Sponsored by:
Assemblyman ROBERT J. SMITH
District 4 (Camden and Gloucester)

SYNOPSIS
The "New Jersey Prescribed Burning Act."

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning prescribed burning and supplementing Title 13 of
the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. This act shall be known, and may be cited, as the "New Jersey
Prescribed Burning Act."

2. The Legislature finds and declares that prescribed burning is a
resource protection and land management tool which promotes public
safety and benefits forest and other natural resources, the environment,
and the economy of the State; that prescribed burning reduces
naturally occurring vegetative fuels within forested areas and other
types of ecosystems, and thereby lessens the risk and severity of major
wildfire and the resulting loss of life and property; that New Jersey's
changing population places urban and suburban development directly
adjacent to fire-prone lands, and that the use of prescribed fire to
manage fuels in those interface areas would substantially reduce the
threat of damaging wildfire in urban and suburban communities.

The Legislature further finds and declares that forested land,
agricultural land, grassland, coastal marshland and other open lands
constitute significant economic, biological, and aesthetic resources of
Statewide importance; that the ecology of the Pine Barrens region in
particular requires periodic fire for maintenance of ecological integrity;
that proper prescribed burning on such lands serves to reduce
hazardous accumulations of fuels, prepares sites for both natural and
artificial forest regeneration, improves wildlife habitat, controls insects
and disease, and perpetuates fire dependent ecosystems; and that
proper application of prescribed burning is essential to the
perpetuation, restoration, and management of many plant and animal
communities, and the resulting increase in vegetative growth and yield
benefits rare, threatened, and endangered species, songbirds, and other
game and nongame species.

The Legislature also finds and declares that as New Jersey's
population continues to grow, pressures from liability issues and
smoke nuisance complaints cause prescribed burn practitioners to limit
prescribed burn activity, thereby reducing the above described benefits
of these burns to the State; and that public misunderstanding of the
benefits of prescribed burning to the ecological and economic welfare
of the State inhibits full use of this valuable resource management tool.

The Legislature therefore determines that it is the purpose of this
act to authorize and promote the continued use of prescribed burning
for public safety, ecological, silvicultural, agricultural, wildfire control,
and wildlife management purposes; that it is appropriate and useful to
exempt prescribed burning, as authorized by this act, from other State
and local laws and regulations prohibiting open burning or the burning
of forests and other types of ecosystems; and that prescribed burning
is to be considered a property right of a landowner when naturally
occurring vegetative fuels are used.

3. As used in this act:

"Certified prescribed burn manager" means a person who has been
certified pursuant to section 4 of this act to conduct prescribed burns;
"Division of Parks and Forestry" means the Division of Parks and
Forestry in the Department of Environmental Protection;
"Prescribed burn" or "prescribed burning" means the controlled
application of fire to naturally occurring vegetative fuels for public
safety, ecological, silvicultural, agricultural, wildfire control, or
wildlife management purposes, under specified environmental
conditions and by following appropriate precautionary measures which
cause the fire to be confined to a predetermined area, so as to
accomplish planned land management objectives;
"Prescription" means a written plan for starting, controlling, and
extinguishing a prescribed burn to accomplish public safety,
ecological, silvicultural, agricultural, wildfire control, or wildlife
management objectives;
"State Forest Fire Service" means the forest fire service established
pursuant to R.S.13:9-1; and
"State Forester" means the State Forester designated as such
pursuant to section 17 of P.L.1983, c.324 (C.13:1L-17).

4. a. The State Forester shall develop and administer a training
course and certification process for any person who desires to become
a certified prescribed burn manager. The training course shall include
the following subjects: the legal aspects of prescribed burning; fire
behavior; prescribed burning tactics; smoke management;
environmental effects; plan preparation; and safety. A final
examination on these subjects shall be given to all attendees. The
State Forester may charge a reasonable fee to cover the costs of the
course and the examination. Certification shall be effective for a
period of seven years from issuance.

b. To be certified as a prescribed burn manager, a person shall:
(1) successfully complete all components of the prescribed burn
training course developed by the State Forester pursuant to subsection
a. of this section, and pass the examination developed for the course;
(2) successfully complete a training course deemed by the State
Forester to be comparable to that developed by the State Forester
pursuant to subsection a. of this section, and pass the examination
developed for New Jersey's course; or
(3) demonstrate to the satisfaction of the State Forester relevant
past experience, and pass the examination developed for New Jersey's
A1979 R. SMITH

4

c. The State Forester shall develop a process for the continued
certification and recertification of certified prescribed burn managers
either through demonstration of managerial participation in at least
five prescribed burns during a five-year period, participation in a
sufficient number of hours of training related to prescribed burn
management every five years as determined by the State Forester, or
subsequent completion of the training course developed pursuant to
subsection a. of this section.

d. The State Forester may revoke a certification issued pursuant to
this section if the certified prescribed burn manager or the prescription
for the prescribed burn violates any provision of this act, the "Air
Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) or
any other State air pollution control law, or any rule or regulation
adopted by the Department of Environmental Protection pursuant
thereto, or otherwise threatens the public health and safety.

5. a. A prescribed burn shall not be conducted on any land unless:
(1) A prescription for the prescribed burn has been prepared by a
certified prescribed burn manager prior to the burn. The prescription
shall include: (a) the landowner's name, address, and telephone
number; (b) the telephone number of the certified prescribed burn
manager who prepared the plan; (c) a description and map of the area
to be burned, the objectives of the prescribed burn, and the desired
weather conditions or parameters; (d) a summary of the methods to be
used to start, control, and extinguish the prescribed burn; and (e) a
smoke management plan based upon guidelines presented therefor by
the United States Forest Service in its publication, "A Guide to
Prescribed Fire in Southern Forests," or such other guidelines as may
be developed or approved therefor by the State Forester for use in the
State;
(2) A copy of the prescription is retained at the site throughout the
period of the prescribed burn;
(3) The prescribed burn is conducted under the direct supervision
of a certified prescribed burn manager, who shall ensure that the
prescribed burn is conducted in accordance with the prescription;
(4) An authorization to burn is obtained from the State Forester or
the State Forester's designee prior to initiating the burn, and the
certified prescribed burn manager ensures that sufficient personnel and
firefighting equipment for control of the fire are present throughout
the burn; and
(5) The nearest regional office of the Division of Parks and
Forestry, State Forest Service, or State Forest Fire Service, and the
nearest local fire station, have been notified of the prescribed burn 24
hours prior to initiation of the burn.

b. Within 10 days prior to conducting a prescribed burn, the owner
of the land to be burned shall notify in writing all landowners whose lands adjoin the land to be burned. The owner shall include in the written notice the proposed date and location of the burn and a telephone number where the owner can be reached for information regarding the prescribed burn. This notification shall be in substantially the following form:

PRESCRIBED BURNING NOTIFICATION

Name:
Phone:
Address:
Location of area to be burned:
Approximate acres to be burned:
Project time frame for burn:
Contact information:

c. The State Forester shall approve properly prepared and filed burn prescriptions unless the prescription is reasonably determined by the State Forester to present an unreasonable risk of uncontrolled wildfire.

6. a. The State Forest Fire Service may prescribe burn any area of land within the State which is reasonably determined by the State Forester, or the State Forester's designee, to be in danger of wildfire, provided that the State Forest Fire Service:

(1) Describes the areas that will be prescribe burned to the affected local governmental entity;

(2) Publishes a prescribed burn notice, including a description of the area to be burned, in a conspicuous manner in at least one newspaper of general circulation in the area of the burn not less than 10 days before initiation of the burn;

(3) Prepares a notice to be sent to all landowners in each municipality designated by the Division of Parks and Forestry as a wildfire hazard area, which shall be included by the county tax assessor with the annual property tax statements sent to landowners. The notice shall describe the particular area to be burned and the tentative date or dates of the burn, list the reasons for and the expected benefits from prescribed burning, and provide an estimate of the costs of the prescribed burn; and

(4) Considers any landowner objections to the prescribed burning of the property. An objecting landowner may apply to the Director of the Division of Parks and Forestry or the director's designee for a review of alternative methods of fuel reduction on the property. If the director or the director's designee does not resolve the objection, the director or the director's designee shall convene a panel made up of the
local forestry unit manager, the fire chief of the jurisdiction, and a
local official designated by the municipality, or any of their designees.
If the panel's recommendation is not acceptable to the landowner, the
landowner may request further consideration by the Commissioner of
Environmental Protection or the commissioner's designee, and shall
thereafter be entitled to an administrative hearing pursuant to the
seq.).

b. If a wildfire hazard reduction prescribed burn is conducted by
the State Forest Fire Service as authorized pursuant to this section, the
State Forest Fire Service shall assess the reasonable and normal costs
thereof against the landowner, which shall be payable within 90 days
after assessment. If the landowner does not pay the assessed costs
within 90 days, they may be collected in a summary proceeding
(C.2A:58-10 et seq.).

7. a. (1) Any prescribed burn conducted in compliance with the
requirements of this act, an approved burn prescription, the "Air
Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.)
and any other applicable State air pollution control law, and the rules
and regulations adopted by the Department of Environmental
Protection pursuant thereto shall be deemed to be in the public interest
and shall not constitute a nuisance, public or private.

(2) No landowner, certified prescribed burn manager, or agen
to thereof who conducts a prescribed burn in compliance with the
requirements of this act, an approved burn prescription, the "Air
Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.)
and any other applicable State air pollution control law, and the rules
and regulations adopted by the Department of Environmental
Protection pursuant thereto shall be liable for any damages or injury
caused by fire or resulting smoke unless it is proven that there was
gross negligence in starting, controlling, or extinguishing the burn.

b. Without affecting any other limitations on liability that may be
applicable, and notwithstanding the provisions of any other law,
neither the State Forester nor any designee thereof shall be personally
liable for any damages or injury arising from or related to any act or
omission of the State Forester or any designee thereof when acting in
an official capacity to carry out the provisions of this act.

c. Notwithstanding any State or local law, rule, regulation,
ordinance, or resolution to the contrary, prescribed burns conducted
pursuant to this act and any rules and regulations adopted pursuant
thereto shall be deemed not to (1) be a source or source operation, (2)
be or tend to be injurious to health or welfare, animal or plant life or
property, or (3) unreasonably interfere with the enjoyment of life or
property, as those terms are used in the "Air Pollution Control Act
(1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), and any rules or
regulations adopted pursuant thereto, or any similar provision of any
municipal or county ordinance, resolution, or regulation.

8. The Department of Environmental Protections shall adopt,
pursuant to the "Administrative Procedure Act," P.L.1968, c.410
(C.52:14B-1 et seq.), such rules and regulations as may be necessary
to implement this act.

9. This act shall take effect on the 180th day after the date of
enactment, but the Commissioner of Environmental Protection and the
State Forester may take such anticipatory administrative action in
advance thereof as shall be necessary to implement this act.

STATEMENT

This bill would establish a process for certifying individuals to
certify individuals to conduct prescribed burns of forested and other undeveloped lands in
order to prevent uncontrolled and damaging wildfires and to
accomplish various land management objectives. The bill also would
establish the procedures to be followed in conducting such burns. In
addition, the bill would authorize the State Forest Fire Service under
certain conditions to conduct prescribed burns on any area of land
within the State which is reasonably determined by the State Forester
to be in danger of wildfire. Finally, the bill would provide to
landowners, certified prescribed burn managers, their agents, and the
State Forester immunity against potential liability for damages or
injury possibly resulting from a prescribed burn.

Specifically, the bill directs the State Forester to develop and
administer a training course and certification process for any person
who desires to become a certified prescribed burn manager. The
training course would include the following subjects: the legal aspects
of prescribed burning; fire behavior; prescribed burning tactics; smoke
management; environmental effects; plan preparation; and safety. The
State Forester would be authorized to charge a reasonable fee to cover
the costs of the course and the examination. A certification would be
effective for a period of seven years from issuance.

Under the bill, a prescribed burn would not be conducted on any
land unless:

1) A prescription for the prescribed burn has been prepared by a
certified prescribed burn manager prior to the burn. The prescription
would include: (a) the landowner's name, address, and telephone
number; (b) the telephone number of the certified prescribed burn
manager who prepared the plan; (c) a description and map of the area
to be burned, the objectives of the prescribed burn, and the desired
weather conditions or parameters; (d) a summary of the methods to be
used to start, control, and extinguish the prescribed burn; and (e) a
smoke management plan based upon guidelines presented therefor by
the United States Forest Service;
   (2) A copy of the prescription is retained at the site throughout the
period of the prescribed burn;
   (3) The prescribed burn is conducted under the direct supervision
of a certified prescribed burn manager, who must ensure that the
prescribed burn is conducted in accordance with the prescription;
   (4) An authorization to burn is obtained from the State Forester
prior to initiating the burn, and the certified prescribed burn manager
ensures that sufficient personnel and firefighting equipment for control
of the fire are present throughout the burn; and
   (5) The nearest regional office of the Division of Parks and
Forestry, State Forest Service, or State Forest Fire Service, and the
nearest local fire station, have been notified of the prescribed burn 24
hours prior to initiation of the burn.

The bill also provides that within 10 days prior to conducting a
prescribed burn, the owner of the land to be burned must notify in
writing all landowners whose lands adjoin the land to be burned. The
owner must include in the written notice the proposed date and
location of the burn and a telephone number where the owner can be
reached for information regarding the prescribed burn.

Under the bill, the State Forester is directed to approve properly
prepared and filed burn prescriptions unless the prescription is
reasonably determined by the State Forester to present an
unreasonable risk of uncontrolled wildfire.

The bill also authorizes the State Forest Fire Service to prescribe
burn any area of land within the State which is reasonably determined
by the State Forester to be in danger of wildfire, provided that the
State Forest Fire Service:
   (1) Describes the areas that will be prescribe burned to the affected
local governmental entity;
   (2) Publishes a prescribed burn notice, including a description of
the area to be burned, in a conspicuous manner in at least one
newspaper of general circulation in the area of the burn not less than
10 days before initiation of the burn;
   (3) Prepares a notice to be sent to all landowners in each
municipality designated by the Division of Parks and Forestry as a
wildfire hazard area, which shall be included by the county tax
assessor with the annual property tax statements sent to landowners.
The notice would describe the particular area to be burned and the
tentative date or dates of the burn, list the reasons for and the
expected benefits from prescribed burning, and provide an estimate of
the costs of the prescribed burn; and
   (4) Considers any landowner objections to the prescribed burning
of the property.

Any such objecting landowner would be able to apply to the
Director of the Division of Parks and Forestry for a review of
alternative methods of fuel reduction on the property. If the director
does not resolve the objection, the director must then convene a panel
made up of the local forestry unit manager, the fire chief of the
jurisdiction, and a local official designated by the municipality. If the
panel's recommendation is not acceptable to the landowner, the
landowner may request further consideration by the Commissioner of
Environmental Protection, and would thereafter be entitled to an
administrative hearing pursuant to the "Administrative Procedure Act."
The bill provides that if a wildfire hazard reduction prescribed burn
is conducted by the State Forest Fire Service, it shall assess the
reasonable and normal costs thereof against the landowner, which shall
be payable within 90 days after assessment. If the landowner does not
pay the assessed costs within 90 days, they may be collected in a
summary proceeding pursuant to the "Penalty Enforcement Law of
1999."

Finally, the bill provides to landowners, certified prescribed burn
managers, their agents, and the State Forester immunity against
potential liability for damages or injury possibly resulting from a
prescribed burn. The bill also declares that a properly conducted
prescribed burn shall be deemed to be in the public interest and shall
not constitute a public or private nuisance.

Prescribed burning is a resource protection and land management
tool which promotes public safety and benefits the environment and
the economy of the State. Prescribed burning reduces naturally
occurring vegetative fuels within forested and other undeveloped
areas, and thereby lessens the risk and severity of major wildfire and
the resulting loss of life and property. This bill would help authorize
and promote the continued use of prescribed burning for these
important purposes.