

## CHAPTER 107

AN ACT concerning prescribed burns, and supplementing Title 13 of the Revised Statutes.

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

C.13:9-44.11 Short title.

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

C.13:9-44.12 Findings, declarations relative to prescribed burns.

2. The Legislature finds and declares that prescribed burning is a public safety tool the primary purpose of which is to reduce the danger of uncontrolled wildfire; that it is also a resource protection and land management technique which benefits forests 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 possible resulting loss of life and property; that New Jersey's changing population places suburban development directly adjacent to fire-prone lands; and that the use of prescribed burning to manage wildland fire fuels in those interface areas would substantially reduce the threat of damaging wildfire in 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 those lands serves to reduce hazardous accumulations of wildland fire 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 existence, continuation, restoration, and management of many plant and animal communities, and the resulting vegetative growth 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, wildfire control, and ecological, silvicultural, agricultural, and natural resource management purposes; that it is appropriate and useful to allow prescribed burning, as authorized by this act, under all other State laws and regulations and exempt from all local laws and regulations prohibiting open burning or the burning of forests and other types of ecosystems; and that prescribed burning of wildland fire fuels is to be considered an acceptable practice of a landowner.

C.13:9-44.13 Definitions relative to prescribed burns.

3. As used in this act:

“Assistant Commissioner” means the Assistant Commissioner of Natural and Historic Resources in the Department of Environmental Protection.

“Certified” means having completed and received the certification from a program of education, approved by the department, about the design and implementation of prescribed

burns that, upon completion, results in issuance of a certification to the participant. "Certified" shall not mean completion of the training provided by the Forest Fire Service.

"Department" means the Department of Environmental Protection."

"Forest Fire Service" means the Forest Fire Service in the Department of Environmental Protection.

"Landowner or lessee" means (1) the person responsible for the land upon which a prescribed burn is to be conducted who (a) either owns or leases the land, and (b) has full access and control of the land at all times during the prescribed burn; or (2) an agent, employee, or other representative of that person who, for the purposes of complying with this act, (a) is authorized to act on the person's behalf, and (b) has full access and control of the land at all times during the prescribed burn.

"Mechanically manage vegetation" means to mow or cut vegetation to reduce wildland fire fuels contained in the forest or other open lands.

"Person" means an individual, trust, partnership, limited partnership, limited liability company, society, association, joint stock company, corporation, public corporation or public authority, estate, receiver, trustee, assignee, referee, fiduciary and any other legal entity.

"Prescribed burn" or "prescribed burning" means the deliberate ignition and controlled open burning of wildland fire fuels, under specified environmental conditions which allow the fire to be confined to a predetermined area and produces the fireline intensity and rate of spread required to attain planned resource management objectives such as public safety, wildfire control, ecological, silvicultural, agricultural, or other natural resource management purposes.

"Prescribed burn plan" or "plan" means a written plan prepared in accordance with this act and the rules and regulations adopted pursuant to section 7 thereof, for starting, executing, and controlling a prescribed burn.

"Wildland fire fuels" means fuels including herbaceous and other plant life found in forests, fields, grasslands, coastal marshlands and other open lands whether in their natural state or having been cut.

#### C.13:9-44.14 Program for prescribed burning, fees.

4. a. The Department of Environmental Protection shall develop and administer a program for prescribed burning on public and private lands under which the department may authorize a person to conduct a prescribed burn pursuant to a prescribed burn plan approved by the department.

b. The department may charge a reasonable fee to cover the costs associated with the program. All such fees collected shall be credited to a special dedicated account in the General Fund and appropriated to the Forest Fire Service to help pay for the administration and operation of its forest fire programs.

c. A person who desires to conduct a prescribed burn only on land for which the person is the landowner or lessee shall not be required to become certified.

#### C.13:9-44.15 Conducting of prescribed burn; notifications, objections.

5. a. The department may conduct a prescribed burn or mechanically manage vegetation in any area of land within the State which is determined by the Forest Fire Service to be in reasonable danger of wildfire due to the accumulation of wildland fire fuels.

b. For lands not owned or controlled by the State, which are determined by the Forest Fire Service to be in reasonable danger of wildfire due to the accumulation of wildland fire fuels, the Forest Fire Service shall:

(1) provide written notice to each affected local governmental entity within which the affected land is located that describes the purpose of the prescribed burn and describes the areas to be burned in the prescribed burn;

(2) publish a prescribed burn notice, which shall include an explanation of the purpose of the prescribed burn and a description of the area to be burned, in at least one newspaper of general circulation in the area of the prescribed burn;

(3) provide prior written notice, by certified mail, return receipt requested, or personal service, of the proposed prescribed burn to each affected landowner and lessee, if known, of the purpose of the prescribed burn and the description of any land that is included in the area to be burned in the prescribed burn, which notice shall be sent at least 30 days prior to the prescribed burn unless the department makes a written finding that an emergency exists, in which case the prior written notice shall be sent as soon as possible after the finding is made; and

(4) consider any landowner or lessee objections to the prescribed burning of the property pursuant to subsection c. of this section.

c. An objecting landowner or lessee may apply to the Forest Fire Service for a review of alternative methods of wildland fire fuel reduction on the property. If the Forest Fire Service does not resolve the objection, the Assistant Commissioner or designee thereof shall convene a panel composed of the local Forest Fire Service manager, the fire chief of the jurisdiction, and a local official designated by the municipality in which the land is located, or any of their designees. The panel shall review the prescribed burning of the property, objections to the prescribed burn, and the proposed alternative fuel reduction methods, and shall recommend a course of action to reduce the wildland fire fuels that specifies the minimum amount of land required for treatment. If the panel's recommendation is not acceptable to the objecting landowner or lessee, the landowner or lessee may request further consideration by the Commissioner of Environmental Protection or the commissioner's designee, and shall thereafter be entitled to an administrative hearing as a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

d. The department may assess against a landowner or lessee reasonable fees and costs for a prescribed burn conducted by the Forest Fire Service for any wildland fuel hazard that poses an extraordinary threat to life, property, or a natural resource as authorized pursuant to this section.

C.13:9-44.16 Prescribed burn deemed to be in public interest; immunity from liability.

6. a. A prescribed burn, including the smoke and ash and other air pollution deriving therefrom, conducted in accordance with the requirements of this act and an approved prescribed burn plan, shall be deemed to be in the public interest and shall not constitute arson, trespass, or a public or private nuisance.

b. A landowner or lessee who conducts or authorizes a prescribed burn in accordance with an approved prescribed burn plan, the requirements of this act, and the rules and regulations adopted pursuant thereto shall not be liable in a civil action for any damages or injury to persons or property from fire or the resulting smoke or ash caused by the prescribed burn, unless it is proven that the landowner or lessee was negligent in starting, executing, or controlling the prescribed burn.

c. Any person who conducts or authorizes a prescribed burn in accordance with an approved prescribed burn plan, the requirements of this act, and the rules and regulations adopted pursuant thereto shall not be liable for any penalties for violations of the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.).

d. In a private civil action arising from the conducting of a prescribed burn and any damages or injury caused by the fire or the resulting smoke or ash, proof of compliance with the requirements and standards established pursuant to this act shall be admissible evidence that the duty of care for conducting of a prescribed burn has been met.

e. No provision of this act shall be construed to relieve a landowner or lessee of the obligation to reimburse the department for the reasonable and normal costs associated with a prescribed burn, regardless of whether fire escapes from the prescribed burn conducted or authorized to be conducted by the landowner or lessee and the fire requires intervention by the Forest Fire Service. If the fire escapes due to the negligence of the landowner or lessee, the landowner or lessee shall also be subject to penalties established by the department by rule or regulation for such negligence. Any reimbursement of costs paid pursuant to this subsection shall be credited to a special dedicated account in the General Fund and appropriated to the Forest Fire Service to pay for the administration and operation of its forest fire programs.

f. Without affecting any other limitations on liability that may be applicable, and notwithstanding the provisions of any other law, the department and any designee, agent, or employee thereof shall be immune from liability for any damages or injury arising from or related to any act or omission taken in the good faith performance of the department and any designee, agent, or employee thereof in carrying out the provisions of this act.

C.13:9-44.17 Rules, regulations.

7. The department, in consultation with the Department of Agriculture, shall develop and adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement this act, which shall include, but need not be limited to, the issuance of appropriate notice to the public of prescribed burns conducted by the Forest Fire Service and the design, approval, and implementation of prescribed burn plans.

8. This act shall take effect immediately.

Approved August 24, 2018.