

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 262 Session of 2009

INTRODUCED BY HALUSKA, BARRAR, BENNINGHOFF, BEYER, CARROLL, FLECK, GODSHALL, GOODMAN, HUTCHINSON, LEVDANSKY, READSHAW, ROHRER, SIPTROTH, STABACK, BRENNAN, WALKO, WATSON, GEIST, K. SMITH, KORTZ AND CALTAGIRONE, FEBRUARY 5, 2009

SENATOR M. WHITE, ENVIRONMENTAL RESOURCES AND ENERGY, IN SENATE, AS AMENDED, MAY 5, 2009

AN ACT

1 Regulating prescribed burning practices; providing for the
2 powers and duties of the State Forester and the Department of
3 Conservation and Natural Resources AND THE DEPARTMENT OF
4 ENVIRONMENTAL PROTECTION; and establishing certain
5 immunities.



6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Prescribed
10 Burning Practices Act.

11 Section 2. Legislative declaration and findings.

12 The General Assembly declares that prescribed burning is a
13 land management tool that benefits the safety of the public, the
14 environment and the economy of this Commonwealth. Therefore, the
15 General Assembly finds that:

16 (1) Prescribed burning reduces naturally occurring
17 vegetative fuels. Reducing the fuel load reduces the risk and

1 severity of wildfires, thereby reducing the threat of loss of
2 life and property.

3 (2) Public agencies and nongovernmental organizations in
4 this Commonwealth have invested millions of dollars to
5 purchase land for parks, wildlife areas, State forests,
6 nature preserves and other outdoor recreational purposes. For
7 many of these public and private lands, the use of prescribed
8 burning is essential to maintain specific resource values for
9 which the areas were acquired.

10 (3) Forests, grasslands and other natural areas in this
11 Commonwealth constitute significant economic, biological and
12 aesthetic resources of Statewide importance. Prescribed
13 burning prepares sites for planting; removes undesirable
14 competing vegetation; accelerates nutrient cycling; controls
15 certain insect pests, pathogens and noxious weeds; and
16 promotes oak regeneration. In these communities, prescribed
17 burning improves and maintains the quality and quantity of
18 wildlife habitats.

19 (4) Many of this Commonwealth's natural communities
20 require periodic fire for maintenance of their ecological
21 health. Prescribed burning is essential to the perpetuation,
22 restoration and management of many plant and animal
23 communities. Significant loss of this Commonwealth's
24 biological diversity will occur if fire is excluded from
25 these fire-dependent and fire-adapted communities.

26 (5) Proper training in the purposes, use and application
27 of prescribed burning is necessary to ensure maximum benefits
28 and protection for the public.

29 (6) Prescribed burning in the hands of trained, skilled
30 and experienced people is safe and often represents one of

1 the most cost-effective management techniques to accomplish
2 many ecosystem restoration objectives and ecological goals.

3 (7) As development and urbanization increase in many
4 areas of this Commonwealth, concerns about potential
5 liability and nuisance complaints may inhibit the use of
6 prescribed burning as a conservation and safety tool.

7 Section 3. Purpose.

8 The purpose of this act is to encourage the continued use of
9 prescribed burning for fuel reduction, ecological, forest,
10 wildlife and grassland management purposes.

11 Section 4. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Department." The Department of Conservation and Natural
16 Resources of the Commonwealth.

17 "National Wildfire Coordinating Group." The organization
18 comprised of representatives from Federal and State Government
19 agencies which has developed formal standards and programs
20 addressing wildland fire, including training, equipment and
21 operational requirements for the appropriate use of prescribed
22 ~~fire~~ BURNS. ←

23 "Prescribed burn" or "prescribed burning." The planned and
24 controlled application of fire to existing vegetative fuels:

25 (1) Under specified environmental conditions and
26 following appropriate precautionary measures, in order to
27 accomplish one or more specific land management objectives,
28 including, but not limited to, vegetative fuel reduction,
29 silvicultural treatments, wildlife habitat improvement and
30 management of grassland and other plant communities.

1 (2) Conducted in compliance with a written prescribed
2 burn plan and under the supervision of a prescribed burn
3 manager.

4 "Prescribed burn manager." An individual who successfully
5 completes and maintains the level of training and experience
6 required by the State Forester to review and approve a
7 prescribed burn plan and supervise a prescribed burn.

8 "Prescribed burn plan." A written plan reviewed and approved
9 by a prescribed burn manager that includes measurable criteria
10 to:

11 (1) Define the conditions for starting, controlling and
12 extinguishing a prescribed burn for a specified area or
13 multiple units within an area.

14 (2) Guide the selection of appropriate management
15 responses.

16 (3) Indicate other required action.

17 The plan may include information relating to burn duration,
18 smoke management, fuel and weather prescriptions, notification
19 of adjacent landowners, safety contingencies and other relevant
20 factors.

21 "PRESCRIBED BURN WORKER." AN INDIVIDUAL WHO WORKS UNDER THE ←
22 DIRECT SUPERVISION OF A PRESCRIBED BURN MANAGER.

23 "STANDARDS." THE PRESCRIBED BURN STANDARDS DEVELOPED UNDER
24 SECTION 5.

25 Section 5. ~~Regulatory~~ PRESCRIBED BURN standards. ←

26 Within six months from the effective date of this section,
27 the ~~State Forester shall promulgate~~ DEPARTMENT SHALL DEVELOP ←
28 standards, which shall include a 60-day public comment period,
29 for the planning and conduct of prescribed burning in this
30 Commonwealth. In developing the standards, the ~~State Forester~~ ←

1 DEPARTMENT shall consult with the Department of Environmental ←
2 Protection, the Pennsylvania Game Commission and other public
3 agencies and private organizations which have interest or
4 experience in the practice of prescribed burning. The standards
5 shall include, but not be limited to:

6 (1) Minimum qualifications and training requirements for
7 prescribed burn managers and ~~other persons participating in a~~ ←
8 ~~prescribed burn~~ PRESCRIBED BURN WORKERS. ←

9 (2) Required content for prescribed burn plans.

10 To the greatest extent practicable, the standards shall be
11 consistent with comparable requirements established by the
12 National Wildfire Coordinating Group.

13 Section 6. Departmental regulations.

14 If deemed necessary and appropriate by the ~~State Forester~~ ←
15 SECRETARY OF CONSERVATION AND NATURAL RESOURCES, the department ←
16 shall establish by regulation:

17 (1) A certification and revocation process for
18 prescribed burn managers.

19 (2) Requirements for the review and approval of
20 prescribed burn plans ~~by the State~~. ←

21 (3) A training program for prescribed burn managers and
22 ~~other persons participating in a prescribed burn~~ PRESCRIBED ←
23 BURN WORKERS.

24 In the event such ~~requirements~~ REGULATIONS are established, the ←
25 department ~~is authorized to~~ MAY charge and collect fees from ←
26 persons participating in training or certification programs.

27 Section 7. Prescribed burn plan.

28 ~~(a) Duty of prescribed burn manager to submit.~~ ←

29 ~~(1) Prior to execution of a prescribed burn plan, the~~

30 (A) NOTIFICATION AND REVIEW.-- ←

1 (1) THE prescribed burn manager shall notify the
2 DEPARTMENT AND THE Department of Environmental Protection in ←
3 writing of the intention to conduct prescribed burning at the
4 specific location of the proposed prescribed burn and the
5 range of dates during which prescribed burns could take
6 place.

7 (2) The notification REQUIRED BY THIS SECTION shall be ←
8 provided to the DEPARTMENT AND THE Department of ←
9 Environmental Protection at least 25 working days before the
10 earliest possible date that a burn could occur. The written
11 notification shall include a copy of the prescribed burn
12 plan, or other such form as approved by the DEPARTMENT AND ←
13 THE Department of Environmental Protection.

14 (3) The DEPARTMENT AND THE Department of Environmental ←
15 Protection shall review and provide comments, if necessary,
16 on the prescribed burn plan no later than five working days
17 prior to the earliest possible date that a burn could occur.

18 (b) Contents.--A prescribed burn plan shall include
19 procedures that minimize the possibility that fire will escape
20 from the desired area and minimize danger to the public and
21 firefighting personnel from fire and smoke. The prescribed burn
22 plan shall be consistent with the ~~prescribed burn~~ standards ←
23 ~~approved by the State Forester~~, and a prescribed burn shall be ←
24 executed pursuant to the plan.

25 Section 8. Relationship to other laws.

26 The requirements of 25 Pa.Code § 129.14(a) and (b) (relating
27 to open burning) do not apply to a prescribed burn which is
28 executed pursuant to a prescribed burn plan consistent with
29 ~~established standards approved by the State Forester under this~~ ←
30 ~~act~~ THE STANDARDS. This section shall not be construed to ←

1 otherwise limit the authority of the Department of Environmental
2 Protection under the act of January 8, 1960 (1959 P.L.2119,
3 No.787), known as the Air Pollution Control Act, and the
4 regulations promulgated under this act.

5 Section 9. Public interest.

6 A prescribed burn conducted in compliance with this act and
7 the act of January 8, 1960 (1959 P.L.2119, No.787), known as the
8 Air Pollution Control Act, is deemed to be in the public
9 interest and shall not constitute a public or private nuisance.
10 Section 10. Prescribed burning requirements.

11 Prescribed burning under the provisions of this act shall be
12 conducted:

13 (1) In compliance with ~~standards established by the~~ ←
14 ~~State Forester pursuant to section 5~~ THE STANDARDS AND ←
15 REGULATIONS PROMULGATED PURSUANT TO SECTION 6.

16 (2) In compliance with a prescribed burn plan which has
17 been reviewed and approved by a prescribed burn manager and
18 is available on site while the prescribed burn or burns are
19 conducted.

20 (3) Only when at least one prescribed burn manager is
21 present on site to supervise the burn or burns that are being
22 conducted.

23 (4) Only with the written consent of ~~the property owner~~ ←
24 ~~or the owner's designee~~ EACH PROPERTY OWNER OR THE LEGAL ←
25 REPRESENTATIVE OF A PROPERTY OWNER.

26 Section 11. Immunities.

27 (a) Civil or criminal penalty.--

28 (1) No owner of property who contracts with or
29 authorizes a prescribed burn manager ~~or person acting under~~ ←
30 ~~the direction of a prescribed burn manager to conduct or TO~~ ←

1 CONDUCT OR permit a prescribed burn on the property pursuant
2 to the requirements of this act shall be subject to civil or
3 criminal penalty for damage or injury caused by the fire or
4 resulting smoke, unless negligence is proven.

5 (2) No prescribed burn manager who executes and acts in
6 accordance with a prescribed burn plan that satisfies the
7 standards ~~established pursuant to this act~~ and who has ←
8 attained the qualifications for planning and conducting a
9 prescribed burn in accordance with the standards ~~established~~ ←
10 ~~pursuant to this act~~ shall be subject to civil or criminal
11 penalty for damage or injury caused by the fire or resulting
12 smoke, unless negligence is proven.

13 (3) No person who acts under the direction of a
14 prescribed burn manager executing a prescribed burn plan that
15 satisfies the standards ~~established pursuant to this act~~ and ←
16 who has attained the relevant qualifications for
17 participating in a prescribed burn in accordance with the
18 standards ~~established pursuant to this act~~ shall be subject ←
19 to civil or criminal penalty for damage or injury caused by
20 the fire or resulting smoke, unless negligence is proven.

21 (b) Private actions.--In a private civil action arising from
22 the conduct of a prescribed burn and damage or injury caused by
23 the fire or resulting smoke, proof of compliance with the
24 requirements of this act and the standards ~~established pursuant~~ ←
25 ~~to this act~~ shall be admissible evidence that the duty of care
26 for such activity has been met.

27 Section 12. Effective date.

28 This act shall take effect immediately.