

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2735 Session of
2008

INTRODUCED BY HALUSKA, HANNA, BRENNAN, CREIGHTON, DENLINGER,
FAIRCHILD, GEORGE, GODSHALL, GOODMAN, HESS, KOTIK, KULA,
LEVDANSKY, MAHONEY, PASHINSKI, SAYLOR, SIPTROTH, SOLOBAY,
STABACK, SURRA, THOMAS, WATSON, WOJNAROSKI AND YOUNGBLOOD,
AUGUST 5, 2008

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
AUGUST 5, 2008

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 establishing certain
4 immunities.

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

7 Section 1. Short title.

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

10 Section 2. Legislative declaration and findings.

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

15 (1) Prescribed burning reduces naturally occurring
16 vegetative fuels. Reducing the fuel load reduces the risk and
17 severity of wildfires, thereby reducing the threat of loss of

1 life and property.

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

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

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

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

28 (6) Prescribed burning in the hands of trained, skilled
29 and experienced people is safe and often represents one of
30 the most cost-effective management techniques to accomplish

1 many ecosystem restoration objectives and ecological goals.

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

6 Section 3. Purpose.

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

10 Section 4. Definitions.

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

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

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

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

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

30 (2) Conducted in compliance with a written prescribed

burn plan and under the supervision of a prescribed burn manager.

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

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

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

(2) Guide the selection of appropriate management responses.

(3) Indicate other required action.

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

Section 5. Regulatory standards.

Within six months from the effective date of this section, the State Forester shall promulgate standards, which shall include a 60-day public comment period, for the planning and conduct of prescribed burning in this Commonwealth. In developing the standards, the State Forester shall consult with the Department of Environmental Protection, the Pennsylvania Game Commission and other public agencies and private organizations which have interest or experience in the practice of prescribed burning. The standards shall include, but not be limited to:

1 (1) Minimum qualifications and training requirements for
2 prescribed burn managers and other persons participating in a
3 prescribed burn.

4 (2) Required content for prescribed burn plans.
5 To the greatest extent practicable, the standards shall be
6 consistent with comparable requirements established by the
7 National Wildfire Coordinating Group.

8 Section 6. Departmental regulations.

9 If deemed necessary and appropriate by the State Forester,
10 the department shall establish by regulation:

11 (1) A certification and revocation process for
12 prescribed burn managers.

13 (2) Requirements for the review and approval of
14 prescribed burn plans by the State.

15 (3) A training program for prescribed burn managers and
16 other persons participating in a prescribed burn.

17 In the event such requirements are established, the department
18 is authorized to charge and collect fees from persons
19 participating in training or certification programs.

20 Section 7. Prescribed burn plan.

21 (a) Duty of prescribed burn manager to submit.--

22 (1) Prior to execution of a prescribed burn plan, the
23 prescribed burn manager shall notify the Department of
24 Environmental Protection in writing of the intention to
25 conduct prescribed burning at the specific location of the
26 proposed prescribed burn and the range of dates during which
27 prescribed burns could take place.

28 (2) The notification shall be provided to the Department
29 of Environmental Protection at least 25 working days before
30 the earliest possible date that a burn could occur. The

1 written notification shall include a copy of the prescribed
2 burn plan, or other such form as approved by the Department
3 of Environmental Protection.

4 (3) The Department of Environmental Protection shall
5 review and provide comments, if necessary, on the prescribed
6 burn plan no later than five working days prior to the
7 earliest possible date that a burn could occur.

8 (b) Contents.--A prescribed burn plan shall include
9 procedures that minimize the possibility that fire will escape
10 from the desired area and minimize danger to the public and
11 firefighting personnel from fire and smoke. The prescribed burn
12 plan shall be consistent with the prescribed burn standards
13 approved by the State Forester, and a prescribed burn shall be
14 executed pursuant to the plan.

15 Section 8. Relationship to other laws.

16 The requirements of 25 Pa.Code § 129.14(a) and (b) (relating
17 to open burning) do not apply to a prescribed burn which is
18 executed pursuant to a prescribed burn plan consistent with
19 established standards approved by the State Forester under this
20 act. This section shall not be construed to otherwise limit the
21 authority of the Department of Environmental Protection under
22 the act of January 8, 1960 (1959 P.L.2119, No.787), known as the
23 Air Pollution Control Act, and the regulations promulgated under
24 this act.

25 Section 9. Public interest.

26 A prescribed burn conducted in compliance with this act and
27 the act of January 8, 1960 (1959 P.L.2119, No.787), known as the
28 Air Pollution Control Act, is deemed to be in the public
29 interest and shall not constitute a public or private nuisance.

30 Section 10. Prescribed burning requirements.

1 Prescribed burning under the provisions of this act shall be
2 conducted:

3 (1) In compliance with standards established by the
4 State Forester pursuant to section 5.

5 (2) In compliance with a prescribed burn plan which has
6 been reviewed and approved by a prescribed burn manager and
7 is available on site while the prescribed burn or burns are
8 conducted.

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

12 (4) Only with the written consent of the property owner
13 or the owner's designee.

14 Section 11. Immunities.

15 (a) Civil or criminal penalty.--

16 (1) No owner of property who contracts with or
17 authorizes a prescribed burn manager or person acting under
18 the direction of a prescribed burn manager to conduct or
19 permit a prescribed burn on the property pursuant to the
20 requirements of this act shall be subject to civil or
21 criminal penalty for damage or injury caused by the fire or
22 resulting smoke, unless negligence is proven.

23 (2) No prescribed burn manager who executes and acts in
24 accordance with a prescribed burn plan that satisfies the
25 standards established pursuant to this act and who has
26 attained the qualifications for planning and conducting a
27 prescribed burn in accordance with the standards established
28 pursuant to this act shall be subject to civil or criminal
29 penalty for damage or injury caused by the fire or resulting
30 smoke, unless negligence is proven.

1 (3) No person who acts under the direction of a
2 prescribed burn manager executing a prescribed burn plan that
3 satisfies the standards established pursuant to this act and
4 who has attained the relevant qualifications for
5 participating in a prescribed burn in accordance with the
6 standards established pursuant to this act shall be subject
7 to civil or criminal penalty for damage or injury caused by
8 the fire or resulting smoke, unless negligence is proven.

9 (b) Private actions.--In a private civil action arising from
10 the conduct of a prescribed burn and damage or injury caused by
11 the fire or resulting smoke, proof of compliance with the
12 requirements of this act and the standards established pursuant
13 to this act shall be admissible evidence that the duty of care
14 for such activity has been met.

15 Section 12. Effective date.

16 This act shall take effect immediately.