

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 AND WALKO, FEBRUARY 5, 2009

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, FEBRUARY 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 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

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

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

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

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

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

15 (3) Indicate other required action.

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

20 Section 5. Regulatory standards.

21 Within six months from the effective date of this section,  
22 the State Forester shall promulgate standards, which shall  
23 include a 60-day public comment period, for the planning and  
24 conduct of prescribed burning in this Commonwealth. In  
25 developing the standards, the State Forester shall consult with  
26 the Department of Environmental Protection, the Pennsylvania  
27 Game Commission and other public agencies and private  
28 organizations which have interest or experience in the practice  
29 of prescribed burning. The standards shall include, but not be  
30 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.