

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1120

Short Title: Prescribed Burning in Forests.

(Public)

Sponsors: Representatives McComas; and Davis.

Referred to: Agriculture, if favorable, Judiciary I.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW PRESCRIBED BURNING IN FORESTS BY FOREST
3 LANDOWNERS UNDER CERTAIN CONDITIONS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 113 of the General Statutes is amended by adding a new
6 Article to read:

7 **“ARTICLE 4E.**

8 **“NORTH CAROLINA PRESCRIBED BURNING ACT.**

9 **“§ 113-60.40. Legislative findings.**

10 The General Assembly finds that prescribed burning of forestlands is a management
11 tool that is beneficial to North Carolina's public safety, forest and wildlife resources,
12 environment, and economy. All of the following are benefits that result from prescribed
13 burning of forestlands:

14 (1) Prescribed burning reduces the naturally occurring buildup of vegetative
15 fuels on forestlands. Reduction of these fuels by prescribed burning
16 reduces the risk and severity of wildfires, thus lessening the loss of life
17 and property.

18 (2) The State's ever-increasing population is resulting in urban development
19 directly adjacent to fire prone forestlands. Such an area is referred to as
20 a woodland-urban interface area. The use of prescribed burning in these

1 woodland-urban interface areas substantially reduces the risk of
2 damaging wildfires.

3 (3) Many of North Carolina's natural ecosystems require periodic fire for
4 their survival. Prescribed burning is essential to the perpetuation,
5 restoration, and management of many plant and animal communities.
6 Fire benefits game, nongame, and endangered wildlife species by
7 increasing the growth and yield of plants that provide forage, escape,
8 brooding, and other habitat needs.

9 (4) Forestlands are economic, biological, and aesthetic resources of
10 statewide significance. In addition to reducing the frequency and
11 severity of wildfires, prescribed burning of forestlands helps to prepare
12 sites for replanting and natural seeding, to control insects and diseases,
13 and to increase productivity.

14 (5) The resources on public use lands, such as State and national forests,
15 wildlife refuges, nature preserves, and game lands, are enhanced by
16 prescribed burning. Private lands that are managed for wildlife,
17 recreation, and other purposes are similarly enhanced by prescribed
18 burning.

19 (6) As North Carolina's population grows, pressures resulting from liability
20 issues and smoke complaints discourage or limit prescribed burning so
21 that these numerous benefits to forestlands often are not attainable.

22 (7) The General Assembly's recognition of the benefits of prescribed
23 burning and the adoption of requirements governing prescribed burning
24 will help to educate the public and avoid misunderstandings and reduce
25 complaints about this valuable management tool.

26 **"§ 113-60.41. Definitions.**

27 As used in this Article:

28 (1) 'Certified prescribed burner' means an individual who has successfully
29 completed a certification program approved by the Division of Forest
30 Resources of the Department of Environment, Health, and Natural
31 Resources.

32 (2) 'Prescribed burning' or 'prescribed burn' means the planned and
33 controlled application of fire to naturally occurring vegetative fuels
34 under safe weather, environmental, and other conditions, while
35 following appropriate precautionary measures that will confine the fire
36 to a predetermined area and accomplish the intended management
37 objectives.

38 (3) 'Prescription' means a written plan prepared by a certified prescribed
39 burner for starting, controlling, and extinguishing a prescribed burn.

40 **"§ 113-60.42. Immunity from liability.**

41 (a) Any prescribed burning conducted in compliance with G.S. 113-60.43 is in the
42 public interest and does not constitute a public or private nuisance.

1 **(b)** A landowner or the landowner's agent who conducts a prescribed burn in
2 compliance with G.S. 113-60.43 shall not be liable in any civil action for any damage or
3 injury caused by or resulting from smoke.

4 **(c)** This section does not apply when a nuisance or damage results from the
5 negligent or improper conduct of the prescribed burn.

6 **"§ 113-60.43. Prescribed burning.**

7 **(a)** Prior to the burning, a prescription for the prescribed burning shall be prepared
8 by a certified prescribed burner and shall be filed with the Division of Forest Resources,
9 Department of Environment, Health, and Natural Resources. A copy of the prescription
10 shall be provided to the landowner and shall be present on the site throughout the period
11 of the burning. The prescription shall include all of the following:

12 **(1)** The landowner's name and address.

13 **(2)** A description of the area to be burned.

14 **(3)** A map of the area to be burned.

15 **(4)** An estimate of the fuel tonnage on the area.

16 **(5)** The objectives of the prescribed burn.

17 **(6)** A list of the acceptable weather conditions and parameters for the
18 prescribed burn.

19 **(7)** The name of the certified prescribed burner responsible for conducting
20 the prescribed burn.

21 **(8)** A summary of the methods to be used to start, control, and extinguish
22 the prescribed burn.

23 **(b)** The prescribed burning shall be conducted by a certified prescribed burner in
24 accordance with the prescription that satisfies subsection (a) of this section. The certified
25 prescribed burner shall be present on the site and shall be in charge of the burning
26 throughout the period of the burning.

27 **(c)** The landowner or the landowner's agent shall obtain a current and valid open-
28 burning permit under Article 4C of this Chapter from the Division of Forest Resources,
29 Department of Environment, Health, and Natural Resources. This open-burning permit
30 must remain in effect throughout the period of the burning. The burning shall be
31 conducted in compliance with all of the following:

32 **(1)** The terms and conditions of the open-burning permit.

33 **(2)** The State's air pollution control statutes and any rules adopted by the
34 Environmental Management Commission pursuant to these statutes.

35 **(3)** Any applicable local ordinances relating to open burning.

36 **(4)** The voluntary smoke management guidelines adopted by the Division
37 of Forest Resources.

38 **(5)** Any rules adopted by the Division of Forest Resources to implement
39 this Article.

40 **(d)** This Article does not apply when the Secretary of Environment, Health, and
41 Natural Resources has prohibited all open burning pursuant to G.S. 113-60.25.

42 **"§ 113-60.44. Adoption of rules.**

- 1 The Division of Forest Resources may adopt rules that govern prescribed burning
2 under this Article."
3 Section 2. This act is effective when it becomes law.