

S T A T E O F N E W Y O R K

S. 4970--A

A. 7857--A

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

April 27, 2009

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. ENGLEBRIGHT, ALESSI, THIELE -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to prescribed burning in the Long Island central pine barrens

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature finds that the appli-
2 cation of prescribed burning is a land management tool that benefits the
3 safety of the public, the environment, and the economy of the state.
4 1. Prescribed burning reduces vegetative fuels within wild land areas.
5 Reduction of the fuel load reduces the risk and severity of wildfire,
6 thereby reducing the threat of loss of life and property, particularly
7 in urban areas.
8 2. The Long Island Pine Barrens maritime reserve requires periodic
9 fire for maintenance of their ecological integrity. Prescribed burning
10 is essential to the perpetuation, restoration, and management of many
11 plant and animal communities. Significant loss of the Central Pine
12 Barrens biological diversity will occur if fire is excluded from fire-
13 dependent systems.
14 3. The reserve constitutes significant economic, biological, and
15 aesthetic resources of statewide importance. Prescribed burning provides
16 for reforestation, removes undesirable competing vegetation, expedites
17 nutrient cycling, and controls or eliminates certain forest pathogens.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD11152-04-9

1 4. The state and local government have preserved thousands of acres
2 of land within the reserve for parks, preserves, wildlife management
3 areas, groundwater recharge, and other public purposes. The use of
4 prescribed burning for management of public lands is essential to main-
5 tain the specific resource values for which these lands were acquired.

6 5. Public education is necessary to make citizens and visitors aware
7 of the public safety, resource, and economic benefits of prescribed
8 burning.

9 6. Proper training in accordance with department of environmental
10 conservation standards in the use of prescribed burning is necessary to
11 ensure maximum benefits and protection for the public.

12 7. As Long Island's population continues to grow, pressures from
13 liability issues and nuisance complaints inhibit the use of prescribed
14 burning. Therefore, the department of environmental conservation is
15 urged to maximize the opportunities for prescribed burning.

16 S 2. The environmental conservation law is amended by adding a new
17 section 57-0124 to read as follows:

18 S 57-0124. PRESCRIBED BURNS AUTHORIZED BY THE DEPARTMENT.

19 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL
20 HAVE THE FOLLOWING MEANINGS:

21 (A) "PRESCRIBED BURNING" MEANS THE CONTROLLED APPLICATION OF FIRE IN
22 ACCORDANCE WITH A WRITTEN PRESCRIPTION FOR VEGETATIVE FUELS UNDER SPECI-
23 FIED ENVIRONMENTAL CONDITIONS FOR PURPOSES INCLUDING, BUT NOT LIMITED
24 TO, SILVICULTURE, WILDLIFE MANAGEMENT, HABITAT MANAGEMENT, INSECT AND/OR
25 DISEASE CONTROL AND FOREST FUEL REDUCTION.

26 (B) "CERTIFIED PRESCRIBED BURN MANAGER" MEANS AN INDIVIDUAL WHO IS
27 CERTIFIED TO CONDUCT PRESCRIBED BURNING BY THE DEPARTMENT.

28 (C) "PRESCRIPTION" MEANS A WRITTEN PLAN ESTABLISHING THE CRITERIA
29 NECESSARY FOR STARTING, CONTROLLING, AND EXTINGUISHING A PRESCRIBED
30 BURN. CONTENT REQUIREMENTS ARE DETAILED IN THE NEW YORK STATE CODES,
31 RULES AND REGULATIONS TITLE 6 ECL PART 194-FOREST PRACTICES.

32 (D) "EXTINGUISHED" MEANS THAT NO SPREADING FLAME FOR WILD LAND BURNING
33 OR CERTIFIED PRESCRIBED BURNING, AND NO VISIBLE FLAME, SMOKE, OR EMIS-
34 SIONS FOR VEGETATIVE LAND-CLEARING DEBRIS BURNING, EXIST.

35 (E) "RESERVE" MEANS THE LONG ISLAND PINE BARRENS MARITIME RESERVE
36 ESTABLISHED PURSUANT TO SECTION 57-0109 OF THIS TITLE.

37 (F) "MECHANICAL TREATMENT" MEANS THE CUTTING, PRUNING, MOWING, REAR-
38 RANGEMENT, OR SIMILAR METHOD OF ALTERING, REDUCING AND/OR REMOVING VEGE-
39 TATIVE FUELS TO REDUCE FIRE INTENSITY.

40 (G) "CHEMICAL TREATMENT" MEANS THE SPRAYING, INJECTING, PAINTING OR
41 OTHER APPLICATION OF HERBICIDE TO REDUCE AND/OR ELIMINATE THE GROWTH OR
42 RE-GROWTH OF UNDESIRABLE PLANTS, VEGETATIVE FUELS, OR PESTS AND PATHO-
43 GENES.

44 (H) "PERSON" SHALL MEAN AN INDIVIDUAL, ORGANIZATION, CORPORATION,
45 STATE AGENCY OTHER THAN THE DEPARTMENT, PUBLIC AUTHORITY, COUNTY, TOWN,
46 VILLAGE, CITY, MUNICIPAL AGENCY OR OTHER PRIVATE FOREST LANDOWNER.

47 2. CERTIFIED PRESCRIBED BURNING. (A) CERTIFIED PRESCRIBED BURNING
48 WITHIN THE RESERVE SHALL BE CONDUCTED IN ACCORDANCE WITH THIS SECTION
49 AND:

50 (I) MAY BE ACCOMPLISHED ONLY WHEN A CERTIFIED PRESCRIBED BURN MANAGER
51 IS PRESENT ON SITE WITH A COPY OF THE PRESCRIPTION FROM IGNITION OF THE
52 BURN TO ITS COMPLETION AS DETAILED IN THE APPROVED PRESCRIPTION;

53 (II) REQUIRES THAT A WRITTEN PRESCRIPTION BE PREPARED BEFORE RECEIVING
54 AUTHORIZATION TO BURN FROM THE DEPARTMENT;

55 (III) REQUIRES THAT THE SPECIFIC CONSENT OF THE LANDOWNER OR HIS OR
56 HER DESIGNEE BE OBTAINED BEFORE REQUESTING AN AUTHORIZATION;

1 (IV) REQUIRES THAT AN AUTHORIZATION TO BURN BE OBTAINED FROM THE
2 DEPARTMENT BEFORE IGNITING THE BURN;

3 (V) REQUIRES THAT THERE BE ADEQUATE CONTROL LINES AT THE BURN SITE AND
4 SUFFICIENT PERSONNEL AND FIREFIGHTING EQUIPMENT FOR THE CONTROL OF THE
5 FIRE AS DETAILED IN THE APPROVED PRESCRIPTION;

6 (VI) ADDITIONAL MECHANICAL AND CHEMICAL TREATMENT MAY BE CONDUCTED
7 THROUGHOUT THE SITE TO TREAT VEGETATIVE FUELS PRIOR TO BURNING IN ORDER
8 TO REDUCE RISKS TO OPERATIONS AND THE PUBLIC AND/OR TO RESTORE ECOSYSTEM
9 HEALTH AND VITALITY; AND

10 (VII) IS CONSIDERED TO BE IN THE PUBLIC INTEREST AND DOES NOT CONSTI-
11 TUTE A PUBLIC OR PRIVATE NUISANCE WHEN CONDUCTED UNDER APPLICABLE STATE
12 STATUTES AND RULES.

13 (B) NO PERSON SHALL BE LIABLE FOR DAMAGE OR INJURY CAUSED BY THE FIRE
14 OR RESULTING SMOKE OR CONSIDERED TO BE IN VIOLATION OF THIS SECTION FOR
15 BURNS CONDUCTED IN ACCORDANCE WITH THIS SUBDIVISION UNLESS GROSS NEGLI-
16 GENCE IS PROVEN.

17 (C) THE DEPARTMENT SHALL ADOPT RULES OR REGULATIONS NECESSARY FOR
18 CERTIFYING AND DECERTIFYING CERTIFIED PRESCRIBED BURN MANAGERS BASED ON
19 SUCH PERSONS' PAST EXPERIENCE, TRAINING AND RECORD OF COMPLIANCE WITH
20 THIS SECTION.

21 3. WILDFIRE HAZARD REDUCTION TREATMENT. THE DEPARTMENT MAY CONDUCT
22 FUEL REDUCTION INITIATIVES, INCLUDING, BUT NOT LIMITED TO, BURNING AND
23 MECHANICAL AND CHEMICAL TREATMENT, IN AREAS WHICH ARE REASONABLY DETER-
24 MINED TO BE IN DANGER OF WILDFIRE IN ACCORDANCE WITH THE FOLLOWING
25 PROCEDURES:

26 (A) DESCRIBE THE AREAS THAT WILL RECEIVE FUELS TREATMENT TO THE
27 AFFECTED GOVERNMENTAL ENTITY.

28 (B) PUBLISH A TREATMENT NOTICE, INCLUDING A DESCRIPTION OF THE AREA TO
29 BE TREATED, IN A CONSPICUOUS MANNER IN AT LEAST ONE NEWSPAPER OF GENERAL
30 CIRCULATION IN THE AREA OF THE TREATMENT NOT LESS THAN TEN DAYS BEFORE
31 THE TREATMENT.

32 4. DUTIES OF AGENCIES. THE DEPARTMENT SHALL INCORPORATE, WHERE FEASI-
33 BLE AND APPROPRIATE, THE ISSUES OF FUELS TREATMENT, INCLUDING PRESCRIBED
34 BURNING, INTO ITS EDUCATIONAL MATERIALS.

35 S 3. This act shall take effect immediately.