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

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 22, 2011

Introduced by M. of A. ENGLEBRIGHT, THIELE -- read once and referred to the Committee on Environmental Conservation

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:

Section 1. Legislative findings. The legislature finds that the application of prescribed burning is a land management tool that benefits the safety of the public, the environment and the economy of the state.

1. Prescribed burning reduces vegetative fuels within wild land areas. Reduction of the fuel load reduces the risk and severity of wildfire, thereby reducing the threat of loss of life and property, particularly in urban areas.

2. The Long Island Pine Barrens maritime reserve requires periodic fire for maintenance of its ecological integrity. Prescribed burning is essential to the perpetuation, restoration and management of many plant and animal communities. Significant loss of the Central Pine Barrens biological diversity will occur if fire is excluded from fire-dependent systems.

3. The reserve constitutes significant economic, biological and aesthetic resources of statewide importance. Prescribed burning provides for reforestation, removes undesirable competing vegetation, expedites nutrient cycling, and controls or eliminates certain forest pathogens.

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) "MECHANICAL TREATMENT" MEANS THE CUTTING, PRUNING, MOWING, REARRANGEMENT, OR SIMILAR METHOD OF ALTERING, REDUCING AND/OR REMOVING VEGETATIVE FUELS TO REDUCE FIRE INTENSITY.

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

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

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

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

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

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

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

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

(VI) ADDITIONAL MECHANICAL AND CHEMICAL TREATMENT MAY BE CONDUCTED THROUGHOUT THE SITE TO TREAT VEGETATIVE FUELS PRIOR TO BURNING IN ORDER

TO REDUCE RISKS TO OPERATIONS AND THE PUBLIC AND/OR TO RESTORE ECOSYSTEM HEALTH AND VITALITY; AND

(VII) IS CONSIDERED TO BE IN THE PUBLIC INTEREST AND DOES NOT CONSTITUTE A PUBLIC OR PRIVATE NUISANCE WHEN CONDUCTED UNDER APPLICABLE STATE STATUTES AND RULES.

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

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

3. WILDFIRE HAZARD REDUCTION TREATMENT. THE DEPARTMENT MAY CONDUCT FUEL REDUCTION INITIATIVES, INCLUDING, BUT NOT LIMITED TO, BURNING AND MECHANICAL AND CHEMICAL TREATMENT, IN AREAS WHICH ARE REASONABLY DETERMINED TO BE IN DANGER OF WILDFIRE IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

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

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

4. DUTIES OF AGENCIES. THE DEPARTMENT SHALL INCORPORATE, WHERE FEASIBLE AND APPROPRIATE, THE ISSUES OF FUELS TREATMENT, INCLUDING PRESCRIBED BURNING, INTO ITS EDUCATIONAL MATERIALS.

S 3. This act shall take effect immediately.