

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 247\*

Short Title: Prescribed Burning in Forests/AB.

(Public)

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Sponsors: Senators Lee and Wellons.

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Referred to: Agriculture/Environment/Natural Resources.

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March 4, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENCOURAGE PRESCRIBED BURNING FOR FORESTRY AND  
3 WILDLIFE PURPOSES 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. The General Assembly finds that the following are benefits  
13 that result from prescribed burning of forestlands:

14 (1) Prescribed burning reduces the naturally occurring buildup of vegetative  
15 fuels on forestlands, thereby reducing the risk and severity of wildfires  
16 and lessening the loss of life and property.

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

1 urban interface areas substantially reduces the risk of wildfires that  
2 cause damage.

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 Prescribed burning benefits game, nongame, and endangered wildlife  
7 species by increasing the growth and yield of plants that provide forage  
8 and an area for escape and brooding and that satisfy 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) Prescribed burning enhances the resources on public use lands, such as  
15 State and national forests, wildlife refuges, nature preserves, and game  
16 lands. Prescribed burning enhances private lands that are managed for  
17 wildlife refuges, nature preserves, and game lands. Prescribed burning  
18 enhances private lands that are managed for wildlife, recreation, and  
19 other purposes.

20 As North Carolina's population grows, pressures resulting from liability issues and  
21 smoke complaints discourage or limit prescribed burning so that these numerous benefits  
22 to forestlands often are not attainable. By recognizing the benefits of prescribed burning  
23 and by adopting requirements governing prescribed burning, the General Assembly helps  
24 to educate the public, avoid misunderstandings, and reduce complaints about this  
25 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 and Natural Resources.

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

36 (3) 'Prescription' means a written plan prepared by a certified prescribed  
37 burner for starting, controlling, and extinguishing a prescribed burning.

38 **"§ 113-60.42. Immunity from liability.**

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

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

1 (c) This section does not apply when a nuisance or damage results from a  
2 negligently or improperly conducted prescribed burning.

3 **"§ 113-60.43. Prescribed burning.**

4 (a) Prior to conducting a prescribed burning, the landowner shall obtain a  
5 prescription for the prescribed burning prepared by a certified prescribed burner and filed  
6 with the Division of Forest Resources, Department of Environment and Natural  
7 Resources. A copy of the prescription shall be provided to the landowner. A copy of this  
8 prescription shall be in the possession of the responsible burner on site throughout the  
9 duration of the prescribed burning. The prescription shall include:

- 10 (1) The landowner's name and address.
- 11 (2) A description of the area to be burned.
- 12 (3) A map of the area to be burned.
- 13 (4) An estimate in tons of the fuel located on the area.
- 14 (5) The objectives of the prescribed burning.
- 15 (6) A list of the acceptable weather conditions and parameters for the  
16 prescribed burning sufficient to minimize the likelihood of smoke  
17 damage and fire escaping onto adjacent areas.
- 18 (7) The name of the certified prescribed burner responsible for conducting  
19 the prescribed burning.
- 20 (8) A summary of the methods that are adequate for the particular  
21 circumstances involved to be used to start, control, and extinguish the  
22 prescribed burning.
- 23 (9) Provision for reasonable notice of the prescribed burning to be provided  
24 to nearby homes and businesses to avoid effects on health and property.

25 (b) The prescribed burning shall be conducted by a certified prescribed burner in  
26 accordance with a prescription that satisfies subsection (a) of this section. The certified  
27 prescribed burner shall be present on the site and shall be in charge of the burning  
28 throughout the period of the burning. A landowner may conduct a prescribed burning  
29 without being a certified prescribed burner if the landowner is burning a tract of  
30 forestland of 50 acres or less owned by that landowner and is following all conditions  
31 established in a prescription prepared by a certified prescribed burner.

32 (c) Prior to conducting a prescribed burning, the landowner or the landowner's  
33 agent shall obtain an open-burning permit under Article 4C of this Chapter from the  
34 Division of Forest Resources, Department of Environment and Natural Resources. This  
35 open-burning permit must remain in effect throughout the period of the prescribed  
36 burning. The prescribed burning shall be conducted in compliance with all the following:

- 37 (1) The terms and conditions of the open-burning permit under Article 4C  
38 of this Chapter.
- 39 (2) The State's air pollution control statutes under Article 21 and Article  
40 21B of Chapter 143 of the General Statutes and any rules adopted  
41 pursuant to these statutes.
- 42 (3) Any applicable local ordinances relating to open burning.

1           (4) The voluntary smoke management guidelines adopted by the Division  
2           of Forest Resources, Department of Environment and Natural  
3           Resources.

4           (5) Any rules adopted by the Division of Forest Resources, Department of  
5           Environment and Natural Resources, to implement this Article.

6 **"§ 113-60.44. Adoption of rules.**

7           The Division of Forest Resources, Department of Environment and Natural  
8           Resources, may adopt rules that govern prescribed burning under this Article.

9 **"§ 113-60.45. Exemption.**

10           This Article does not apply when the Secretary of Environment and Natural  
11           Resources has cancelled burning permits pursuant to G.S. 113-60.27 or prohibited all  
12           open burning pursuant to G.S. 113-60.25."

13           Section 2. This act becomes effective January 1, 2000.