

AMENDED IN ASSEMBLY APRIL 9, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2585

Introduced by Assembly Member Patterson

February 15, 2018

An act to *amend Sections 13008 and 13055 of the Health and Safety Code, and to add Section 4444 to, and to add Article 4.5 (commencing with Section 4500) to Chapter 7 of Part 2 of Division 4 of* the Public Resources Code, relating to burning of lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 2585, as amended, Patterson. Prescribed burns: burn managers: liability.

Existing law authorizes a person, firm, or corporation, or a group or combination of persons, firms, corporations, or groups, that owns or controls brush-covered land, forest lands, woodland, grassland, shrubland, or any combination thereof within a state responsibility area, as defined, to apply to the Department of Forestry and Fire Protection for permission to utilize prescribed burning for specified public purposes.

This bill would provide that a property owner and his or her agent conducting a prescribed burn, as defined, shall not be liable for damage or injury caused by fire or smoke, unless negligence is proven, when the prescribed burn meets specified conditions, including that the prescribed burn is conducted under the supervision of a certified prescribed burn manager, as defined, and proper burn permits have been obtained from all appropriate state and local agencies.

The bill would require the department, on or before January 1, 2020, to develop a training and certification program for prescribed burn

managers. The bill would require the department, on or before July 1, 2020, subject to the receipt of funding, to secure an insurance policy to provide compensation for any injuries or property damage resulting from a prescribed burn operation performed according to the above provisions. *The bill would require prescribed burn managers, companies engaging in prescribed burn operations, small landowners, and fire safe councils to be covered under the liability insurance policy.*

The bill would provide that compliance with specified department burning contracts or with a specified burn permit shall constitute prima facie evidence of due diligence for purposes of determining liability under specified provisions of law and that any person or entity that has been issued the burn permit may use fire to abate a fire hazard. The bill would express intent of the Legislature that, among other things, the department (1) dedicate adequate numbers of staff solely to prescribed burning and vegetation management activities, and (2) make spot weather forecasting available to entities engaged in these burning contracts and to entities that have been issued the burn permit.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Prescribed burning reduces naturally occurring vegetative
- 4 fuels within wild land areas. Reduction of the fuel load reduces
- 5 the risk and severity of major catastrophic wildfires, thereby
- 6 reducing the threat of loss of life and property, particularly in
- 7 urbanized areas.
- 8 (b) Many of the state's natural communities and ecosystems
- 9 require periodic fire for maintenance of their ecological integrity.
- 10 Prescribed burning is essential to the perpetuation, restoration, and
- 11 management of many plant and animal communities. Significant
- 12 loss of the state's biological diversity will occur if fire is excluded
- 13 from fire-dependent systems.
- 14 (c) Prescribed burning on forest land prepares sites for
- 15 reforestation, removes undesirable competing vegetation, expedites
- 16 nutrient cycling, and controls or eliminates certain forest pathogens.
- 17 On range land, prescribed burning improves the quality and

1 quantity of herbaceous vegetation necessary for livestock
2 production.

3 (d) The application of prescribed burning is a land management
4 tool that benefits the safety of the public, the environment, and the
5 economy of California.

6 (e) Proper training in the use of prescribed burning is necessary
7 to ensure maximum benefits and protection for the public.

8 (f) Liability issues and the inability of registered professional
9 foresters to secure adequate liability insurance often preclude the
10 use of prescribed burning as a forest and vegetation management
11 tool.

12 (g) *Given the pressing need to increase fire prevention activities*
13 *and the challenges posed by a year-round fire season, the*
14 *Legislature intends that the Department of Forestry and Fire*
15 *Protection dedicate adequate numbers of staff solely to prescribed*
16 *burning and vegetation management activities, including the*
17 *permitting, oversight, and implementation thereof.*

18 (h) *To the extent that resources are available, the Legislature*
19 *intends for the department to make spot weather forecasting*
20 *available to those entities engaged in contracts pursuant to Article*
21 *2 (commencing with Section 4475) of, and to those entities that*
22 *have obtained a burn permit issued pursuant to Article 3*
23 *(commencing with Section 4491) of, Chapter 7 of Part 2 of Division*
24 *4 of the Public Resources Code.*

25 (i) *The Legislature recognizes that prescribed fire is an*
26 *important vegetation management tool, but that it is simply one*
27 *tool to improve forest health and prevent future catastrophic*
28 *wildfires. The Legislature does not intend for prescribed fire to*
29 *supplant other vegetation management techniques and recognizes*
30 *that the best results are often achieved by using both prescribed*
31 *fire and mechanical thinning in combination with one another.*

32 SEC. 2. *Section 13008 of the Health and Safety Code is*
33 *amended to read:*

34 13008. (a) Any person who allows any fire burning upon his
35 or her property to escape to the property of another, whether
36 privately or publicly owned, without exercising due diligence to
37 control ~~such~~ that fire, is liable to the owner of ~~such~~ the property
38 for the damages to the property caused by the fire.

39 (b) *Compliance with Article 2 (commencing with Section 4475)*
40 *of, including any agreement pursuant to that article, or with the*

1 *provisions of a burn permit issued pursuant to Article 3*
2 *(commencing with Section 4491) of Chapter 7 of Part 2 of Division*
3 *4 of the Public Resources Code, shall constitute prima facie*
4 *evidence of due diligence for purposes of determining liability*
5 *pursuant to subdivision (a).*

6 *SEC. 3. Section 13055 of the Health and Safety Code is*
7 *amended to read:*

8 13055. Any public agency authorized to engage in fire
9 protection activities, ~~including~~ *including*, but not limited to, a
10 fire protection district, city, city and county, or county fire
11 department, the Department of Forestry, and the United States
12 Forest Service, *and a person or entity that has obtained a burn*
13 *permit issued pursuant to Article 3 (commencing with Section*
14 *4491) of Chapter 7 of Part 2 of Division 4 of the Public Resources*
15 *Code, may use fire to abate a fire hazard.*

16 *SEC. 4. Section 4444 is added to the Public Resources Code,*
17 *to read:*

18 4444. Notwithstanding any other provision of this article,
19 compliance with Article 2 (commencing with Section 4475) of,
20 including any agreement pursuant to that article, or with the
21 provisions of a burn permit issued pursuant to Article 3
22 (commencing with Section 4491) of Chapter 7, shall constitute
23 prima facie evidence of due diligence for purposes of determining
24 liability pursuant to this article.

25 ~~SEC. 2.~~

26 *SEC. 5. Article 4.5 (commencing with Section 4500) is added*
27 *to Chapter 7 of Part 2 of Division 4 of the Public Resources Code,*
28 *to read:*

29
30 Article 4.5. Prescribed Burning

31
32 4500. As used in this article, the following terms have the
33 following meanings:

34 (a) "Certified prescribed burn manager" means an individual
35 who successfully completes the certification program created by
36 the department.

37 (b) "Prescribed burn" means the controlled application of fire
38 to naturally occurring vegetative fuels under specified
39 environmental conditions and following appropriate precautionary

1 measures, which causes the fire to be confined to a predetermined
2 area and accomplish the planned land management objectives.

3 4501. On or before January 1, 2020, the department shall
4 develop a training and certification program for prescribed burn
5 managers.

6 4502. A property owner and his or her agent conducting a
7 prescribed burn shall not be liable for damage or injury caused by
8 fire or smoke, unless negligence is proven, when the prescribed
9 burn meets the following conditions:

10 (a) The prescribed burn is conducted under the supervision of
11 a certified prescribed burn manager.

12 (b) Proper burn permits have been obtained from all appropriate
13 state and local agencies.

14 (c) The burn is conducted pursuant to the requirements of the
15 burn permit.

16 (d) The burn is conducted in accordance with all existing air
17 pollution statutes, rules, and regulations.

18 4503. (a) On or before July 1, 2020, subject to the receipt of
19 funds for this purpose, the department shall secure an insurance
20 policy to provide compensation for any injuries or property damage
21 resulting from prescribed fire operations performed pursuant to
22 Section 4502.

23 *(b) In order to increase the use of prescribed fire, reduce the*
24 *cost of insurance, and adequately protect lives and property,*
25 *prescribed burn managers, companies engaging in prescribed*
26 *burn operations, small landowners, and fire safe councils shall*
27 *be covered under the liability insurance policy specified in*
28 *subdivision (a).*

29 ~~(b)~~

30 (c) The department shall submit an estimate of the amount of
31 coverage and anticipated cost of coverage to the Joint Legislative
32 Budget Committee by July 1, 2019, and submit a budget request
33 for that funding with the budget on January 10, 2020.

34 4504. On or before July 1, 2019, the department shall develop
35 a public education program to make citizens and visitors aware of
36 the public safety, resource, and economic benefits of prescribed
37 burning.

1 4505. The board may adopt any regulations necessary to
2 implement this article.

O