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BILL ANALYSIS

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Senate Bill 925 (Substitute S-2 as reported by the Committee of the Whole)

Sponsor: Senator Michelle A. McManus

Committee: Natural Resources and Environmental Affairs

Date Completed: 11-4-04

RATIONALE

Prescribed burning refers to the practice of intentionally setting fires as a ecological management tool. The objective of a prescribed burn might be to reduce accumulated fuel, such as timber, that can contribute to wildfires; remove dead vegetative build-up (duff); reduce noxious weeds or pests; increase the population of threatened or endangered species; promote the regrowth of cool-season or warm-season plants; or promote the growth of fire-dependent trees, such as Jack pine. The Department of Natural Resources commonly engages in prescribed burning, and some local units of government, nature conservancies, and private individuals also conduct prescribed burns. While State law and local ordinances restrict open burning and contain permit requirements, the practice of prescribed burning is not directly addressed by statute. Due to the environmental benefits of prescribed burning, it has been suggested that the law should limit the liability of people who conduct prescribed burns, under particular circumstances.

CONTENT

The bill would amend Part 515 (Prevention and Suppression of Forest Fires) of the Natural Resources and Environmental Protection Act to do the following:

- **State that prescribed burning would not constitute a public or private nuisance when conducted in compliance with the law.**
- **Provide that a property owner would not be liable for damage or injury caused by the fire or smoke from a**

prescribed burn, if certain conditions were met.

- **Require the Department of Natural Resources (DNR) to adopt rules governing prescribed burning and rules for certifying and decertifying prescribed burn managers.**
- **Preempt local ordinances that conflicted with the proposed immunity or otherwise applied to prescribed burns conducted in compliance with the bill.**

The bill would define "prescribed burn" or "prescribed burning" as "the burning, in compliance with a prescription and to meet planned fire or land management objectives, of a continuous cover of fuels". "Prescription" would mean a written plan establishing the criteria necessary for starting, controlling, and extinguishing a burn.

Current Permit Requirement

Under Section 51503, a person may not burn any flammable material on or adjacent to forest land, except for domestic purposes, without a permit from the DNR, at any time the ground is not snow-covered. The DNR must set the times of day and the conditions under which burning for nondomestic purposes on or adjacent to forest land is permitted. A person doing the burning must take action in and around the area to prevent the spread of the fire, as the DNR may require.

Presently, "forest land" means timbered land, potential timber-producing land, cutover or burned timber land, or grass lands, but not land devoted to agriculture.

The bill also would include wetland as "forest land", and would refer to prairie or other land dominated by grasses or forbes (rather than grass lands).

"Wetland" would mean land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh.

Nuisance; Immunity

The bill would add Section 51503b to provide that prescribed burning would not constitute a public or private nuisance when conducted in compliance with Part 515, Part 55 (Air Pollution Control), or rules promulgated to implement either part.

Also, under the proposed section, a property owner or his or her agent conducting prescribed burning would not be liable for damage or injury caused by the fire or resulting smoke.

These provisions would apply to a prescribed burn only if all of the following requirements were met:

- The landowner or his or her designee had specifically consented to the prescribed burn.
- The requirements of Section 51503 were met.
- There were adequate firebreaks at the burn site and sufficient personnel and fire-fighting equipment for the control of the fire.
- A certified prescribed burn manager was present on site with a copy of the prescription, from ignition of the burn to its completion.
- The damage or injury did not result from the fire's escaping the boundary of the area authorized in the permit under Section 51503.
- The property owner or his or her agent was not grossly negligent.

The immunity provision would not affect liability for injury to or the death of a person engaged in the prescribed burning.

("Certified burn manager" would mean an individual who had successfully completed

the DNR's certification program and possessed a valid certification number.)

Currently, if a person causes a forest or grass fire in violation of Part 515, he or she is liable for all damage resulting from that fire, including the cost of any governmental unit fighting the fire. Also, a person who sets fire on any land and negligently allows it to escape and become a forest or grass fire is liable for all expenses incurred by the State in suppressing the fire. Under the bill, these provisions would apply except as provided in Section 51503b.

In addition, Part 515 prohibits a person from willfully, maliciously, or wantonly setting on fire any forest land, land adjacent to forest land, or flammable material on forest land, or placing any device or substance in or adjacent to any forest land with intent to set fire to the land or that would result in a fire being set in the natural course of events. Under the bill, this prohibition would not apply to a prescribed burn conducted in compliance with Section 51503b.

Rules

The bill would require the DNR to adopt rules governing prescribed burning and rules for certifying and decertifying prescribed burn managers based on their past experience, training, certification by another state, and record of compliance with proposed Section 51503b. The DNR would have to submit the proposed rules for public hearing within six months after the bill's effective date.

Local Preemption

Part 515 states that it does not obviate local ordinances or prevent enactment of local regulations that are as restrictive as or more restrictive than this part. Under the bill, this preemption would apply *except* to the extent the ordinances or regulations conflicted with the exemption from liability for, or otherwise applied to, prescribed burns conducted in compliance with Section 51503b.

MCL 324.51501 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Prescribed burning is an increasingly accepted method of managing the ecology of forests and grasslands. Rather than creating a hazard or threatening the environment, prescribed burning can reduce the risks of wildfire by eliminating dead or built-up timber and vegetation, as well as encourage the growth of native flora by removing invasive species. In Michigan, prescribed burning also promotes the growth of Jack pine, which is essential to the nesting of Kirtland's warblers. When it is done properly, under controlled conditions, and by trained individuals, prescribed burning should be safe. Although the risks from smoke and fire can be minimized, however, unforeseen circumstances might arise and simple human error cannot be entirely prevented. The bill in effect would create a right-to-burn law, by allowing property owners to engage in prescribed burning without fear of lawsuits for injury or damage, or actions claiming that prescribed burning is a nuisance. This protection from liability would be available, however, only under conditions designed to ensure that the burning was conducted safely and properly.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. The certification program for prescribed burn managers would cost the Department of Natural Resources an indeterminate amount in administrative costs. There could be savings for the State since it would not be liable for damage or injury caused by a prescribed burn conducted by the DNR if all conditions of the bill were met. There also could be fewer expenses from addressing wild fires if additional prescribed burns were conducted to clear forests of fire-contributing debris.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.