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BILL ANALYSIS

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Senate Bill 925 (as introduced 1-22-04)

Sponsor: Senator Michelle A. McManus

Committee: Natural Resources and Environmental Affairs

Date Completed: 9-28-04

## **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:**

- **Establish requirements for burning wild land or vegetative land-clearing debris.**
- **State that prescribed burning would not constitute a public or private nuisance when conducted in compliance with the law.**
- **Establish immunity from liability for a property owner conducting prescribed burning, under certain conditions.**
- **Preempt local ordinances that conflicted with the proposed immunity.**
- **Require the Department of Natural Resources (DNR) to adopt rules governing prescribed burning and rules for certifying and decertifying prescribed burn managers.**

The bill would define "prescribed burn" or "prescribed burning" as "the burning, in compliance with a written prescription, of a continuous cover of fuels that consist of slash resulting from forest practices, surface litter, and duff and that are left in place, fairly uniform, and ignited to meet planned fire or land management practices in the desired area". "Prescription" would mean a written plan establishing the criteria necessary for starting, controlling, and extinguishing a burn.

### Wild Land or Land-Clearing Burning

The bill would add Section 51503b to prohibit a person from burning wild land or vegetative land-clearing debris, unless the following requirements were met:

- The landowner or his or her designee had specifically consented to the 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.
- The fire remained within the boundary of the area authorized in the permit under Section 51503.
- A person 18 years old or older responsible for monitoring the burn was present at the burn site until the fire was extinguished.
- The DNR determined that the fire danger was favorable for safe burning and, in consultation with the Department of Environmental Quality, determined that air quality was favorable for safe burning.

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.

Under the bill, burning for "domestic purposes" would refer to any of the following:

- A fire within the curtilage of a dwelling where the material being burned had been properly placed in a debris burner constructed of metal or masonry, having a metal covering device with openings not larger than three-fourths of an inch.
- A campfire.
- Any fire within a building.

In reference to wild land burning or prescribed burning, "extinguished" would mean that there was no longer any spreading flame. In reference to vegetative land-clearing debris burning, "extinguished" would mean that there was no longer any visible flame, smoke, or emissions.

#### Prescribed Burn Immunity

The bill would add Section 51503d 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, and would not be considered to be in violation of Section 51503b unless gross negligence was proven.

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 fire remained within the boundary of the area authorized in the permit.

("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 violating 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 51503d.

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 51503d.

### 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, and record of compliance with proposed Section 51503d. 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. The bill states, instead, that Part 515 would not preempt local ordinances that were as restrictive as or more restrictive than this part, except to the extent the ordinances or regulations conflicted with the exemption from liability for prescribed burns conducted in compliance with Section 51503d.

MCL 324.51501 et al.

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.