**South Carolina General Assembly**

119th Session, 2011-2012

**A139, R157, H3631**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Harrison, Clemmons, Funderburk, Pitts, Anderson, R.L. Brown, Govan, Hodges, Allen, White, Edge, Whipper, Hiott, Limehouse, Horne, Vick, Herbkersman, Agnew, Viers, Hardwick, Harrell, Sellers, Skelton, Gambrell, Young and Taylor

Document Path: l:\council\bills\nbd\11208ac11.docx

Companion/Similar bill(s): 340, 501

Introduced in the House on February 9, 2011

Introduced in the Senate on March 15, 2011

Last Amended on March 8, 2012

Adopted by the General Assembly on March 21, 2012

Governor's Action: April 2, 2012, Signed

Summary: Requirements for conducting a prescribed fire

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/9/2011 House Introduced and read first time ([House Journal‑page 9](file:///h:\hj%20archive\2011\02-09-11.docx))

2/9/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 9](file:///h:\hj%20archive\2011\02-09-11.docx))

2/10/2011 House Member(s) request name added as sponsor: Clemmons, Funderburk, Pitts, Anderson, R.L.Brown, Govan, Hodges, Allen, White, Edge, Whipper, Hiott, Limehouse, Horne, Vick, Herbkersman, Agnew, Viers, Hardwick

2/16/2011 House Member(s) request name added as sponsor: Harrell

3/2/2011 House Member(s) request name added as sponsor: Sellers, Skelton, Gambrell

3/9/2011 House Member(s) request name added as sponsor: Young, Taylor

3/9/2011 House Committee report: Favorable with amendment **Judiciary** ([House Journal‑page 3](file:///h:\hj%20archive\2011\03-09-11.docx))

3/10/2011 House Amended ([House Journal‑page 21](file:///h:\hj%20archive\2011\03-10-11.docx))

3/10/2011 House Read second time ([House Journal‑page 21](file:///h:\hj%20archive\2011\03-10-11.docx))

3/10/2011 House Unanimous consent for third reading on next legislative day ([House Journal‑page 22](file:///h:\hj%20archive\2011\03-10-11.docx))

3/11/2011 House Read third time and sent to Senate ([House Journal‑page 2](file:///h:\hj%20archive\2011\03-11-11.docx))

3/11/2011 Scrivener's error corrected

3/15/2011 Senate Introduced and read first time ([Senate Journal‑page 13](file:///h:\sj%20archive\2011\03-15-11.docx))

3/15/2011 Senate Referred to Committee on **Fish, Game and Forestry** ([Senate Journal‑page 13](file:///h:\sj%20archive\2011\03-15-11.docx))

4/20/2011 Senate Committee report: Favorable **Fish, Game and Forestry** ([Senate Journal‑page 12](file:///h:\sj%20archive\2011\04-20-11.docx))

2/21/2012 Senate Special order, set for February 21, 2012 ([Senate Journal‑page 47](file:///h:\sj%20archive\2012\02-21-12.docx))

2/21/2012 Senate Roll call Ayes‑42 Nays‑2 ([Senate Journal‑page 47](file:///h:\sj%20archive\2012\02-21-12.docx))

3/7/2012 Senate Consideration Interrupted ([Senate Journal‑page 50](file:///h:\sj%20archive\2012\03-07-12.docx))

3/8/2012 Senate Amended ([Senate Journal‑page 21](file:///h:\sj%20archive\2012\03-08-12.docx))

3/8/2012 Senate Roll call Ayes‑40 Nays‑0 ([Senate Journal‑page 21](file:///h:\sj%20archive\2012\03-08-12.docx))

3/9/2012 Scrivener's error corrected

3/15/2012 Senate Read third time and returned to House with amendments ([Senate Journal‑page 15](file:///h:\sj%20archive\2012\03-15-12.docx))

3/21/2012 House Concurred in amendment ([House Journal‑page 47](file:///h:\hj%20archive\2012\03-21-12.docx))

3/21/2012 House Roll call Yeas‑101 Nays‑0 ([House Journal‑page 48](file:///h:\hj%20archive\2012\03-21-12.docx))

3/29/2012 Ratified R 157

4/2/2012 Signed By Governor

4/5/2012 Effective date 04/02/12

4/11/2012 Act No. 139

**VERSIONS OF THIS BILL**

[2/9/2011](file:///p:\pprever\2011-12\3631_20110209.docx)

[3/9/2011](file:///p:\pprever\2011-12\3631_20110309.docx)

[3/10/2011](file:///p:\pprever\2011-12\3631_20110310.docx)

[3/11/2011](file:///p:\pprever\2011-12\3631_20110311.docx)

[4/20/2011](file:///p:\pprever\2011-12\3631_20110420.docx)

[3/8/2012](file:///p:\pprever\2011-12\3631_20120308.docx)

[3/9/2012](file:///p:\pprever\2011-12\3631_20120309.docx)

(A139, R157, H3631)

**AN ACT TO AMEND SECTION 48‑34‑40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REQUIREMENTS FOR CONDUCTING A PRESCRIBED FIRE, SO AS TO PROVIDE THAT THESE FIRES MUST COMPLY WITH SOUTH CAROLINA SMOKE MANAGEMENT GUIDELINES; TO FURTHER SPECIFY RESPONSIBILITIES OF A CERTIFIED PRESCRIBED FIRE MANAGER; AND TO EXEMPT PURPOSEFULLY SET PRESCRIBED FIRES THAT COMPLY WITH SMOKE MANAGEMENT GUIDELINES AND STATUTORY REQUIREMENTS IF THEY ARE SET FOR CERTAIN MANAGEMENT PRACTICES, AGRICULTURAL PURPOSES, OR GAME MANAGEMENT PURPOSES; TO AMEND SECTION 48‑34‑50, RELATING TO IMMUNITY FROM LIABILITY FOR DAMAGES CAUSED BY A PRESCRIBED FIRE, EXCEPT FOR RESULTING SMOKE, SO AS TO PROVIDE THAT A PROPERTY OWNER, LESSEE, AGENT, OR EMPLOYEE IS NOT LIABLE FOR DAMAGES, INJURY, OR LOSS CAUSED BY THE RESULTING SMOKE OF A PRESCRIBED FIRE UNLESS GROSS NEGLIGENCE OR RECKLESSNESS IS PROVEN; AND TO PROVIDE THAT “SMOKE MANAGEMENT GUIDELINES FOR VEGETATIVE DEBRIS BURNING FOR FORESTRY, AGRICULTURE, AND WILDLIFE PURPOSES IN THE STATE OF SOUTH CAROLINA” IS DEEMED TO BE PROMULGATED BY THE STATE FORESTRY COMMISSION AND ANY AMENDMENT TO THESE GUIDELINES MUST BE PROMULGATED BY THE COMMISSION.**

Be it enacted by the General Assembly of the State of South Carolina:

**Requirements for conducting a prescribed fire**

SECTION 1. Section 48‑34‑40 of the 1976 Code is amended to read:

“Section 48‑34‑40. (A) For purposes of this section, ‘South Carolina Smoke Management Guidelines’ means smoke management guidelines for vegetative debris burning for forestry, agriculture, and wildlife purposes that are promulgated as regulations by the State Forestry Commission pursuant to the Administrative Procedures Act.

(B) Prescribed fires conducted pursuant to this chapter:

(1) must have a written prescribed fire plan that:

(a) complies with the South Carolina Smoke Management Guidelines;

(b) is prepared before authorization to burn is issued by the State Commission of Forestry; and

(c) is on site and followed during the burn;

(2) must have present at least one certified prescribed fire manager who must:

(a) be certified by the commission;

(b) personally supervise the burn from ignition until the certified prescribed fire manager determines the burn to be safe;

(c) fully consider both fire behavior and related smoke management issues during and after the burn;

(3) are considered in the public interest and do not constitute a public or private nuisance when conducted pursuant to the South Carolina Smoke Management Guidelines, Chapters 1 and 35, Title 48, and Chapter 2, Title 50; prescribed fires that are purposefully set in accordance with these chapters and the South Carolina Smoke Management Guidelines are exempt from the open fire prohibition pursuant to R. 61‑62.2 and are acceptable to the Department of Health and Environmental Control if the fire is for:

(a) burning forest lands for specific management practices;

(b) agricultural control of diseases, weeds, and pests and for other specific agricultural purposes;

(c) open burning of trees, brush, grass, and other vegetable matter for game management purposes;

(4) are considered a property right of the property owner.”

**Liability for smoke resulting from a prescribed fire**

SECTION 2. Section 48‑34‑50 of the 1976 Code is amended to read:

“Section 48‑34‑50. A property owner or lessee or his agent or employee conducting a prescribed fire pursuant to this chapter is not liable for damage, injury, or loss caused by fire or other consequences of the prescribed fire, except for smoke, unless negligence is proven. A property owner or lessee or his agent or employee conducting a prescribed fire pursuant to this chapter is not liable for damage, injury, or loss caused by the resulting smoke of a prescribed fire unless gross negligence or recklessness is proven.”

**Smoke Management Guidelines are considered promulgated by the State Forestry Commission**

SECTION 3. The guidelines published by the State Forestry Commission in August 2006 entitled, ‘Smoke Management Guidelines for Vegetative Debris Burning for Forestry, Agriculture, and Wildlife purposes in the State of South Carolina’ are hereby considered promulgated by the State Forestry Commission and approved by the General Assembly. Any amendment, replacement, or revision of these guidelines must be promulgated by the State Forestry Commission pursuant to the Administrative Procedures Act.

**Time effective**

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 29th day of March, 2012.

Approved the 2nd day of April, 2012.

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