



Senate Fiscal Agency
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BILL



ANALYSIS

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House Bill 4082 (Substitute H-2 as reported without amendment)

Sponsor: Representative Mary Whiteford

House Committee: Natural Resources

Senate Committee: Natural Resources

Date Completed: 5-31-17

RATIONALE

A prescribed burn is a burning of a continuous cover of fuels, planned to meet fire or land management objectives. Michigan Law prohibits planned burns unless they comply with a written plan establishing the criteria for starting, controlling, and extinguishing a burn. The Department of Natural Resources (DNR) maintains a list of about 300 planned prescribed burns, though only about 100 burns occur every year. When the DNR schedules a prescribed burn, the notification requirements are set by departmental policy. This DNR policy includes notifying local units of government, sometimes years in advance, and notifying the local fire departments and local 9-1-1 dispatches on the day of the fire. Door hangers are placed on houses the day before and the day of a prescribed burn, based on where smoke is predicted to be blown and which residents will be able to see the fire.

In November 2010, Clinton Township incurred \$3,000 in fire safety costs when responding to a fire thought to be out of control. Some people allege that this fire was a prescribed burn conducted by the Department of Natural Resources and that the township was given no notice that such a burn was to take place. It has been suggested that, regardless of whether this incident took place in the manner alleged, the DNR should be required to contact township officials and local 9-1-1 call centers in the region of a planned burn, so local residents and officials will be aware of its time and location. Some also believe that the DNR should be held liable for the costs of a fire safety response when it fails to provide adequate notice of a prescribed burn.

CONTENT

The bill would amend Part 515 (Prevention and Suppression of Forest Fires) of the Natural Resources and Environmental Protection Act to require the Department of Natural Resources to attempt to notify the township supervisor and 9-1-1 call center of each township where a prescribed burn was to take place; and provide that the DNR would be liable for costs a township incurred if the Department violated this requirement.

Specifically, the bill would add Section 51503c to require the DNR to attempt to notify by telephone and electronic mail the township supervisor and the primary public safety answering point (9-1-1 call center) of each township where a prescribed burn was to take place before conducting the prescribed burn. The DNR would be required to maintain a record of the notification attempts. The notice would have to include all of the following:

- The location, expected date, and estimated number of acres of the prescribed burn.
- The name, electronic mail address, and telephone number of the person in charge of the prescribed burn.

If the DNR violated Section 51503c, the Department would be liable for any costs incurred by a township as a result of the prescribed burn.

Currently, except as provided for a prescribed burn, if a person violates Part 515 and causes a forest or grass fire, the person is liable for all damage resulting from the fire, including the cost of any governmental unit fighting it. This would not apply to a violation by the DNR of Section 51503c.

Part 515 prohibits the burning of any flammable material on or adjacent to forestland without a permit from the DNR. A person who violates the prohibition is guilty of a misdemeanor. A person convicted of willfully, maliciously, or wantonly setting fire or causing to be set on fire any forestland, land adjacent to forestland, or flammable material on forestland is guilty of a felony. A person convicted of willfully, maliciously or wantonly setting, throwing, or placing any device, instrument, or paraphernalia, or substance in or adjacent to any forestland with intent to set fire to the land or that in the natural course of events would result in fire being set to the forestland is guilty of a felony. Both felonies are punishable by up to 10 years in prison or a fine of up to \$10,000, or both. If the DNR did not comply with Section 51503c, the Department would not be subject to these punishments.

(Part 515 defines "prescribed burn" as the burning, in compliance with a prescription and to meet planned fire or land management objectives, of a continuous cover of fuels. "Prescription" means a written plan establishing the criteria necessary for starting, controlling, and extinguishing a burn.)

MCL 324.51501 et al.

BACKGROUND

Fire is a natural and essential part of many ecosystem-wide processes and is historically common in Michigan's various biomes, including wetlands, prairies, and woodlands. These environments rely on fires to sustain healthy competition among species and sustain biodiversity. Prescribed burns are planned to achieve specific management objectives which may include simulating the benefits of natural fires. According to the DNR, prescribed burns are conducted in a designated area during appropriate weather conditions and in cooperation with the proper authorities. Trained crews using specialized equipment keep fire under control throughout the process.

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

According to the DNR, it gives notice of a planned burn well in advance to local units of government, and notifies fire departments and 9-1-1 dispatch on the day of the burn. By requiring the Department specifically to notify the township supervisor of a prescribed burn, the bill would enable the township to take any steps it considered appropriate, without imposing a significant burden on the DNR. The bill also would hold the DNR liable for costs a township incurred if the Department failed to comply with the notice requirement, while the record-keeping requirement would give the DNR proof of its compliance. These measures would prevent a situation in which a township incurred fire-fighting costs due to an unexpected prescribed burn, without recourse against the Department.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bill would not have a significant fiscal impact on the Department of Natural Resources or local units of government. Under the bill, the DNR would have to notify a township where it intended

to perform a prescribed burn. If the DNR failed to do so, the bill would hold the DNR liable for any costs incurred by the township related to the prescribed burn. It is not known how often this type of situation occurs, but it is anticipated that the bill would not have a significant impact on the DNR's finances.

Fiscal Analyst: Josh Sefton

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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.