~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 9, 2011

**H. 3631**

Introduced by 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 and Gambrell

S. Printed 3/9/11--H.

Read the first time February 9, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3631) 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 further specify, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting SECTION 1 of the bill and inserting:

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

“Section 48‑34‑40. Prescribed fires conducted pursuant to this chapter:

(1) must have a prescribed fire plan prepared before authorization to burn is given by the State Commission of Forestry, and the plan must be on site and followed during the burn;

(2) must have at least one certified prescribed fire manager present ~~and~~ who must consider both fire behavior and smoke management issues while supervising the burn from ignition until it is declared safe according to certification guidelines;

(3) are considered in the public interest and do not constitute a public or private nuisance when conducted pursuant to state air pollution statutes, smoke management guidelines, as provided for in Regulations 61‑62.2, or a successor regulation thereto, and ~~regulations~~ other statutory provisions applicable to the use of prescribed fire, as provided for in Chapter 35 and Chapter 2, Title 50; and

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

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

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 FURTHER SPECIFY SUPERVISION REQUIREMENTS FOR A PRESCRIBED FIRE MANAGER AND TO REFERENCE SPECIFIC REGULATORY AND STATUTORY PROVISIONS APPLICABLE TO CONDUCTING A PRESCRIBED FIRE; AND TO AMEND SECTION 48‑34‑50, RELATING TO LIABILITY FOR DAMAGES CAUSED BY A PRESCRIBED FIRE, SO AS TO PROVIDE THAT A PROPERTY OWNER, LESSEE, AGENT, OR EMPLOYEE IS NOT LIABLE FOR DAMAGES CAUSED BY THE RESULTING SMOKE OF A PRESCRIBED FIRE UNLESS GROSS NEGLIGENCE IS PROVEN.

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

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

“Section 48‑34‑40. Prescribed fires conducted pursuant to this chapter:

(1) must have a prescribed fire plan prepared before authorization to burn is given by the State Commission of Forestry, and the plan must be on site and followed during the burn;

(2) must have at least one certified prescribed fire manager present ~~and~~ who must consider both fire behavior and smoke management issues while supervising the burn from ignition until it is declared safe according to certification guidelines;

(3) are considered in the public interest and do not constitute a public or private nuisance when conducted pursuant to state air pollution statutes, smoke management guidelines, as provided for in Regulations 61‑62.2, and ~~regulations~~ other statutory provisions applicable to the use of prescribed fire, as provided for in Chapter 35 and Chapter 2, Title 50; and

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

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

“Section 48‑34‑50. ~~No~~ 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~~, resulting smoke,~~ or other consequences of the prescribed fire 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 is proven.”

SECTION 3. This act takes effect upon approval by the Governor.

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