

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 780

SPONSOR: Agriculture and Consumer Services Committee

SUBJECT: Wildfires

DATE: February 17, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Poole</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	<u>Withdrawn</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Florida experienced its worst wildfires in recent history in the summer of 1998. More than 300 homes were damaged or destroyed as were over 30 businesses. Loss estimates in total were at approximately \$500 million and during the Fourth of July weekend approximately 120,000 people were forced to evacuate, including the entire population of Flagler County.

This bill provides greater authority to the Division of Forestry within the Department of Agriculture and Consumer Services regarding wildfire management.

This bill creates sections 590.015, and 590.125 of the Florida Statutes.

This bill amends the following sections of the Florida Statutes: 590.01, 590.02, 590.081, 590.082, 590.091, 590.10, 590.11, 590.13, 590.14, 590.16, 590.25, 590.27, 590.28, 590.29, 590.33, 590.34, and 590.42.

This bill repeals the following sections of the Florida Statutes: 590.025, 590.026, 590.03, 590.04, 590.05, 590.06, 590.07, 590.08, 590.09, 590.12, and 590.30.

II. Present Situation:

The Division of Forestry (DOF) is charged with the primary responsibility to promote and encourage forest fire protection and the proper management of public lands (s. 589.04, F.S.). Specific duties of the DOF regarding fire suppression and prescribed burning activities on forest and wild lands are provided under chapter 590, F.S., Forest Protection.

Section 590.01, F.S., regarding the protection of forests and wild land, provides for the DOF to have primary responsibility for forest and wild land fire protection and gives it the authority to create forest protection districts throughout the state.

Section 590.02, F.S., provides broad powers to the DOF to: (a) enforce the forest fire and forest protection laws of the state, (b) prevent and extinguish forest fires in the state, (c) provide forest firefighting crews, (d) appoint district foresters and certified forestry firefighters, (e) develop a training curriculum for firefighters, with standards, (f) suppress fires and cut fire lines on state-owned park lands, (g) develop rules to accomplish the purposes of the chapter, and (h) provide forest protection services to the public as requested and charge fees for those services.

This section also authorizes the DOF firefighting crews to enter any property to prevent and suppress forest fires. Protection from liability is granted to all employees of the DOF, federal and state agencies, and companies, corporations, and all persons under contract with the DOF to assist in firefighting operations. Under this section the department is also authorized to build structures from existing resources, at a cost not to exceed \$50,000 per structure.

Section 590.025, F.S., defines "wild land" as that which is uncultivated land other than fallow. It includes lands that are neglected altogether or maintained for forage production, wildlife, recreation, or protective plant cover, or land virtually uninfluenced by human activity.

If requested by the governing body of a county, and if proper notice is furnished, the DOF is authorized to prescribe-burn an area within the county that is in danger of having an uncontrolled fire. Additionally, the county tax collector is to send a notice to landowners in a high-hazard area of tentative dates when a prescribed burn in those areas is to take place and the benefits expected to result from the burning.

Additionally, a notice of intent to control burn property with tentative dates of the burning is required to be published in one or more newspapers in the circulation the area to be burned at least 10 days before the burning.

Section 590.026, F.S., is referred to as the "Florida Prescribed Burning Act." A series of legislative findings and purpose is reviewed and definitions are provided for the terms "prescribed burning," "certified prescribed burn manager," and "prescription." Additionally, protection from liability is afforded under certain conditions, unless negligence is proven.

Under this section, the Department of Community Affairs, the Division of Forestry, and the Office of the State Fire Marshal are required to prepare a report for the legislature of actions required to minimize the threat of wildfire in areas where new development is proposed. The Department of Education is instructed to incorporate the issues involved in prescribed burning into its educational materials.

Section 590.03, F.S., prohibits the burning of land within a forest protection district without prior written permission from a fire warden. The permit is to include the date and hour for burning with a description of lands to be burned.

Section 590.04, F.S., authorizes the DOF to organize forest protection districts throughout the state to prevent, detect, and suppress forest fires.

Section 590.05, F.S., stipulates that those working on road construction projects are to keep all fires they set under control and confined to the right-of-way and are to suppress fires discovered near the roadway.

Section 590.06, F.S., instructs the Division of Road Operations of the Department of Transportation and others that they are to comply with the provisions of this chapter and authorizes them to adopt and promulgate rules and regulations to that end.

Section 590.07, F.S., provides a second-degree misdemeanor penalty for any road foreman or member of a road crew who refuses to or neglects to suppress fires as provided in this chapter.

Section 590.08, F.S., statutorily provides that it is unlawful for any person to willfully or carelessly burn or cause to be burned, or to set fires to, any forest, grass, or woods not owned or controlled by that person.

Section 590.081, F.S., provides that when drought conditions are present or when there is an extraordinary danger from fire it is unlawful to set fire to a forest or other wild lands without written permission from the DOF. The director of the DOF is to report to the Commissioner of Agriculture when an emergency drought condition exists. The commissioner then advises the Governor and the Governor may by proclamation filed with the Department of State, declare the emergency and its general boundaries. The Governor's proclamation of emergency drought conditions continues in effect until it is canceled when conditions improve. Violation of any of the provisions of this section constitutes a misdemeanor of the second degree.

Section 590.082, F.S., provides a process for the Governor to respond to extraordinary fire hazard situations. When the Governor has proclaimed a drought emergency it is unlawful for anyone, except the owner or his agent, to travel over the stipulated lands except by public roads and well-defined private roads. The Governor can declare an extraordinary fire hazard when advised that such a condition exists by the Commission of Agriculture, who must have the consent of the chairman of the board of county commissioners. The Governor's proclamation of extraordinary fire hazard takes effect upon being filed with the Secretary of State and continues in effect until he or she cancels it. A violation of these provisions is punishable as a misdemeanor.

Section 590.09, F.S., stipulates that it is unlawful to carelessly set a fire within the right-of-way of any public road or railroad and allow it to burn adjoining land.

Section 590.091, F.S., authorizes the DOF to annually designate railroad rights-of-way that are known fire hazard areas. Before doing so, the DOF must notify the local government affected by its actions. Railroad companies operating in the state are obligated to maintain rights-of-way and to provide firebreaks to prevent fire from igniting or spreading from rights-of-way to adjacent property.

Section 590.10, F.S., prohibits a person to throw or drop from a vehicle a lighted cigar or other flaming or glowing substance that could cause a fire.

Section 590.11, F.S., prohibits a person from building a campfire and failing to extinguish it.

Section 590.12, F.S., provides that in order to burn any forest, grass, woods, wild land, marsh, or vegetative-land-clearing debris, prior authorization by the DOF must be obtained. Also, adequate fire lines, manpower, and firefighting equipment must be provided, and the fire must be watched over until it is extinguished. It is unlawful to allow fire to escape from the boundary area. There is no authorization required for setting a fire in a forest protection district when written permission has been obtained from a fire warden. The provisions of this section are punishable as a second-degree misdemeanor.

Section 590.13, F.S., provides for civil liability for damages as a result of violation of any provision in this chapter.

Section 590.14, F.S., provides that anyone who willfully or intentionally violates the provisions of this chapter commits a felony of the third degree. Provides that anyone who carelessly violates the provisions of this chapter commits a second-degree misdemeanor. Additionally, the section provides for the payment of reasonable costs and expenses by a person who causes an unauthorized forest or grass fire to escape. This provision extends beyond the individual to the firm or corporation as well. The department is authorized to impose an administrative fine of up to \$1,000 per violation, based upon certain criteria such as a prior violation record.

Section 590.15, F.S., provides that in both prosecutions and civil actions brought under the chapter, neither the state nor the plaintiff must allege and prove that the defendant had no right to set a fire. However, the defendant may assert that right as an affirmative defense.

Section 590.16, F.S., authorizes the DOF to pay rewards for information leading to the arrest and conviction of a person violating provisions of the chapter.

Section 590.25, F.S., provides that anyone interfering with an employee of the DOF or any other person extinguishing a woods fire is guilty of a third-degree felony.

Section 590.27, F.S., provides that anyone intentionally breaking or removing a fire control sign erected by the DOF is guilty of a second-degree misdemeanor.

Section 590.28, F.S., provides that anyone who intentionally sets a fire to a forest not owned by him or her, or in his or her lawful possession, if convicted, is guilty of a felony crime.

Section 590.29, F.S., provides that anyone who possesses an incendiary device, including any "slow match" who intends to use it for setting a fire to any forest that he or she neither owns nor is authorized to burn, is guilty of a felony.

Section 590.30, F.S., provides that violations of the two preceding sections (s. 590.028, F.S. and 590.29, F.S.) are punishable as felonies of the third degree.

Section 590.31, F.S., is the Southeastern Interstate Forest Fire Protection Compact. It provides authorization for the Governor to execute a compact, or agreement, with the states of Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia for the purpose of promoting effective prevention and control of forest fires in the Southeastern United States.

Section 590.32, F.S., provides that the Southeastern Interstate Forest Fire Protection Compact is effective in a state when a verified copy is filed by the Governor of that state with the Department of State and ratified by another state or states.

Section 590.33, F.S., designates the Director of the DOF as the compact administrator for the state. Provides for four members from Florida to sit on the advisory committee. One member is to be from the Senate, one member from the House of Representatives, and two members are to be appointed by the Governor, one of whom is to be associated with forestry or the forest products industry.

Section 590.34, F.S., provides for the director of the DOF to have all powers provided for in the compact, and members of the advisory committee are afforded similar powers. All officers, bureaus and departments are directed to furnish information to the director and advisory committee members. Departments are also authorized to lend personnel and equipment for carrying out the compact.

Section 590.35, F.S., clarifies that the preceding sections pertaining to the compact are in aid and supplement to powers of the division.

Section 590.42, F.S., provides for the DOF to enter into agreements with the U.S. Secretary of Agriculture to participate in the Federal Rural Community Fire Protection Program.

Section 590.50, F.S., provides that no one except the owner of the property can sell or have for sale articles made from unfinished cross-sectional slabs cut from buttresses of cypress trees without a permit from the DACS.

Section 590.61, F.S., provides authorization for the forestry-arson-alert program. The program is to enhance public awareness of the economic costs, environmental damages, and cultural deprivations that accompany forest fires. Its purpose is also to enhance public awareness of the importance of quick reporting of forest arson and accurate reporting of information to law enforcement officials for the apprehension of anyone engaged in forest arson.

Additionally, the program is to reward public-spirited citizens who cooperate with law enforcement officials in the apprehension and conviction of anyone involved in forest arson. It also provides public recognition of those who contribute to the prevention of forest arson through education programs and assistance to law enforcement officials.

Section 590.612, F.S., authorizes the department to establish a direct-support organization for providing assistance to the forestry-arson-alert program.

III. Effect of Proposed Changes:

Section 1. Amends s. 590.01, F.S., to expand the authority of the DOF to have primary responsibility for prevention, detection, and suppression of wild fires wherever they occur.

Section 2. Creates s. 590.015, F.S., to define five terms as used in this chapter.

- “Division” means the Division of Forestry of the Department of Agriculture and Consumer Services.
- “Fire management services” means presuppression fire line plowing, contract prescribed burning, prescribed and wildfire management training, and other activities associated with prevention, detection, and suppression of wildfires.
- “Fuel reduction” means the application of techniques that reduce vegetative fuels, and may include prescribed burning, manual and mechanical clearing, and the use of herbicides.
- “Wildfire” means any vegetative fire which threatens to destroy life, property, or natural resources.
- “Wild land” means any public or private managed or unmanaged forest, urban/interface, range land, recreation lands, or any other land at risk of wildfire.

Section 3. Amends s. 590.02, F.S., to:

- Expand the authority of the DOF to prevent, detect, suppress, and extinguish wildfires on both public and private lands and provide fire fighting crews under the control and direction of the DOF;
- Authorize the DOF to appoint center managers, forest area supervisors, forestry program administrators, forest protection bureau chief, forest protection assistant bureau chief, field operations bureau chief, deputy chiefs of field operations, district managers, senior forest rangers, firefighter rotor craft pilots, and other employees;
- Authorize development of a training curriculum for forestry firefighters which includes basic volunteer structural fire training and at least 250 hours of wildfire training;
- Expand the DOF’s authority to provide fire management services and emergency response assistance and to charge reasonable fees for such services;
- Expand the DOF’s authority to allow their employees to enter any lands for the purpose of investigating smoke complaints or open burning not in compliance with authorization;
- Allow local agencies and other entities under contract or agreement with DOF to assist in firefighting operations, such as setting counter fires, removing fences and cutting fire lines;
- Allow the use of water from public and private sources;
- Authorize the DOF to organize its operational units to most effectively prevent, detect, and suppress wildfires; and employ the necessary personnel to manage the activities in each unit;
- Authorize the DOF to construct lookout towers, roads, bridges, fire lines, and other facilities and purchase or fabricate tools, supplies, and equipment for firefighting;
- Authorize the DOF to reimburse public and private entities that it engages to assist in the suppression of wildfires including their personnel and equipment, including aircraft;
- Direct the DOF to undertake privatization alternatives for fire prevention activities such as constructing fire lines and conducting prescribed burns and if appropriate, entering into agreements with the private sector to perform these activities;
- Authorize the DOF to operate a newly created Florida Center for Wildfire and Forest Resources Management Training. The center is to serve as a place where fire and forest resource managers can obtain current knowledge, techniques, skills, and theory of their disciplines;
- Direct that wildfire suppression training will be provided at the center to rural fire departments, volunteer fire departments, other local fire response units, and structural firefighters;

- Authorize the DOF to establish cooperative efforts with governmental entities, hire personnel and have contract arrangements with public and private bodies to assist in carrying out the training and operation of the center. The training center is directed to focus curriculum related to incident management system, prescribed burning certification, multiple use land management, water quality, forest health, environmental education, and wildfire suppression training for structural firefighters;
- Authorize the assessment of fees for food, lodging, travel, course materials and supplies in order to meet operational costs of the center. Provision is made for free meals, room and scholarships to individuals and entities in exchange for instructional assistance; and
- Create an advisory committee to review program curriculum, course content, and scheduling.

Section 4. Amends s. 590.081, F.S., to authorize the Commissioner of Agriculture to declare a severe drought emergency to exist in a given area of the state and to require a written permit for all open burning in those areas to be obtained from the DOF or its designated agent.

Section 5. Amends s. 590.082, F.S., to require the Commissioner of Agriculture to advise the Governor when a severe drought emergency as prescribed in s. 590.081, F.S., continues until wild lands have become so dry or parched as to create an extraordinary fire hazard that could endanger life or property on wild lands. The Governor may by proclamation declare an extraordinary fire hazard to exist and file the proclamation with the Department of State. Upon such proclamation certain travel in any public or private wild land within any area described by the proclamation is prohibited, except on public roads or highways or on well-defined private roads. A person violating this provision commits a misdemeanor of the second degree.

Section 6. Amends s. 590.091, F.S., to delete a requirement that local governments must be notified that railroad rights-of-way are being designated as wildfire hazard areas by the DOF.

Section 7. Amends s. 590.10, F.S., to expand this section to include disposal of lighted substances which could cause a wildfire, in addition to throwing and dropping such substances. Violation of this section constitutes a misdemeanor of the first degree.

Section 8. Amends s. 590.11, F.S., to make it unlawful to leave bonfires unextinguished.

Section 9. Creates s. 590.125, F.S., relating to open burning authorized by the DOF.

Provides definitions of terms used in this section:

- “Prescribed burning” means the controlled application of fire in accordance with a written prescription for vegetative fuels under specified environmental conditions while following appropriate precautionary measures that ensure that the fire is confined to a predetermined area to accomplish the planned fire or land-management objectives.
- “Certified prescribed burn manager” means an individual who successfully completes the certification program of the DOF and possesses a valid certification number.
- “Prescription” means a written plan establishing the criteria necessary for starting, controlling, and extinguishing a prescribed burn.
- “Extinguished” means that no spreading flame for wild land burning or certified prescribed burning and no visible flame, smoke, or emissions for vegetative land-clearing debris burning exist.

Provides the following conditions under which burning of wild land and vegetative land-clearing may take place:

- Requires consent of the landowner or his or her designee;
- Authorization from the DOF has been obtained;
- Adequate fire breaks, sufficient personnel, and firefighting equipment for the control of the authorized fire is in place;
- The fire must remain within the boundary of the authorized area;
- Someone must be present at the burn site until the fire is extinguished;
- The DOF does not cancel the authorization; and
- Air quality and fire danger are favorable for safe burning.

Establishes that a violation of this section is a misdemeanor of the second degree. Describes the legislative intent to support prescribed burning.

Establishes the following conditions for certified prescribed burning:

- May only be accomplished by a certified prescribed burn manager who is present on site with a copy of the prescription from ignition to completion;
- Requires a written prescription be prepared prior to obtaining authorization from the DOF;
- Requires consent of the landowner or his or her designee prior to requesting authorization;
- Requires authorization to burn be obtained from the DOF prior to igniting the prescribed burn;
- Requires adequate firebreaks at the burn site and sufficient personnel and firefighting equipment to control the fire;
- Is considered in the public interest and does not constitute a public or private nuisance when conducted under applicable statutes and rules;
- Is considered to be a property right of the property owner.

Specifies that property owners or their agents are not liable for damage or injury caused by fire or smoke when conducting a lawful certified prescribe burn unless gross negligence is proven. When a lesser degree of negligence is proven, a cap of \$200,000 is established. Provides that violations of the section are a second degree misdemeanor. Mandates the DOF to adopt rules for certifying and decertifying certified prescribed burn managers. Authorizes and empowers the DOF to prescribe burn any wild land area of the state that is in danger of having an uncontrolled fire.

Before an area is prescribe burned under this section a notice of intent will be sent out in the tax notice, and it will be published in the newspaper 10 days in advance of the prescribed burn.

Landowners who object to the prescribed burning of their property can apply to the Director of the DOF for a review. If the landowner's objection is not resolved, a panel consisting of a DOF forestry manager, fire chief and county or city manger will be convened. If the landowner's objection is still not resolved, the owner can request further consideration by the Commissioner of Agriculture. The DOF is required to notify local governments of areas which are to be prescribe burned. Directs the Department of Education to include prescribed burning information in educational materials.

Section 10. Amends s. 590.13, F.S., to reflect more current language and to provide for the continuation of civil liabilities separate from criminal prosecution.

Section 11. Amends s. 590.14, F.S., to create a “warning citation” which may be issued by the DOF if unpredicted weather conditions occur causing an authorized fire to escape its intended boundaries but does not leave land owned or controlled by the authorization holder. If the DOF determines that a person has violated chapter 589, Forestry, or chapter 590, Forest Protection, a “notice of violation” may be issued which will be filed with the DOF and a copy sent to the appropriate law enforcement agency for further disposition. Provides that in addition to other penalties, anyone who causes a wildfire, or allows an authorized fire to escape, or burn past the approved time is liable for costs of suppressing the fire or \$150, whichever is greater. Provides that costs incurred by agencies acting at the direction of the DOF may be recoverable by that agency.

Section 12. Amends s. 590.16, F.S., relating to rewards, to make a technical correction.

Section 13. Amends s. 590.25, F.S., to broaden its scope to include wildfires rather than only forest fires in a penalty for obstructing the extinguishing of wildfires.

Section 14. Amends s. 590.27, F.S., relating to destroying fire control signs, to broaden it to include those signs of private landowners in addition to those of the state.

Section 15. Amends s. 590.28, F.S., to clarify that an individual who intentionally sets a fire to wild land not owned or without consent of the owner is considered to have committed a third degree felony. Further clarification is made to provide that anyone carelessly setting fire to wild land not owned or without consent of the owner has committed a second degree misdemeanor.

Section 16. Amends s. 590.29, F.S., to allow certified fire instructors and law enforcement instructors to have an incendiary device including such as a “slow match” in their possession with the intent to use it. Possession of an incendiary device is prima facie evidence of intent to use the device. Violation of this provision constitutes a third degree felony offense.

Section 17. Amends s. 590.33, F.S., relating to the administration of the Southeastern Interstate Forest Fire Protection Compact, to correct an organizational reference.

Section 18. Amends s. 590.34, F.S., relating to aid from other states under the Southeastern Interstate Forest Fire Protection Compact, to correct an organizational reference.

Section 19. Amends s. 590.42, F.S., relating to federally funded fire protection assistance programs, to correct an organizational reference.

Section 20. Repeals s. 590.025, F.S., relating to control burning of wild land; authorization; condition, s. 590.026, F.S., relating to prescribed burning; requirements; liability, s. 590.03, F.S., relating to fire wardens, s. 590.04, F.S., relating to organization of districts, s. 590.05, F.S., relating to road crews extinguishing fires, s. 590.06, F.S., relating to the adoption of rules for road crews, s. 590.07, F.S., relating to the refusal of road crews to suppress fires, s. 590.08, F.S., relating to unlawful burning of lands, s. 590.09, F.S., relating to the setting of fires on rights-of-way, s. 590.12, F.S., relating to unlawful burning, and s. 590.30, F.S., relating to penalties.

Section 21. Provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

A person who causes a wildfire, allows an authorized fire to escape boundaries, or burns past the authorized time is liable for expenses to suppress the fire.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill creates the Florida Center for Wildfire and Forest Resource Management Training. The department's budget request for FY 1999-2000 includes the following to operate the center:

6 positions	\$184,780
Expenses	724,146
Operating Capital Outlay	<u>254,812</u>
Total	\$1,163,738

VI. Technical Deficiencies:

None.

VII. Related Issues:

The legislative budget request of the Department of Agriculture and Consumer Services, Division of Forestry, for FY 1999-2000 includes a request of approximately \$37.1 million for fire suppression, monitoring and reforestation activities.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
