



Prescribed burning is generally seen as a way to reduce fuels over a larger landscape at a lower cost than logging and other forms of mechanical thinning. Both can be much cheaper than trying to suppress wildfire. However, there are practical, social, educational and regulatory issues states are considering.

Legal and Liability Barriers

- **The Perceived Risk and Liability Gap:** Fear of legal repercussions in the case of an escaped burn is a primary reason private landowners and agencies are reluctant to utilize fire. Most prescribed fires occur without incident, the perceived risk of financial ruin frequently dictates operational caution, which can lead managers to miss safe burn windows.
- **Variable Standards of Care:** Liability standards vary widely across states, ranging from strict liability (burner is responsible for all damages) to simple negligence (burner must show reasonable care) and gross negligence (protection for burners unless they act with reckless disregard).
- **Legislative Options:** Legislatures can lower the legal burden for practitioners by shifting to a gross negligence standard, provided they follow an approved burn plan. Some states, like Texas, provide statutory immunity for landowners who hire a Certified and Insured Prescribed Burn Manager (CIPBM). California recently implemented a similar gross negligence standard for prescribed fire suppression costs to encourage beneficial fire use.

Financial and Insurance Constraints

- **Insurance Market Dysfunction:** Many private contractors and nongovernmental organizations struggle to find available or affordable liability insurance. The insurance industry may conflate the controlled risk of professional prescribed burns with the catastrophic losses of uncontrolled wildfires, leading to high premiums or policy cancellations.
- **Funding Instability:** Federal and state financial structures often prioritize expensive, reactive wildfire suppression over stable, multi-year funding for proactive prevention.
- **Legislative Options:** States may establish a prescribed fire claims fund (or catastrophe fund) to serve as a financial backstop, covering initial damages from escapes before private insurance is triggered. California modeled this by appropriating \$20 million for a pilot claims fund in 2021. Additionally, providing dedicated, multi-year funding for forest restoration accounts can ensure a permanent workforce that is not diverted during fire suppression emergencies.

Operational and Capacity Deficits

- **Workforce Shortages:** A major operational barrier is a lack of qualified staff, particularly certified burn bosses. It typically takes eight years of specialized training and experience for an individual to qualify as a burn boss.
- **Legislative Options:** Certified Burn Manager programs can expand the workforce and link training to liability protections. Legislatures could allow certification reciprocity between state, federal, and Tribal entities to allow for more efficient resource sharing during limited weather windows.

Regulatory and Administrative Friction

- **Conflict with Environmental Laws:** Laws such as the Clean Air Act (CAA) and the Endangered Species Act (ESA) often treat beneficial fire as a disruptive human activity rather than a natural ecosystem process. This creates administrative hurdles, such as time-consuming permitting or smoke management restrictions, that cause practitioners to miss narrow, climatically safe burn windows.
- **Legislative Options:** Legislatures can advocate for rules that recognize smoke from beneficial fire as a "natural" or "baseline" condition, allowing emissions to be excluded when determining air quality violations. States can also streamline state-level environmental reviews by creating categorical exclusions for low-risk, routine prescribed fire projects.

Tribal Sovereignty and Cultural Burning

- Impediments to Indigenous Stewardship: Federal and state regulations can impede Tribal sovereignty by subjecting cultural burning to federal approval and oversight processes.
- **Legislative Options:** Legislatures could explicitly acknowledge cultural burning as a retained right of Indigenous peoples and deregulate these practices at the state level. Facilitating co-management and co-stewardship agreements could transfer decision-making authority back to Tribes for stewardship on ancestral lands.

Public Perception and Communication

- Smoke Intolerance and Fear: A lack of public understanding regarding the training and science involved in prescribed fire can limit social license to burn near communities.
- **Legislative Options:** Investing in regional and national communication strategies, such as using characters like "Burner Bob" to educate the public on the necessity of "good fire," can build public trust and acceptance 45, 46. Outreach should emphasize the air quality tradeoffs, as smoke from a prescribed fire is often far less severe and shorter in duration than smoke from a catastrophic wildfire 47, 48.

Sources:

The information provided regarding the barriers to prescribed burning and potential legislative solutions was drawn from the following sources using NotebookLM.

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- Hardigg, K. (2022). *Prescribed Fire Liability Insurance – Current Conditions & Pathways Forward*. This report outlines the dysfunction in the insurance market, the conflation of controlled burn risks with wildfire risks, and the emergence of claims funds or "catastrophe funds" as backstops.
- Cary, B., Lowdermilk, J., & Fawcett, J. E. (2024). *Prescribed Fire Liability Report for the Southern United States: A Summary of Statutes & Cases*. This source provides a comprehensive comparison of state liability standards (negligence vs. gross negligence) and summarizes the legal landscape in the Southeast.
- Weir, J. R., et al. (2020). *Prescribed Fire: Understanding Liability, Laws and Risk*. This publication provides statistical data on the safety record of prescribed burns, noting that over 99% of burns occur without escape, and highlights the gap between perceived and actual risk.

- United States Congress (2021). *S. 1734 - National Prescribed Fire Act of 2021*. This legislation proposed provisions for creating dedicated fire crews, establishing categorical exclusions for environmental reviews, and funding public education programs featuring characters like "Burner Bob".
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- Hinnant, R. (2011). *Prescribed Burning Laws, Rules, and Regulations in Texas*. This educational publication outlines the specific liability protections and certification requirements in Texas, including the immunity provided to landowners who hire certified managers.