HB301

115941-1

By Representative Wood

RFD: Judiciary

First Read: 14-JAN-10

115941-1:n:01/05/2010:JMH/ll LRS2009-5335

SYNOPSIS: Existing law makes it a crime for a person to burn or set fire to forests, grasses, or woodlands not under the control of that person. Existing law makes it a crime for a person to possess certain paraphernalia or use certain paraphernalia to burn or set fire to grass or woodlands not controlled by that person. Existing law also makes it a crime for a person or entity to allow fire to escape from forests, grasses, or woodlands not under the control of the person.

This bill would also make it a crime for a person to attempt to burn or set fire to forests, grasses, or woodlands not under the control of that person. This bill would clarify that paraphernalia means incendiary paraphernalia and includes any time-delay incendiary device.

This bill would also make it a crime for any person, firm, or corporation to recklessly or with wanton disregard for safety start a fire or cause a fire to start.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

A BILL

TO BE ENTITLED

AN ACT

Relating to arson in forests, grasses, or woodlands; to amend Section 9-13-11, Code of Alabama 1975, to make it a

crime to attempt to willfully, maliciously, or intentionally set fire to forests, grasses, or woodlands; to specify that paraphernalia means incendiary paraphernalia, including any time-delay incendiary device; to make it a crime to recklessly or with wanton disregard for safety start a fire or cause a fire to start; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 9-13-11, Code of Alabama 1975, is amended to read as follows:

"§9-13-11.

"(a) It shall be a Class C felony for every person, firm, association, or corporation ~~who~~ to do either of the following:

"(1) Willfully, maliciously or intentionally burns, sets fire to, attempts to set fire to, or causes to be burned or any fire to be set to any forest, grass, woodlands, or other inflammable vegetation on any lands not owned, leased, controlled, or in the lawful possession of the person, firm, association, or corporation setting ~~such~~ the fire or burning such lands or causing ~~such~~ the fire to be set or lands to be burned~~;~~.

"(2) Shall have in his or her possession or shall set, throw or place any device, instrument, or other incendiary paraphernalia, including any time-delay incendiary device, in or adjacent to any forest, grass, woodlands, or other inflammable vegetation, which forest, grass, woodland or other inflammable vegetation is not owned, leased, controlled, or in the lawful possession of the person possessing such device, instrument, or paraphernalia.

"(b) It shall be a Class B misdemeanor for any person, firm, association, or corporation:

"(1) Who allows a fire to escape from land owned, leased, or controlled by him or her, whereby any property of another is injured or destroyed;

"(2) Who shall burn any brush, stumps, logs, rubbish, fallen timber, grass, stubble, or debris of any sort, whether on one's own land or that of another, without taking reasonably necessary precautions, both before lighting the fire and all times thereafter to prevent the escape thereof;

"(3) Who shall set fire to any brush, stumps, logs, rubbish, fallen timber, grass, stubble, or debris of any sort within or near any forest or woodland, unless the area surrounding said material to be burned shall be cleared of all inflammable material for a reasonably safe distance in all directions and maintained free of all inflammable material so long as such fire shall continue to burn;

"(4) Who shall set a fire within or near any forest, woodland, or grassland without clearing the ground immediately

around it free from material which will carry fire, or shall leave such fire before it is totally extinguished or start a fire in any forest, woodland, or grassland by throwing away a lighted cigar, cigarette, match or by the use of firearms or in any other manner and leave the same unextinguished;

"(5) Who shall destroy, remove, injure, or deface any fire warning or notices or deface any inscription or devices comprising such notices;

"(6) Who shall burn any new ground, field, grasslands, or woodlands, or adjoining woodlands or grasslands of another within any area which has been placed under organized forest fire protection by the State Forestry Commission without first obtaining verbal authorization from the State Forestry Commission by obtaining a burning permit number.

"(c) It shall be a Class A misdemeanor for any person to recklessly or with wanton disregard for the safety of persons or property burn, set fire to, attempt to set fire to, or cause to be burned or any fire to be set to any forest, grass, woodlands, or other inflammable vegetation on any lands not owned, leased, controlled, or in the lawful possession of the person setting the fire or burning such lands or causing the fire to be set or lands to be burned without the permission of the lawful owner.

"~~(c)~~(d) (1) Burning permits may be obtained from the district operations center when the center is in active operation. The following criteria must be met:

"a. The person requesting the permit must have adequate tools, equipment, and manpower to stay with and control the fire during the entire burning period.

"b. The person requesting the permit is responsible to keep the fire confined.

"c. In no case will the person requesting the permit allow the fire to be unattended until it is dead out.

"(2) Burning permits will be issued if the individual requesting the permit states that the above criteria will be met unless the State Forester shall declare a fire alert. Under fire alert conditions the State Forester may allow issuance of permits at his or her discretion, taking into account the number of fires burning in the district, current and projected weather conditions, the ability of the person seeking the permit to contain the fire and that individual's knowledge of fire behavior, and other factors which may affect fires and fire behavior. A fire alert will be issued by the State Forester for any district or portion of a district that in the opinion of the State Forester, has existing conditions which produce extraordinary danger from fire or smoke.

"(3) If subsequent to issuance of a permit a lawfully authorized fire escapes to the lands of another and an investigation reveals that the permit holder did not meet all the criteria as set forth above, the fire will be treated as if no legal authorization had been obtained.

"(4) A burning permit once issued may be revoked if the person requesting the permit fails to comply with proper burning procedures or if weather conditions develop which may result in erratic fire or smoke behavior.

"~~(d)~~ (e) An area shall be deemed legally placed under organized forest fire protection by the State Forestry Commission of the State of Alabama upon proclamation of the State Forester. Such proclamation shall describe the lands placed in said area and shall be published once a week for two consecutive weeks in a newspaper published in the county where the lands composing said area are located. If there are no newspapers published in the county where said lands are located, then said proclamation shall be published in a newspaper of an adjoining county. In the event the lands composing said area are located in more than one county, such proclamation shall be so published in a newspaper in each county where said lands are located. Beginning with the twelfth day after the first publication of said proclamation in said newspaper or newspapers, the lands described in the proclamation shall be deemed in an area under organized forest fire protection. Upon the trial of any person, firm, or corporation for the violation of any provision of this section, a certified copy of said proclamation executed by the State Forester shall be admissible in evidence and shall be conclusive evidence of the fact that the lands described in said proclamation constitute an area under organized forest fire protection within the meaning of this section.

"~~(e)~~(f) All moneys collected for any violation of this section as fines, forfeitures, etc., shall go to the Alabama Forestry Commission Fund and shall be used in defraying the expense of the administration of such State Forestry Commission."

Section 2. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 3. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.