
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
2021 - 2022 Regular

Bill No: AB 1409
Author: Levine
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Consultant: Baker

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Tax Levy: No
Fiscal: Yes

PLANNING AND ZONING: GENERAL PLAN: SAFETY ELEMENT

Requires cities and counties to update their safety element to identify evacuation locations.

Background

Fire Hazard Severity Zones. The California Department of Forestry and Fire Protection (CALFIRE) provides wildland fire protection on non-federal lands outside cities. To meet this duty, the State Board of Forestry and Fire Protection (Board) designates the State Responsibility Area (SRA) every five years. Within SRA lands, the Director of CALFIRE designates moderate, high, and very high fire hazard severity zones (VHFHSZs). After the 1991 Oakland-Berkeley firestorm, the Legislature required CALFIRE to designate VHFHSZs in the Local Responsibility Area (LRA). These maps must be updated every five years (current maps date to 2007).

Landowners in the SRA and VHFHSZs must follow specified fire prevention practices and meet standards developed by the Board (AB 337, Bates, 1992). These practices and standards include maintaining defensible space of 100 feet around structures, performing certain activities to reduce the amount of flammable material near and on structures, and meeting specific building standards developed by CALFIRE and the Department of Housing and Community Development that help a structure withstand ignition and reduce fire risk.

Recent oversight hearings. On March 13, 2019 the Senate Governance & Finance Committee and the Senate Natural Resources & Water Committee held an oversight hearing titled “Living Resiliently in the New Abnormal: The Future of Development in California’s Most Fire Prone Regions.” Among other topics, that hearing explored changes to land use planning and permitting that may be needed to reduce the loss of life and property from wildfire. One issue identified at the hearing was that the Town of Paradise lacked adequate emergency evacuation routes, resulting in residents who were trapped in their cars.

Historic levels of wildfire. In the past decade, California wildfires have grown in size and destructiveness. According to a Los Angeles Times analysis published on September 15, 2020:

- The 2020 wildfire season burned more than 4.2 million acres, making it by far the largest in California history;
- 8 out of the 10 largest wildfires in California history occurred in the past ten years, including the August Complex Fire, which burned over 1 million acres in September 2020, making it the state’s first “giga fire”;
- 7 of the 10 most destructive fires in California history occurred in the past five years, meaning single years had multiple massive conflagrations; and

- The Camp Fire in November 2018 became California’s most destructive and deadliest wildfire, which caused the deaths of 86 people and destroyed nearly 19,000 structures.

Planning and permitting. Every county and city must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. General plans must also either include an eighth element on environmental justice, or incorporate environmental justice concerns throughout the other elements. Most of cities’ and counties’ major land use decisions—subdivisions, zoning, public works projects, use permits—must be consistent with their general plans. Development decisions must carry out and not obstruct a general plan’s policies.

The Planning and Zoning Law says that the safety element’s purpose is to protect the community from unreasonable risks from geologic hazards, flooding, and wildland and urban fires. In 2012, the Legislature expanded the safety elements’ contents for fire risks on land classified as SRAs and VHFHSZs (SB 1241, Kehoe, 2012). SB 1241 required safety elements to contain:

- Specified information about fire hazards.
- Based on that information, a set of comprehensive goals, policies, and objectives to protect against unreasonable fire risks.
- To carry out those goals, a set of feasible implementation measures.

Cities and counties within the SRA or VHFHSZ must also submit a draft of any safety element amendments to the Board and to local fire protection agencies at least 90 days before adopting it. The Board must review and recommend changes to the draft safety element within 60 days of receiving it. If the Board provides recommendations within this timeframe, local governments must consider its recommendations. If they don’t adopt the Board’s recommendations, local governments have to explain why they didn’t to the Board. Local agencies must meet with the Board on its recommendations if the Board requests, but aren’t required to adopt the Board’s recommendations.

The safety element must also include similar information about risks due to climate change and goals, policies, objectives, and implementation measures to protect against those risks.

Before a city council or county board of supervisors can approve a subdivision of land in the SRA or VHFHSZ, it must make findings supported by substantial evidence that:

- The subdivision is consistent with the Board’s applicable regulations or local ordinances certified by the Board as meeting or exceeding the state regulations; and
- A local agency or CALFIRE, under contract, will provide structural fire protection and suppression services to the subdivision.

Upon making these findings, the city or county must send them, along with the subdivision maps, to the Board, to identify existing subdivisions in either an SRA or a VHFHSZ that do not have secondary egress routes and that are at significant fire risk.

Other local planning for disasters. Local agencies must also prepare a local hazard mitigation plan (LHMP) every five years as a condition for receiving federal hazard mitigation grants. Local agencies can work together on a multi-jurisdictional basis for the LHMP and submit it to the Governor’s Office of Emergency Services (Cal OES) for review and certification. LHMPs

help cities and counties identify and mitigate risks and vulnerabilities associated with disasters. Cal OES provides technical assistance to local governments in the development of these plans required under the federal Disaster Mitigation Act of 2000 and assists with integrating hazard identification, risk assessments, risk management, and loss prevention into a comprehensive approach to hazard mitigation.

In addition, under the California Emergency Services Act, all local agencies with a certified disaster council must prepare an Emergency Operations Plan (EOP) that meets state and federal requirements. Local EOPs generally include information on evacuation and transportation, sheltering, hazard-specific planning, regional planning, public-private partnerships, and recovery planning.

Recent safety element requirements. In recent years, the Legislature has adopted additional requirements to enhance the disaster preparedness planning done under the safety element. Specifically, SB 99 (Nielsen, 2019) requires each city and county, upon the next revision of the housing element on or after January 1, 2020, to review and update its safety element to identify residential developments in any hazard area identified in the safety element that do not have at least two emergency evacuation routes. Additionally, AB 747 (Levine, 2019) requires each city and county to review and update its safety element to identify evacuation routes and their capacity, safety, and viability under a range of emergency scenarios. This revision must occur either upon the next revision of a local hazard mitigation plan, adopted in accordance with the federal Disaster Mitigation Act of 2000 on or after January 1, 2022, or, if a local jurisdiction has not adopted a local hazard mitigation plan, beginning on or before January 1, 2022. AB 747 allows a county or city that has adopted a local hazard mitigation plan, emergency operations plan, or other document that fulfills commensurate goals and objectives to summarize and incorporate into the safety element that other plan or document. AB 747 does not include a requirement to identify evacuation locations.

The author wants to update the requirements of AB 747 to include evacuation locations.

Proposed Law

Assembly Bill 1409 requires cities and counties to periodically review and update its safety element to identify evacuation locations under a range of emergency scenarios. This revision must occur according to the schedule required by AB 747.

State Revenue Impact

No estimate.

Comments

1. **Purpose of the bill.** According to the author, “In 2019, AB 747 (Levine) was successfully chaptered into law to adequately address the need for sufficient evacuation routes during a full-scale emergency. Now, AB 1409 would ensure those that evacuate using these routes have a specified evacuation location. California faces a daunting task in contending with prolonged wildfire seasons and natural disasters facilitated by climate change. This, coupled with increased development in the wildland-urban interface, requires communities to adequately address the need for sufficient evacuation locations during a full-scale emergency. AB 1409 will help save lives by requiring local governments to proactively plan evacuation locations under a range of

emergency scenarios. The safety element establishes policies and programs to protect the community from risks associated with seismic, geologic, flood, wildfire hazards and other concerns.”

2. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because AB 1409 adds to the duties of local planners, Legislative Counsel says that the bill imposes a new state mandate. AB 1409 disclaims the state's responsibility for providing reimbursement by citing local governments' authority to charge for the costs of implementing the bill's provisions.

3. Related legislation. The Legislature is considering numerous fire-related bills this year. SB 12 (McGuire) which the Committee approved at its March 25th hearing on a 5-0 vote, imposes certain fire hazard planning responsibilities on local governments and requires cities and counties to make specified findings on fire standards prior to permitting development in very high fire risk areas.

In recent years, the Legislature has taken several important actions that have been signed into law to improve wildfire planning and safety. Notable bills include the following:

- SB 190 (Dodd, 2019) requires the State Fire Marshal to develop a model defensible space program for use by a city or county in the enforcement of the defensible space provisions in current law.
- SB 901 (Dodd, 2018) establishes a comprehensive framework to address and prevent catastrophic wildfires including prevention and planning by the state's electric utilities; management of the state's forests, chaparrals, and other lands to prevent and defend against wildfires; and standards to stabilize electrical corporations in the event of extensive liability resulting from claims under inverse condemnation. SB 901 also appropriated \$200 million per year through the 2023-24 budget for forest health and fire prevention.
- SB 1260 (Jackson, 2018) made various changes related to local fire planning, prescribed fire requirements, and broader fire prevention efforts, including to require that: (1) local safety elements reflect best practices contained in the Governor's Office of Planning and Research's technical guidance for fire hazard planning; (2) cities and counties meet with the Board on their draft safety elements at the request of the Board; and (3) cities and counties transmit any fire-related findings made under the Subdivision Map Act to the Board.
- AB 2911 (Friedman, 2018) made various changes to fire safety planning, including to: require local agencies to submit ordinances adopting VHFHSZ to the Board; direct OPR to update its technical guidance for fire and land use planning; and require the Board to identify at-risk subdivisions not less than every 5 years.
- AB 1956 (Limón, 2018) requires CALFIRE to establish a local grant program and establishes the criteria for those grants.
- SB 465 (Jackson, 2018) expands, until January 1, 2029, Property Assessed Clean Energy (PACE) financing to allow cities and counties in VHFHSZs to allow contractual assessments for property owners to finance wildfire safety improvements.

Assembly Actions

Assembly Local Government:	8-0
Assembly Emergency Management:	6-0
Assembly Appropriations:	16-0
Assembly Floor:	77-0

Support and Opposition (6/14/21)

Support: American Planning Association, California Chapter

Opposition: None submitted

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