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# SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair  
2021 - 2022 Regular

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<b>Author:</b>	Dodd		
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<b>Urgency:</b>	Yes	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Katharine Moore		

**Subject:** Prescribed Fire Liability Pilot Program: Prescribed Fire Claims Fund

## BACKGROUND AND EXISTING LAW

Catastrophic and devastating wildfires have occurred repeatedly in the state in recent years. In 2021 alone, preliminary data show almost 9,000 wildland fires burned almost 2.6 million acres in the state. Slightly fewer wildland fires in 2020 burned almost 4.4 million acres – a modern record. The 2020 August Complex Fire in northern California – the largest fire in California’s modern history – burned over 1 million acres by itself. The 2021 Dixie fire also almost reached 1 million acres. Two wildland fires in the last year burned over the crest of the Sierras which had not been previously observed. Nine of the twenty largest and seven of the twenty most destructive wildland fires in state history occurred in 2020 and 2021. Six of the seven most costly wildfires in US history occurred in California in the last 5 years. Thousands of firefighters have been deployed to fight these fires and the state’s wildland fire suppression costs in the last three fiscal years total on the order of \$3.5 billion. In the last five years from wildland fire, tens of thousands of structures – almost entirely homes – have been destroyed, insured losses incurred are in the billions of dollars, prime habitat has been destroyed or damaged, and, tragically, hundreds of lives have been lost. In addition, millions of Californians have been exposed to unhealthy air quality due to the wildfires, and millions of metric tons of carbon dioxide were emitted to the atmosphere from burning trees and vegetation.

While wildland fires have always been present in the state, the number of days with extreme fire risk has more than doubled in the last 40 years. This is likely to continue to increase. One of the impacts of climate change in the state is an increase in the frequency and intensity of wildfires, and both of these have noticeably increased in the last two decades. Instead of a discernible fire season, wildfires are occurring throughout the year. In forested regions, decades of fire suppression, historic logging practices and drought have produced unhealthy forests that exacerbate the risk of an extreme wildfire developing when a fire occurs. Further, continued development in the Wildland Urban Interface (WUI) puts more homes at risk from wildland fire.

Native American tribes have used low-intensity fires for cultural and traditional purposes for millennia. Low-intensity fires have ecological benefits – such as creating habitat and germinating the seeds of certain species of plants. Low-intensity fires can also remove surface fuels, and, therefore, decrease the likelihood of high-intensity fire later. There is scientific consensus that frequent, low-intensity fires can positively improve forest health, biodiversity and the safety of forested communities. Prescribed low-intensity fires can be a useful vegetation management treatment in forests. However, other types of vegetation – such as coastal sage scrub – may more effectively benefit from

other types of treatments to reduce the fuel load. The different ecosystems of the state, among the most biodiverse places on earth, require different approaches to be effectively managed to reduce wildfire risk.

Executive Order B-52-18, signed by then-Governor Brown in May 2018, sought to accelerate the use of prescribed fire and other treatments to help reduce wildland fuel loading and the associated wildfire risk. In part this was achieved by increasing training, including with tribal governments, with an explicit goal of treating up to 500,000 acres annually. SB 901 (Dodd, Chapter 626, Statutes of 2018) and SB 1260 (Jackson, Chapter 624, Statutes of 2018) sought to increase the use of prescribed fire by providing more funding and an improved statutory framework for it. The Newsom Administration signed a shared forest stewardship agreement with the US Forest Service in August 2020 that also provided for an expanded use of prescribed fire on both federal and state lands and called for working with tribal governments in those efforts. The shared goals of the stewardship agreement include an increase in vegetation treatment of up to 1 million acres annually by 2025. The state's forestland is owned by public (federal, state and local jurisdictions) and private entities so a shared and coordinated approach is critical. Regionally driven wildfire resilience strategies across the different ownership are essential to ensuring fuel management and wildfire restoration work is appropriately tailored to the diversity of communities and ecosystems in the state.

In January 2021, the Governor's Forest Management Task Force (now Wildfire and Forest Resilience Task Force)(Task Force) released "California's Wildfire and Forest Resilience Action Plan" (Action Plan). The Action Plan builds upon ongoing or institutes new efforts to reduce wildland fire risk and promote resiliency. The Action Plan is informed by the shared forest stewardship agreement, and incorporates elements of that agreement in its goals and strategies. The Action Plan is designed to "strategically accelerate" efforts to restore the health and resilience of the state's forests, grasslands and natural places; and to improve the fire safety of communities in the state; among other things. These include expanding the use of prescribed fire, working with Native American tribes, among others, to establish a prescribed fire training center, and instituting programs with Native American tribes and tribal organizations, including grant programs, to help incorporate their traditional and cultural practices in managing the state's forests and rangelands.

The Task Force also released the draft "California's Strategic Plan for Prescribed Fire, Cultural Burning, and Prescribed Natural Fire" (draft Strategic Plan) in October 2021. The draft Strategic Plan specifically calls for empowering the private sector through the growth of the Prescribed Fire Burn Boss certification program, modification of the State's liability standards and the development of a pilot claims fund for private burners. As noted above, the Legislature has undertaken multiple efforts to spur the use of prescribed fire including addressing liability and seeking the creation of a public claims fund for prescribed fire and cultural burn projects that meet certain criteria to both backstop the private insurance markets and facilitate the re-entry of private insurers to the market. In addition, \$20 million was appropriated in last year's budget to provide money for a pilot prescribed fire claims fund.

Studies indicate that virtually all prescribed fires are implemented as planned, remain in the intended boundaries, and cause no unintended damage to life or property. There is always some risk, however, associated with the use of prescribed fire. Insurance is a means to mitigate for this risk. Unfortunately, private insurance is increasingly unavailable for the private service providers and non-governmental organizations who wish to conduct prescribed burns. A 2019 report from the Task Force described several challenges to providing this coverage by private insurers. Without the availability of insurance, it is likely that far fewer prescribed fire and cultural burn projects will be conducted for the state to meet its ambitious targets. This is a key barrier to expanding the use of prescribed fire and cultural burn projects. Self-insurance is generally not feasible.

Existing law:

- 1) Establishes the California Department of Forestry and Fire Prevention (CAL FIRE) in the California Natural Resources Agency. Establishes the Office of the State Fire Marshal within CAL FIRE.

The Director of Forestry and Fire Protection (CAL FIRE Director) leads CAL FIRE.

- 2) Establishes the Department of General Services in the Government Operations Agency that is led by the Director of General Services. The Department of General Services is “created to provide centralized services” including, among other things, government claims.
- 3) Requires the Department of General Services to develop and enforce policy and procedures to assure effective operation of all functions performed by it and to conserve the rights and interests of the state.
- 4) Require the State Fire Marshal to develop a curriculum for a certification program for burn bosses who have the authority to engage in a prescribed burning operation, as provided.
- 5) Require CAL FIRE to develop a training program for prescribed fire users to certify professionals as burn bosses to a common standard.
- 6) Declares that compliance with a CAL FIRE burn permit constitutes prima facie evidence of due diligence. A person with a CAL FIRE burn permit is authorized to use fire to abate a fire hazard.
- 7) Requires the CAL FIRE director to appoint a cultural burning liaison with specified duties.

Cultural burn” or “cultural burning” means the intentional application of fire to land by California Native American tribes, tribal organizations, or cultural fire practitioners to achieve cultural goals or objectives, including for subsistence, ceremonial activities, biodiversity, or other benefits.

- 8) Declares that historically CAL FIRE conducted prescribed burns using its own personnel, and, therefore, was liable for any damages resulting from the burn. However, to reach statewide prescribed burn goals to limit the threat of catastrophic

wildlife, and to improve forest health, CAL FIRE may have a smaller role on individual prescribed burns with a cooperator taking more control.

- 9) Establishes a process for CAL FIRE to determine the maximum amount of liability for a prescribed burn conducted as part of a burning agreement. Limits the maximum percentage of liability for the person contracting with CAL FIRE to 75%.
- 10) Requires the Task Force in coordination with the Department of Insurance to develop recommendations for the implementation of an insurance pool or other mechanism for prescribed burn managers that reduces the cost of conducting prescribed fire while maintaining adequate liability protection when conducting prescribed burns.
- 11) Appropriates \$20 million in the Budget Act of 2021 to be used to establish a Prescribed Fire Liability Pilot Program, in consultation with the Department of Insurance and the California Natural Resources Agency, to create a prescribed fire claims fund to support coverage for losses from permitted prescribed fires by non-public entities, such as Native American tribes, private landowners, and nongovernmental entities.
  - a) CAL FIRE, in consultation with the Department of Insurance and the California Natural Resources Agency, is required to propose to the Legislature statutory changes necessary to effectuate the establishment of this program by January 10, 2022.
  - b) The funds are available for encumbrance or expenditure until June 30, 2023, and for liquidation until June 30, 2025

## **PROPOSED LAW**

This bill would establish the Prescribed Fire Liability Pilot Program and implement the Prescribed Fire Claims Fund. Specifically, this bill would:

- 1) Require CAL FIRE, on or before January 1, 2023, to establish the Prescribed Fire Liability Pilot Program to support coverage for losses from permitted prescribed fires by individuals and nonpublic entities through the Prescribed Fire Claims Fund (Fund), as provided.
- 2) Establish the Fund in the State Treasury.
  - a) Twenty million dollars appropriated to CAL FIRE in the Budget Act of 2021 shall be deposited in the Fund, and be available for encumbrance or expenditure until June 30, 2023 and for liquidation until June 30, 2025.
  - b) Any other funds from any source, and any other funds appropriated by the Legislature for this purpose are required to also be deposited in the Fund, as specified. Fund monies that have not been appropriated are available upon appropriation.
  - c) Moneys in the Fund are encumbered when an eligible claimant may file a claim against the Fund in accordance with the policies and procedures established by the Director of General Services, as provided.

- 3) Require moneys in the Fund to be used to support coverage for losses from prescribed fire and cultural burn projects, and for administrative costs not to exceed 5% of the moneys appropriated, as specified.
- 4) Require the Director of General Services to administer and oversee the Fund to assist in increasing the pace and scale of prescribed fire and cultural burn projects, as provided.
- 5) Require the Fund to cover eligible claims for damages and losses associated with prescribed fire and cultural burn projects undertaken in natural vegetation for cultural or ecological benefit or for hazardous fuels reduction purposes, as specified.
- 6) Require the Director of General Services to develop policies and procedures for the operation and administration of the Fund, including, but not limited to, eligible claims and events, coverage limits, and minimum amounts eligible for claims and categories of losses eligible for coverage, among others. The policies and procedures are required to include at least the following:
  - a) Exclusion of damages resulting from intentional violations of laws or established policies and procedures.
  - b) Verification of a claim prior to payment from the Fund by the Director of General Services.
  - c) Authorization to the Director of General Services to negotiate with an eligible claimant to settle a claim and a requirement to pay the costs of any claims settlement process from the Fund.
  - d) Establishment of an upper limit of \$2 million and a lower limit of claims or coverage per event.
  - e) Development of an application process for eligible claimants to file a claim against the Fund. Required application elements include:
    - i) The past experience of an eligible claimant in successfully completing a prescribed fire or cultural burn project.
    - ii) The project subject to an application for a claim received permission from the landowner.
    - iii) A specified period when an eligible claimant is required to make a claim before needing to reapply.
    - iv) The prescribed fire or cultural burn project compiles with all applicable state laws and regulations and all permits required to conduct the project.
  - f) A notification process for eligible claimants when the Fund cannot support new claims, as provided.
  - g) A maximum number of prescribed fire or cultural burn projects that the Fund can cover claims from simultaneously.

- h) A process for reserving capacity within the Fund for a specified period to maximize participation of eligible claimants and the public benefits of the Fund, as provided.
- 7) Authorize the Director of General Services, with the concurrence of the Insurance Commissioner and the Director of Forestry and Fire Protection, to modify the policies and procedures described in (6) to improve the operation of the Fund.
- 8) Exempt the development and modification of the policies and procedures in (6) and (7) from the Administrative Procedure Act, as provided.
- 9) Require the Director of General Services to notify the Governor and the relevant legislative policy and fiscal committees if, at any time, the size of the Fund limits the amount of claims coverage that can be provided.
- 10) Require a person engaging with a Native American tribe, tribal organization or cultural fire practitioner to respect tribal sovereignty, customs, and culture.
- 11) Authorize the Director of General Services to exercise certain powers to administer the Fund, such as entering into contracts with third parties, and determining the eligibility of claimants, among others, as provided.
- 12) Require the Director of General Services, on or before January 1, 2024 and then annually thereafter, to prepare and submit a report to the relevant policy and fiscal legislative committees that includes certain information about the Fund and its use, as provided.
- 13) Require the Department of Finance to audit the Fund and provide a report to the relevant policy and fiscal legislative committees on or by July 1, 2024.
- 14) Require the Director of General Services to provide a report to the relevant policy and fiscal legislative committees including whether the Fund should continue and recommendations for changes in the Fund on or by July 1, 2026, as specified.
- 15) Provide that participation in the Fund is not required for conducting a prescribed fire or cultural burn project and a decision not to participate in the Fund cannot be used to restrict a project.
- 16) Provide justification for the urgency due to the necessity of facilitating prescribed fire and cultural burn projects in high wildfire threat areas
- 17) Define various relevant terms. An “eligible claimant” of the fund which means a person who meets all the necessary qualifications established by the Director of General Services, and who is a landowner who owns the property where a prescribed fire or cultural burn occurs or is an individual, organization, or Native American tribe, including a cultural fire practitioner, who supervises, plans, or executes a prescribed fire or cultural burn project, as provided. Delete obsolete provisions.

## ARGUMENTS IN SUPPORT

According to the author, “California is facing a growing forest and wildfire crisis. Decades of effective fire exclusions, coupled with the increasing impacts of climate change, have dramatically increased wildfires’ size and intensity throughout the state. Last year has brought new records including the first wildfire to burn across the Sierra Nevada; the destruction of towns like Greenville and Grizzly Flats; and destruction of many of California’s irreplaceable giant sequoias.”

“Despite widespread acknowledgement in the scientific community of the utility of the practice, a 2019 study found that implementation of prescribed burning as a forest management practice has not increased over recent decades.”

“On January 8, 2021, the Governor’s Wildfire and Forest Resilience Task Force released a comprehensive action plan. The action plan stated, “Insurance is no longer available for most private landowners and organizations seeking to conduct prescribed fire projects. In 2021, the state will explore the development of alternative strategies to increase insurance availability for these projects.”

“The Budget Act of 2021 appropriated to the department \$20,000,000 to establish a Prescribed Fire Liability Pilot Program that creates a prescribed fire claims fund to support coverage for losses from permitted prescribed fires by nonpublic entities, such as Native American tribes, private landowners, and other nongovernmental entities. SB 926 sets forth the guidelines to operationalize the Claims Fund.”

## ARGUMENTS IN OPPOSITION

None received

## COMMENTS

There is no public Administration plan. Despite the January 10, 2022 deadline noted above, the Administration has not yet released its plan for implementation of the pilot program or the claims fund. This bill may help to spur the public release of that plan, and may also provide a counterpoint to the Administration’s proposal. While anecdotal, conversations with prescribed fire and cultural burn practitioners support the need to take public action to spur private insurers to enter/re-enter the market. Given the importance of facilitating prescribed fire and cultural burn projects statewide to help prevent and mitigate wildland fire, this effort has considerable merit.

The Administration’s proposal, likely to be budget trailer bill language, remains in development. In view of this, it is likely that the language in this bill will evolve, possibly substantially. Therefore, the Committee may wish to direct the author to continue working with Committee staff as the bill proceeds. The Committee may further wish to re-hear the bill in the future.

Prescribed fire works. The spread and intensity of the recent Caldor fire was reduced and fire behavior significantly moderated when it reached areas in the Caples Creek watershed near the Kirkwood Ski Resort where prescribed fire, among other treatments, were used.

The scale of the fuel management problem. Prior to colonization and associated fire suppression activities, approximately 1.8 million to 4 million acres burned annually in the state. There is clear benefit to increasing the use of prescribed fire in wildlands where

that is an appropriate vegetation treatment. A 2020 scientific study found that as much as 20 million acres in the state needed to be burned to resolve the conditions of the state's forests. In FY 17/18, 18/19, 19/20, 20/21, and 21/22, CAL FIRE burned 19,413, 31,305, 13,450, 27,143, and 32,226 acres annually, respectively. The draft Strategic Plan states that CAL FIRE and the US Forest Service collectively conducted or assisted with prescribed burns on approximately 80,000 acres annually from 2017 – 2020. Private entities, tribes, local agencies and the California Department of Parks and Recreation treated thousands or tens of thousands additional acres annually according to the draft Strategic Plan at the same time. The need, however, continues to be projected to be much larger and CAL FIRE's goal for 2025 alone is 100,000 acres treated annually. A recently study by Stanford University argued for the importance of implementing prescribed burning at scale, where appropriate, with the goal of returning the ecosystems to regular low-intensity fire to reduce wildfire risk and improve ecosystem health. While expensive upfront, these efforts may ultimately yield benefits from reduced fire activity-related costs. The Stanford study noted that the state spends much less on wildfire mitigation than it does on wildfire suppression, although each dollar invested in wildfire mitigation funding saves 2 – 4 dollars in avoided disaster costs (based on national data).

*Prescribed Fire Burn Boss Certification program update.* The state-certified burn boss program was mandated by SB 1260 (Jackson, Chapter 624, Statutes of 2018). The curriculum was finalized and approved in 2021, and the first course was held in the spring of 2021. Many of the attendees had extensive experience in prescribed fire, including federal qualification which is considered to be more rigorous than the state certification requirements. Not until early 2022, after consider prodding, did the first class receive course certificates and task books. None of the first class will be eligible for state certification until the task books are completed which, given the need to conduct a prescribed fire and document it, will take a few more months. As of now, another course is scheduled for the spring.

*Recent related legislation*

SB 170 (Skinner, Chapter 240, Statutes of 2021) is a Budget Bill Junior modifying the Budget Act of 2021, and, among other items, provided the \$20M for a claims funds related to prescribed fires.

SB 332 (Dodd, Chapter 600, Statutes of 2021) provides that a burn boss and a private landowner upon whose property a burn boss carries out a prescribed burn are immune from liability for damages or injuries to persons or property as the result of a prescribed burn, unless the burn was conducted in a grossly negligent manner.

AB 642 (Friedman, Chapter 375, Statutes of 2021) made numerous statutory changes to enhance wildland fire prevention efforts, including, among other things, incorporating and facilitating cultural burning practices, and requiring the identification of moderate and high fire hazard severity zones in local responsibility areas, as provided.

SB 901 (Dodd, Chapter 626, Statutes of 2018) addresses numerous issues concerning wildfire prevention, response and recovery, including funding for mutual aid, fuel reduction and forestry policies, and wildfire mitigation plans by electric utilities, among other things.



SB 1260 (Jackson, Chapter 624, Statutes of 2018) includes multiple provisions to promoted long-term forest health and improve wildfire resiliency, including related to prescribed fire.

AB 2091 (Grayson, Chapter 634, Statutes of 2018) requires the then-Forest Management Task Force in coordination with the Department of Insurance to develop recommendations for an insurance pool or other mechanism to assist prescribed burn managers and reduce the cost of conducting prescribed fire.

**SUGGESTED AMENDMENTS:** none**SUPPORT**

The Nature Conservancy (sponsor)  
Amah Mutsun Land Trust  
Audubon Canyon Ranch  
California Association of Resource Conservation Districts  
California Cattlemen's Association  
California Farm Bureau  
California Forestry Association  
California Native Plant Society  
California State Grange  
Central Coast Prescribed Burn Association  
Defenders of Wildlife  
Esselen Tribe of Monterey County  
Feather River College  
Firestorm Wildland Fire Suppression, Inc.  
Forest Ranch Fire Safe Council  
Good Fire Alliance  
Holcomb/Pilario Ranch  
Humboldt and Mendocino Redwood Companies  
Humboldt County Prescribed Burn Association  
Humboldt Fire Resilience Institute  
MidPeninsula Regional Open Space District  
Monan's Rill Association  
Monterey County Farm Bureau  
Northern California Prescribed Fire Council  
Open Canopy, LLC  
Paula Lane Action Network  
Peninsula Open Space Trust  
Piercy Fire Protection & Rescue District  
Plumas County Fire Safe Council  
Prometheus Fire Consulting, LLC  
Rural County Representatives of California  
Salmon River Restoration Council  
San Luis Obispo County Cattlemen's Association  
Santa Clara County Parks and Recreation Department  
Scott River Watershed Council  
Sonoma County Regional Parks  
Sonoma Land Trust

The Buckeye Conservancy  
The Watershed Research and Training Center  
Tribal EcoRestoration Alliance  
UC Berkeley Fire Lab  
Valencia Road Association  
Ventura Regional Fire Safe Council  
Yuba Bear Burn Cooperative

Multiple (nine) individuals

**OPPOSITION**

None received

**-- END --**