
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION**Senator Bill Dodd****Chair****2021 - 2022 Regular**

Bill No:	SB 926	Hearing Date:	4/5/2022
Author:	Dodd		
Version:	3/10/2022 Amended		
Urgency:	Yes	Fiscal:	Yes
Consultant:	Brian Duke		

SUBJECT: Prescribed Fire Liability Pilot Program: Prescribed Fire Claims Fund

DIGEST: This bill requires the Department of Forestry and Fire Protection (Cal FIRE), on or before January 1, 2023, to establish the Prescribed Fire Liability Pilot Program (PFL Pilot Program) and the Prescribed Fire Claims Fund (Fund) to support coverage for losses from permitted prescribed fires by individuals and nonpublic entities, as specified; requires \$20 million appropriated to CalFIRE for the PFL Pilot Program, and any other funds, be deposited into the Fund, as specified; and, designates the Director of General Services (Director) to administer the Fund, as specified.

ANALYSIS:

Existing law:

- 1) Establishes CalFIRE and provides that CalFIRE be responsible for the fire protection, fire prevention, maintenance, and enhancement of the state's forest, range, and bushland resources, contract fire protection, associated emergency services, and assistance in civil disasters and other non-fire emergencies.
- 2) Establishes the Department of General Services (DGS), under the control of the Director, to provide centralized services including, but not limited to, planning, acquisition, construction, and maintenance of state buildings and property; purchasing; printing; architectural services; administrative hearings; government claims; and, accounting services.
- 3) Establishes a process for CalFIRE to determine the maximum amount of liability for a prescribed burn conducted as part of a burning agreement. Existing law limits the maximum percentage of liability for the person contracting with CalFIRE to 75 percent.

- 4) Requires the State Fire Marshal (SFM) to develop a curriculum for a certification program for burn bosses who have the authority to engage in a prescribed burning operation, as specified.
- 5) Requires the Director of CalFIRE to appoint a cultural burning liaison, as specified.
- 6) Defines “cultural burn” or “cultural burning” to mean 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.
- 7) Defines “cultural fire practitioner” to mean a person associated with a California Native American tribe or tribal organization with experience in burning to meet cultural goals or objectives, including for subsistence, ceremonial activities, biodiversity, or other benefits.
- 8) Requires, on or before January 1, 2020, the Forest Management Task Force (Task Force) or its successor entity, in coordination with DOI, 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 for lives and property when conducting prescribed burns.
- 9) The Budget Act of 2021 appropriated to CalFIRE \$20 million to establish the PFL Pilot Program, in consultation with DOI and the Natural Resources Agency, 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.
- 10) States that it is the intent of the Legislature to enact legislation to increase the pace and scale of the use of prescribed fire and to reduce barriers for conducting prescribed burns.

This bill:

- 1) Requires CalFIRE, in consultation with the Department of Insurance (DOI), the Director, and the Natural Resources Agency, to establish the PFL Pilot Program to support coverage for losses from permitted prescribed fires by individuals and nonpublic entities, such as Native American tribes, including cultural fire

practitioners, private landowners, and other nongovernmental entities through the Fund, on or before January 1, 2023, as specified.

- 2) Establishes the Fund within the State Treasury (Treasury); and, provides that the \$20 million appropriated by the Budget Act of 2021, any other funds appropriated by the Legislature for the purposes of this bill, and any other funds from any source that are provided for the purposes of this bill be deposited in the claims fund, as specified.
- 3) Provides that moneys in the claims fund shall be encumbered once an eligible claimant may file a claim against the claims fund in accordance with the policies developed by the Director, as specified.
- 4) Requires that moneys in the claims fund be used for both of the following: to support coverage for losses from prescribed fire and cultural burn projects consistent with the State Budget Act of 2021; and, the actual and reasonable costs incurred for administration of the fund, not to exceed five percent of the total amount appropriated by the Legislature.
- 5) Requires the Director to administer and oversee the claims fund to assist in increasing the pace and scale of prescribed fire and cultural burn projects, as specified.
- 6) Requires the claims 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 benefits or for hazardous fuels reduction purposes.
- 7) Requires the Director, with the concurrence of the Insurance Commissioner (IC) and the Director of CalFIRE, to develop policies and procedures for the operation and administration of the claims fund, as specified.
- 8) Defines “eligible claimant” to mean a person who meets all of the necessary qualifications established in the policies and procedures whose prescribed fire or cultural burn project furthers the purposes of the bill and who is either of the following:
 - a. An individual, organization, or Native American tribe, including a cultural fire practitioner, that supervises, plans, or executes a prescribed fire cultural burn project.
 - b. A landowner who owns the property where a prescribed fire or cultural burn project takes place.

- 9) Authorizes the Director, subject to the concurrence of the IC and the Director of CalFIRE, to modify the policies and procedures to improve the operation of the claims fund.
- 10) Exempts the policies and procedures developed by the Director from the rulemaking provisions of the APA, as specified.
- 11) Requires the Director to notify the Governor and relevant policy and fiscal committees of the Legislature if, at any time, in the opinion of the Director, the size of the claims fund limits the amount of claims coverage that can be provided to otherwise eligible claimants.
- 12) Requires any person engaging with a Native American tribe, tribal organization, or cultural fire practitioner pursuant to this bill to respect tribal sovereignty, customs, and culture.
- 13) Authorizes the Director to exercise the following powers to administer the claims fund:
 - a. Access and review relevant records at Cal FIRE, the State Air Resources Board (ARB), and local air pollution control and air quality management districts to confirm and eligible claimant's compliance with applicable permits to determine eligibility of the claimant for the claims fund.
 - b. Enter into contracts with third parties necessary to carry out the Director's duties pursuant to this bill.
 - c. Determine the eligibility of claimants in accordance with the policies and procedures developed.
 - d. Make withdrawals from and deposits to the claims fund necessary to administer the claims fund pursuant to this article.
 - e. Any other actions necessary to carry out the purposes of this article.
- 14) Requires the Director, on or before January 1, 2024, and annually thereafter, to prepare and submit a report to the relevant policy and fiscal committees of the Legislature that includes all of the following:
 - a. A detailed description of all activities related to the claims fund.
 - b. A summary and description of acres burned by eligible claimants.
 - c. Recommendations for and modifications to claims fund policies and procedures.

- 15) Requires the Department of Finance (DOF), on or before July 1, 2024, to audit the claims fund and provide a report to the relevant policy and fiscal committees of the Legislature.
- 16) Requires the Director, on or before July 1, 2026, and in consultation with the IC and the Director of Cal FIRE, to report to the relevant policy and fiscal committees of the Legislature:
 - a. Whether the claims fund should continue.
 - b. Recommendations for changes to claims fund policies and procedures.
 - c. Whether the Director should continue to administer the claims fund.
- 17) Provides that nothing in this bill shall be construed as requiring participation in the claims fund as an additional requirement for conducting a prescribed fire or cultural burn project, as specified.
- 18) Includes an urgency clause, to take effect immediately.
- 19) Repeals obsolete provisions.

Background

Purpose of the bill. According to the author's office, "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 the 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."

Further, the author's office states that, "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.”

California’s Wildfires. Climate change, increasing populations of people living in combustible places, and more fuel for fires to burn are all contributing to more severe wildfires and volatile costs. The state’s six most recent wildfire seasons were unprecedented, both in terms of scope and destruction. The Camp Fire in November of 2018 was the deadliest and most destructive ever in California, resulting in 85 deaths and nearly 19,000 structures destroyed. In June of 2018, the Mendocino Complex Fire became the state’s largest ever at the time, burning nearly 460,000 acres, and in August of 2018, California was battling 17 large fires simultaneously. In 2020, the August Complex Fire more than doubled the Mendocino Complex Fire, burning over one million acres.

While 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. Wildfire frequency and intensity are expected to increase as climate change further impacts the state. In forested regions, decades of fire suppression, historic logging practices and drought have produced unhealthy forests. In some forests, the current tree density is significantly greater than the density a century ago increasing the likelihood of damaging high-intensity fire when it burns. Native American tribes have used low-intensity fires for cultural and traditional purposes for millennia.

Use of Prescribed Fires as Prevention. 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.

Communities have continued to expand into forested and other areas at high risk of wildland fire. Although relatively small in area, millions of homes and approximately 25 percent of the state’s population lives in the wildland-urban interface (WUI) – loosely defined as a zone where development intermingles with undeveloped vegetative fuels. Expansion in these areas has increased the number of people and homes more likely to be affected by wildfire (currently estimated at 11.2 million people and 4.5 million homes). Individual home hardening, hardening

of the surrounding community, and vegetation management are key to a structure's ability to survive a wildfire. In order to minimize wildfire risk, structures built in the WUI should be hardened against wildfire.

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 one million acres annually by 2025.

The state's forestland is owned by public (federal, state and local jurisdictions) and private entities therefore 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 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" (Strategic Plan) in October 2021. The 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.

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 considerable 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.

Prior/Related Legislation

SB 170 (Skinner, Chapter 240, Statutes of 2021) among other things, provided \$20 million for a claims fund 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, Statutes of 2021) was an omnibus fire prevention bill that makes various changes to support cultural and prescribed fire, including the creation of a Cultural Burning Liaison at CalFIRE, and requires a proposal for creating a prescribed fire training center in California.

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, wildfire mitigation plans by electric utilities, and cost recovery by electric corporations of wildfire-related damages.

SB 1260 (Jackson, Chapter 624, Statutes of 2018) authorizes federal, state, and local agencies to engage in collaborative forestry management, created new opportunities for public and private land managers to mitigate wildfire risks, and enhanced CalFIRE's role in identifying wildfire hazards as local governments plan for new housing and neighborhoods.

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

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT:

The Nature Conservancy (Source)
Alameda County Resource Conservation District
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

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: The Nature Conservancy writes in support of the bill that, "last year's budget bill, SB 170 (Skinner, Chapter 240, Statutes of 2021), appropriated \$20 million to pilot a prescribed fire claims fund. However, additional action is needed to allow for claims. SB 926 will provide that action by creating the prescribed fire liability pilot program, selecting DGS as the administrator of the prescribed fire claims fund, and creating the necessary structure to allow the claims fund to work."

DUAL REFERRAL: Natural Resources & Water (8-0) & Governmental
Organization