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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### **SB 926 (Dodd) - Prescribed Fire Liability Pilot Program: Prescribed Fire Claims Fund**

**Version:** March 10, 2022  
**Urgency:** Yes  
**Hearing Date:** April 25, 2022

**Policy Vote:** N.R. & W. 8 - 0, G.O. 13 - 0  
**Mandate:** No  
**Consultant:** Ashley Ames

**Bill Summary:** This bill would establish the Prescribed Fire Liability Pilot Program and implement the Prescribed Fire Claims Fund.

#### **Fiscal Impact:**

- The Department of General Services (DGS) estimates costs of about \$2 million annually for the first three years and \$1.8 million annually thereafter (General Fund) for the creation of a new program within the Office of Risk and Insurance Management to manage a prescribed fire claims fund as well as to process, review, and determine the merits of claims filed pursuant to this bill. (Some of these costs could still be incurred absent this bill, either by DGS or by another state department, as part of an Administration plan for implementation of the pilot program or the claims fund. Please see staff comments for details.)
- To the extent that this bill encourages forest treatment activities that reduce the occurrence or severity of catastrophic wildfires from what otherwise would occur, this bill would result in potentially significant savings due to avoided fire suppression and other costs (General Fund).

**Background:** Roughly one-third of California is forested, including the majority of the watersheds that serve as the key originating water source for millions of people across the state. These forests also provide critical air, wildlife, climate, and recreational benefits. However, a combination of factors have resulted in poor conditions across these forests and watersheds, including excessive vegetation density and an overabundance of small trees and brush. Such conditions have contributed to more prevalent and severe wildfires and unprecedented tree mortality in recent years, and experts are concerned these trends will continue if steps are not taken to significantly improve the health of the state's forests.

Catastrophic and devastating wildfires have occurred repeatedly in the state in recent years. In 2020 alone, over 8,000 wildland fires burned almost 4.4 million acres, breaking the previous record of 1.8 million acres set in 2018. Already in the first 3 months of 2021, there have been over 800 fires burning nearly 3,000 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. This is likely to continue to increase, and one of the impacts of climate change in the state is an increase in the frequency and intensity of wildfires. In forested regions, decades of fire suppression, historic logging practices, and drought have produced unhealthy forests. In some forests, the

current tree density is up to an order of magnitude greater than the density a century ago which increases the likelihood of damaging high-intensity fire when it burns.

Forest management in California is complicated by its patchwork of ownership. Close to 60 percent (nearly 19 million acres) of forestlands in California are owned by the federal government, including by the U.S. Forest Service (USFS), Bureau of Land Management (BLM), and National Park Service. Private nonindustrial entities own about one-quarter (8 million acres) acres of forestland. These include families, individuals, conservation and natural resource organizations, and Native American tribes. Industrial owners—primarily timber companies—own 14 percent (4.5 million acres) of forestland. State and local governments own a comparatively small share—only 3 percent (1 million acres) combined.

The state funds programs in several different state departments that are intended to encourage activities that support California's forests, including to reduce wildfire risk. Many of these programs are designed to assist private landowners in effectively managing their lands, given they own a significant portion of the state's forests.

*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, CalFire burned 19,413, 31,305, 13,450, 27,143, and 32,226 acres annually, respectively. The draft Strategic Plan states that CalFire 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 CalFire's goal for 2025 alone is 100,000 acres treated annually.

*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.

**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 CalFire, 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 CalFire 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.

**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.

**Staff Comments:**

*The Administration has not released a plan.* Despite the January 10, 2022 deadline, 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. Some of the costs identified in this analysis could still be incurred absent this bill depending on the details of the Administration's plan, should it ever be released and implemented. These costs could be due to similar activities at DGS or another state department as part of an Administration plan.

*Existing \$20 million appropriation to establish prescribed fire claims fund.* The Budget Act of 2021 appropriated \$20 million 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. This bill would set forth the guidelines to operationalize the claims fund.

*Savings due to avoided or mitigated catastrophic wildfires.* CalFire spends roughly \$1 billion annually (General Fund) on "emergency fire suppression" – additional fire suppression resources needed when a fire continues to spread after the "initial attack" or about the first 24 hours. Fires in treated forests are more likely to be contained during the initial attack, and are much less likely to become catastrophic wildfires that require emergency fire suppression resources. For example, 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.

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).

Wildfire suppression is not the only significant cost related to catastrophic wildfires. Other examples of the costs and negative effects that improved forest management could potentially mitigate include the following:

- *Property.* Property losses from the October 2017 "wine country" fires in Sonoma, Napa, Solano, Lake, and Mendocino Counties—which included the Tubbs Fire—are expected to add up to between \$6 billion and \$8 billion. According to the California Department of Insurance, more than 14,000 homes were damaged or totally destroyed, along with nearly 4,000 commercial buildings, 3,200 cars, and 111 boats. These totals understate the total damage, as they do not include uninsured properties or vehicles.

- *Other State Costs.* Recovery costs for debris removal and cleanup, social services (such as shelters and social services), and local assistance (including rebuilding public infrastructure and backfilling property tax losses) can also be significant. For example, the administration estimates that state expenditures on wildfire and recovery activities for the 2017 wine country fires have totaled about \$1.5 billion. While costs associated with these fires are eligible for federal reimbursement, the administration estimates that the state General Fund share of these costs will be roughly \$400 million.
- *Air Quality.* Smoke from the multiple wildfires that burned in the northern part of the state in October 2017 affected air quality and closed schools, airports, and businesses in cities at least 100 miles away from the fires. At its worst, fine particulate matter air pollution in San Francisco—located over 40 miles away from the fires—was measured at 190 micrograms per cubic meter, more than five times the federal health standard of 35 micrograms per cubic meter.
- *Greenhouse Gas (GHG) Emissions.* The Sierra Nevada Conservancy estimates that the 2013 Rim Fire—the fourth largest in California history—released 11.4 metric tons of GHG emissions, equivalent to what 2.6 million cars would release in a year. Moreover, burned trees left on the landscape will continue to release additional emissions as they decay over time.
- *Water Supply and Quality.* Initial estimates suggest the 2012 Bagley Fire resulted in an estimated 330,000 metric tons of fine sediment and 170,000 metric tons of sand, gravel, and cobbles deposited into Lake Shasta—which stores drinking and agricultural water supplies for millions of customers.
- *Habitat for Fish and Wildlife.* One study found that the 2013 King Fire destroyed 30 out of 45 known habitat sites in the El Dorado National Forest for the California Spotted Owl, and that those sites remained unsuitable even a year after the fire.

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