
THIRD READING

Bill No: SB 926
Author: Dodd (D), et al.
Amended: 5/19/22
Vote: 27 - Urgency

SENATE NATURAL RES. & WATER COMMITTEE: 8-0, 3/22/22
AYES: Stern, Jones, Allen, Eggman, Hertzberg, Hueso, Laird, Limón
NO VOTE RECORDED: Grove

SENATE GOVERNMENTAL ORG. COMMITTEE: 13-0, 4/5/22
AYES: Dodd, Nielsen, Allen, Archuleta, Becker, Borgeas, Glazer, Hueso, Jones,
Kamlager, Melendez, Portantino, Rubio
NO VOTE RECORDED: Bradford, Wilk

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/19/22
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

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

SOURCE: The Nature Conservancy

DIGEST: This bill establishes the Prescribed Fire Liability Pilot Program to support coverage for losses from permitted prescribed fires by individuals and nonpublic entities, establishes the Prescribed Fire Claims Fund, requires the \$20 million appropriated to the Department of Forestry and Fire Protection for the pilot program to be deposited in the fund, and designates the Director of General Services to administer the fund, as provided.

ANALYSIS:

Existing law:

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

- a) CAL FIRE is 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.
 - b) The Director of Forestry and Fire Protection (CAL FIRE Director) leads CAL FIRE.
- 2) Establishes the Department of General Services (DGS) in the Government Operations Agency that is led by the Director of DGS. The DGS is "created to provide centralized services" including, among other things, government claims.
 - 3) Requires the DGS 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) Requires 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) Requires 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 Wildfire and Forest Resilience 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

This bill establishes the Prescribed Fire Liability Pilot Program to support coverage for losses from permitted prescribed fires by individuals and nonpublic entities, establishes the Prescribed Fire Claims Fund, requires the \$20 million appropriated to CAL FIRE for the pilot program to be deposited in the fund, and designates the Director of DGS to administer the fund, as provided. Specifically, this bill:

- 1) Requires 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) Establishes 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 DGS, as provided.
- 3) Requires 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) Requires the Director of DGS to administer and oversee the Fund to assist in increasing the pace and scale of prescribed fire and cultural burn projects, as provided.
- 5) Requires 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) Requires the Director of DGS 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 DGS.
 - c) Authorization to the Director of DGS 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 complies 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) Authorizes the Director of DGS, with the concurrence of the Insurance Commissioner and the CAL FIRE Director, to modify the policies and procedures described in 6) to improve the operation of the Fund.
 - 8) Exempts the development and modification of the policies and procedures in 6) and 7) from the Administrative Procedure Act, as provided.
 - 9) Requires the Director of DGS 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) Requires a person engaging with a Native American tribe, tribal organization or cultural fire practitioner to respect tribal sovereignty, customs, and culture.
 - 11) Authorizes the Director of DGS 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) Requires the Director of DGS, 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) Requires 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) Requires the Director of DGS 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) Provides 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) Provides justification for the urgency due to the necessity of facilitating prescribed fire and cultural burn projects in high wildfire threat areas
- 17) Defines various relevant terms. An “eligible claimant” of the fund which means a person who meets all the necessary qualifications established by the Director of DGS, 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. Deletes obsolete provisions.

NOTE: Further discussion can be found in the committee analyses of the Senate Natural Resources and Water Committee and the Senate Government Organization Committee.

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

According to the Senate Appropriations Committee:

- 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.)
- 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 will result in potentially significant savings due to avoided fire suppression and other costs (General Fund).

SUPPORT: (Verified 5/19/22)

The Nature Conservancy (source)
 Alameda County Resource Conservation District
 Amah Mutsun Land Trust
 Association of California Water Agencies
 Audubon Canyon Ranch
 California Association of Resource Conservation Districts
 California Cattlemen’s Association
 California Climate and Agriculture Network

California Farm Bureau
California Fire Chiefs Association
California Forestry Association
California Native Plant Society
California State Association of Counties
California State Grange
Central Coast Prescribed Burn Association
Defenders of Wildlife
Esselen Tribe of Monterey County
Feather River College
Fire Districts Association of California
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: (Verified 5/19/22)

None received

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.”

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