

Date of Hearing: June 20, 2022

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

SB 926(Dodd) – As Amended May 19, 2022

SENATE VOTE: 38-0

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

SUMMARY: 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 (CAL FIRE) for the pilot program to be deposited in the fund, and designates the Director of General Services to administer the fund, as provided.

EXISTING LAW:

- 1) Requires the CAL FIRE and the State Air Resources Board (ARB) to develop and fund a program to enhance air quality and smoke monitoring, and to provide a public awareness campaign regarding prescribed burns.
- 2) Authorizes CAL FIRE to purchase 3rd-party liability policy of insurance and requires, if CAL FIRE elects not to purchase insurance, CAL FIRE to agree to indemnify and hold harmless the person or public agency contracting with CAL FIRE with respect to liability arising out of performance of the contract. Authorizes CAL FIRE to provide a maximum of liability or provide for the proportionate share of liability between CAL FIRE and the person contracting with CAL FIRE.
- 3) Authorizes a person, firm, or corporation, or a group or combination of persons, firms, corporations, or groups, that owns or controls brush-covered land, forest lands, woodland, grassland, shrubland, or any combination thereof within a state responsibility area to apply to CAL FIRE for permission to utilize prescribed burning for specified public purposes.
- 4) Establishes the intent of the Legislature, pursuant to AB 642 (Friedman, Chapter 375, Statutes of 2021), that the Department of Insurance and CAL FIRE develop or facilitate innovative solutions within the next year to ensure certified burn bosses, Native American tribes, tribal organizations, and cultural fire practitioners and the organizations they work for have access to appropriate insurance to enable them to contribute to the fire resilience of the state.
- 5) Requires, on or before January 1, 2020, the Forest Management Task Force, or its successor entity, 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.
- 6) Establishes the Department of General Services (DGS) in the Government Operations Agency that is led by the Director of DGS. DGS is “created to provide centralized services” including, among other things, government claims. 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

THIS BILL:

- 1) Repeals a requirement that the Forest Management Task Force 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 by January 1, 2020.
- 2) Requires, on or before January 1, 2023, CAL FIRE, in consultation with the Department of Insurance, the director of DGS, and the Natural Resources Agency (NRA), to establish, consistent with Item 3540-102-0001 of the Budget Act of 2021, the Prescribed Fire Liability 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 Prescribed Fire Claims Fund (Claims Fund).
- 3) Establishes the Claims Fund in the State Treasury. Requires the following moneys to be deposited in the Claims Fund:
 - a) \$20,000,000 appropriated to CAL FIRE by the Legislature pursuant to Item 3540-102-0001 of the Budget Act of 2021. Notwithstanding any other law, the amount appropriated by the Legislature pursuant to Item 3540-102-0001 of the Budget Act of 2021 shall be available for encumbrance or expenditure until June 30, 2023, and for liquidation until June 30, 2025.
 - b) Any other funds appropriated by the Legislature for purposes of this bill.
 - c) Any other funds from any source that are provided for purposes of this bill.
- 4) Requires any moneys in the Claims Fund that have not been appropriated by the Legislature to be available upon appropriation by the Legislature.
- 5) Requires moneys in the claims fund to be encumbered once an eligible claimant files a claim against the claims fund in accordance with the policies and procedures developed by the Director of DGS.
- 6) Requires moneys in the Claim Fund to be used for both of the following:
 - a) To support coverage for losses from prescribed fire and cultural burn projects consistent with Item 3540-102-0001 of the Budget Act of 2021 and this bill.
 - b) The actual and reasonable costs incurred for administration of the fund, not to exceed 5% of the total amount appropriated by the Legislature.
- 7) Requires the director of DGS to administer and oversee the Claims Fund to assist in increasing the pace and scale of prescribed fire and cultural burn projects to provide public benefits to the state consistent with Item 3540-102-0001 of the Budget Act of 2021 and this article.

- 8) 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 benefit or for hazardous fuels reduction purposes.
- 9) Requires, on or before April 1, 2023, the Director of DGS, with the concurrence of the Insurance Commissioner and the Director of CAL FIRE, to develop policies and procedures for the operation and administration of the Claims Fund, including, but not limited to, eligible claims and events, coverage limits, minimum amounts eligible for claims, and categories of losses that are eligible for coverage or that are excluded from coverage. The policies and procedures shall, at a minimum, do all of the following:
 - a) Exclude from coverage damages that are the result of intentional violations of laws or established policies and procedures applicable to prescribed fire and cultural burn projects.
 - b) Require the Director of General Services to verify a claim, prior to payment from the Claims Fund.
 - c) Authorize the Director of General Services to negotiate with an eligible claimant to settle a claim, and require the Director of General Services to pay from the Claims Fund the costs of any claims settlement process.
 - d) Establish an upper limit, not to exceed two million dollars (\$2,000,000), and a lower limit for payments of claims or coverage per event.
 - e) Establish an application process for eligible claimants to file a claim against the Claims Fund that shall require, at a minimum, all of the following:
 - i) That an eligible claimant demonstrate past experience successfully completing a prescribed fire or cultural burn project. Nothing in this clause shall be used to prohibit a prescribed fire or cultural burn project from including a training component.
 - ii) That the prescribed fire or cultural burn project for which a claim is being made complies with, as necessary, both of the following:
 - (1) All applicable state laws and regulations.
 - (2) All permits required by state law or regulation for the prescribed fire or cultural burn project.
 - (3) That a prescribed fire or cultural burn project for which a claim is being made received permission from the landowner of the property where the prescribed fire or cultural burn project occurred or will occur.
 - (4) A specified period during which an eligible claimant is required to make a claim before needing to reapply.
 - f) Establish a process for notifying eligible claimants when the Claims Fund is no longer able to support new claims based on a threshold established by the Director of DGS.
 - g) Establish the maximum number of prescribed fire or cultural burn projects for which the Claims Fund can cover claims at one time.
 - h) Establish a process for reserving capacity within the Claims Fund for a specified period to maximize participation of eligible claimants and the public benefits of the Claims Fund. The process shall facilitate the expeditious shifting of claims-paying capacity once a prescribed fire or cultural burn project has been completed and evaluated for damages.
- 10) Authorizes the Director of DGS to modify the policies and procedures to improve the operation of the Claims Fund.

- 11) Exempts the policies and procedures from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).
- 12) Requires the Director of DGS to notify the Governor and relevant policy and fiscal committees of the Legislature if, at any time, in the opinion of the Director of General Services, the size of the Claims Fund limits the amount of claims coverage that can be provided to otherwise eligible claimants.
- 13) Requires a person engaging with a Native American tribe, tribal organization, or cultural fire practitioner to respect tribal sovereignty, customs, and culture.
- 14) Authorizes the Director of DGS to exercise all of the following powers to administer the Claims Fund:
 - a) Access and review relevant records at the department, the State Air Resources Board, and local air pollution control and air quality management districts to confirm an 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.
 - d) Make withdrawals from and deposits to the Claims Fund necessary to administer the Claims Fund.
 - e) Any other actions necessary to carry out the purposes of this bill.
- 15) Requires, on or before January 1, 2024, and annually thereafter, the Director of DGS 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.
- 16) Requires, on or before July 1, 2024, the Department of Finance to audit the claims fund and provide a report to the relevant policy and fiscal committees of the Legislature.
- 17) Requires, on or before July 1, 2026, the Director of DGS, in consultation with the Insurance Commissioner and the Director of CAL FIRE, to report to the relevant policy and fiscal committees of the Legislature on all of the following:
 - a) Whether the Claims Fund should continue.
 - b) Recommendations for changes to Claims Fund policies and procedures.
 - c) Whether the Director of General Services should continue to administer the Claims Fund.
- 18) Sunsets the reporting requirement on January 1, 2028.
- 19) 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.

Notwithstanding any other law, the decision not to participate in the Claims Fund shall not be used to restrict a prescribed fire or cultural burn project.

- 20) Establishes this as an urgency statute in order to protect life and property, and increase the number of controlled burns in high wildfire threat areas, by immediately operationalizing the Claims Fund to support coverage for losses from prescribed fires and cultural burns by nonpublic entities, such as Native American tribes, private landowners, and other nongovernmental entities.

FISCAL EFFECT: According to the Senate Appropriations Committee, enactment of this bill would result in the following costs:

- 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).

COMMENTS:

1) Author's statement.

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.

On January 8, 2021, the Governor's Wildfire and Forest Resilience Task Force (WFRTF) 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.

- 2) **Wildfires.** Wildfires in California are continuing to increase in frequency and intensity, resulting in loss of life and damage to public health, property, infrastructure, and ecosystems. In 2020, wildfires burned more than 4.1 million acres. The August Complex Fire in northern California, the largest fire in California's modern history, burned over one million acres. In total, wildfires caused 33 deaths and destroyed over 10,000 structures in 2020. The land area burned in 2020 more than doubled the previous record, roughly 1.8 million acres, which was set in 2018. Furthermore, seven of the state's deadliest fires have occurred since 2017, with over 100 fatalities in 2017 and 2018.

Fire has always been present in California landscapes either occurring by lightning strikes or used by Native American tribes to preserve certain useful plants and prevent larger fires. Low-intensity fires have clear ecological benefits, such as creating habitat and assisting in the regeneration of certain species of plants and trees. Low-intensity fire also reduces surface fuel, which decreases future wildfire intensity.

A century of suppressing low-intensity fires, logging of older growth and more fire-resistant trees, and a significant five-year drought has increased the size and severity of California's fires. Climate change has also contributed to wildfire risk by reducing humidity and precipitation and increasing temperatures.

- 3) **Prescribed burning.** California's landscapes are among the most naturally fire-dependent on Earth. One study suggests that prior to 1800, approximately 4.5 million acres of the state burned annually. Native Americans were likely responsible for a significant portion of this acreage. With colonization, many of these practices were significantly reduced or eliminated, fundamentally altering fire scope and intensity across the state.

Science strongly points to the need to re-establish more frequent fire across a significant part of the state. In significant parts of California, reintroduction of fire in controlled circumstances can limit the scope of catastrophic wildfire and improve ecosystem resilience. In many ecosystems, beneficial fire may be the only restoration tool available.

Prescribed burning is the controlled application of fire to the land to reduce wildfire hazards, clear downed trees, control plant diseases, improve rangeland and wildlife habitats, and restore natural ecosystems. Prescribed fires are typically conducted in compliance with a written prescribed fire plan that outlines the conditions necessary for the burn to be "within prescription."

Approximately 125,000 acres of wildlands are treated each year in California using prescribed burning, and the rate of treatment is expected to rise as this tool is used more frequently to reduce the risk of catastrophic wildfires. Current estimates indicate that between 10 and 30 million acres in California would benefit from some form of fuel reduction treatment.

In August 2020, California and the US Forest Service agreed to scale up vegetation treatment and maintenance to one million acres of federal, state, and private forest and wildlands annually by 2025. Pursuant to the Wildfire and Forest Resilience Action Plan, CAL FIRE

will expand its fuels reduction and prescribed fire programs to treat up to 100,000 acres on its 13.3 million acre jurisdiction by 2025, and the California Department of Parks and Recreation (State Parks) and other state agencies will also increase the use of prescribed fire on high-risk state lands.

Various studies and assessments have identified barriers to expanding beneficial fire activities, including insufficient human and other resources, regulatory hurdles, lack of public buy-in, fear of liability and lack of insurance, and for tribes, a lack of access to ancestral territories.

A recent wildfire in New Mexico's Santa Fe National Forest sparked by a US Forest Service prescribed burn turned into the state's largest wildfire. Although forecasted weather conditions were within parameters for the prescribed fire, unexpected erratic winds in the later afternoon caused multiple spot fires to spread outside the project boundary. Examples like this further fear and doubt about beneficial fire, however, more than 99% of prescribed burns have no escape.

- 4) **Providing liability coverage.** Under current law, CAL FIRE has discretion to purchase a third-party liability policy of insurance that provides coverage against loss resulting from a wildland fire sustained by any person or public agency, including the federal government.

SB 332 (Dodd, Chapter 600, Statutes of 2021) modified the liability standards so that no person would be liable for any fire suppression or other costs otherwise recoverable for a prescribed burn if specified conditions are met, including, among others, that the burn be for the purpose of wildland fire hazard reduction, ecological maintenance and restoration, cultural burning, silviculture, or agriculture, and that, when required, a certified burn boss review and approve a written prescription for the burn. The law is intended to assist private prescribed fire practitioners overcome a barrier to conducting prescribed fire, which is the associated liability. Federal and state prescribed fires do not have the same concerns because they are able to self-insure.

Data on the amount of prescribed fire that occurs in California has gaps, because CAL FIRE only requires a burn permit during fire season and not all local air districts track the prescribed fire they permit or report it to the Prescribed Fire Incident Reporting System. Even without knowing the exact amount of prescribed fire by the federal, state, local government, and private entities it is clear that private entities contribute to a large portion of the number of acres treated in California by prescribed fire. However, many private entities, such as cultural fire practitioners and nonprofits, have stated that it is impossible to get insurance to cover any damages that could arise if the prescribed fire went out of prescription. Many private entities are unwilling to conduct public purpose burning without insurance or some liability protection.

- 5) **Funding insurance coverage.** To support the use of prescribed burns to meet the acreage goals, SB 170, Budget Act of 2021, included \$20 million (Item 3540-102-0001) to CAL FIRE to establish a Prescribed Fire Liability Pilot Program (program), in consultation with the Department of Insurance and NRA that creates 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.

The Budget Act required CAL FIRE to propose any changes needed by the Legislature; trailer bill language is anticipated to request the additional authorities needed to execute the program.

SB 926 would set parameters to operationalize the \$20 million budget appropriation. The bill establishes the Claims Fund 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. The Claims Fund would be administered by the Director of DGS, who would develop policies and procedures for the operation and administration of Claims Fund.

Furthermore, the bill requires detailed reporting to the Legislature on much of the data that is currently unknown as it relates to prescribed burning practices.

6) **Double referral.** This bill is double referred to the Assembly Judiciary Committee.

7) **Related legislation.** AB 2479 (Wood) would require CAL FIRE to inform the Legislature how it will increasingly use, develop, implement, facilitate, and support prescribed burn, cultural fire, and managed wildfire projects to burn specified number of acres by January 1, 2030. This bill was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies
California Forestry Association
Watershed Research and Training Center

Opposition

None on file.

Analysis Prepared by: Paige Brokaw / NAT. RES. /