

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

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

PROPOSED CONSENT

SENATE VOTE: 38-0

SUBJECT: PRESCRIBED FIRE LIABILITY PILOT PROGRAM: PRESCRIBED FIRE CLAIMS FUND

KEY ISSUE: SHOULD A PRESCRIBED FIRE CLAIMS FUND BE ESTABLISHED TO COMPLEMENT THE PRESCRIBED FIRE LIABILITY PROGRAM ESTABLISHED BY THE DEPARTMENT OF FORESTRY AND FIRE PROTECTION?

SYNOPSIS

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. A growing body of evidence suggests one of the most effective ways to limit the damage from large wildfires is to return California's forests to a more natural fire regime by utilizing controlled burns to eliminate dead and dying vegetation and help reduce forest density. To that end, this non-controversial bill requires the Department of Forestry and Fire Protection to finish establishing the Prescribed Fire Liability Pilot Program by the beginning of 2023, and establishes a Prescribed Fire Claims Fund to be administered by the Department of General Services. The fund established by this bill would be used to offset losses should a controlled burn escape containment and damage property. Importantly, this bill does not change any liability standards related to damages stemming from controlled fires.

This bill is sponsored by the Nature Conservancy and is supported by a coalition of preservation organizations, local governments, as well as forestry and fire professionals. The proponents of this measure highlight the need for greater prescribed fire and note that this bill is consistent with ongoing efforts of the executive branch to promote the use of prescribed fire as a tool for managing California's forests and reducing wildfire risk. This bill has no known opposition and was previously heard and unanimously approved by the Committee on Natural Resources.

SUMMARY: Establishes the Prescribed Fire Liability Pilot Program, and associated claims fund, to support financial coverage for losses from permitted prescribed fires by individuals and nonpublic entities. Specifically, **this bill:**

- 1) Requires, on or before January 1, 2023, the Department of Forestry and Fire Protection, in consultation with the Department of Insurance, the Director of General Services, and the Natural Resources Agency, to establish 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.
- 2) Creates the Prescribed Fire Claims Fund in the State Treasury.

- 3) Requires the following moneys to be deposited into the Prescribed Fire Claims Fund:
 - a) \$20,000,000 appropriated to the Department of Forestry and Fire Protection by the Legislature pursuant to Item 3540-102-0001 of the Budget Act of 2021;
 - b) Any additional funds appropriated by the Legislature; and
 - c) Any other funds from any source.
- 4) Requires that any moneys in the claims fund are to be encumbered once an eligible claimant may file a claim against the claims fund in accordance with the policies and procedures developed by the Director of General Services.
- 5) Requires moneys in the claims fund to be used for both of the following:
 - a) To support coverage for losses from prescribed fire and cultural burn projects, as specified; and
 - b) The actual and reasonable costs incurred for administration of the fund, not to exceed five percent of the total amount appropriated by the Legislature.
- 6) Requires the Director of General Services to 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.
- 7) 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.
- 8) Requires, on or before April 1, 2023, the Director of General Services, with the concurrence of the Insurance Commissioner and the Director of Forestry and Fire Protection, 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.
- 9) Requires the policies and procedures adopted in accordance with 8) to, at minimum, do 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 \$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, as specified;
 - 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 General Services;
 - g) Establish the maximum number of prescribed fire or cultural burn projects for which the claims fund can cover claims at one time; and
 - 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, including a process that facilitates the expeditious shifting of claims-paying capacity once a prescribed fire or cultural burn project has been completed and evaluated for damages.
- 10) Enables the Director of General Services to modify the policies and procedures developed pursuant to 9), subject to the concurrence of the Insurance Commissioner and the Director of Forestry and Fire Protection.
- 11) Exempts the development of the policies and procedures developed pursuant to 9) from the Administrative Procedures Act.
- 12) Requires the Director of General Services 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) Enables the Director of General Services to exercise all of the following powers to administer the claims fund:
- a) Access and review relevant records at the Department of Forestry and Fire Protection, 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;
 - c) Determine the eligibility of claimants in accordance with the policies and procedures developed pursuant 9);
 - d) Make withdrawals from and deposits to the claims fund necessary to administer the claims fund; and
 - e) Any other actions necessary to carry out the Director's duties related to the fund.
- 14) Requires, on or before January 1, 2024, and annually thereafter, the Director of General Services 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; and
 - c) Recommendations for and modifications to claims fund policies and procedures.
- 15) Requires the Department of Finance, 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 on or before July 1, 2026, the Director of General Services, in consultation with the Insurance Commissioner and the Director of Forestry and Fire Protection 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; and
 - c) Whether the Director of General Services should continue to administer the claims fund.
- 17) Repeals the above provisions on January 1, 2028.
- 18) Clarifies that nothing in the bill should 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.
- 19) Adopts an urgency clause.
- 20) Repeals existing law stating 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 and replaces it with the above provisions.

EXISTING LAW:

- 1) States 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. (Public Resources Code Section 4500.)
- 2) Requires the State Fire Marshal to develop a curriculum for a certification program for burn bosses, who possess authority to engage in a prescribed burning operation and to enter into the necessary contracts related to a prescribed burning operation. The curriculum shall provide for the initial certification as well as the continuing education of burn bosses. (Public Resources Code Section 4477 (a).)
- 3) Requires the Department of Forestry and Fire Protection to develop a training program for prescribed fire users to certify professionals in any agency or organization as burn bosses and that the Department must certify these individuals to a common standard. (Public Resources Code Section 4477 (b).)
- 4) States the intent of the Legislature that the Department use its discretion to ensure that burn bosses are thoroughly qualified to engage in prescribed burning operations prior to issuing certifications. (*Ibid.*)

- 5) Provides for the creation of prescribed burn agreements and the provisions to be included in such agreements, as well as the apportionment of liability and the purchase of liability insurance. (Public Resources Code Section 4475 *et seq.*)
- 6) 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 the Department of Forestry and Fire Protection for permission to utilize prescribed burning for specified public purposes. (Public Resources Code Section 4492.)
- 7) Requires the Department of Forestry and Fire Protection, upon receipt of an application, to inspect the land in company with a permit applicant to determine whether a permit can be granted, to prescribe the manner in which the site for the prescribed burning shall be prepared, and to require any precautions to be taken by the applicant as may be considered reasonable to prevent damage to the property of others by reason of the burning. (Public Resources Code Section 4493.)
- 8) Permits the Department of Forestry and Fire Protection to issue to an applicant a burning permit that specifies the site preparation requirements and required precautions to be exercised prior to and during the burning. (Public Resources Code Section 4494.)
- 9) Provides that the issuance of a permit by the Department does not relieve the permit holder from the duty of exercising due diligence to avoid damage to the property of others in conducting the burning of vegetation as authorized by the permit. (*Ibid.*)
- 10) Provides that any person who personally or through another willfully, negligently, or in violation of law, sets fire to, allows fire to be set to, or allows a fire kindled or attended by that person to escape to the property of another, whether privately or publicly owned, is liable to the owner of such property for any damages to the property caused by the fire. (Health & Safety Code Section 13007.)
- 11) Provides that any person who allows any fire burning upon their property to escape to the property of another, whether privately or publicly owned, without exercising due diligence to control such fire, is liable to the owner of such property for the damages to the property caused by the fire. (Health & Safety Code Section 13008.)
- 12) Provides that any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by that person to escape onto any public or private property, is liable for the cost of investigating and making any reports with respect to the fire and other administrative costs. (Health & Safety Code Section 13009.1.)
- 13) Provides that every person is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civic Code Section 1714 (a).)
- 14) Provides that, notwithstanding any other law a person is liable for any fire suppression or other costs otherwise recoverable pursuant to 10) or 11) resulting from a prescribed burn if all of the following conditions are met:

- a) The purpose of the burn is for wildland fire hazard reduction, ecological maintenance and restoration, cultural burning, silviculture, or agriculture;
- b) A person certified as a burn boss and obtains approved a written prescription for the burn that includes adequate risk mitigation measures;
- c) The burn is conducted in compliance with the written prescription;
- d) The burner has a landowner's written permission or the approval of the governing body of a Native American Tribe to burn; and
- e) The burn is conducted in compliance with any required air quality permit. (Civil Code Section 3333.8.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Following several years of devastating wildfires, as a part of the 2021-22 Budget (SB 170 (Committee on Budget and Fiscal Review), Chap. 240, Stats. 2021), the Department of Forestry and Fire Protection was allocated \$20,000,000 to establish a Prescribed Fire Liability Pilot Program. This bill sets a timeline for the establishment of the pilot program and creates a controlled burn liability fund utilizing the \$20,000,000 provided to the Department. In support of this bill the author states:

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.

Despite the best efforts of the state government, California's wildfires continue to get worse. Although wildfires have always been a concern in California, the issue of large catastrophic wildfires burst into the collective conscious of many Californians following the devastating fires that destroyed large swaths of Napa and Sonoma County in 2017. The following year, in 2018,

the Carr Fire, Camp Fire, and Woolsey Fire combined to kill nearly 100 Californians. In 2020, lightning-started fires kept much of Northern California shrouded in smoke for weeks and more than doubled the previous record of acreage burned, roughly 1.8 million acres, which was set in 2018. In 2021, both the Dixie and Caldor fire were the first to burn over the crest of the Sierra Nevada Mountains. As a result of the seemingly never ending string of catastrophic wildfires, Californians are demanding the state take action to reduce the risk.

Setting aside the fact that a great many of these fires were started as the result of the continued mismanagement and corporate malfeasance of one electrical utility company, these fires have demonstrated never-before-seen fire behavior and have behaved in highly erratic ways. Much of this fire behavior can be attributed to the extremely dense fuel loads in California's forests. Although manual and chemical treatments can reduce some fire risk, prescribed fire is one of the most effective ways to clear forests of dead and dying fuels.

Prescribed fire is viewed as an increasingly effective tool to control and manage vegetation and prevent large wildfires. In recent years, fire professionals note that decades of mismanagement of California's wildlands have resulted in overly, and unnaturally, dense forests. Much of this mismanagement originated from the United States Forest Services "10 AM Rule" for fire suppression. That rule, predicated on a policy of total fire suppression, dictated that wildfires should be out no later than 10 o'clock of the morning after the fire was first reported to emergency officials. (Berger, *et al.*, *Managing Wildfire for Resource Benefit: What is it and is it beneficial?* (Apr. 2018) Oregon St. University, available at: <https://catalog.extension.oregonstate.edu/em9193/html#:~:text=Following%20the%201910%20fire%20season,morning%20following%20the%20initial%20report.>) Much like other state level forest management agencies, the Department of Forestry and Fire Protection maintained a similar rule for decades before a growing body of evidence suggested such fire suppression tactics were harming the natural ecosystem.

Upon recognizing that prescribed fire best mimicked a natural fire regime, the Department of Forestry and Fire Protection has been a leader in trying to deploy greater use of prescribed burns. In late 2019, the Board of Forestry and Fire Protection approved the California Vegetation Treatment Program, a programmatic Environmental Impact Report (EIR) designed to streamline approvals of prescribed fires. (<https://bof.fire.ca.gov/projects-and-programs/calvtp/>.) Unfortunately due to the arrival of the COVID-19 pandemic shortly after the Board approved the EIR, to date, the program has not been as widely used as hoped. However, the Board is now actively promoting the program and more projects are now being approved. Additionally, last year, the Legislature expanded on these efforts by providing the Department the previously mentioned \$20,000,000 to create a prescribed fire liability pilot program and by enacting SB 332 (Dodd), Chap. 600, Stats. 2021, to limit liability for some prescribed fire managers in specified circumstances. SB 332 is particularly useful for burning on tribal lands, a practice Native Californians used for centuries before the Forest Service's ill-fated policies greatly reduced the practice.

This bill. Building on prior legislative efforts, this bill requires the Department of Forestry and Fire Protection to implement the Prescribed Fire Liability Pilot Program by the beginning of 2023. Additionally, this bill establishes the Prescribed Fire Claims Fund to be administered by the Department of General Services to help offset claims for damage in the event an authorized prescribed fire escapes controls and damages property. The bill directs \$20,000,000 previously allocated for the Pilot Program to establish the initial appropriation for the Claims Fund. The bill

establishes various metrics for administering the fund and provides for several reports to the Legislature to ensure that the Legislature is made aware of the funds use and ongoing viability.

Nothing in this measure changes liability, thus the relatively small size of the Prescribed Fire Claims Fund will not adversely impact any claims related to a prescribed fire. Although this bill establishes a prescribed fire liability pilot program and a liability fund, this bill does not actually change *any* liability standards. Indeed, if a person were to be held liable for negligently losing control of a controlled burn, should this bill be enacted, they would still face liability. This bill simply provides a limited state-funded claims fund to backstop certain liability claims, with the hope that the fund may encourage more controlled burning. Accordingly, should any Californian suffer damages as a result of a controlled burn, nothing in this bill would preclude that person from recovering their losses. Thus this measure simply seeks to boost efforts to encourage prescribed fires, help restore natural fire regimes to California's forests, and help mitigate the threat of catastrophic wildfires.

ARGUMENTS IN SUPPORT: This bill is sponsored by the Nature Conservancy and is supported by an array of forestry organizations, watershed management organizations, local governments and special districts, and groups representing California's firefighting leaders. In support of this bill the Nature Conservancy writes:

Fires in California continue to set new records for the "largest," "most damaging," "worst air quality," and "most costly" we've ever seen. The Nature Conservancy believes with the right investments and policy changes California can stop making history with increasingly larger and more devastating wildfires. SB 926 is one of those necessary policy changes. SB 926 will increase the pace and scale of prescribed fire in California to put good fire on the landscape, which will reduce megafires.

On January 8, 2021, the Governor's Wildfire and Forest Resilience Task Force (WFRTF) released the comprehensive California Wildfire and Forest Resilience Action Plan (action plan) to reduce wildfire risk for vulnerable communities, improve the health of forests and wildlands, and accelerate action to combat climate change.

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 action plan also called for a prescribed fire strategic action plan. In the fall a draft of the strategic plan was released that stated the development of a pilot claims fund is a key action for empowering the private sector to do prescribed fire.

SB 926 is consistent with the recommendations by both WFRTF and its prescribed fire strategic action plan. SB 926 selects DGS as the administrator of claims fund. DGS is an appropriate agency for this task because it already has experience handling state claims.

REGISTERED SUPPORT / OPPOSITION:

Support

The Nature Conservancy (sponsor)
Association of California Water Agencies (ACWA)
California Cattlemen's Association

California Forestry Association
California State Association of Counties
California State Association of Counties (CSAC)
California Fire Chiefs Association
Fire Districts Association of California
Midpeninsula Regional Open Space District
Plumas County Fire Safe Council
Rural County Representatives of California
The Watershed Research and Training Center
Tree Care Industry Association
Ventura Regional Fire Safe Council

Opposition

None on file

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