

Date of Hearing: August 3, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

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

Policy Committee:	Natural Resources	Vote:	10 - 0
	Judiciary		11 - 0

Urgency: Yes State Mandated Local Program: No Reimbursable: No

SUMMARY:

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

Specifically, this bill, among other things:

- 1) Requires, on or before January 1, 2023, CAL FIRE, in consultation with the Department of Insurance, the Director of DGS, and the California Natural Resources Agency (CNRA), 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, through the Prescribed Fire Claims Fund (Claims Fund) established by this bill and administered and overseen by the Director of DGS.
- 2) Requires specified moneys to be deposited in the Claims Fund, including \$20 million appropriated to CAL FIRE in the Budget Act of 2021; requires any moneys in the Claims Fund that have not been appropriated by the Legislature to be available upon appropriation by the Legislature; requires moneys in the Claims Fund to be encumbered once an eligible claimant files a claim against the fund in accordance with the policies and procedures developed by the Director of DGS; and requires moneys in the Claim Fund to be used 1) to support coverage for losses from prescribed fire and cultural burn projects consistent with the Budget Act of 2021 and this bill; and 2) for administrative costs, not to exceed 5% of the total amount appropriated.
- 3) 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, as specified, and exempts the policies and procedures from the rulemaking provisions of the Administrative Procedure Act.
- 4) Requires 1) on or before January 1, 2024, and annually thereafter, the Director of DGS to prepare and submit a specified report to the Legislature; 2) on or before July 1, 2024, the Department of Finance to audit the Claims Fund and provide a report to the Legislature; and 3) on or before July 1, 2026, the Director of DGS, in consultation with the Insurance Commissioner and the Director of CAL FIRE, to provide a second specified report to the Legislature.

FISCAL EFFECT:

- 1) 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 the 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 the implementation of the funding appropriated for a Prescribed Fire Liability Pilot Program in the Budget Act of 2021.
- 2) The California Department of Insurance (CDI) estimates costs of approximately \$21,000 in fiscal year (FY) 2022-23, \$13,000 in FY 2025-26, and \$3,000 in 2026-27 (Fees & License and Proposition 103 sub-accounts) for the Insurance Commissioner (or designee) to fulfill the requirements of the bill.
- 3) Minor and absorbable costs to CNRA.

COMMENTS:

- 1) **Purpose.** According to the author:

California is facing a growing forest and wildfire crisis...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...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) **Background.**

- a) **Prescribed Fire.** 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, controlled prescribed fire across a significant part of the state to limit the scope of catastrophic wildfire, improve ecosystem resilience, clear downed trees, reduce fuels, control plant diseases, and improve rangeland and wildlife habitats.
- b) **State Efforts.** Current estimates indicate between 10 million and 30 million acres in California would benefit from some form of fuel reduction treatment. The state is responsible for fire and resource protection on nearly 13.3 million acres of private and state-owned forested lands. In the past several years, forest management by state agencies, partners receiving state-funded grants, and private landowners has significantly

expanded on these lands. In March of 2022, the Governor's Wildfire and Forest Resilience Task Force set a target of expanding beneficial fire to 400,000 acres annually by 2025, a shared goal between state, federal, tribal, and local entities – part of an overall goal to scale up vegetation treatment and maintenance to one million acres of federal, state, and private forest and wildlands by 2025. The state invested \$1.5 billion in wildfire resilience in the FY 2021-22 budget, including significant support for prescribed fire and cultural burning. Additional funding has been proposed in the FY 2022-23 budget. See comment e) below.

- c) **Liability Concerns.** 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 such that no person is liable for any fire suppression or other costs recoverable for a prescribed burn, provided specific training and certification conditions are met and unless the person acted with gross negligence. 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. Many private entities, such as cultural fire practitioners and nonprofits, have stated it is impossible to secure insurance to cover any damages that could arise if a prescribed fire goes out of prescription. Many private entities are unwilling to conduct public purpose burning without insurance or some liability protection.
- d) **Author's Intent.** Building on prior legislative efforts, this bill directs CAL FIRE to implement the Prescribed Fire Liability Pilot Program and establishes the Claims Fund to be administered by DGS to help offset claims for damage in the event an authorized prescribed fire escapes controls and damages property. This bill does not change any underlying 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. Instead, this bill provides a limited state-funded claims fund to backstop certain liability claims, with the hope the fund may encourage more controlled burning.
- e) **Budget Action.** The Budget Act of 2021 allocated \$20 million for CAL FIRE, in consultation with the Department of Insurance and CNRA, to establish a Prescribed Fire Liability Pilot Program and a 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. SB 926 sets parameters to operationalize the approved funding. The administration proposed trailer bill language for this appropriation in May of 2022. The Legislature subsequently rejected the administration's trailer bill. The author and administration continue to engage in discussions to reach an agreement on the specific details of the program.