

SENATE THIRD READING
SB 926 (Dodd)
As Amended August 15, 2022
2/3 vote. Urgency

SUMMARY

Establishes the Prescribed Fire Liability Pilot Program (Program) to support coverage for losses from prescribed fires and proposed funding the Program with \$20 million appropriated by the Legislature in the Fiscal Year 2021-22 Budget Act.

Major Provisions

- 1) Authorizes the California Insurance Guarantee Association (Association) to administer the Prescribed Fire Claims Fund (Fund), subject to prior written approval by the Insurance Commissioner (Commissioner). Requires the association to seek the Commissioner's approval by amending the association's plan of operations.
- 2) Authorizes the Association, upon approval by the Commissioner and if contracted to administer the Prescribed Fire Claims Fund by CAL FIRE on CAL FIRE's behalf, to administer or assist in administering the Fund. Prohibits the Association from settling or adjusting any claims to the Fund while seeking to subrogate against the Fund.
- 3) Precludes the state, the association, the Association's member insurers, and officers, directors, agents, and employees of the association or its member insurers from liability for claims for losses in excess of the amount in the Fund or for the costs of administration, loss adjustment, investigation, and defenses relating to those claims in excess of the amount in the Fund.
- 4) Sunsets these authorities on January 1, 2028.
- 5) Establishes the Program, to be administered by CAL FIRE, to increase the pace and scale of the use of prescribed fire and cultural burning and to reduce barriers for conducting prescribed fires and cultural burning.
- 6) Establishes the Fund in the State Treasury to support coverage for losses from prescribed fires and cultural burning by nonpublic entities, such as cultural fire practitioners, private landowners, and nongovernmental entities. Requires the moneys in the Fund to be under the control of CAL FIRE or the third-party administrator with whom CAL FIRE contracts with.
- 7) Transfers, upon the order of the Department of Finance, the amount in Item 3540-102-0001 of the Budget Act of 2021 (SB 170 (Skinner), Chapter 240, Statutes of 2021) into the Fund. Requires funds to be continuously appropriated.
- 8) Authorizes the State Controller to use moneys in the Fund for cash flow loans to the General Fund (GF). Requires interest payment on all GF loans.
- 9) Authorizes CAL FIRE to contract with any entity, including another state agency, to serve as a third-party administrator to administer or to assist in administering the Fund, including, but not limited to, managing and operating the fund, adjusting claims made to the fund, and paying claims from the fund. Subject to prior written approval by the Insurance

Commissioner, the Association may serve as a third-party administrator of the fund. Participation by the association is governed by the Commissioner's authority over its Plan of Operation.

- 10) Exempts approval from the Department of General Services, competitive bidding, and protest requirements from CAL FIRE contracts that do not exceed three years.
- 11) Authorizes CAL FIRE to award a contract to a new third-party administrator for the limited purpose of settling and adjusting specified claims.
- 12) Requires CAL FIRE to collaborate with other relevant state agencies, cultural fire practitioners, and burn bosses to establish guidelines governing the program and the administration of the Fund. Specifies requirements for the guidelines, including capping the amount the Fund can pay for losses arising from any one prescribed fire or cultural burn at \$2 million. Exempts the guidelines from the Administrative Procedures Act.
- 13) Sunsets the Program on January 1, 2028.
- 14) Includes an urgency clause to protect life and property and increase the number of controlled burns in high wildfire threat areas by immediately operationalizing the Fund to support coverage for losses from prescribed fires and cultural burns by nonpublic entities.

COMMENTS

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.

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.

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.

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.

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 California Department of Insurance (CDI) and the California Natural Resources Agency (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.

This bill would set parameters to operationalize the \$20 million budget appropriation. The bill establishes the Fund to support coverage for losses from permitted prescribed fires.

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 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 Fund.

Arguments in Support

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."

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committees, this bill requires \$20 million appropriated to CAL FIRE by the Legislature in the Budget Act of 2021, upon order of the Department of Finance, to be transferred into the Prescribed Fire Claims Fund, continuously appropriated, and used for the Prescribed Fire Liability Pilot Program. Estimated costs are unknown for CAL FIRE to administer or contract with a third-party administrator to administer the program.

VOTES**SENATE FLOOR: 38-0-2**

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Hertzberg, Jones

ASM NATURAL RESOURCES: 10-0-1

YES: Luz Rivas, Flora, Friedman, Cristina Garcia, Mathis, Muratsuchi, Seyarto, Stone, Wood, Boerner Horvath

ABS, ABST OR NV: McCarty

ASM JUDICIARY: 11-0-0

YES: Stone, Cunningham, Bloom, Davies, Haney, Kalra, Kiley, Maienschein, Reyes, Mia Bonta, Wicks

ASM APPROPRIATIONS: 12-0-4

YES: Holden, Bryan, Calderon, Arambula, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

ABS, ABST OR NV: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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CONSULTANT: Paige Brokaw / NAT. RES. / (916) 319-2092

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