
UNFINISHED BUSINESS

Bill No: SB 926
Author: Dodd (D), et al.
Amended: 8/15/22
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

SENATE FLOOR: 38-0, 5/26/22
AYES: 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
NO VOTE RECORDED: Hertzberg, Jones

ASSEMBLY FLOOR: 76-0, 8/18/22 - See last page for vote

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

SOURCE: The Nature Conservancy

DIGEST: This bill establishes the Prescribed Fire Liability Pilot Program (pilot proram) to increase the pace and scale of prescribed fire and cultural burning, creates the Prescribed Fire Claims Fund to support coverage for losses from

prescribed fires and cultural burning of up to \$2 million per claim, and requires the California Department of Forestry and Fire Protection to establish guidelines governing the pilot program, among other things, as provided.

Assembly Amendments authorize the California Insurance Guarantee Association to administer the fund to replace the Department of General Services, substantially revise the program, remove certain reporting requirements and add a January 1, 2028 sunset, among other amendments, 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) 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.
- 3) Requires CAL FIRE to develop a training program for prescribed fire users to certify professionals as burn bosses to a common standard.
- 4) 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.
- 5) 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.

- 6) 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 wildfire, and to improve forest health, CAL FIRE may have a smaller role on individual prescribed burns with a cooperator taking more control.
- 7) 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%.
- 8) 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.
- 9) 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
- 10) Establishes the California Insurance Guarantee Association with specified duties and membership. (Insurance Code §§1063 *et seq.*)

This bill establishes the Prescribed Fire Liability Pilot Program to increase the pace and scale of prescribed fire and cultural burning, creates the Prescribed Fire Claims Fund to support coverage for losses from prescribed fires and cultural burning of up to \$2 million per claim, and requires CAL FIRE to establish guidelines governing the pilot program, among other things, as provided. Specifically, this bill:

- 1) Establishes the Prescribed Fire Liability Pilot Program (pilot program), to be administered by CAL FIRE, to increase the pace and scale of prescribed fire and cultural burning and to reduce barriers to their use, as specified.
- 2) Creates the Prescribed Fire Claims Fund (fund) in the State Treasury to support coverage for losses from prescribed fires and cultural burning by nonpublic entities, as specified. Moneys in the fund are under CAL FIRE's control, and CAL FIRE or its third-party contractor are authorized to make payments for claims from the fund, as provided.
- 3) Authorizes the California Insurance Guarantee Association (association) to administer the fund on behalf of CAL FIRE, as provided, 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.
- 4) Requires, upon the order of the Department of Finance, that a certain appropriation of twenty million dollars in the Budget Act of 2021 be deposited in the fund, and all moneys deposited or transferred into the fund are continuously appropriated to CAL FIRE, as provided.
- 5) Authorizes cash flow loans to the General Fund from the fund, as provided.
- 6) Authorizes CAL FIRE to contract with an entity to serve as a third-party administrator to administer or assist in administering the fund, including managing and operating the fund, adjusting claims made to the fund and paying claims from the fund, as specified. Authorizes the association to serve as the third-party administrator, as provided. Establishes certain terms and conditions for the third-party contractor, as specified.
- 7) Requires CAL FIRE to collaborate with certain other state agencies, cultural fire practitioners and burn bosses to establish guidelines governing the pilot program and the administration of the fund, including payment of claims from the fund.
- 8) Requires the guidelines to include at least all of the following:
 - a) Eligible claims are required to relate to either a prescribed fire conducted or supervised by a burn boss, or a cultural burn conducted or supervised by a cultural fire practitioner.
 - b) A claim shall not be paid from the fund unless CAL FIRE reviewed and approved a burn plan; a burn permit, if required, and all other permits

necessary were obtained; and CAL FIRE determines the prescribed fire or culture burn complied with all other requirements, as provided.

- 9) Requires the maximum amount paid from the fund for losses arising from any one prescribed fire or cultural burn is \$2 million, as specified.
- 10) Requires CAL FIRE to post the guidelines on its internet website.
- 11) Provides that the state's liability for all claims for covered losses and the guidelines developed by CAL FIRE shall be limited, as specified.
- 12) Exempts the development and modification of the guidelines from the Administrative Procedure Act, as provided.
- 13) Requires a person engaging with a Native American tribe, tribal organization or cultural fire practitioner to respect tribal sovereignty, customs, and culture.
- 14) Provides justification for the urgency due to the necessity of facilitating prescribed fire and cultural burn projects in high wildfire threat areas.
- 15) Defines various relevant terms, and deletes obsolete provisions.
- 16) Sunsets all provisions on January 1, 2028.

[NOTE: Further discussion can be found in the committee analysis of the Senate Natural Resources and Water Committee.]

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

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.

SUPPORT: (Verified 8/18/22)

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
Tree Care Industry Association

Tribal EcoRestoration Alliance
UC Berkeley Fire Lab
Valencia Road Association
Ventura Regional Fire Safe Council
Yuba Bear Burn Cooperative

OPPOSITION: (Verified 8/18/22)

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.”

ASSEMBLY FLOOR: 76-0, 8/18/22

AYES: Aguiar-Curry, Alvarez, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Chen, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low,

Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi,
Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva,
Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas,
Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel,
Waldron, Ward, Akilah Weber, Wicks, Wilson, Rendon
NO VOTE RECORDED: Arambula, Cervantes, Choi, Wood

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8/19/22 13:20:29

****** END ******