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AB-2911 Fire safety. (2017-2018)

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Assembly Bill No. 2911

CHAPTER 641

An act to amend Sections 51179, 51189, and 65302.5 of, and to add Section 65040.21 to, the Government Code, and to amend Sections 4291 and 4291.3 of, and to add Sections 4290.5 and 4295.5 to, the Public Resources Code, relating to fire safety.

[Approved by Governor September 21, 2018. Filed with Secretary of State September 21, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2911, Friedman. Fire safety.

(1) Existing law requires a local agency to designate, by ordinance, very high fire hazard severity zones in its jurisdiction within 120 days of receiving recommendations from the Director of Forestry and Fire Protection and exempts a local agency, as defined, from that requirement if ordinances of the local agency, adopted on or before December 31, 1992, impose standards that are equivalent to, or more restrictive than, specified state standards. Existing law authorizes a local agency, at its discretion, to exclude from specified requirements governing fire risk reduction an area identified as a very high fire hazard severity zone by the director within the jurisdiction of the local agency, following a specified finding supported by substantial evidence that those requirements are not necessary for effective fire protection within the area.

This bill would eliminate the above-described exemption and exclusion and would require a local agency to transmit a copy of any ordinance adopted pursuant to these provisions to the State Board of Forestry and Fire Protection within 30 days of adoption. By imposing new responsibilities on local agencies with regard to the adoption of fire safety ordinances, the bill would impose a state-mandated local program.

(2) Existing law requires, no later than January 1, 2005, the State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, to recommend building standards that provide for comprehensive site and structure fire risk reduction to protect structures from fires spreading, as provided.

This bill would require the State Fire Marshal, no later than January 31, 2020, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, to recommend updated building standards that provide for comprehensive site and structure fire risk reduction to protect structures from fires spreading, as specified, based on lessons learned from the wildfires of 2017 and to develop a list of low-cost retrofits that provide for comprehensive site and structure fire risk reduction, as provided.

(3) Existing law requires each planning agency to prepare and the legislative body of each county and city to adopt a comprehensive, long-term general plan, including a safety element, for the physical development of the county or city, as provided. Existing law requires the draft element of or draft amendment to the safety element of a county or city's general plan to be submitted to the State Board of Forestry and Fire Protection and to every local agency that provides fire protection to territory in the city or county at least 90 days prior to specified events.

RPC (g)

Existing law requires a county that contains state responsibility areas and a city or county that contains a very high fire hazard severity zone to submit for review the safety element of its general plan to the board and every local agency that provides fire protection to territory in the city or county in accordance with a specified schedule based on location, as provided.

This bill would delete the latter submission requirement.

Existing law requires the State Board of Forestry and Fire Protection and authorizes a local agency to review and recommend changes to the safety element, as provided. Existing law requires the board of supervisors or the city council to consider the changes made by the board.

This bill would authorize the State Board of Forestry and Fire Protection to request a consultation with the board of supervisors or city council if the local agency decides not to adopt the board's recommendations, as provided. Because the bill would require local officials to consult with the board, this bill would impose a state-mandated local program.

(4) Existing law requires the Office of Planning and Research, when it adopts its next edition of the general plan guidelines, to include specified information related to fire hazards and fire safety.

This bill would require the office, by July 1, 2020, to update its guidance document entitled "Fire Hazard Planning, General Plan Technical Advice Series" in consultation with the Department of Forestry and Fire Protection, the state board, and other fire and safety experts, as provided.

(5) Existing law requires the State Board of Forestry and Fire Protection to adopt regulations implementing minimum fire safety standards related to defensible space applicable to state responsibility area lands, as provided.

This bill would require, on or before July 1, 2021, and every 5 years thereafter, the board, in consultation with the State Fire Marshal, to survey local governments and fire districts to identify existing subdivisions, as defined, in either a state responsibility area or a very high fire hazard severity zone, without secondary egress routes, that are at significant fire risk. The bill would require the board, in consultation with the State Fire Marshal and the local governments identified above, to develop recommendations to improve the subdivision's fire safety, as provided. The bill would require the board to provide final recommendations to the identified local governments.

(6) Existing law requires the Department of Forestry and Fire Protection to develop, periodically update, and post on its Internet Web site a guidance document on fuels management. Existing law requires the guidance to include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species.

This bill would limit these native species, for purposes of the guidance document, to those that are fire resistant or drought tolerant, or both.

(7) Existing law authorizes a state or local fire official to authorize an owner of property or his or her agent to construct a firebreak, or implement appropriate vegetation management techniques, to ensure that defensible space is adequate for the protection of a hospital, adult residential care facility, school, aboveground storage tank, hazardous materials facility, or similar facility on the property.

This bill would authorize the director of the Department of Forestry and Fire Protection to authorize an owner of any other property not listed above to construct a firebreak, or implement appropriate vegetation management techniques, as provided, if it is determined by the director as necessary to protect life, property, and natural resources from unreasonable risks associated with wild land fires.

(8) Existing law requires a person that owns, controls, operates, or maintains an electrical transmission or distribution line upon mountainous land, or in forest-covered land, brush-covered land, or grass-covered land, to maintain certain clearances between all vegetation and all conductors that are carrying electric current during those times and in those areas determined to be necessary by the Director of Forestry and Fire Protection or the agency with primary responsibility for the fire protection of those areas.

Existing law requires dead trees, old decadent or rotten trees, trees weakened by decay or disease, and trees or portions of the trees that are leaning toward a line that may contact the line from the side or may fall on the line to be felled, cut, or trimmed so as to remove the hazard.

This bill would authorize any person who owns, controls, operates, or maintains any electrical transmission or distribution line to traverse land as necessary, regardless of land ownership or express permission to traverse land from the landowner, after providing notice and an opportunity to be heard to the landowner, to prune trees to maintain clearances, and to abate, by pruning or removal, any hazardous, dead, rotten, diseased, or

structurally defective live trees. The bill would provide that these provisions do not exempt any person who owns, controls, operates, or maintains any electrical transmission or distribution line from liability for damages for the removal of vegetation that is not covered by any easement granted to him or her for the electrical transmission or distribution line.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The 2017 fire season was devastating. Over 1.3 million acres burned in high-severity wildfires and over 10,000 structures were destroyed from wildfires across the state.

(2) Forty-four people died in the 2017 fire season, higher than the last 10 years combined.

(3) During 2017 and 2018 California experienced the largest fires ever recorded in its history.

(4) CAL FIRE and the State Board of Forestry and Fire Protection have recognized that California now often experiences a year-round fire season, with an increase in both the number and the intensity of large, damaging wildfires.

(5) The increase in frequency and intensity of large wildfires is due to a century of fire exclusion and the impacts of climate change.

(6) Governor Brown has declared these wildfire threats as the “new normal” in California.

(b) It is therefore the intent of the Legislature to strengthen requirements that improve defensible space protections, increase the use of fire-resistant building materials, and improve the fire safety of California communities.

(c) The Legislature intends that the Public Utilities Commission and the Department of Forestry and Fire Protection encourage the use of the concept “right tree right place” to reduce the need for utility vegetation management, reduce fire risk, and provide appropriate vegetation below energized electrical facilities that create carbon sequestration, air quality, and habitat benefits. “Right tree right place” is the selection of vegetation including trees, shrubs, or other plants that can grow under energized electrical facilities for their entire lives and would not come in contact with the line’s conductors.

SEC. 2. Section 51179 of the Government Code is amended to read:

51179. (a) A local agency shall designate, by ordinance, very high fire hazard severity zones in its jurisdiction within 120 days of receiving recommendations from the director pursuant to subdivisions (b) and (c) of Section 51178.

(b) A local agency may, at its discretion, include areas within the jurisdiction of the local agency, not identified as very high fire hazard severity zones by the director, as very high fire hazard severity zones following a finding supported by substantial evidence in the record that the requirements of Section 51182 are necessary for effective fire protection within the area.

(c) The local agency shall transmit a copy of an ordinance adopted pursuant to subdivision (a) to the State Board of Forestry and Fire Protection within 30 days of adoption.

(d) Changes made by a local agency to the recommendations made by the director shall be final and shall not be rebuttable by the director.

(e) The State Fire Marshal shall prepare and adopt a model ordinance that provides for the establishment of very high fire hazard severity zones.

(f) Any ordinance adopted by a local agency pursuant to this section that substantially conforms to the model ordinance of the State Fire Marshal shall be presumed to be in compliance with the requirements of this section.

(g) A local agency shall post a notice at the office of the county recorder, county assessor, and county planning agency identifying the location of the map provided by the director pursuant to Section 51178. If the agency amends the map, pursuant to subdivision (b) or (c) of this section, the notice shall instead identify the location of the amended map.

SEC. 3. Section 51189 of the Government Code is amended to read:

51189. (a) The Legislature finds and declares that site and structure defensibility is essential to reduce the risk of structure ignition as well as for effective fire suppression by firefighters. This need to establish defensibility extends beyond the site fuel management practices required by this chapter, and includes, but is not limited to, measures that increase the likelihood of a structure to withstand ignition, such as building design and construction requirements that use fire resistant building materials, and provide standards for reducing fire risks on structure projections, including, but not limited to, porches, decks, balconies and eaves, and structure openings, including, but not limited to, attic, foundation, and eave vents, doors, and windows.

(b) No later than January 31, 2020, the State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, shall, pursuant to Section 18930 of the Health and Safety Code, recommend updated building standards that provide for comprehensive site and structure fire risk reduction to protect structures from fires spreading from adjacent structures or vegetation and to protect vegetation from fires spreading from adjacent structures, based on information learned from the 2017 wildfire season.

(c) (1) No later than January 31, 2020, the State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, shall develop a list of low-cost retrofits that provide for comprehensive site and structure fire risk reduction to protect structures from fires spreading from adjacent structures or vegetation and to protect vegetation from fires spreading from adjacent structures. The department shall incorporate the list in its fire prevention education and outreach efforts.

(2) In addition to the requirements of paragraph (1), the list shall include a guidance document, including regionally appropriate vegetation management suggestions that preserve and restore native plant species that are fire resistant or drought tolerant, or both.

SEC. 4. Section 65040.21 is added to the Government Code, to read:

65040.21. By July 1, 2020, the office shall, in consultation with the Department of Forestry and Fire Protection, the State Board of Forestry and Fire Protection, and other fire and safety experts, update the guidance document entitled "Fire Hazard Planning, General Plan Technical Advice Series." The guidance document shall include specific land use strategies to reduce fire risk to buildings, infrastructure, and communities. The office shall, on and after July 1, 2020, update the guidance document not less than once every eight years.

SEC. 5. Section 65302.5 of the Government Code is amended to read:

65302.5. (a) At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the California Geological Survey of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made by the division shall be advisory to the planning agency and legislative body.

(b) (1) The draft element or draft amendment to the safety element of a county or a city's general plan shall be submitted to the State Board of Forestry and Fire Protection and to every local agency that provides fire protection to territory in the city or county at least 90 days prior to either of the following:

(A) The adoption or amendment to the safety element of its general plan for each county that contains state responsibility areas.

(B) The adoption or amendment to the safety element of its general plan for each city or county that contains a very high fire hazard severity zone as defined pursuant to subdivision (i) of Section 51177.

(2) The State Board of Forestry and Fire Protection shall, and a local agency may, review the draft or an existing safety element and recommend changes to the planning agency within 60 days of its receipt regarding both of the following:

(A) Uses of land and policies in state responsibility areas and very high fire hazard severity zones that will protect life, property, and natural resources from unreasonable risks associated with wild land fires.

(B) Methods and strategies for wild land fire risk reduction and prevention within state responsibility areas and very high fire hazard severity zones. These methods and strategies shall reflect accepted best practices in the most recent guidance document entitled "Fire Hazard Planning, General Plan Technical Advice Series," as identified in Section 65040.21.

(3) (A) Prior to the adoption of its draft element or draft amendment, the board of supervisors of the county or the city council of a city shall consider the recommendations, if any, made by the State Board of Forestry and Fire Protection and any local agency that provides fire protection to territory in the city or county. If the board of supervisors or city council determines not to accept all or some of the recommendations, if any, made by the State Board of Forestry and Fire Protection or local agency, the board of supervisors or city council shall communicate in writing to the State Board of Forestry and Fire Protection or the local agency, its reasons for not accepting the recommendations.

(B) If the board of supervisors or city council proposes not to adopt the board's recommendations concerning its draft element or draft amendment, the board, within 15 days of receipt of the board of supervisors' or city council's written response, may request in writing a consultation with the board of supervisors or city council to discuss the board's recommendations and the board of supervisors' or city council's response. The consultation may be conducted in person, electronically, or telephonically. If the board requests a consultation pursuant to this subparagraph, the board of supervisors or city council shall not approve the draft element or draft amendment until after consulting with the board. The consultation shall occur no later than 30 days after the board's request.

(4) If the State Board of Forestry and Fire Protection's or local agency's recommendations are not available within the time limits required by this section, the board of supervisors or city council may act without those recommendations. The board of supervisors or city council shall take the recommendations into consideration the next time it considers amendments to the safety element.

SEC. 6. Section 4290.5 is added to the Public Resources Code, to read:

4290.5. (a) On or before July 1, 2021, and every five years thereafter, the board, in consultation with the State Fire Marshal, shall survey local governments, including counties, cities, and fire districts to identify existing subdivisions located in a state responsibility area or a very high fire hazard severity zone, identified pursuant to Section 51178 of the Government Code, without a secondary egress route *that are at significant fire risk.*

(b) (1) The board, in consultation with the State Fire Marshal and the local government that identified the subdivision, shall develop recommendations to improve the subdivision's fire safety. The recommendations may include, but are not limited to, the following:

(A) Creating secondary access to the subdivision.

(B) Improvements to the existing access road.

(C) Other additional fire safety measures.

(2) The board shall provide the final recommendations developed pursuant to this subdivision to the local government that identified the subdivision and to the residents of the subdivision.

(c) The board may enter into contracts with an independent group to conduct the survey required in subdivision (a).

(d) For purposes of this section, "subdivision" means an existing residential development of more than 30 dwelling units.

(e) The board shall maintain a list of the subdivisions identified in subdivision (a) and the status of the implementation of the recommendations provided pursuant to subdivision (b).

SEC. 7. Section 4291 of the Public Resources Code is amended to read:

4291. (a) A person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with flammable material, shall at all times do all of the following:

(1) Maintain defensible space of 100 feet from each side and from the front and rear of the structure, but not beyond the property line except as provided in paragraph (2). The amount of fuel modification necessary shall take into account the flammability of the structure as affected by building material, building standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure. This paragraph does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, the most intense being within the first 30 feet around the structure. Consistent with fuels management objectives, steps should be taken to minimize erosion. For the purposes of this paragraph, "fuel" means any combustible material, including petroleum-based products and wildland fuels.

(2) A greater distance than that required under paragraph (1) may be required by state law, local ordinance, rule, or regulation. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.

(3) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under paragraph (1) if a fire expert, designated by the director, provides findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation.

(4) Remove that portion of a tree that extends within 10 feet of the outlet of a chimney or stovepipe.

(5) Maintain a tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood.

(6) Maintain the roof of a structure free of leaves, needles, or other vegetative materials.

(7) Prior to constructing a new building or structure or rebuilding a building or structure damaged by a fire in an area subject to this section, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.

(b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels, nor is a person required to enter upon or to alter property that is owned by any other person without the consent of the owner of the property.

(c) (1) Except as provided in Section 18930 of the Health and Safety Code, the director may adopt regulations exempting a structure with an exterior constructed entirely of nonflammable materials, or, conditioned upon the contents and composition of the structure, the director may vary the requirements respecting the removing or clearing away of flammable vegetation or other combustible growth with respect to the area surrounding those structures.

(2) An exemption or variance under paragraph (1) shall not apply unless and until the occupant of the structure, or if there is not an occupant, the owner of the structure, files with the department, in a form as the director shall prescribe, a written consent to the inspection of the interior and contents of the structure to ascertain whether this section and the regulations adopted under this section are complied with at all times.

(d) The director may authorize the removal of vegetation that is not consistent with the standards of this section. The director may prescribe a procedure for the removal of that vegetation and make the expense a lien upon the building, structure, or grounds, in the same manner that is applicable to a legislative body under Section 51186 of the Government Code.

(e) The department shall develop, periodically update, and post on its Internet Web site a guidance document on fuels management pursuant to this chapter. Guidance shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species that are fire resistant or drought tolerant, or both, minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of nonvegetative sources of combustion such as woodpiles, propane tanks, decks, and outdoor lawn furniture.

(f) As used in this section, "person" means a private individual, organization, partnership, limited liability company, or corporation.

SEC. 8. Section 4291.3 of the Public Resources Code is amended to read:

4291.3. (a) Subject to any other applicable law, a state or local fire official, at his or her discretion, may authorize an owner of property, or his or her agent, to construct a firebreak, or implement appropriate vegetation management techniques, to ensure that defensible space is adequate for the protection of a hospital, adult residential care facility, school, aboveground storage tank, hazardous materials facility, or similar facility on the property. The firebreak may be for a radius of up to 300 feet from the facility, or to the property line, whichever distance is shorter.

(b) The director may authorize an owner of a property not listed in subdivision (a) to construct a firebreak, or implement appropriate vegetation management techniques, within a radius of up to 300 feet from a structure, or to the property line, whichever distance is shorter, if it is determined by the director as necessary to protect life, property, and natural resources from unreasonable risks associated with wild land fires.

SEC. 9. Section 4295.5 is added to the Public Resources Code, to read:

4295.5. (a) Notwithstanding any other law, including Section 4295, any person who owns, controls, operates, or maintains any electrical transmission or distribution line may traverse land as necessary, regardless of land ownership or express permission to traverse land from the landowner, after providing notice and an opportunity to be heard to the landowner, to prune trees to maintain clearances pursuant to Section 4293, and to abate, by pruning or removal, any hazardous, dead, rotten, diseased, or structurally defective live trees. The clearances obtained when the pruning is performed shall be at the full discretion of the person that owns, controls, operates, or maintains any electrical transmission or distribution line, but shall be no less than what is required in Section 4293. This section shall apply to both high fire threat districts, as determined by the California Public Utilities Commission pursuant to its rulemaking authority, and to state responsibility areas.

(b) Nothing in subdivision (a) shall exempt any person who owns, controls, operates, or maintains any electrical transmission or distribution line from liability for damages for the removal of vegetation that is not covered by any easement granted to him or her for the electrical transmission or distribution line.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.