

Date of Hearing: March 24, 2021

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 642 (Friedman) – As Introduced February 12, 2021

SUBJECT: Wildfires

SUMMARY: This bill is an omnibus fire prevention bill that makes various changes to support cultural and prescribed fire, including the creation of a Cultural Burning Liaison at the Department of Forestry and Fire Protection (CAL FIRE), and requires a proposal for creating a prescribed fire training center in California.

EXISTING LAW:

- 1) Requires the Board of Forestry and Fire Protection (Board) to classify all lands within the state for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state [known as the State Responsibility Area (SRA)].
- 2) Requires CAL FIRE to identify certain areas in the local responsibility area (LRA) as very high fire hazard severity zones (VHFHSZ) based on consistent statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas.
- 3) Requires, no later than January 31, 2020, the State Fire Marshal (SFM), in consultation with CAL FIRE and the Department of Housing and Community Development (HCD), to recommend building standards that provide for comprehensive site and structure fire risk reduction to protect structures from fire risk, based on information learned from the 2017 wildfire season.
- 4) Requires, no later than January 31, 2020, the SFM, in consultation with CAL FIRE and HCD to develop a list of low-cost retrofits that provide for comprehensive site and structure fire risk reduction to protect structures from fire risk. Requires CAL FIRE to incorporate the list in its fire prevention education and outreach efforts.
- 5) Declares compliance with a CAL FIRE burn permit constitutes prima facie evidence of due diligence.
- 6) Authorizes a person with a CAL FIRE burn permit to use fire to abate a fire hazard.
- 7) Requires CAL FIRE to actively engage the University of California Extension Services, fire safe councils, resource conservation districts, and any other entity with demonstrated expertise to enhance its public education efforts regarding fire prevention and public safety.
- 8) Declares that historically, CAL FIRE conducted prescribed burns only utilizing its own personnel and therefore was liable for any damages resulting from the burn. However, to reach the statewide prescribed burn goals identified in the "California Forest Carbon Plan: Managing our Forest Landscapes in a Changing Climate," 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.

- 9) 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%.
- 10) Requires, on or before January 1, 2021, the SFM to develop a curriculum, or amend into an existing curriculum, a certification program for fire bosses for both CAL FIRE and private prescribed fire users.
- 11) Requires, to the extent feasible and only in portions of the state, the Board's vegetation treatment program programmatic environmental impact report, when certified, to serve as the programmatic environmental document for persons conducting prescribed fires with a CAL FIRE burn permit.
- 12) Authorizes prescribed burning, mastication, herbicide application, mechanical thinning, or other vegetative treatments of chaparral or sage scrub to only occur if CAL FIRE finds that the activity will not cause "type conversion" away from the chaparral and coastal sage scrub currently on site.

THIS BILL:

- 1) Makes various findings and declarations, including that it is the intent of the Legislature that the Department of Insurance and CAL FIRE develop or facilitate innovative solutions within the next year to ensure certified burn bosses and the organizations they work for have access to appropriate insurance to enable them to contribute to the fire resilience of the state.
- 2) Requires, on or before July 1, 2023, CAL FIRE to identify certain areas outside the SRA as moderate and high fire severity zones and adds possible lightning cause ignitions and regional winds to the criteria for identifying those areas.
- 3) Requires, upon identification of high and moderate severity zones, the SFM, in consultation with CAL FIRE and HCD to propose to the Building Standards Commission (BSC), and for the BSC to adopt, building standards that provide for comprehensive site and structure fire risk reduction to protect structures from fire risk in high fire severity zones and to consider after a public process whether to propose expanding to moderate fire severity zones in the LRA.
- 4) Requires the Director of CAL FIRE to appoint a Cultural Burning Liaison to do all of the following:
 - a) Advise CAL FIRE on developing increased cultural burning activity;
 - b) Engage with Native American tribes, tribal organizations, and cultural practitioners on opportunities to partner with CAL FIRE;
 - c) Serve on the SFM's Statewide Training and Education Advisory Committee; and,
 - d) Work with unit chiefs across the state to ensure prescribed fire and cultural burning objectives are understood and supported by CAL FIRE.

- 5) Requires CAL FIRE to actively engage with relevant California State Universities, Native American tribes, tribal organizations, and cultural practitioners. Requires CAL FIRE to respect tribal sovereignty, customs, and culture.
- 6) Requires CAL FIRE to support, to the extent feasible, the programs of Native American tribes.
- 7) Requires, on or before, July 1, 2023, CAL FIRE, in consultation with the SFM and Insurance Commissioner, to make recommendations on how to understand and model wildfire risk for communities and specific parcels within the LRA or SRA through the input of mitigating factors. Requires CAL FIRE to establish, and consult with, an advisory workgroup to develop the recommendations.
- 8) Requires, on or before July 1, 2022, CAL FIRE, in consultation with the California Conservation Corps, the Regional Forest and Fire Capacity Program, a statewide inter-tribal organization or indigenous stewardship network, and the Sierra Nevada Conservancy, to develop a proposal to establish a prescribed fire training center, as specified.
- 9) Requires, on or before July 1, 2022, the SFM and the Cultural Burning Liaison, to develop a streamlined process to certify members of Native American tribes with cultural burning experience as burn bosses to recognize and account for their experience.
- 10) Requires, on or before January 1, 2023, the SFM to post and update on its internet website the number of burn bosses who have been certified.
- 11) Specifies adherence to the best practices outlined in the curriculum and certification process constitutes prima facie evidence of due diligence.
- 12) Authorizes CAL FIRE to order remediation for any type conversion in violation of the prohibition of specified vegetation management in chaparral or sage scrub.
- 13) Requires CAL FIRE to consider when issuing a burn permit non-department contingency resources when determining required precautions.
- 14) Requires CAL FIRE, to the extent feasible, employ burn suspensions at the unit level, and not at the state or regional level to not unreasonably restrict prescribed burning operations.
- 15) Requires CAL FIRE to develop and deploy an automated system for burn permits.
- 16) Requires CAL FIRE to take into consideration the salary, classification, and recruitment efforts for its personnel that conduct fuel reduction to fill vacancies and retain seasoned fuel reduction experts.
- 17) Requires CAL FIRE, to the extent feasible, to engage in recruitment efforts with Native American tribes to fill vacancies in positions that engage in fuel reduction on behalf of the department.

FISCAL EFFECT: Unknown

COMMENTS:**1) Author's statement:**

On January 8, 2021, the Governor's Forest Management Task Force (FMTF) released a comprehensive action plan to reduce wildfire risk for vulnerable communities, improve the health of forests and wildlands, and accelerate action to combat climate change. The FMTF's action plan, among other things, called for expanding the use of prescribed fire and cultural burning. The FMTF's action plan also called for the support of community wildfire risk reduction. AB 642 will assist in implementing portions of the FMTF's plan.

The recent Creek Fire, which burned over 370,000 acres, provides an example of the effectiveness of prescribed burns. The Southern California Edison property in Shaver Lake, one of the impacted communities, experienced substantially less damage on and near the property than other parts of the county. The resiliency of this property is attributed to the prescribed burning program that the utility has carried out since the 1960s. AB 642 would increase the pace and scale prescribed fire and takes important steps to restoring cultural burning in California by improving prescribed fire training, permitting, and through the creation of a cultural burning liaison at CAL FIRE. This bill would also require partnerships and engagement with Native American tribes, tribal organizations, and cultural practitioners while respecting their tribal sovereignty.

AB 642 also takes important steps to harden homes. The bill would expand the number of new homes that comply with fire safety building standards, which will reduce the number of homes lost in wildfires. This bill will also require CAL FIRE to make recommendations on how Californian's can better understand their wildfire risk and what actions they can take to reduce that risk.

I believe California must take bold action to become more fire resilient and reduce the damage caused by high-severity wildfires. AB 642 will facilitate that action by embracing new ideas and ideas that have been in practice for a millennium

- 2) Background.** 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. In 2020, wildfires burned more than 4.1 million acres. The August Complex Fire in northern California, the largest fire in California's modern history, burned over one million acres. In total, wildfires caused 33 deaths and destroyed over 10,000 structures in 2020. The land area burned in 2020 more than doubled the previous record, roughly 1.8 million acres, which was set in 2018. Furthermore, seven of the state's deadliest fires have occurred since 2017, with over 100 fatalities in 2017 and 2018.

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.

A century of suppressing low-intensity fires, logging of older growth and more fire-resistant trees, and a significant five-year drought has increased the size and severity of California's fires. Climate change has also contributed to wildfire risk by reducing humidity and precipitation and increasing temperatures.

The use of targeted mechanical vegetation management, prescribed fire, and managed wildfire reduces the accumulated high fuel loads, promoting healthier, more resilient forests, reducing the risk of high-severity wildfires.

SB 901 (Dodd), Chapter 626, Statutes of 2018, committed \$1 billion for CAL FIRE's Forest Health Grant Program and Fire Prevention Grant Program and dedicated fuel reduction crews over the next five years. The funds are meant to be used to do significant fuel reduction work near communities and in forested watersheds, and many projects will include a biomass utilization component. Approximately half of this commitment has already been spent.

On January 8, 2021, the Governor's Budget proposed \$1 billion to support the FMTF's Wildfire and Forest Resilience Action Plan; the plan included early action items and an extension of the SB 901 funding commitment for five years.

- 3) **Cultural and Prescribed fire.** For thousands of years, Native American tribes used fire to manage the landscape in California. These cultural burns were used to renew food, medical, and cultural resources, to create habitat for wildlife, and to reduce the risk of larger fires. As native peoples were forcibly removed from their land, the practice of cultural burning was largely eliminated. In addition to depriving native peoples of land sovereignty, access to resources, and the right to practice traditional cultural activities, fire suppression policies also contributed to the overstocked and highly flammable forest conditions that result in destructive wildfires today.

Prescribed and managed fire are a type of vegetation management where low-intensity fires are either intentionally lit or allowed to burn in specified weather conditions and in a way that is consistent with a preapproved plan (known as a burn plan) to treat a specified area. The prescribed burn eliminates hazardous surface fuels and achieves other important ecological outcomes. Prescribed burns increase short-term air pollution and greenhouse gas (GHG) emissions in order to mitigate the risk of larger fires with significantly higher air and GHG emissions in the future. In combination with other forest management practices such as forest thinning and vegetation clearing, prescribed fire can contribute to the health of California's forests and reduce the occurrence of catastrophic wildfires.

Prescribed burns reduce the risk of catastrophic wildfires primarily by reducing fuel loads in forested areas. Fire suppression has led to an accumulation of dense underbrush and dead and decaying trees on the forest floor, exacerbated by the recent drought that resulted in the death of over 140 million trees and tree mortality from infestations of bark beetles. Furthermore, the elimination of low-intensity fires, in combination with logging practices that removed old growth trees, have led to an

increased density of trees and also reduced overall tree size. Consequently, fires have more fuel to burn hotter and are able to spread faster in the denser canopies. Prescribed fire, carefully planned on days with low-risk weather conditions and monitored by professionals, can incrementally remove the debris on the forest floor, reduce the density of forest stands, and therefore reduce the severity of future wildfires.

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. SB 1260 (Jackson), Chapter 624, Statutes of 2018, took important steps towards increasing the pace and scale of prescribed fire by authorizing CAL FIRE to enter into burning agreements where they limit the liability of their partners, having CAL FIRE certify burn bosses, and creating a program to assist air districts in reviewing and approving air quality burn permits. However, CAL FIRE's burn boss curriculum is still pending regulatory approval, and therefore no burning agreements have been entered into yet. As part of the SB 901 funding commitment CAL FIRE received funding for dedicated fuel reduction crews to increase the amount of prescribed fire the agency does. There has been concern about retention within those crews because crew members can be transferred to fire suppression duties for additional pay.

Partnering with California tribes to reintroduce the practice of cultural burns onto landscape provides an opportunity to restore an important cultural practice while also improving forest health and decreasing the risk of catastrophic wildfires. Several California tribes are working to create and maintain these types of partnerships. For example, the Cultural Fire Management Council aims to facilitate the practice of cultural burning on the Yurok Reservation and Ancestral Lands. The Lomakatsi Restoration Project, a nonprofit organization that works with tribal communities in Oregon and California, aims to advance efforts to repair fire-adapted ecosystems. Representatives of the North Fork Mono have entered into an agreement with state and federal agencies near Fresno to perform more prescribed burns to restore mountain meadows that have become overgrown due to fire suppression.

A Stanford-led study with the U.S. Forest Service in collaboration with the Yurok and Karuk tribes found that incorporating traditional techniques into current fire suppression practices could help revitalize American Indian cultures, economies and livelihoods, while continuing to reduce wildfire risks. This bill would increase the state's engagement with Native American tribes, tribal organizations, and cultural practitioners to expand the practice of cultural burning.

- 4) **Chapter 7A building standards.** New homes within the VHFHSZ and the SRA must meet Chapter 7A building standards for new construction (including ignition-resistant roofs, under eaves, siding, windows, and decking). Home hardening standards started with a prohibition on new wooden roofs in the early nineties and were dramatically improved in 2008 to make homes that have adequate defensible space ignition resistant. The standards are periodically updated to be improved even further. These standards have been shown to work. An analysis by the Sacramento Bee showed that approximately 51% of the 350 single-family homes built after 2008 in the path of the Camp Fire were undamaged. By contrast, only 18% of the 12,100

homes built prior to 2008 escaped damage. Factors that can cause post 2008 homes to combust include not having adequate defensible space and proximity to neighboring non-fire hardened homes.

A 2018 Headwaters Economics report found negligible cost differences between a typical home and a home constructed using wildfire-resistant materials and design features. Decades of research and post-fire assessments have provided clear evidence that building materials and design, coupled with landscaping on the property, are the most important factors influencing home survivability during a wildfire.

In the informational hearing this committee held in February 2019, former Fire Marshal Kate Dargan estimated there are 2 million homes in high fire threat areas that do not meet Chapter 7A building standards. According to the Building Industry Association, only 860,000 homes and apartments have been built statewide since the code went into effect. According to Paradise Town Councilman Michael Zuccolillo, the average home in Paradise was built in the 1970s, which means most homes did not meet the 2008 standard and likely many homes still had wooden roofs.

According to the SFM, property owners in high fire hazard zones who replace at least half their roof are required to install fire-retardant materials on the entire roof.

This bill would expand Chapter 7A building standards to moderate and high fire severity zones within the LRA. Current law authorized the SFM to require Chapter 7A building standards in the moderate and high severity zones in the SRA, which the SFM has done through regulation. Currently, fire severity maps in the LRA do not include high and moderate severity zones like SRA maps do. This bill would require the identification of those zones. It is unclear if during that process the LRA maps will be updated to reflect the increased fire severity in the state since the map was published in 2007. If new maps include increased fire severity zones, they will affect the expansion of the Chapter 7A building standards required by this bill.

5) **Related legislation.**

AB 575 (Fong) requires a private entity engaging in a prescribed burning activity that is supervised by a person certified as a burn boss to be liable for damages to a third party only if the prescribed burning activity was carried out in a grossly negligent manner. This bill is awaiting hearing in the Assembly Judiciary Committee.

SB 63 (Stern) makes multiple changes in state law to enhance fire prevention efforts by CAL FIRE, including, among other things, improved vegetation management and expanding the area where fire safety building standards apply. This bill is awaiting hearing in the Senate Natural Resources and Water Committee.

SB 332 (Dodd) requires certified burn bosses and property owners where the certified burn boss conducted the prescribed fire to not be liable for any damage or injury to property or persons that is caused by a prescribed burn unless the prescribed burn was conducted in a grossly negligent manner. This bill is awaiting hearing in the Senate Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Planning Association, California Chapter
California Association of Resource Conservation Districts
California Building Industry Association
California Fire Chiefs Association
California Native Plant Society
Defenders of Wildlife
Edison International and Affiliates, Including Southern California Edison
Fire Districts Association of California
Intertribal Sinkyone Wilderness Council
Pacific Forest Trust
Peninsula Open Space Trust
Personal Insurance Federation of California
Save the Redwoods League
Sierra Business Council
Sierra Club
Southern California Edison
The Fire Restoration Group
The Nature Conservancy
The Watershed Research and Training Center
Wine Institute

Opposition

None on file

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