

ASSEMBLY BILL

No. 642

**Introduced by Assembly Member Friedman
(Coauthor: Assembly Member Wood)**

February 12, 2021

An act to amend Sections 51178 and 51178.5 of the Government Code, to amend Section 13108.5 of the Health and Safety Code, and to amend Sections 4114.3, 4477, 4483, 4493, and 4494 of, to add Sections 703 and 4742 to, and to add and repeal Section 4204.1 of, the Public Resources Code, relating to wildfires.

LEGISLATIVE COUNSEL'S DIGEST

AB 642, as introduced, Friedman. Wildfires.

(1) Existing law requires the Director of Forestry and Fire Protection to identify areas of the state as very high fire hazard severity zones, as provided. Existing law requires a local agency, within 30 days of receiving a transmittal from the director that identifies very high fire hazard severity zones, to make the information available for public review.

This bill would require the director to identify areas in the state as moderate and high fire hazard severity zones. The bill would additionally require the director classify areas into fire hazard severity zones based on additional factors including possible lightning caused ignition. The bill would require a local agency, within 30 days of receiving a transmittal from the director that identifies fire hazard severity zones, to make the information available for public comment. Because the bill would impose additional duties on local agencies, this bill would impose a state-mandated local program.

(2) The California Building Standards Law provides for the adoption of building standards by state agencies by requiring all state agencies that adopt or propose adoption of any building standard to submit the building standard to the California Building Standards Commission for approval or adoption. In the absence of a designated state agency, the commission is required to adopt specific building standards, as prescribed. Existing law requires the State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, to propose specified fire protection building standards in fire hazard severity zones, including very high fire hazard severity zones, in state responsibility areas.

This bill would require, upon the identification of high fire hazard severity zones by the Director of Forestry and Fire Protection or by a local agency, the Office of the State Fire Marshal and the Department of Housing and Community Development to propose, and the commission to adopt, expanded application of the adopted fire protection building standards to high fire hazard severity zones. The bill would require the Office of the State Fire Marshal and the Department of Housing and Community Development to consider if it is appropriate to expand the application of the adopted fire protection building standards to moderate fire hazard severity zones.

(3) Existing law authorizes the Director of Forestry and Fire Protection to enter into an agreement, including a grant agreement, for prescribed burning operations or other hazardous fuel reduction efforts, with any person for specified purposes. Existing law requires the agreement to designate an officer of the Department of Forestry and Fire Protection or a certified burn boss with the final authority regarding the prescribed burn operation and to specify the duties of, and the precautions taken by, the person contracting with the department and any personnel furnished by that person. Existing law requires the State Fire Marshal, with the involvement of the Statewide Training and Education Advisory Committee, to develop a curriculum for a certification program for burn bosses.

This bill would require the department, on or before July 1, 2022, to develop a proposal to establish a prescribed fire training center. The bill would, on or before July 1, 2022, require the State Fire Marshal and the cultural burning liaison, which the bill would require the director to appoint, 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.

This bill would require the department, on or before July 1, 2023, to make recommendations on how to understand and model wildfire risk for a community and specific parcels. The bill would establish an advisory workgroup and would require the department to consult with the advisory workgroup, as specified, in the development of the recommendations. The bill would repeal these provisions on January 1, 2025.

Existing law requires the department to actively engage certain entities to enhance its public education efforts regarding fire prevention and public safety.

This bill would additionally require the department to actively engage with those entities, relevant California State Universities, Native American tribes, tribal organizations, and cultural practitioners to enhance its public education efforts regarding restoring fire processes and function, and cultural burning.

Existing law authorizes an entity that controls brush-covered land, forest lands, woodland, grassland, shrubland, or a combination of those types of land within a state responsibility area to apply to the department for permission to use prescribed burning for certain public purposes.

This bill would require the department, in issuing the permit, to consider non-departmental contingency resources when determining required precautions for the prescribed burn. The bill would require the department, to the extent feasible, to employ burn suspensions at the unit level and not at the state or regional level to not unreasonably restrict prescribed burnings that are within prescription. The bill would require the department to develop and deploy an automated system for issuing burn permits.

Existing law authorizes prescribed burning, mastication, herbicide application, mechanical thinning, or other vegetative treatments of chaparral or sage scrub only if the department finds the activity will not cause “type conversion” away from the chaparral and coastal sage scrub currently on site.

This bill would authorize the department to order remediation for any type conversion caused in violation of the above provision.

This bill would require the department to take into consideration the salary, classification, and recruitment efforts for its personnel that conducts fuel reduction to fill vacancies and retain seasoned fuel reduction experts, and engage in recruitment efforts with Native American tribes to fill vacancies in positions that engage in fuel reduction on behalf of the department.

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, if the Commission on State Mandates determines that the bill contains costs 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. State-mandated local program: yes.

The people of the State of California do enact as follows:

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

3 (1) Wildfires in California are continuing to increase in
4 frequency and intensity, resulting in loss of life and damage to
5 property, infrastructure, and ecosystems. In 2020, wildfires burned
6 more than 4.1 million acres. The August Complex Fire in northern
7 California, the largest fire in California’s modern history, burned
8 over one million acres. In total, wildfires caused 33 deaths and
9 destroyed over 10,000 structures in 2020. The land area burned in
10 2020 more than doubled the previous record, roughly 1.8 million
11 acres, which was set in 2018. Furthermore, seven of the state’s
12 deadliest fires have occurred since 2017, with over 100 fatalities
13 in 2017 and 2018. The Department of Forestry and Fire Protection
14 keeps records of the largest and most destructive wildfires in the
15 state’s history. Each year, those records continue to be broken.

16 (2) Fire has always been present in California landscapes, ignited
17 either by lightning strikes or by Native Americans to enhance
18 certain useful plants, enhance hunting success, perform religious
19 rites, prevent larger fires, and other reasons. Lower-intensity fires
20 have clear ecological benefits, such as creating habitat and assisting
21 in the regeneration of certain species of trees and other plants.
22 Low-intensity fire also reduces surface fuel, which decreases future
23 wildfire intensity. However, climate change, an epidemic of dead
24 and dying trees, a century of fire exclusion, and the proliferation
25 of new homes in the wildland-urban interface have magnified the
26 threat of high-intensity wildfires and substantially reduced
27 California’s fire resiliency.

1 (3) Chapter 624 of the Statutes of 2018 made important steps
2 to increase the use of prescribed burns. However, much more must
3 be done to increase the pace and scale of prescribed burns to meet
4 the state goals and increase fire resiliency, including increasing
5 partnerships with Native American tribes, tribal organizations, and
6 cultural practitioners.

7 (4) Partnering with Native American tribes, tribal organizations,
8 and cultural practitioners to expand the practice of cultural burnings
9 upon landscape provides an opportunity to restore landscape
10 resilience while preserving Native American cultural identity and
11 also improving forest health, ecosystem abundance, maintaining
12 species diversity, and decreasing the risk of catastrophic wildfires.

13 (5) To limit the threat of catastrophic wildfires and to improve
14 forest health and air quality, it is a priority of the state to have an
15 effective prescribed burning program that is developed and crafted
16 collaboratively with federal agencies, prescribed burning experts
17 at state public universities, public agencies, Native American tribes,
18 tribal organizations, cultural practitioners, nonprofit entities, private
19 landowners, and other relevant organizations.

20 (b) It is the intent of the Legislature that the State Air Resources
21 Board, in consultation with the local air quality management and
22 air pollution control air districts, review established guidance and
23 policies related to prescribed fire with the goal of maximizing
24 acreage and opportunities to implement prescribed fire in order to
25 reduce the air pollution associated with high-severity wildfire.

26 (c) It is the intent of the Legislature that the Department of
27 Insurance and the Department of Forestry and Fire Protection
28 develop or facilitate innovative solutions within the next year to
29 ensure certified burn bosses and the organizations they work for
30 have access to appropriate insurance to enable them to contribute
31 to the fire resilience of the state.

32 SEC. 2. Section 51178 of the Government Code is amended
33 to read:

34 51178. ~~The~~ *On or before July 1, 2023, the* director shall identify
35 areas in the state as *moderate, high, and* very high fire hazard
36 severity zones based on consistent statewide criteria and based on
37 the severity of fire hazard that is expected to prevail in those areas.
38 ~~Very~~ *Moderate, high, and* very high fire hazard severity zones
39 shall be based on fuel loading, slope, fire weather, *possible*
40 *lightning cause ignitions*, and other relevant factors including areas

1 where Santa Ana, Mono, ~~and Diablo~~ *Diablo*, and other regional
2 winds have been identified by the Department of Forestry and Fire
3 Protection as a major cause of wildfire spread.

4 SEC. 3. Section 51178.5 of the Government Code is amended
5 to read:

6 51178.5. Within 30 days after receiving a transmittal from the
7 director that identifies ~~very high~~ fire hazard severity ~~zones~~, *zones*
8 *pursuant to Section 51178*, a local agency shall make the
9 information available for public ~~review~~: *review and comment*. The
10 information shall be presented in a format that is understandable
11 and accessible to the general public, including, but not limited to,
12 maps.

13 SEC. 4. Section 13108.5 of the Health and Safety Code is
14 amended to read:

15 13108.5. (a) The State Fire Marshal, in consultation with the
16 Director of Forestry and Fire Protection and the Director of
17 Housing and Community Development, shall, pursuant to Section
18 18930, propose fire protection building standards for roofs, exterior
19 walls, structure projections, including, but not limited to, porches,
20 decks, balconies, and eaves, and structure openings, including, but
21 not limited to, attic and eave vents and windows of buildings in
22 fire hazard severity zones, including very high fire hazard severity
23 zones designated by the Director of Forestry and Fire Protection
24 pursuant to Article 9 (commencing with Section 4201) of Chapter
25 1 of Part 2 of Division 4 of the Public Resources Code.

26 (b) (1) Building standards adopted pursuant to this section
27 shall also apply to buildings located in very high fire hazard
28 severity zones designated pursuant to Chapter 6.8 (commencing
29 with Section 51175) of Part 1 of Division 1 of Title 5 of the
30 Government Code, and other areas designated by a local agency
31 following a finding supported by substantial evidence in the record
32 that the requirements of the building standards adopted pursuant
33 to this section are necessary for effective fire protection within the
34 area.

35 (2) *Upon identification by the Director of Forestry and Fire*
36 *Protection pursuant to Section 51178 of the Government Code of*
37 *high fire hazard severity zones and by a local agency pursuant to*
38 *Section 51179 of the Government Code, the Office of the State*
39 *Fire Marshal and the Department of Housing and Community*
40 *Development shall propose, and the California Building Standards*

1 *Commission shall adopt, expanded application of the building*
2 *standards adopted pursuant to this section to high fire hazard*
3 *severity zones during the next regularly occurring building code*
4 *adoption cycle.*

5 *(3) The Office of the State Fire Marshal and the Department of*
6 *Housing and Community Development shall, after consulting with*
7 *interested stakeholders, including local fire officials, consider if*
8 *it is appropriate to expand application of the building standards*
9 *adopted pursuant to this section to moderate fire hazard severity*
10 *zones. If it is found appropriate, the State Fire Marshal and the*
11 *Department of Housing and Community Development shall,*
12 *pursuant to Section 18930, recommend expanding the application*
13 *of the building standards adopted pursuant to this section to*
14 *moderate fire hazard severity zones.*

15 (c) Building standards adopted pursuant to this section shall
16 also apply to buildings located in urban wildland interface
17 communities. A local agency may, at its discretion, include in or
18 exclude from the requirements of these building standards any
19 area in its jurisdiction following a finding supported by substantial
20 evidence in the record at a public hearing that the requirements of
21 these building standards are necessary or not necessary,
22 respectively, for effective fire protection within the area. Changes
23 made by a local agency to an urban wildland interface community
24 area following a finding supported by substantial evidence in the
25 record shall be final and shall not be rebuttable.

26 (d) For purposes of subdivision (c), “urban wildland interface
27 community” means a community listed in “Communities at Risk
28 from Wild Fires,” produced by the California Department of
29 Forestry and Fire Protection, Fire and Resource Assessment
30 Program, pursuant to the National Fire Plan, federal Fiscal Year
31 2001 Department of the Interior and Related Agencies
32 Appropriations Act (Public Law 106-291).

33 SEC. 5. Section 703 is added to the Public Resources Code,
34 to read:

35 703. The director shall appoint a cultural burning liaison who
36 shall do all of the following:

37 (a) Advise the department on developing increased cultural
38 burning activity.

1 (b) Engage with Native American tribes, tribal organizations,
2 and cultural practitioners on opportunities to partner with the
3 department.

4 (c) Make recommendations to the director on ways to reduce
5 barriers to cultural burning.

6 (d) Serve on the State Fire Marshal's Statewide Training and
7 Education Advisory Committee.

8 (e) Work with unit chiefs across the state to ensure prescribed
9 fire and cultural burning objectives are understood and supported
10 by the department.

11 SEC. 6. Section 4114.3 of the Public Resources Code is
12 amended to read:

13 4114.3. (a) The department shall actively engage University
14 of California Cooperative Extension, *relevant California State*
15 *Universities*, fire safe councils, *Native American tribes, tribal*
16 *organizations, cultural practitioners*, resource conservation
17 districts, and any other entity with demonstrated expertise to
18 enhance its public education efforts regarding *restoring fire*
19 *processes and functions, cultural burning, fire—prevention*
20 *prevention*, and public safety. These public education efforts shall
21 include, but are not limited to, educational activities regarding
22 community wildfire protection plans, community fire safe councils,
23 community and private chipping days, defensible space, prescribed
24 fires, hardened residences, compliance with building standards,
25 evacuation routes, activities that promote fire resiliency or achieve
26 carbon-sequestration benefits in the wildland-urban interface and
27 other forest lands, and activities that promote public safety. *When*
28 *engaging with Native American Tribes, tribal organizations, and*
29 *cultural practitioners, the department shall respect tribal*
30 *sovereignty, customs, and culture.*

31 (b) *The department shall also support, to the extent feasible,*
32 *the programs of Native American tribes that develop the knowledge*
33 *and skills needed to establish and maintain the diverse workforce*
34 *that is required to achieve activities described in this section.*

35 SEC. 7. Section 4204.1 is added to the Public Resources Code,
36 to read:

37 4204.1. (a) On or before July 1, 2023, the department, in
38 consultation with the State Fire Marshal and the Insurance
39 Commissioner, shall make recommendations on how to understand
40 and model wildfire risk for a community and specific parcels within

1 the local responsibility area or state responsibility area through
2 the input of mitigating factors. The department's recommendations
3 shall include all of the following:

4 (1) Identification of mitigation factors that must be included to
5 determine risk.

6 (2) Cost-effective ways to gather data on mitigation factors.

7 (3) A discussion on how parcels can affect the risk of other
8 parcels in close proximity.

9 (4) An evaluation of the effectiveness of using natural
10 infrastructure as a community buffer.

11 (5) A review of other jurisdictions' applicable wildfire risk
12 models.

13 (6) Identification of barriers to determining the wildfire risk of
14 a community and specific parcels.

15 (b) (1) The department shall establish, and consult with, an
16 advisory workgroup to develop the recommendations required
17 pursuant to subdivision (a).

18 (2) The advisory workgroup established pursuant to paragraph
19 (1) shall include all of the following members:

20 (A) The State Fire Marshal, or the State Fire Marshal's designee.

21 (B) The Director of Emergency Services, or the director's
22 designee.

23 (C) The Insurance Commissioner, or the Insurance
24 Commissioner's designee.

25 (D) The Director of Office of Planning and Research, or the
26 director's designee.

27 (E) Two representatives from insurers and insurance research
28 organizations that have appropriate expertise in wildfire risk
29 modeling, such as exposure measurement, risk modeling, and
30 actuarial expertise, to be appointed by the department.

31 (F) Two representatives, one a fire chief, or the fire chief's
32 designee, and the other a fire prevention officer, to be appointed
33 by the department in consultation with the California Fire Chiefs
34 Association and the Fire Districts Association of California.

35 (G) A representative from the California Professional
36 Firefighters, to be appointed by the department.

37 (H) A representative from the California Fire Science
38 Consortium, to be appointed by the department.

39 (I) A representative from the California Building Industry
40 Association, to be appointed by the department.

1 (J) Two representatives from a local government, with one from
 2 a rural city or county, to be appointed by the department.

3 (3) The appointed members of the advisory workgroup shall
 4 serve at the pleasure of the department.

5 (4) The members of the advisory workgroup shall serve without
 6 compensation, but each member shall be reimbursed for their actual
 7 and necessary expenses incurred in the performance of their duties.

8 (5) The chairperson of the advisory workgroup shall be the State
 9 Fire Marshal, or the State Fire Marshal’s designee.

10 (6) The vice chairperson of the advisory workgroup shall be the
 11 fire chief specified in subparagraph (F) of paragraph (2), or the
 12 fire chief’s designee.

13 (c) The department shall post the recommendations required by
 14 subdivision (a) on the department’s internet website.

15 (d) This section shall remain in effect only until January 1, 2025,
 16 and as of that date is repealed.

17 SEC. 8. Section 4477 of the Public Resources Code is amended
 18 to read:

19 4477. (a) On or before January 1, 2021, the State Fire Marshal,
 20 with the involvement of the Statewide Training and Education
 21 Advisory Committee, shall develop a curriculum for, or amend
 22 into an existing curriculum, a certification program for burn bosses,
 23 who, pursuant to Section 4476, possess authority to engage in a
 24 prescribed burning operation and to enter into the necessary
 25 contracts related to a prescribed burning operation. The curriculum
 26 shall provide for the initial certification as well as the continuing
 27 education of burn bosses. It is the intent of the Legislature that this
 28 curriculum become a regular part of the training of firefighters
 29 conducted by the Department of Forestry and Fire Protection and
 30 all other appropriate accredited training providers.

31 (b) In addition to the curriculum and certification program
 32 developed pursuant to subdivision (a), the department shall develop
 33 a training program for prescribed fire users to certify professionals
 34 in any agency or organization as burn bosses. The department shall
 35 certify these individuals to a common standard. It is the intent of
 36 the Legislature that the department use its discretion to ensure that
 37 burn bosses are thoroughly qualified to engage in prescribed
 38 burning operations prior to issuing certifications.

39 (c) *On or before July 1, 2022, the department, in consultation*
 40 *with the California Conservation Corps, the Regional Forest and*

1 *Fire Capacity program, a statewide inter-tribal organization or*
2 *indigenous stewardship network, and the Sierra Nevada*
3 *Conservancy, shall develop a proposal to establish a prescribed*
4 *fire training center. In developing the proposal, the department*
5 *shall do all of the following:*

6 *(1) Collaborate with the University of California Cooperative*
7 *Extension, fire safe councils, Native American tribes, resource*
8 *conservation districts, and other relevant stakeholders on the*
9 *development of the proposal.*

10 *(2) Identify potential funding sources for the proposal, including,*
11 *but not limited to, federal funds, and consider the proposal's*
12 *eligibility for those funding sources.*

13 *(3) Identify potential locations for a prescribed fire training*
14 *center.*

15 *(4) Identify opportunities for satellite learning landscapes to*
16 *support the work of the prescribed fire training center.*

17 *(5) Ensure that tribal fire managers are engaged in the*
18 *development and ongoing leadership of the prescribed fire training*
19 *center.*

20 *(d) On or before July 1, 2022, the State Fire Marshal and the*
21 *cultural burning liaison appointed pursuant to Section 703, in*
22 *cooperation with a statewide inter-tribal organization or*
23 *indigenous stewardship network, shall develop a streamlined*
24 *process to certify members of Native American tribes with cultural*
25 *burning experience as burn bosses to recognize and account for*
26 *their experience.*

27 *(e) On or before January 1, 2023, the State Fire Marshall shall*
28 *post and update on its internet website the number of burn bosses*
29 *who have been certified pursuant to this section.*

30 *(f) Adherence to the best practices outlined in the curriculum*
31 *and certification process established pursuant to this section shall*
32 *constitute prima facie evidence of due diligence.*

33 **SEC. 9.** Section 4483 of the Public Resources Code is amended
34 to read:

35 4483. (a) To the extent feasible, the board's Vegetation
36 Treatment Program Programmatic Environmental Impact Report,
37 when certified, shall serve, in addition to any identified entities in
38 the report, as the programmatic environmental document for
39 prescribed fires initiated by a third party for a public purpose
40 pursuant to Section 4491.

1 (b) (1) It is the intent of the Legislature that additional
2 consideration be provided for chaparral and coastal sage scrub
3 plant communities that are being increasingly threatened by fire
4 frequency in excess of their natural fire return patterns due to
5 climate change and human-caused fires.

6 (2) Prescribed burning, mastication, herbicide application,
7 mechanical thinning, or other vegetative treatments of chaparral
8 or sage scrub shall occur only if the department finds that the
9 activity will not cause “type conversion” away from the chaparral
10 and coastal sage scrub currently on site.

11 (3) This subdivision shall be in addition to the requirements in
12 the Vegetation Treatment Program Programmatic Environmental
13 Impact Report.

14 (c) *The department may order remediation for any type*
15 *conversion caused in violation of paragraph (2) of subdivision*
16 *(b).*

17 SEC. 10. Section 4493 of the Public Resources Code is
18 amended to read:

19 4493. (a) Upon receipt of an application, the department shall
20 inspect the land in company with the applicant to determine
21 whether a permit shall be granted, shall prescribe the manner in
22 which the site for the prescribed burning shall be prepared, and
23 shall require any precautions to be taken by the applicant as may
24 be considered reasonable to prevent damage to the property of
25 others by reason of the burning. The precautions shall, if deemed
26 necessary, include the advance preparation of firebreaks and the
27 firefighting equipment and personnel desirable to conduct the
28 prescribed burning.

29 (b) *In issuing the permit, the department shall consider*
30 *non-department contingency resources when determining required*
31 *precautions.*

32 (c) *The department shall, to the extent feasible, employ burn*
33 *suspensions at the unit level, and not at the state or regional level,*
34 *to not unreasonably restrict prescribed burning operations that*
35 *are within prescription.*

36 SEC. 11. Section 4494 of the Public Resources Code is
37 amended to read:

38 4494. (a) Upon the conclusion of the examination provided
39 for in Section 4493, the department may issue to the applicant a
40 burning permit that shall specify the site preparation requirements

1 and required precautions to be exercised ~~prior to~~ *before* and during
2 the burning. The issuance of a permit by the department does not
3 relieve the permit holder from the duty of exercising due diligence
4 to avoid damage to property of others in conducting the burning
5 of vegetation as authorized by the permit.

6 (b) Compliance with a permit issued pursuant to this article
7 shall constitute prima facie evidence of due diligence.

8 (c) *The department shall develop and deploy an automated*
9 *system for burn permits issued pursuant to this article.*

10 SEC. 12. Section 4742 is added to the Public Resources Code,
11 to read:

12 4742. (a) The state recognizes the problem of recruitment and
13 retention of foresters who engage in fuel reduction at the
14 department. Due to the continuing need to recruit new foresters to
15 fill vacancies, retain seasoned fuel reduction experts, reduce
16 turnover rates, and provide comparability in pay to effectively
17 compete with other positions at the department and ensure
18 necessary staffing levels, salaries and classifications should be
19 improved and maintained by the department.

20 (b) To carry out the intent of subdivision (a), the department
21 shall take into consideration the salary, classification, and
22 recruitment efforts for its personnel that conducts fuel reduction
23 to fill vacancies and retain seasoned fuel reduction experts.

24 (c) The department shall, to the extent feasible, engage in
25 recruitment efforts with Native American tribes to fill vacancies
26 in positions that engage in fuel reduction on behalf of the
27 department.

28 SEC. 13. If the Commission on State Mandates determines
29 that this act contains costs mandated by the state, reimbursement
30 to local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.