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**SB-1260 Fire prevention and protection: prescribed burns.** (2017-2018)

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**Senate Bill No. 1260**

**CHAPTER 624**

An act to amend Sections 51179, 65302.5, 65352, and 66474.02 of the Government Code, to amend Section 41812 of the Health and Safety Code, and to amend Sections 4475, 4476, 4479, 4480, and 4494 of, to amend the heading of Article 2 (commencing with Section 4475) of Chapter 7 of Part 2 of Division 4 of, to add Sections 4114.3, and 4483 to, to add Article 4 (commencing with Section 4495) to Chapter 7 of Part 2 of Division 4 of, to repeal Sections 4475.1, 4475.5, and 4478 of, and to repeal and add Section 4477 of, the Public Resources Code, relating to fire prevention.

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

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1260, Jackson. Fire prevention and protection: prescribed burns.

(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 the local agency to transmit a copy of the adopted ordinance to the State Board of Forestry and Fire Protection within 30 days of adoption. By imposing a new duty on a local agency, the bill would impose a state-mandated local program.

(2) 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 and to every local agency that provides fire protection to territory in the city or county, as provided. Existing law requires the state board 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 recommendations made by the state board.

This bill would authorize the state board 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.

Existing law requires, before a legislative body takes action to adopt or substantially amend a general plan, the planning agency to refer the proposed action to specified entities.

This bill would also require the planning agency to refer the proposed action to the state board and every local agency that provides fire protection to territory in the city or county, as provided. By requiring a higher level of service from a local agency with respect to the referral of the proposed action, the bill would impose a state-mandated local program.

(3) The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency, and sets forth procedures governing the local agency's processing, approval, conditional approval, or disapproval, and filing of tentative, final, and parcel maps, and the modification thereof. The act generally requires a subdivider to file a tentative map or vesting tentative map with the local agency, as specified, and the local agency, in turn, to approve, conditionally approve, or disapprove the map within a specified time period. Before approving a tentative map, or a parcel map for which a tentative map was not required, for an area located in a state responsibility area or a very high fire hazard severity zone, existing law requires the local agency to make specified findings, including that the design and location of each lot in the subdivision and the subdivision as a whole are consistent with any regulations adopted by the State Board of Forestry and Fire Protection relating to buildings or structures in hazardous fire areas or mountainous, forest, brush, and grass-covered lands, as specified.

This bill would instead require a finding that the subdivision is consistent with any regulations adopted by the board relating to buildings or structures in the areas described above, or consistent with local ordinances, as provided. The bill would require the local agency, upon approval of the tentative map in specified situations, to transmit a copy of the findings and maps to the board, thereby imposing a state-mandated local program.

The act also requires the local agency to make a finding that, to the extent practicable, ingress and egress for the subdivision meet regulations regarding road standards for fire equipment access, as provided.

This bill would delete this provision.

(4) 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 either the owner or any other person who has legal control of any property, any public agency with regulatory or natural resource management authority over any property that is included within any wildland, or any nonprofit organization for specified purposes. Existing law provides that an agreement shall not be entered into unless the director makes a specified determination. Existing law authorizes private burning of lands under specified circumstances, as described in (6). Existing law provides that a person who allows a fire upon his or her property to escape to the public or private property of another, without exercising due diligence to control the fire, is liable to the owner of the property for the damages to the property caused by the fire.

This bill would instead provide that the director may enter into an agreement, including a grant agreement, for prescribed burning or other hazardous fuel reduction efforts with any person, as described, to conduct prescribed burning operations, as provided. The bill would delete the requirement that the director make a specified determination before entering into the agreement. This bill would provide that compliance with the provisions of law relating to prescribed burning-operation agreements with the director or with a permit authorizing the private burning of lands under specified circumstances shall constitute prima facie evidence of due diligence with respect to the above provision relating to fire liability. The bill would require the Department of Forestry and Fire Protection to cooperate with private and public landowners in prescribed fire activities, as provided. The bill would require, to the extent feasible, the State Board of Forestry and Fire Protection's Vegetation Treatment Program Programmatic Environmental Impact Report, when certified, to serve as the programmatic environmental document for prescribed burns, as provided.

Existing law requires any contract entered into pursuant to the above provisions to clearly state the obligations of each party, specify the value assigned, as provided, and specify the total costs of the prescribed burning operation or other hazardous fuel reduction, as provided. Existing law provides that in certain situations, the amount of moneys due to the state shall become a lien upon the property and that any money recovered shall be credited to the department's current support appropriation as a reimbursement.

This bill would delete these provisions.

Existing law requires a prescribed burning or other hazardous fuel reduction agreement to designate an officer of the department as the fire boss, as provided.

This bill would also authorize the department to designate a burn boss.

Existing law authorizes the director, in certain circumstances, and with the approval of the Director of Finance, to enter into an agreement with private consultants or contractors or with other public agencies for furnishing all or a part of the state's share of the responsibility for a burning operation, as provided. Existing law prohibits an agreement from being entered into unless the director determines that it will enable the prescribed burning operation to be conducted at a cost equal to, or less than, the cost that would otherwise be incurred by the state.

This bill would delete the above prohibition as well as the requirement that the Department of Finance approve the agreement.

Existing law authorizes the department to purchase 3rd-party liability policy of insurance, as provided. Existing law provides that if the department elects not to purchase insurance, the department shall agree to indemnify and hold harmless the person or public agency contracting with the department with respect to liability arising out of performance of the contract.

This bill would also give the department the option, if it elects not to purchase insurance, to provide a maximum of liability for the department or provide for the proportionate share of liability between the department and the person contracting with the department, as provided.

The bill would require the agreements described above to provide that the department shall be fully responsible for prescribed burns initiated at the department's request, with the consent of the landowner, for training or other purposes on lands owned by a nonprofit organization or other public agencies.

Existing law provides that any costs incurred by the department in suppressing any wildland fire originating or spreading from a prescribed burning operation conducted by the department pursuant to a contract shall not be governed by a specified provision of law that prohibits the department from collecting costs from a party to the contract, as specified.

This bill would provide that this provision does not apply when the department is applying for federal assistance.

(5) Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution, and air pollution control and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law authorizes the air pollution control officer of any district in a county with a population of 6,000,000 or less, upon authorization of the district board, to authorize, by permit, open outdoor fires for disposing of specified wastes in a mechanized burner under certain conditions.

This bill would allow these fires to be authorized, as provided above, in any county, regardless of population. The bill would make other technical, nonsubstantive changes.

(6) Existing law authorizes a person, firm, corporation, or a group or combination thereof, that owns or controls brush-covered land, forest land, woodland, grassland, shrubland, or any combination thereof, within a state responsibility area to apply to the Department of Forestry and Fire Protection for permission to utilize prescribed burning operations for specified public purposes. Existing law authorizes various public agencies to use fire to abate fire hazards. Existing law provides that the issuance of a permit by the department does not relieve the permit holder from the duty of exercising due diligence to avoid damage to property of others in conducting the burning, as provided.

This bill would provide that a person, firm, corporation, or a group or combination thereof, that owns or controls brush-covered land, forest land, woodland, grassland, shrubland, or any combination thereof, within a state responsibility area authorized by the department to utilize prescribed burning operations for specified public purposes is also authorized to use fire to abate a fire hazard, as provided. This bill would authorize a person, until January 1, 2039, with a valid fire boss certificate, as provided, to apply for the prescribed burning permit on behalf of the person or entities described above, and would authorize the department, in specified situations, to appoint a burn boss. The bill would provide that compliance with a permit issued pursuant these provisions would constitute prima facie evidence of due diligence.

The bill would require the department and the State Air Resources Board, in coordination with local air pollution control and air quality management districts, to develop and fund a program, upon appropriation, to enhance air quality and smoke monitoring, and to provide a public awareness campaign regarding prescribed burns, among other things.

(7) Existing law requires the State Fire Marshal to establish a program of fire prevention training for fire prevention inspectors employed by local fire protection agencies.

This bill would require the State Fire Marshal, on or before January 1, 2021, with the involvement of the Statewide Training and Education Advisory Committee, to develop a curriculum, or amend an existing curriculum, for a certification program for fire bosses, as provided.

The bill would require the Department of Forestry and Fire Protection to develop a training program for prescribed fire users to certify professionals in any agency or organization as fire bosses. The bill would require the department to certify these individuals to a common standard.

(8) Existing law requires the Department of Forestry and Fire Protection to do certain things, including, but not limited to, providing fire prevention and firefighting implements and apparatus.

This bill would require the department, by working with specified entities, to enhance the department's education efforts regarding fire prevention and public safety.

(9) Existing law authorizes the state to assume a proportionate share of the costs of site preparation, prescribed burning operations, or other hazardous fuel reduction efforts conducted on wildlands other than wildlands under the jurisdiction of the federal government. Existing law requires the State Board of Forestry and Fire Protection to establish regulations establishing standards to be used by the Director of Forestry and Fire Protection in determining the state's share of the cost. Existing law authorizes the director to accept grants and donations of equipment, materials, or funds from any source for the purpose of supporting or facilitating prescribed burning or other hazardous fuels reduction work, as provided. Existing law authorizes the director to enter into a master agreement with federal land management agencies to conduct joint prescribed burning operations on wildlands and federal lands, as provided.

This bill would delete these provisions.

(10) 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

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

**SECTION 1.** The Legislature finds and declares all of the following:

(a) For millennia, fire has shaped and renewed the ecosystems of California's forest lands. In many parts of the state, historical fire regimes were frequent, with fires occurring as often as every five to 15 years. Some of these fires were naturally ignited by lightning, but fire was also an important tool for Native Americans, who used it to promote the growth of certain plants they relied on for food, medicine, and materials to make baskets, string, and shelter, and which limited the build-up of fuels in forest lands.

(b) For more than a century, states and the federal government have adopted fire suppression policies that have resulted in high fuel accumulations and significant ecological impacts on forest lands. This has been reflected in the increasingly severe fire seasons in recent years with more acres burned at high intensity, increased numbers of large-scale catastrophic fires, significant carbon dioxide and other emissions, problematic and dangerous containment and suppression efforts, increased financial costs, and reductions in resiliency and biodiversity of California's fire-adapted ecosystems. In addition, implementation of fire suppression policies has impacted tribal communities throughout the state, and continues to threaten cultural resources, practices, ceremonies, and cultural identity.

(c) The 2013 Rim Fire demonstrated the dangers and cost of high fuel accumulations on forest lands. The Rim Fire burned more than 250,000 acres over a period of 69 days, caused at least hundreds of millions of dollars in economic and environmental damage, destroyed significant habitats for a number of California's rarest animals, blanketed large swaths of northern California and northern Nevada with thick smoke impacting 7 million people per day with poor air quality, threatened reservoirs, such as Hetch Hetchy, and demanded more than \$125 million in firefighting costs. The fire caused the Governor to declare states of emergency in the Counties of Mariposa, San Francisco, and Tuolumne, and the President of the United States to make a major disaster declaration. According to federal forest ecologists, the Rim Fire's exponential growth was tied to a century's worth of fuel left behind due to historic policies of fire suppression and fire exclusion. The lack of fire over the years had led to overgrown and unhealthy forests. In fact, the fire slowed only after hitting areas that had burned in the past two decades due to prescribed and natural burns.

(d) Many states and the federal government have been taking measures to increase the use of prescribed burning as a vegetation management tool to reduce the naturally occurring buildup of vegetative fuels on forest lands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property. The United States Fish and Wildlife Service, Bureau of Indian Affairs, National Park Service, United States Forest Service, United States Bureau of Land Management, and United States Fire Administration are part of an interagency strategy that has adopted direction and guidance for prescribed burn planning and implementation. These agencies have created a formal prescribed fire plan template as part of this effort. Moreover, several states have laws that promote prescribed burning, and approximately one-half of the states in the country have prescribed fire councils.

(e) Prescribed burning is recognized as an important tool in the Department of Forestry and Fire Protection's 2010 Strategic Fire Plan for California. This plan includes the objective of increasing "public education and awareness in support of ecologically sensitive and economically efficient vegetation management activities, including prescribed fire, forest thinning and other fuels treatment projects."

(f) In addition to reducing the frequency and severity of wildfires, prescribed burning of forest lands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity. It is also an important tool for increasing the fire resilience and heterogeneity of California's diverse landscapes, and for creating, restoring, and maintaining critical habitats, resources, and ecosystem services. Importantly, prescribed burning also supports public health by reducing emissions associated with more catastrophic wildfires.

(g) Prescribed burning is often the most cost-effective, efficient fuel treatment option for forest lands. This is especially true in areas dominated by steep terrain or lack of vehicular access. In some circumstances, costs may be a challenge when preburn thinning is required to avoid fire escape during burns. In California, some of these costs may be offset through existing timber harvest permit exemptions (for example, the Forest Fire Prevention Pilot Project Exemption) that allow landowners to harvest timber to offset the cost of thinning or burning.

(h) While prescribed burning inherently creates wood smoke, this smoke pales in comparison to the air quality issues created by catastrophic wildfires. Therefore, by reducing the threat of catastrophic wildfires, prescribed burning can have net air quality benefits that are significant to protecting public health.

(i) California needs to develop a training curriculum for firefighters to become proficient in prescribed fire and should use certified professionals as fire bosses even while the training curriculum is enhanced.

(j) Forest ecosystems are crucial for absorbing and storing atmospheric carbon; however, catastrophic wildfires impede the forest's ability to sequester carbon. Accelerating the pace and scale of prefire treatments, such as prescribed fire, promises to help modify future wildfire impacts and thus protect our forests' ability to sequester carbon.

(k) Though prescribed burning is widely recognized as an effective, powerful management tool, it is complex in nature and highly regulated. Despite the fact that prescribed fire is often the only option in portions of California, successful implementation of prescribed burning requires careful planning, specific weather conditions, qualified crews, funding, public support, and compliance with various laws and regulations. These variables can make it difficult for managers to utilize prescribed burning.

(l) To limit the threat of catastrophic wildfires and to improve forest health, it is a priority of the state to have an effective prescribed burning program that is developed collaboratively with federal agencies and crafted by prescribed burning experts at state public universities, public agencies, nonprofit entities, private landowners, and other relevant organizations. It is also a priority of the state that a prescribed burning program should assist forest landowners in exercising due diligence to control prescribed burning so as to prevent fire escape. By promoting due diligence, the state will be protecting the public, reducing the risk of landowner liability, and taking steps to encourage more responsible prescribed burning.

(m) Considerable expertise exists in universities, resource conservation districts, fire safe councils, and other entities that should be employed more widely and more strategically to provide nonregulatory information to property owners, homeowners, and local governments. This information could relate to defensible space around homes, restoring prescribed fires on a regularized basis to the landscape, information about smoke monitoring from prescribed fires, hardening residences to improve resistance to wildfires, evacuation routes, land management that improves fire resiliency or carbon sequestration, and activities or programs that improve public safety, among other things.

**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 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 of 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 wildland fires.

(B) Methods and strategies for wildland 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 State Board of Forestry and Fire Protection's recommendations concerning its draft element or draft amendment, the State Board of Forestry and Fire Protection, 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 State Board of Forestry and Fire Protection's recommendations and the board of supervisors' or city council's response. The consultation may be conducted in person, electronically, or telephonically. If the State Board of Forestry and Fire Protection 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 State Board of Forestry and Fire Protection. The consultation shall occur no later than 30 days after the State Board of Forestry and Fire Protection'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. 4.** Section 65352 of the Government Code is amended to read:

**65352.** (a) Before a legislative body takes action to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:

(1) A city or county, within or abutting the area covered by the proposal, and any special district that may be significantly affected by the proposed action, as determined by the planning agency.

(2) An elementary, high school, or unified school district within the area covered by the proposed action.

(3) The local agency formation commission.

(4) An areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.

(5) A federal agency, if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.

(6) (A) The branches of the United States Armed Forces that have provided the Office of Planning and Research with a California mailing address pursuant to subdivision (d) of Section 65944, if the proposed action is within 1,000 feet of a military installation, or lies within special use airspace, or beneath a low-level flight path, as defined in Section 21098 of the Public Resources Code, and if the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations at a scale and in an electronic format that is acceptable to the Office of Planning and Research.

(B) Within 30 days of a determination by the Office of Planning and Research that the information provided by the United States Department of Defense is sufficient and in an acceptable scale and format, the office shall notify cities, counties, and cities and counties of the availability of the information on the Internet. Cities, counties, and cities and counties shall comply with subparagraph (A) within 30 days of receiving this notice from the office.

(7) A public water system, as defined in Section 116275 of the Health and Safety Code, with 3,000 or more service connections, that serves water to customers within the area covered by the proposal. The public water system shall have at least 45 days to comment on the proposed plan, in accordance with subdivision (b), and to provide the planning agency with the information set forth in Section 65352.5.

(8) Any groundwater sustainability agency that has adopted a groundwater sustainability plan pursuant to Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code or local agency that otherwise manages groundwater pursuant to other provisions of law or a court order, judgment, or decree within the planning area of the proposed general plan.

(9) The State Water Resources Control Board, if it has adopted an interim plan pursuant to Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6 of the Water Code that includes territory within the planning area of the proposed general plan.

(10) The Bay Area Air Quality Management District for a proposed action within the boundaries of the district.

(11) A California Native American tribe that is on the contact list maintained by the Native American Heritage Commission and that has traditional lands located within the city's or county's jurisdiction.

(12) The Central Valley Flood Protection Board for a proposed action within the boundaries of the Sacramento and San Joaquin Drainage District, as set forth in Section 8501 of the Water Code.

(13) (A) The State Board of Forestry and Fire Protection and every local agency that provides fire protection to territory in the city or county, if the proposed action includes either of the following:

(i) The adoption or amendment of the safety element of its general plan for any county that contains a state responsibility area.

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

(B) A referral made pursuant to this paragraph shall be made no later than the date on which the county or city sends notice of preparation pursuant to Section 21080.4 of the Public Resources Code, if any, for the project.

(b) An entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it to comment unless a longer period is specified by the planning agency.

(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

**SEC. 5.** Section 66474.02 of the Government Code is amended to read:

**66474.02.** (a) Before approving a tentative map, or a parcel map for which a tentative map was not required, for an area located in a state responsibility area or a very high fire hazard severity zone, as both are defined in Section 51177, a legislative body of a county shall, except as provided in subdivision (b), make the following findings:

(1) A finding supported by substantial evidence in the record that the subdivision is consistent with regulations adopted by the State Board of Forestry and Fire Protection pursuant to Sections 4290 and 4291 of the Public Resources Code or consistent with local ordinances certified by the State Board of Forestry and Fire Protection as meeting or exceeding the state regulations.

(2) A finding supported by substantial evidence in the record that structural fire protection and suppression services will be available for the subdivision through any of the following entities:

(A) A county, city, special district, political subdivision of the state, or another entity organized solely to provide fire protection services that is monitored and funded by a county or other public entity.

(B) The Department of Forestry and Fire Protection by contract entered into pursuant to Section 4133, 4142, or 4144 of the Public Resources Code.

(b) Upon approving a tentative map, or a parcel map for which a tentative map was not required, for an area located in a state responsibility area or a very high fire hazard severity zone, as both are defined in Section 51177, a legislative body of a county shall transmit a copy of the findings required in subdivision (a) and accompanying maps to the State Board of Forestry and Fire Protection.

(c) (1) Subdivision (a) does not apply to the approval of a tentative map, or a parcel map for which a tentative map was not required, that would subdivide land identified in the open space element of the general plan for the managed production of resources, including, but not limited to, forest land, rangeland, agricultural land, and areas of economic importance for the production of food or fiber, if the subdivision is consistent with the open space purpose and if, for the subdivision of land that would result in parcels that are 40 acres or smaller in size, those parcels are subject to a binding and recorded restriction prohibiting the development of a habitable, industrial, or commercial building or structure. All other structures shall comply with defensible space requirements described in Section 51182 of this code or Sections 4290 and 4291 of the Public Resources Code.

(2) Any later approval to remove a binding restriction placed as a condition of a tentative map, or a parcel map for which a tentative map was not required, that would allow the development of a building or structure for a parcel that has previously been exempted from the requirements of subdivision (a) pursuant to paragraph (1) of this subdivision shall be subject to the requirements of subdivision (a).

(d) This section does not supersede regulations established by the State Board of Forestry and Fire Protection or local ordinances that provide equivalent or more stringent minimum requirements than those contained within this section.

**SEC. 6.** Section 41812 of the Health and Safety Code is amended to read:

**41812.** (a) The air pollution control officer of any district, upon authorization of the district board, may authorize, by permit, open outdoor fires for the purpose of disposing of agricultural wastes, or wood waste from trees, vines, bushes, or other wood debris free of nonwood materials, in a mechanized burner so that no air contaminant is discharged into the atmosphere for a period or periods aggregating more than 30 minutes in any eight-hour period that is either of the following:

(1) As dark or darker in shade as that designated as No. 1 on the Ringelmann Chart, as published by the former United States Bureau of Mines.

(2) So opaque that it obscures observer's view to a degree equal to or greater than does smoke described in paragraph (1).

(b) In authorizing the operation of a mechanized burner, the air pollution control officer may make the permit subject to whatever conditions the officer determines are reasonably necessary to ensure conformance with the standards prescribed in this section.

**SEC. 7.** Section 4114.3 is added to the Public Resources Code, to read:

**4114.3.** The department shall actively engage University of California Cooperative Extension, 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. These public education efforts shall include, but are not limited to, educational activities regarding community wildfire protection plans, community fire safe councils, community and private chipping days, defensible space, prescribed fires, hardened residences, compliance with building standards, evacuation routes, activities that promote fire resiliency or achieve carbon-sequestration benefits in the wildland-urban interface and other forest lands, and activities that promote public safety.

**SEC. 8.** The heading of Article 2 (commencing with Section 4475) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code is amended to read:

**Article 2. Department of Forestry Burning Agreements**

**SEC. 9.** Section 4475 of the Public Resources Code is amended to read:

**4475.** (a) The director may enter into an agreement, including a grant agreement, for prescribed burning or other hazardous fuel reduction that is consistent with this chapter and the regulations of the board with any person to conduct prescribed burning operations and joint prescribed burning operations that serve the public interest and are beneficial to the state. To be considered for the public interest and beneficial to the state, each prescribed burn shall be for any of the following purposes, or any combination of those purposes:

- (1) Prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels.
- (2) Watershed management.
- (3) Range improvement.
- (4) Vegetation management.
- (5) Forest improvement.
- (6) Wildlife habitat improvement.
- (7) Air quality maintenance.

(b) For the purposes of this article and consistent with subdivision (c), "person" includes, but is not limited to, private or nongovernmental entities, Native American tribes, or local, state, and federal public agencies. For purposes of this article, "person" shall also include the plural when the department determines an agreement needs to contain two or more persons as defined in this section.

(c) The Legislature finds and declares that historically, the department 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, the department may have a smaller role on individual prescribed burns with a cooperator taking more control as authorized by the act adding this subdivision. This cooperator control may range from creating the burn plan to being the burn boss and conducting the burn.

**SEC. 10.** Section 4475.1 of the Public Resources Code is repealed.

**SEC. 11.** Section 4475.5 of the Public Resources Code is repealed.

**SEC. 12.** Section 4476 of the Public Resources Code is amended to read:

**4476.** An agreement that is entered into pursuant to this article shall do all of the following:

- (a) Vest in the director the final authority to determine the time during which wildland fuel and structural fire hazards may be burned to minimize the risk of escape of a fire set in a prescribed burning operation and to facilitate maintenance of air quality.
- (b) Designate an officer of the department or a burn boss certified pursuant to Section 4477 as the burn boss with final authority to approve and amend the plan and formula applicable to a prescribed burning operation, to determine that the site has been prepared and the crew and equipment are ready to commence the operation, and to supervise the work assignments of departmental employees and all personnel furnished by the person contracting with the department until the prescribed burning is completed and all fire is declared to be out.
- (c) Specify the duties of, and the precautions taken by, the person contracting with the department and any personnel furnished by that person.

(d) Provide that any personnel furnished by a person contracting with the department to assist in any aspect of site preparation or prescribed burning or other hazardous fuel reduction shall be an agent of that person for all purposes of workers' compensation. However, any volunteer recruited or used by the department to suppress a wildland fire originating or spreading from a prescribed burning operation is an employee of the department for all purposes of workers' compensation.

(e) (1) Provide that the department may, in its discretion, purchase a third-party liability policy of insurance that provides coverage against loss resulting from a wildland fire sustained by any person or public agency, including the federal government. The amount of the policy, if purchased, shall be determined by the director. The policy shall name the person contracting with the department and the department as joint policyholders. A certificate of insurance, if purchased, covering each policy shall be attached to or become a part of the agreements. If the department elects not to purchase insurance, with respect to liability arising out of performance of the agreement, the department shall, in the agreement, either (A) indemnify and hold harmless the person contracting with the department, (B) provide a maximum dollar amount of liability for the department, or (C) provide for the proportionate share of liability between the department and the person contracting with the department.

(2) If the department chooses to use option (B) or (C) as allowed pursuant to paragraph (1), the department shall determine the maximum amount of liability or proportionate share of liability for each prescribed burn conducted pursuant to this article using factors including, but not limited to, department involvement with the planning and conducting the prescribed burn, fire hazard severity, assets at risk from a wildfire without the prescribed burn being conducted, wildlife habitat, and watershed values. When using a proportionate share of liability as allowed in (C) pursuant to paragraph (1), the maximum percentage of liability for the person contracting with the department shall be 75 percent. This section does not preclude the department from purchasing an insurance policy to cover the maximum amount of state liability or state proportionate share of liability in the contract.

(f) Provide that the department shall be fully responsible for prescribed burns initiated at the department's request, with the consent of the landowner, for training or other purposes on lands owned by a nonprofit organization or other public agencies.

**SEC. 13.** Section 4477 of the Public Resources Code is repealed.

**SEC. 14.** Section 4477 is added to the Public Resources Code, to read:

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

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

**SEC. 15.** Section 4478 of the Public Resources Code is repealed.

**SEC. 16.** Section 4479 of the Public Resources Code is amended to read:

**4479.** (a) Liability for any costs incurred by the department in suppressing any wildland fire originating or spreading from a prescribed burning operation conducted pursuant to an agreement entered into pursuant to this article shall be governed by subdivision (c) of Section 13009 of the Health and Safety Code.

(b) This section shall not apply when the department is applying for federal assistance.

**SEC. 17.** Section 4480 of the Public Resources Code is amended to read:

**4480.** In any area of the state where there are substantially more requests for prescribed burning operations or other hazardous fuel reduction pursuant to this article than can be conducted directly by the department in a single fiscal year, the director may enter into an agreement with private consultants or contractors or with other public agencies for furnishing all or a part of the state's share of the responsibility for planning the operation, preparing the site, and conducting the prescribed burning or other hazardous fuel reduction. The private consultant or contractor or other public agency, and the work assignments of its employees, shall be supervised by the burn boss when conducting prescribed burning operations, or designated officer as determined by the department when conducting other hazardous fuel reduction, as provided in subdivision (c) of Section 4476.

**SEC. 18.** Section 4483 is added to the Public Resources Code, to read:

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

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

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

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

**SEC. 19.** Section 4494 of the Public Resources Code is amended to read:

**4494.** (a) Upon the conclusion of the examination provided for in Section 4493, the department may issue to the applicant a burning permit that shall specify the site preparation requirements and required precautions to be exercised prior to and during the burning. The issuance of a permit by the department does not relieve the permit holder from the duty of exercising due diligence to avoid damage to property of others in conducting the burning of vegetation as authorized by the permit.

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

**SEC. 20.** Article 4 (commencing with Section 4495) is added to Chapter 7 of Part 2 of Division 4 of the Public Resources Code, to read:

**Article 4. Air Quality and Prescribed Burns Program**

**4495.** In coordination with local air pollution control and air quality management districts, the department and the State Air Resources Board shall develop and fund a program, upon appropriation by the Legislature, to enhance air quality and smoke monitoring, and to provide a public awareness campaign regarding prescribed burns. The program may include, but not be limited to, purchasing new, rapidly deployable air quality monitors. The program shall include adequate funding, upon appropriation by the Legislature, for local air pollution control and air quality management district participation and implementation costs.

**SEC. 21.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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.