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SB-310 Prescribed fire: civil liability: cultural burns. (2023-2024)

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Senate Bill No. 310

CHAPTER 666

An act to amend Section 3333.8 of the Civil Code, and to amend Sections 4002.4 and 4002.6 of, and to add and repeal Article 4.5 (commencing with Section 4505) of Chapter 7 of Part 2 of Division 4 of, the Public Resources Code, relating to fire prevention.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 310, Dodd. Prescribed fire: civil liability: cultural burns.

Existing law provides that no person shall be liable for any fire suppression or other costs otherwise recoverable for a prescribed burn if specified conditions are met, including, among others, that a burn boss, as certified through a certification program developed by the State Fire Marshal, has reviewed and approved a written prescription for the burn, the burn complies with that written prescription, and either the landowner has provided written permission or the governing body of a Native American tribe has given approval, as provided. Existing law exempts cultural burns, as defined, conducted by a cultural fire practitioner, as defined, from those requirements that a person certified as a burn boss review and approve a written prescription and that the burn be conducted in compliance with the written prescription.

This bill would revise and recast those provisions by, among other things, expanding the definition of burn boss to also include a person qualified for specified positions through the National Wildfire Coordinating Group, as provided, and limiting the tribal approval condition to the approval of the governing body of a California Native American tribe. The bill would also revise and recast the definitions of cultural burn and cultural fire practitioner by, among other things, specifying that the definitions only apply to California Native American tribes.

Existing law imposes various permitting requirements and prohibitions related to prescribed burns, as provided.

This bill would authorize the Secretary of the Natural Resources Agency, in consultation with its departments, commissions, boards, conservancies, and other entities, to enter into written agreements with federally recognized California Native American tribes in support of tribal sovereignty with respect to cultural burning in their ancestral territories. The bill would provide that, in deference to tribal sovereignty, the secretary may agree in a written agreement regarding cultural burning that compliance with specified state permitting or regulatory requirements is not required. The bill would authorize local air districts to enter into written agreements with federally recognized California Native American tribes in support of tribal sovereignty with respect to cultural burning in their ancestral territories, as specified. The bill would provide that it does not grant immunity from fire suppression or other specified recoverable costs to any person whose conduct constitutes gross negligence. The bill would repeal these provisions on January 1, 2030.

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

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

SECTION 1. Section 3333.8 of the Civil Code is amended to read:

3333.8. (a) The Legislature finds and declares that in order to meet fuel management goals, the state must rely on private entities to engage in prescribed burning for public benefit.

(b) Notwithstanding Sections 13009 and 13009.1 of the Health and Safety Code, no person shall be liable for any fire suppression or other costs otherwise recoverable pursuant to Section 13009 or 13009.1 of the Health and Safety Code resulting from a prescribed fire or cultural burn if all of the following conditions are met:

(1) The purpose of the burn is for wildland fire hazard reduction, ecological maintenance and restoration, cultural burning, silviculture, or agriculture.

(2) A burn boss, as defined in paragraph (1) of subdivision (a) of Section 4500 of the Public Resources Code, has reviewed and approved a written prescription for the burn that includes adequate risk mitigation measures.

(3) The burn is conducted in compliance with the written prescription.

(4) The burn is authorized pursuant to Chapter 6 (commencing with Section 4411) or Chapter 7 (commencing with Section 4461) of Part 2 of Division 4 of the Public Resources Code.

(5) The burner has a landowner's written permission or the approval of the governing body of a California Native American tribe to burn.

(6) The burn is conducted in compliance with any air quality permit required pursuant to Article 3 (commencing with Section 41850) of Chapter 3 of Part 4 of Division 26 of the Health and Safety Code.

(c) Cultural burns conducted by a cultural fire practitioner are exempt from paragraphs (2) and (3) of subdivision (b).

(d) This section shall not be construed to grant immunity from fire suppression or other costs otherwise recoverable pursuant to Section 13009 or 13009.1 of the Health and Safety Code to any person whose conduct constitutes gross negligence.

(e) Nothing in this section affects the ability of a private or public entity plaintiff to bring a civil action against any defendant.

(f) "Cultural burn" or "cultural burning" means the intentional application of fire to land by a California Native American tribe, a tribal organization, or a cultural fire practitioner to achieve cultural goals or objectives, including for sustenance, ceremonial activities, biodiversity, or other benefits.

(g) "Cultural fire practitioner" means a person recognized by a California Native American tribe or tribal organization with substantial experience in burning to meet cultural goals or objectives, including for sustenance, ceremonial activities, biodiversity, or other benefits.

SEC. 2. Section 4002.4 of the Public Resources Code is amended to read:

4002.4. "Cultural burn" or "cultural burning" means the intentional application of fire to land by a California Native American tribe, a tribal organization, or a cultural fire practitioner to achieve cultural goals or objectives, including for sustenance, ceremonial activities, biodiversity, or other benefits.

SEC. 3. Section 4002.6 of the Public Resources Code is amended to read:

4002.6. "Cultural fire practitioner" means a person recognized by a California Native American tribe or tribal organization with substantial experience in burning to meet cultural goals or objectives, including for sustenance, ceremonial activities, biodiversity, or other benefits.

SEC. 4. Article 4.5 (commencing with Section 4505) is added to Chapter 7 of Part 2 of Division 4 of the Public Resources Code, to read:

Article 4.5. Tribal Sovereignty with Respect to Cultural Burning

4505. (a) (1) The Legislature acknowledges that federally recognized California Native American tribes have inherent sovereignty and authority to regulate their members and cultural practices, including, but not limited to, cultural fire practitioners and cultural burning.

(2) The Legislature finds and declares that in order to meet fuel management and wildfire resilience goals of the state and to address the historical wrongs of criminalizing cultural use of fire, the state must work collaboratively with federally recognized California Native American tribes that engage in cultural burning within their ancestral territories.

(b) (1) The Secretary of the Natural Resources Agency, in consultation with its departments, commissions, boards, conservancies, and other entities, may enter into written agreements with federally recognized California Native American tribes in support of tribal sovereignty with respect to cultural burning in their ancestral territories. In deference to tribal sovereignty, the secretary may agree in a written agreement regarding cultural burning that compliance with either of the following is not required:

(A) The state permitting or regulatory requirements in Article 3 (commencing with Section 4491).

(B) The burn plan requirements in subdivision (e) of Section 4500.

(2) The Secretary of the Natural Resources Agency shall consult with federally recognized California Native American tribes on the implementation of paragraph (1).

(3) (A) Local air districts may enter into written agreements with federally recognized California Native American tribes in support of tribal sovereignty with respect to cultural burning in their ancestral territories.

(B) A local air district may agree in a written agreement regarding cultural burning that compliance with its permitting, regulatory, or administrative requirements is not required.

(C) In the event of a disagreement between a local air district and a tribe in developing or implementing an agreement, the Secretary for Environmental Protection shall assist in resolving the disagreement.

(4) The Secretary of the Natural Resources Agency or the local air district shall provide a copy of a final written agreement developed under this subdivision to the Deputy Secretary for Tribal Affairs at the Natural Resources Agency. In addition, a local air district shall provide a copy of a final written agreement developed under this subdivision to the State Air Resources Board.

(c) Nothing in this section provides authorization to enter or burn property without the permission of the landowner.

(d) Any state or local agency operating within a federally recognized California Native American tribe's ancestral territory, including a local air district and a regional water quality control board, is highly encouraged to collaboratively work together with federally recognized California Native American tribes to create conditions that support cultural burning.

(e) A cultural burn conducted with an agreement developed under this section shall meet the permit requirements of Section 3333.8 of the Civil Code.

(f) This section does not grant immunity from fire suppression or other costs otherwise recoverable pursuant to Section 13009 or 13009.1 of the Health and Safety Code to any person whose conduct constitutes gross negligence.

(g) An agreement reached under this section shall include a clear description of the area covered by the agreement and an attestation that the area is within the boundaries of the tribe's ancestral territory.

(h) This article shall remain in effect only until January 1, 2030, and as of that date is repealed.