

Date of Hearing: July 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 182 (Jackson) – As Amended July 3, 2019

SENATE VOTE: 27-9

SUBJECT: Local government: planning and zoning: wildfires.

SUMMARY: Imposes certain fire hazard planning responsibilities on local governments and requires counties and cities to make specified findings on fire standards before permitting development in very high fire risk areas (VHFRA's). Specifically, **this bill:**

- 1) Defines VHFRA's to be lands located within a Very High Fire Hazard Severity Zone (VHFHSZ) in the State Responsibility Area (SRA) or the Local Responsibility Area.
- 2) Defines "wildfire risk reduction standard" to mean the following:
 - a) For a development of any size:
 - i) Existing regulations governing defensible space, vegetation management, fuel modification and building standards promulgated by the State Fire Marshal, the Building Standards Commission, and the State Board of Forestry and Fire Protection (Board);
 - ii) A wildland fire hazard assessment and mitigation plan, as described in certain published standards;
 - iii) An enforcement program established, funded, and implemented to verify ongoing compliance with i), above, and with local fire plan/wildfire hazard mitigation plans, with specified requirements; and,
 - iv) Certain published standards for fire suppression, response times and levels, water flows for firefighting, road design for equipment ingress/egress, and for identifying ignition hazards;
 - b) For developments of nine or more residential dwelling units:
 - i) All the standards applicable to smaller developments;
 - ii) A site-specific fire protection plan designed to protect against fire encroachment, including a layout that reduces wildfire risk to the greatest extent possible, identification of potential on-site shelter-in-place locations, and mechanisms to maintain common areas and open spaces to control vegetative fuels, as specified;
 - iii) A condition on the development that all parcels within the development containing structures are subject to an ongoing, permanent fee, tax, or assessment, an assessment through a homeowners' association, or a similar funding mechanism sufficient to ensure that defensible space maintenance is funded and occurs on a schedule so as to comply with this bill's requirements;

- iv) A finding by a city or county that the development can be reasonably accessed and served in the event of wildfire; and,
- c) For developments of 100 or more residential units:
 - i) All the standards applicable to smaller developments;
 - ii) All applicable recommendations of the Office of Planning and Research's (OPR's) "Fire Hazard Planning – General Plan Technical Advice Series" or other equivalent standards as adopted State Fire Marshal, or conditions imposed by the city or county that provide the same practical effect; and,
 - iii) Additional wildfire risk reduction standards developed by the State Fire Marshal as provided in the bill, or conditions imposed by the city or county that provide the same practical effect.
- 3) Requires, on or before January 1, 2023, the State Fire Marshal, in consultation with OPR, to do all of the following, subject to the Administrative Procedures Act:
 - a) Review the wildfire risk reduction standards created by this bill and adopt wildfire risk reduction standards that meet all of the following requirements:
 - i) Account for differences in the size of proposed developments;
 - ii) Include successor provisions to the standards identified in this bill that meet or exceed those standards;
 - iii) Include any additional requirements for fire hardening or similar building standards applicable to structures located in areas with restricted access or service in the event of wildfire;
 - iv) Establish specified types of community-scale risk reduction measures, as specified;
 - v) Are designed to reduce the risk of catastrophic loss due to wildfire based upon the best available science and objective scientific methodologies; and,
 - vi) Are directly applicable to, and account for, California's climate, weather, topography, and development patterns;
 - b) Adopt standards for third-party inspection and certification of defensible space; and,
 - c) Update the maps of the VHFHSZ, including identifying areas where new residential development poses exceptional risk to future occupants of the development and to fire personnel and other public safety personnel that must access the development during a wildfire.
- 4) Requires the wildfire risk reduction standards and associated rules and regulations required by this bill to be reasonable, and to be feasible and achievable for the majority of developments, as specified.

- 5) Requires OPR, on or before January 1, 2023, to develop and post on its Web site a clearinghouse of local ordinances, policies, and best practices relating to land use planning in VHFRA, wildfire risk reduction, and wildfire preparedness, including any comprehensive retrofit strategies submitted to OPR pursuant to this bill. OPR must also regularly update the clearinghouse.
- 6) Imposes new planning requirements on local governments, as follows:
 - a) Requires each city or county, upon the next revision of the housing element or a local hazard mitigation plan (LHMP) on or after January 1, 2020, whichever occurs first, to review and update its safety element to include a comprehensive retrofit strategy to reduce the risk of property loss and damage during wildfires that includes:
 - i) A list of the types of retrofits needed in an area based on fire risk;
 - ii) A process for identifying and inventorying structures in need of retrofit for fire hardening. The strategy shall prioritize the identification and inventorying of residential structures in VHFRA;
 - iii) Goals and milestones for completing needed retrofit work; and,
 - iv) Potential funding sources and financing strategies to pay for needed retrofits on public and private property;
 - b) Requires the planning agency to submit the adopted comprehensive retrofit strategy to OPR for inclusion in the clearinghouse established by this bill;
 - c) Requires a city or county with VHFRA within its jurisdiction to amend the land use element of its general plan upon the next revision of the housing element on or after January 1, 2021. This amendment of the land use element must include:
 - i) The goals contained in the most recent Strategic Fire Plan for California prepared by the California Department of Forestry and Fire Protection (CAL FIRE);
 - ii) The locations of all VHFRA within the city or county;
 - iii) The data and analysis described in OPR's most recent publication of "Fire Hazard Planning – General Plan Technical Advice Series";
 - iv) The goals of any LHMP, community wildfire protection plan, and climate adaptation plan that has been adopted by the governing body of the city or county;
 - v) Objectives and policies, based on the goals, data, and analysis identified above, for the protection of lives and property from unreasonable risk of wildfire, as specified; and,
 - vi) Feasible implementation measures designed to carry out the goals, objectives, and policies established above;
 - d) Requires, upon each subsequent revision of the housing element, but not less than once every eight years, each city or county to review all of the following:

- i) The implementation of the wildfire risk reduction standards established by this bill within the jurisdiction, including making written findings, based upon substantial evidence, regarding whether the city or county has implemented the wildfire risk reduction standards during the preceding planning period, or made adequate progress toward implementing the wildfire risk reduction standards established by this bill; and,
 - ii) The designation of lands within the jurisdiction as VHFRA pursuant to this bill, including making written findings, based upon substantial evidence, supporting the determinations made in accordance with this bill;
- e) Requires the draft findings required by c), above, to be submitted to the Board and to every local agency that provides fire protection to territory in the city or county at least 90 days prior to adoption by the governing body. The Board shall, and a local agency may, review the draft findings and recommend changes to the city or county within 60 days of its receipt regarding both of the following:
- i) Whether the city or county has implemented the wildfire risk reduction standards during the preceding planning period, or made adequate progress toward implementing the wildfire risk reduction standards as provided by this bill; and,
 - ii) Whether the designation of lands within the jurisdiction as VHFRA is appropriate;
- f) Requires, before adopting draft findings required by c), above, the governing body of a city or county to consider recommendations made by the Board and any local agency that provides fire protection to territory in the city or county. If the governing body determines not to accept all or some of the recommendations, it must communicate to the Board or the local agency its reasons for not accepting the recommendations. If the governing body proposes not to adopt the Board's recommendations, the Board may request a consultation with the governing body to discuss the Board's recommendations and the governing body's response. If the Board requests a consultation, the governing body shall not approve the draft element or draft amendment until after consulting with the Board;
- g) Requires the Board to notify the city or county, and allows the Board to notify the Office of the Attorney General, that the city or county is in violation of state law if the Board finds that the written findings required by c), above, do not substantially comply with this bill's requirements or that the city or county has otherwise failed to comply with this bill's requirements to amend land use elements and zoning ordinances; and,
- h) Allows any interested person to bring a civil action to compel compliance with the requirements of c) through f), above.
- 7) Changes the regional housing needs allocation (RHNA) process undertaken by Councils of Government (COGs) or the Department of Housing and Community Development (HCD) (where no COG exists) by adding to the list of objectives that the RHNA plan must further. This bill requires these objectives to also include reducing development pressure within VHFRA's by allocating a lower proportion of housing to a jurisdiction if it is likely that the jurisdiction would otherwise need to identify lands within a VHFRA as adequate sites pursuant to existing law in order to meet its RHNA. In determining whether it is likely the

jurisdiction would otherwise need to identify lands within a VHFRA as adequate sites, HCD or the appropriate COG shall consider factors that include, but are not limited to, the following:

- a) The percentage of land suitable for urban development, as specified, within the jurisdiction that is located within a VHFRA;
 - b) The percentage of the jurisdiction's housing capacity located on sites identified pursuant to existing law governing the identification of housing sites, as specified, in the prior housing element for the jurisdiction that is within a VHFRA;
 - c) Whether it is likely that compliance with the wildfire risk reduction standards and the regulations of the State Fire Marshal established by this bill would effectively reduce densities on lands within the jurisdiction that are otherwise suitable for development; and,
 - d) Whether suitable alternative sites exist outside the jurisdiction, but within the region, to accommodate the remaining regional housing need.
- 8) Requires each city, including a charter city, or county that contains a VHFRA, within 12 months after revising the land use element of its general plan as required by this bill, to develop a VHFRA overlay zone or otherwise amend its zoning ordinance so that it is consistent with the amended general plan.
 - 9) Prohibits a city or county with a VHFRA from entering into a development agreement or approving any new residential ministerial or discretionary permits, discretionary entitlements, tentative subdivision or parcel maps in VHFRA's unless the city or county finds, based on substantial evidence in the record, that the project and all structures within the project are protected from wildfire risk in accordance with the wildfire risk reduction standards established by this bill, or standards adopted by a local jurisdiction that exceed those standards, as specified. Allows, through December 31, 2025, for a development to be in compliance with the wildfire risk reduction standards if the city or county finds that the responsible state and local agencies have made adequate progress towards achieving those standards.
 - 10) Allocates an unspecified amount of the funds appropriated to CAL FIRE by SB 901 (Dodd), Chapter 626, Statutes of 2018, to cities and counties that include designated VHFRA's for projects that control the spread of wildfire and improve life safety, as specified.
 - 11) Clarifies that local governments may impose more stringent standards than those set out in the bill, and clarifies that a local government may issue a final subdivision map without making the findings in the bill if the tentative map or parcel map met the required standards when it was deemed complete.
 - 12) Makes clarifying changes to state laws governing conservation easements of forestlands, and makes other technical and conforming changes.

EXISTING LAW:

- 1) Requires every county and city to adopt a general plan with seven mandatory elements, including a safety element.

- 2) Provides that the safety element's purpose is to protect the community from unreasonable risks from geologic hazards, flooding, and wildland and urban fires.
- 3) Requires the Director of CAL FIRE to designate areas of moderate, high, and VHFHSZs.
- 4) Requires landowners in the SRA and VHFHSZs to follow specified fire prevention practices and meet standards developed by the Board.

FISCAL EFFECT: Unknown. This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Fire Hazard Severity Zones.** CAL FIRE provides wildland fire protection on non-federal lands outside cities. To meet this duty, the Board designates the SRA every five years. Within SRA lands, the Director of CAL FIRE designates moderate, high, and VHFHSZs. After the 1991 Oakland-Berkeley firestorm, the Legislature required CAL FIRE to designate VHFHSZs in the Local Responsibility Area. These maps must be updated every five years (current maps date to 2007).

Landowners in the SRA and VHFHSZs must follow specified fire prevention practices and meet standards developed by the Board. These practices and standards include maintaining defensible space of 100 feet around structures, performing certain activities to reduce the amount of flammable material near and on structures, and meeting specific building standards developed by CAL FIRE and HCD that help a structure withstand ignition and reduce fire risk. AB 2911 (Friedman), Chapter 641, Statutes of 2018, required the State Fire Marshal to update these building standards to provide for comprehensive site and structure fire risk reduction by January 1, 2020.

- 2) **Planning and Permitting.** Every county and city must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. Most major land use decisions – subdivisions, zoning, public works projects, use permits, and so forth – must be consistent with the general plan. Development decisions must carry out and not obstruct a general plan's policies.

The Subdivision Map Act regulates how local officials approve the conversion of larger parcels into marketable lots. Major subdivisions – more than four lots – require a discretionary tentative map and a ministerial final map. Minor subdivisions – four or fewer lots, called “lot splits” – usually require a single, discretionary parcel map. In some communities, minor subdivisions require a tentative parcel map and a final parcel map, similar to major subdivisions.

- 3) **Fire-Specific Planning Requirements.** The Planning and Zoning Law provides that the safety element's purpose is to protect the community from unreasonable risks from geologic hazards, flooding, and wildland and urban fires. In 2012, the Legislature expanded the safety elements' contents for fire risks on land classified as SRAs and VHFHSZs. SB 1241 (Kehoe), Chapter 311, Statutes of 2012, required safety elements to contain specified information about fire hazards and, based on that information, a set of comprehensive goals,

policies, and objectives to protect against unreasonable fire risks. SB 1241 also required safety elements to contain a set of feasible implementation measures to carry out these goals.

Cities and counties must also submit a draft of any safety element amendments to the Board and to local fire protection agencies at least 90 days before adopting it. The Board must review and recommend changes to the draft safety element within 60 days of receiving it. If the Board provides recommendations within this timeframe, local governments must consider its recommendations. If they do not adopt the Board's recommendations, local governments have to explain why they did not to the Board. Local agencies must meet with the Board on its recommendations if the Board requests, but are not required to adopt the Board's recommendations. The safety element must also include similar information about risks due to climate change, and goals, policies, objectives, and implementation measures to protect against those risks.

Many local governments have also adopted a LHMP to identify all of the natural hazards that threaten a community, and strategies to mitigate those hazards. The Federal Emergency Management Agency reviews and approves every LHMP, and the LHMP expires five years after it's approved, unless amended and recertified. Local governments with a compliant LHMP are eligible for proactive hazard mitigation grants from the federal government, as well as additional post-disaster assistance.

Before a city council or county board of supervisors can approve a tentative map or final map in the SRA or VHFHSZ, it must make findings supported by substantial evidence that: the subdivision is consistent with the Board's applicable regulations or local ordinances certified by the Board as meeting or exceeding the state regulations; and a local agency or CAL FIRE, under contract, will provide structural fire protection and suppression services to the subdivision. Upon making these findings, the city or county must send them, along with the subdivision maps, to the Board.

To assist local governments with fire hazard planning, OPR issues a technical advisory series that includes best practices in land use and permitting for fire hazard planning.

- 4) **Author's Statement.** According to the author, "California's persistent threat of wildfire poses a significant risk to homes and businesses throughout the state. While much is being done to better manage our forests, more must be done to 'harden' existing homes to make them more resistant to wildfire, as well as to improve local land use decisions to minimize this threat, particularly to new communities built in wildland areas. At a March 13th hearing focused on development in fire prone regions, the Senate Committees on Governance and Finance, and Natural Resources and Water, recommended legislation to 'bolster local planning efforts to design more resilient communities; condition development approvals to ensure that structures and communities are adequately protected from fire; or encourage development out of harm's way.' This bill aims to do precisely that."
- 5) **Bill Summary.** This bill creates new wildfire risk reduction standards for new housing that must be implemented by local jurisdictions. This includes requiring the State Fire Marshal, in consultation with OPR, to develop comprehensive wildfire risk reduction standards and to update VHFHSZ maps. It also adds a number of planning requirements for local governments, including:

- a) Developing a comprehensive retrofit strategy to protect existing housing from fires, including funding sources;
- b) Updating each jurisdiction's land use element in their General Plans to identify all VHFRAAs, as well as specify all goals, objectives, and policies for the protection of lives and property from unreasonable risk of wildfire;
- c) Prohibiting cities and counties from approving any new residential ministerial or discretionary permits, discretionary entitlements, tentative subdivision or parcel maps, or development agreement in VHFRAAs unless the city or county finds that the project and all structures within the project are protected from wildfire risk in accordance with specified "wildfire risk reduction standards." These standards include requiring, for sites of nine units or more, site-specific fire protection plans and funding mechanisms to ensure that defensible space maintenance occurs in a timely fashion. Larger housing developments (100 units or more) must go further and implement the additional wildfire risk reduction standards developed by the State Fire Marshal; and,
- d) Updating subsequent land use elements to make findings related to each jurisdiction's implementation of the wildfire risk reduction standards and its designation of VHFRAAs. This process enables the Board to determine if a city or county is out of compliance, and notify the Attorney General if this is the case.

This bill allocates an unspecified amount of the funds appropriated to CAL FIRE by SB 901 (Dodd), Chapter 626, Statutes of 2018, to cities and counties that include designated VHFRAAs for projects that control the spread of wildfire and improve life safety. This bill also changes the RHNA process for cities and counties regarding wildfire risk, by requiring COGs or HCD to consider additional objectives when determining a region's RHNA.

This bill is sponsored by the author.

- 6) **Related Legislation and Chaptering Issues.** This bill amends code sections that are also amended by AB 65 (Petrie-Norris), AB 139 (Quirk-Silva), AB 747 (Levine), AB 1486 (Ting), AB 1730 (Gonzalez), SB 99 (Nielsen), SB 295 (McGuire), and SB 672 (Hill). The authors of these measures will need to address chaptering issues should the bills continue to progress through the legislative process.
- 7) **Double-Referral.** This bill was heard in the Housing and Community Development Committee, where it passed on a 7-0 vote on July 3, 2019.
- 8) **Arguments in Support.** The Rural County Representatives of California, in support, write, "Recent wildfires in California have been increasingly catastrophic, with the most destructive and deadly wildfires outpacing the previous year's statistics. Last year, the Mendocino Complex fire burned 460,000 acres and destroyed 1,600 structures, followed by the Camp Fire in Butte County that destroyed over 18,000 structures and killed 85 individuals. The increased loss of life and structural damage has intensified the focus on communities existing in VHFRAAs and how communities are planned and development in these regions of that state.

“SB 182 is a comprehensive measure that recognizes the continued need to build in the VHFRA, and therefore, the obligation of the state and local governments to ensure new communities are planned and built to best mitigate for uncontrollable fire. Specifically, SB 182 prohibits local governments from approving permits for housing developments unless the project is in compliance with the wildfire risk reduction standards outlined in the bill. This bill also requires increased wildfire risk mitigation planning by local governments through updated local safety and land use elements of that jurisdiction’s general plan. Additionally, in order to reduce development pressures in the VHFRA through the RHNA process, SB 182 requires a lower proportion of state housing allocation to jurisdictions that meet specified conditions.

“The wildfire risk reduction standards in SB 182 are expansive, however, RCRC believes you have balanced the additional planning burdens on local governments with a sensible implementation timeline. And though we are supportive of your measure, RCRC would like to see funding included in this bill to offset the increased costs of the new planning mandates. We appreciate the collaborative process of crafting SB 182 that has involved many stakeholders, including RCRC. SB 182 is a bold, yet reasonable solution to allowing much needed housing production to continue in the most fire prone areas of the state in a manner that aids future developments withstand devastating wildfires.”

- 9) **Arguments in Opposition.** The California Building Industry Association (CBIA), in opposition, writes, “The remaining issues of concern to CBIA relate to the proposed reference, in statute, of numerous national wildland fire safety standards which would create conflict with existing, similar regulations already in effect throughout California. For a 3-year period (2020-2023), this would set the stage for unintended confusion in the field. As an alternative, CBIA is suggesting amendments to the bill which require the Office of the State Fire Marshal and the Board of Forestry to adopt updates to these existing regulations on a very regular basis for the next twelve years. Also, our proposed amendments will require our agencies to consider national wildland fire safety standards, including those currently referenced in the bill, as they go about adopting updates to the Title 14 SRA Development Standards and the Title 24 WUI Building Standards.”

“As the state grapples with the increased risk of wildfires, CBIA has been at the forefront of these discussions for years – working collaboratively to advance cutting edge policy at the state and local level. CBIA has long supported hardening homes and increasing the stringency of fire-resistant building codes. We supported and participated in all the updates to these building codes. We supported the establishment of defensible space laws since they were established in the 1990s and have supported multiple efforts to enforce defensible space rules. We have conducted classes on the laws applicable to the Wildland-Urban Interface (WUI) for building officials, and we are sponsoring SB 190 (Dodd) – a measure that increases education and implementation of the WUI building standards and defensible space statutes. And, with the inclusion of our amendments into SB 182, CBIA will look forward to continuing its participation in the updating of these important state regulations. We are hopeful our code-related amendments will be accepted, which will enable us to remove our current position of opposition to this bill.”

REGISTERED SUPPORT / OPPOSITION:

Support

Bear Yuba Land Trust (if amended)
California State Association of Counties
Center for Biological Diversity
Eastern Sierra Land Trust (if amended)
Pacific Forest Trust (if amended)
Placer Land Trust (if amended)
Rural County Representatives of California
Sierra Business Council (if amended)
Sierra County Land Trust (if amended)
Sierra Foothill Conservancy (if amended)
Sierra Nevada Alliance (if amended)
Southern California Edison
Truckee Donner Land Trust (if amended)

Opposition

California Building Industry Association

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