

Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 182 (Jackson) – As Amended May 24, 2019

**SENATE VOTE:** 27-9

**SUBJECT:** Local government: planning and zoning: wildfires

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

- 1) Defines “very high fire risk areas” (VHFRA) to be the Very High Fire Hazard Severity Zone (VHFHSZ) in areas where the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state [known as the State Responsibility Area (SRA)] or the local jurisdiction [known as the Local Responsibility Area].
- 2) Defines “wildfire risk reduction standard” to mean the following:
  - a) For a development of any size, these standards include:
    - i. Existing regulations governing defensible space, vegetation management, fuel modification and building standards promulgated by the State Fire Marshal, Building Standards Commission, and the 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 within jurisdiction concerning defensible space, vegetation management, and 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, these standards include:
    - 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;
    - 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; and
- iv. A finding by a city or county that the development can be reasonably accessed and served in the event of wildfire.
- c) For developments of 100 or more residential units, these standards include:
- i. All the standards applicable to smaller developments;
  - ii. All applicable aspects of the Office of Planning and Research's (OPR's) "Fire Hazard Planning" 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.
- 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 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;
    - 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.
  - a) Adopt standards for third-party inspection and certification of defensible space; and
  - b) Update the maps of the VHFHSZ and identify 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 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. OPR must also regularly update the clearinghouse.

- 5) Imposes new planning requirements on local governments, as follows:
- a) Requires each city or county, upon the next revision of the housing element or local hazard mitigation plan on or after January 1, 2020, whichever occurs first, to review and update its safety element to include a comprehensive retrofit strategy 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 or fire hardening;
    - 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 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 locations of all VHFRA within the city or county;
    - ii. The goals of any local hazard mitigation plan, community wildfire protection plan, and climate adaptation plan that has been adopted by the governing body of the city or county; and
    - iii. Objectives and policies, based on the goals, data, and analysis for the protection of lives and property from unreasonable risk of wildfire.
  - c. Requires, upon each subsequent revision of the housing element, a process for the city or county related to the implementation of the wildfire risk reduction standards. This includes:
    - i. Requirements to update the designation of VHFRA within the jurisdiction; and
    - ii. Requirements to make findings related to its implementation of the wildfire risk reduction standards and its designation of VHFRA. The process provides for review, comment, and consultation on the draft findings by the State Board of Forestry and Fire Protection (Board) and local fire agencies on whether the city or county has implemented the standards and/or made adequate progress. If the Board determines that the city or county is out of compliance, the Board must notify the city or county and may notify the Office of the Attorney General that the city or county is in violation of state law.
  - d) Requires cities and counties, within 12 months after revision of their general plan as described above, to develop VHFRA overlay zones in their zoning ordinances to ensure consistency with the jurisdiction's amended general plan.
  - e) Prohibits cities and counties from approving any new residential ministerial or discretionary permits, discretionary entitlements, tentative subdivision or parcel maps, or development agreement in VHFRA 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” contained in this bill, or standards adopted by a local jurisdiction that exceed those standards. 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.

- 6) Allocates an unspecified amount of the funds appropriated to the California Department of Forestry and Fire Protection (CAL FIRE) by SB 901 (Dodd, Chapter 626, Statutes of 2018) to cities and counties that include designated VHFRA for projects that control the spread of wildfire and improve life safety, as specified.
- 7) Changes the regional housing needs allocation (RHNA) process undertaken by Council of Governments (COGs), or the Department of Housing and Community Development (HCD) where no COG exists, as follows:
  - a) Requires the amount of VHFRA in each city and county to be a factor used in developing the methodology that allocates regional housing needs;
  - b) Enables a lower proportion of housing to be allocated to a city or county if appropriate due to the risk to life and safety from catastrophic wildfire; and
  - c) Requires a lower proportion of housing to be allocated to city or county if:
    - i. The jurisdiction is composed of a greater proportion of VHFRA than the regional average;
    - ii. It is likely the jurisdiction would otherwise need to identify lands within the VHFRA as adequate sites in order to meet its housing need allocation;
    - iii. Compliance with the wildfire risk reduction standards set forth in Section 65012 and the regulations of the State Fire Marshal adopted pursuant to Section 65013 would otherwise impair development of the amount and type of housing set forth in the jurisdiction’s housing need allocation; and
    - iv. Suitable alternative sites exist outside the jurisdiction, but within the council of governments’ jurisdiction, to accommodate the remaining regional housing need.
- 8) 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.
- 9) Makes clarifying changes to state laws governing conservation easements of forestlands, and makes other technical and conforming changes.
- 10) Requires that the standards, regulations, and rules developed as part of this bill to be reasonable, and to be feasible and achievable for the majority of developments in that size category.

**EXISTING LAW:** Requires every county and city to adopt a general plan with seven mandatory elements, including the safety element.

- 1) Provides that the safety element's purpose is to protect the community from unreasonable risks from geologic hazards, flooding, and wildland and urban fires.
- 2) Requires the Director of CAL FIRE to designate areas of moderate, high, and VHFHSZs.
- 3) Requires landowners in the State Responsibility Area (SRA) and VHFHSZs to follow specified fire prevention practices and meet standards developed by the Board (AB 337, Bates, 1992). 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.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Purpose of the Bill:* 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 13<sup>th</sup> 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.”

*Background:* The 2018 wildfire season eclipsed 2017 as the most destructive and deadliest year for wildfires in California. The Mendocino Complex Fire alone burned 459,123 acres to become the largest fire in California history, and even more devastating, the Camp Fire in November 2018 became California’s most destructive and deadliest wildfire, which caused the deaths of 86 people and destroyed nearly 19,000 structures.

The risk from wildfires is widespread and growing. More than three million Californians (about seven percent) currently live in high-risk wildfire areas, and a 2018 study estimates a 77 percent increase in mean area burned by the end of the century, compared to 1961-1990. Thus, even if the state immediately stops building homes in existing wildfire areas, millions of Californians will remain at risk in existing and expanding wildfire areas.

*Preparing for Wildfires:* Landowners in the very high fire risk areas must follow specified fire prevention practices and standards. These 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 the Department of Housing and Community Development that help a structure withstand ignition and reduce fire risk.

Reflecting evolving and worsening conditions, the Legislature passed a series of bills in 2018 to prevent and protect against deadly wildfires. Additionally, on January 8, 2019, the Governor issues Executive Order N-05-19, which, among other things, directed CAL FIRE to submit a written report to the Governor within 45 days with recommendations of the most impactful administrative, regulatory and policy changes or waivers the Governor can initiate that are necessary to prevent and mitigate wildfires to the greatest extent possible. On February 22, 2019 CAL FIRE submitted the *Community Prevention and Mitigation Report* to the Governor.

This bill further seeks to protect against deadly wildfires by creating new wildfire risk reduction standards for new housing that must be implemented by local jurisdictions. This includes requiring the State's Fire Marshal, in consultation with OPR, to develop comprehensive wildfire risk reduction standards and to update their VHFHSZ maps. It also includes a series of requirements for local governments, including:

- Developing a comprehensive retrofit strategy to protect housing from fires, including funding sources;
- Updating its next land use element of the General Plan to identify all VHRFA, as well as specify all goals, objectives, and policies for the protection of lives and property from unreasonable risk of wildfire;
- Prohibiting cities and counties from approving any new residential ministerial or discretionary permits, discretionary entitlements, tentative subdivision or parcel maps, or development agreement in VHFRA 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 any of the additional wildfire risk reduction standards developed by the State Fire Marshal; and
- Updating its subsequent land use elements to make findings related to its implementation of the wildfire risk reduction standards and its designation of VHFRA. The process enables the State Board of Forestry and Fire Protection to determine that a city or county is out of compliance, and allows them to notify the Office of the Attorney General if that is the case.

The 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 VHFRA for projects that control the spread of wildfire and improve life safety.

Finally, the bill changes the RHNA process for cities and counties regarding wildfire risk. Specifically, it:

- Maintains the same amount of allocation per region, but requires the amount of VHFRA in each city and county to be a factor used distributing the RHNA within the region;
- For cities with a greater amount of land within the VHFRA, this bill:
  - Enables a lower proportion of housing to be allocated to a city or county if appropriate due to the risk to life and safety from catastrophic wildfire;
  - Requires a lower proportion of housing to be allocated to a city or county if all of the following are met:
    - The jurisdiction is composed of a greater proportion of VHFRA than the regional average;

- It is likely the jurisdiction would otherwise need to identify lands within the VHFRA as adequate sites in order to meet its housing need allocation;
- Compliance with the wildfire risk reduction standards would impair development of the amount and type of housing set forth in the jurisdiction's housing need allocation; and
- Suitable alternative sites exist outside the jurisdiction, but within the council of governments' jurisdiction, to accommodate the remaining regional housing need.

*Arguments in Support:* According to APA California, “SB 182 ensures proper planning so that new developments are appropriately designed and/or directed to less-hazardous areas within a jurisdiction. Communities need to meet their affordable housing needs, as state law requires and as our communities so desperately need, but they need to do it in a sustainable way that builds in long-term protection for those very same homes, including life-safety protections for the future residents of those homes.”

*Arguments in Opposition:* According to the California Building Industry Association, “We oppose SB 182 and have designated it as a Housing Killer. However, it should be noted that CBIA has been conducting numerous and very productive meetings with the author's staff and the sponsors of the bill. 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.”

*Committee Amendments:* California is facing a simultaneous crises regarding both wildfires and housing affordability. Understandably, there is a desire to reduce pressure to build new housing in the state's substantial – and growing – very high fire risk areas. However, this desire is in tension with the need to build millions of new housing units to help reduce the cost of housing. This tension comes to a head in those jurisdictions with VHFRA, who face the choice of identifying housing sites to meet their RHNA in VHFRA or instead choosing to build more densely in other parts of their jurisdiction.

This dynamic of this situation was captured in the language that came out of the Senate Housing Committee's amendments to SB 182, which stated that “The Legislature finds and declares the need to reconcile the conflicting goals of reducing the number of the state's residents that face wildfire risk while at the same time addressing decades of low housing construction rates and declares the intent of the Legislature to determine a method of addressing these two goals in the regional housing needs allocation process.” As described above, subsequent amendments were made to the bill intended to complete this reconciliation by specifying when a COG (or HCD, where no COG exists) may or shall reduce a local jurisdiction's RHNA allocation. The challenge with the amended version of the bill is that its emphasis is on whether or not a jurisdiction has a “greater amount of land” within the VHFRA. However, for purposes of reducing pressure to build in VHFRA, the amount of land is just a proxy for the real issue – whether in order to meet its RHNA local jurisdictions would be forced to build in the VHFRA. There are other challenges with the existing language, including that it:

- Limits the discretion of allocating agencies by providing a limited number of factors for determining whether a city or county must have a reduced RHNA;
- Focuses on total land area instead of developable land;
- Is triggered by comparing the risk in jurisdictions against each other rather than focusing on the impact of that risk itself; and

- Includes language that is difficult to interpret and implement.

To address these concerns while maintaining the intent of the bill, the Committee may wish to consider the following amendments:

- Re-focusing the trigger for reducing RHNA to whether a city or county would need to meet their allocation in VHFRA's;
- Increase the discretion of the allocating agency (be it the COG or HCD) by not limiting the factors they may consider in determining its allocations;
- Adjusting the additional factors that the allocating agency must consider, including:
  - Removing the relative metric of whether a jurisdiction has more or less of its land in the VHFRA than the regional average;
  - Factoring the more definitive risk, via percentage of a jurisdiction's developable land within its VHFRA's;
  - Factoring in historic precedent, via the percentage of its housing capacity identified in its last Housing Element that is within the VHFRA; and
  - Clarifying the metric regarding how the new standards may affect development capacity by specifying that the allocating agencies should focus on how they may reduce densities on lands within the jurisdiction that are otherwise suitable for development.

As discussed above, the bill also requires that local governments develop a comprehensive retrofit strategy to protect housing from fires, including funding sources. This section lacks some details that would clarify its purpose and facilitate its implementation. As such, the Committee may wish to request the following amendments:

- Clarify that the intent of this retrofit strategy is to reduce the risk of property loss and damage during wildfires.
- Emphasize that the process for identifying and inventorying structures in need of retrofit for fire hardening must include residential structures in VHFRA's.
- Require the planning agency to submit their adopted retrofit strategy to OPR for inclusion in the clearinghouse of best practices established by this bill.

Finally, the bill includes a couple of instances of semantic inconsistency that could create confusion in implementing this bill. For example, the amendments to Government Code Section 65012(a) speak to specific wildlife risk reduction standards, but then speaks to "preparation of" a wildland fire hazard assessment and wildfire hazard mitigation plan, as well as "implementation of" mechanisms to maintain common areas and open spaces. "Preparation of" and "implementation of" describe actions and not definitive standard, and as such the Committee may wish to consider deleting those words.

*Related Legislation:*

SB 190 (Dodd) (2019): requires the State Fire Marshal to develop a model defensible space ordinance and a training manual on WUI standards for building officials, builders, and fire service personnel. *This bill is pending in the Assembly Natural Resources Committee.*

AB 38 (Wood) (2019): establishes a \$1 billion fire-hardened homes revolving fund, establishes regional wildfire prevention districts, and requires sellers of buildings in very high fire hazard



zones to certify that certain low-cost retrofits have been applied to the structure. *This bill is pending hearing in the Senate Government Organization Committee.*

AB 1516 (Friedman) (2019): enhances the state's defensible space requirements and imposes a \$500 penalty for failure to maintain defensible space. *This bill is pending hearing in the Senate Energy, Utilities, and Communications Committee.*

SB 901 (Dodd), Chapter 626 of the Statutes of 2018): Established a comprehensive framework to address and prevent catastrophic wildfires including prevention and planning by the state's electric utilities; management of the state's forests, chaparrals, and other lands to prevent and defend against wildfires; and standards to stabilize electrical corporations in the event of extensive liability resulting from claims under inverse condemnation. SB 901 also appropriated \$200 million per year through the 2023-24 budget for forest health and fire prevention.

SB 1260 (Jackson, Chapter 624, Statutes of 2018): Made various changes related to local fire planning, prescribed fire requirements, and broader fire prevention efforts, including to require that: (1) local safety elements reflect best practices contained in OPR's technical guidance for fire hazard planning; (2) cities and counties meet with the Board on their draft safety elements at the request of the Board; and (3) cities and counties transmit any fire-related findings made under the Subdivision Map Act to the Board.

AB 2911 (Friedman), Chapter 641, Statutes of 2018: Made various changes to fire safety planning, including to: require local agencies to submit ordinances adopting VHFHSZ to the Board; direct OPR to update its technical guidance for fire and land use planning; and require the Board to identify at-risk subdivisions not less than every 5 years.

AB 1956 (Limón), Chapter 632, Statutes of 2018: Requires CAL FIRE to establish a local grant program and establishes the criteria for those grants.

SB 465 (Jackson), Chapter 837, Statutes of 2018: Expands, until January 1, 2029, Property Assessed Clean Energy (PACE) financing to allow cities and counties in VHFHSZs to allow contractual assessments for property owners to finance wildfire safety improvements.

*Double referred:* This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Planning Association, California Chapter  
Center for Biological Diversity  
Sierra Club

### *Support if Amended*

Bear Yuba Land Trust  
Eastern Sierra Land Trust

Pacific Forest Trust  
Placer Land Trust  
Sierra Business Council  
Sierra County Land Trust  
Sierra Foothill Conservancy  
Sierra Nevada Alliance  
Truckee Donner Land Trust

**Opposition**

California Building Industry Association

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