

Assembly Bill No. 38

CHAPTER 391

An act to add Sections 1102.6f and 1102.19 to the Civil Code, to add and repeal Article 16.5 (commencing with Section 8654.2) of Chapter 7 of Division 1 of Title 2 of the Government Code, and to add Section 4123.7 to the Public Resources Code, relating to fire safety.

[Approved by Governor October 2, 2019. Filed with Secretary of State October 2, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 38, Wood. Fire safety: low-cost retrofits: regional capacity review: wildfire mitigation.

(1) Existing law requires the Director of Forestry and Fire Protection to designate specified areas as very high fire hazard severity zones and requires a person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with flammable material to take specified measures to protect that building or structure from wildfires.

This bill would require the Natural Resources Agency, by July 1, 2021, and in consultation with the State Fire Marshal and the Forest Management Task Force, to review the regional capacity of each county that contains a very high fire hazard severity zone to improve forest health, fire resilience, and safety, as specified. The bill would require the Natural Resources Agency to make the review publicly available on its internet website. On or after July 1, 2021, the bill would require a seller of real property located in a high or very high fire hazard severity zone to provide specified documentation to the buyer that the real property is in compliance with the wildfire protection measures described above or a local vegetation management ordinance, or enter into an agreement with the buyer pursuant to which the buyer will obtain documentation of compliance, as provided.

(2) Existing law requires the State Fire Marshal, by January 31, 2020, to develop a list of low-cost retrofits that provide for comprehensive site and structure fire risk reduction to protect structures from fires spreading from adjacent structures or vegetation and to protect vegetation from fires spreading from adjacent structures.

This bill, on or after January 1, 2021, would require the seller of any real property located in a high or very high fire hazard severity zone to provide a prescribed disclosure notice to the buyer, if the home was constructed before January 1, 2020, of information relating to fire hardening improvements on the property and a list of specified features that may make the home vulnerable to wildfire and flying embers and which features, if

any, that exist on the home of which the seller is aware. The bill, on or after July 1, 2025, would require the disclosure notice to also include the State Fire Marshal's list of low-cost retrofits. The bill would also require a seller who has obtained a specified final inspection report to provide to the buyer a copy of that report or information on where a copy may be obtained.

(3) Existing law establishes, within the office of the Governor, the Office of Emergency Services, under the direction of the Director of Emergency Services. Existing law charges the Office of Emergency Services with coordinating various emergency activities within the state.

The Joint Exercise of Powers Act authorizes 2 or more public agencies, if authorized by their legislative or other governing bodies, to enter into an agreement to jointly exercise any power common to the contracting parties, as provided. That act requires, among other things, that the agreement state the purpose of agreement or power to be exercised and provides for the method by which the purpose will be accomplished or the manner in which the power will be exercised.

This bill would require the Office of Emergency Services to enter into a joint powers agreement pursuant to the Joint Exercise of Powers Act with the Department of Forestry and Fire Protection to develop and administer a comprehensive wildfire mitigation program to, among other things, encourage cost-effective structure hardening and retrofitting to create fire-resistant homes, businesses, and public buildings. The bill would require the State Fire Marshal, in consultation with specified state officials, to identify building retrofits and structure hardening measures, and the Department of Forestry and Fire Protection to identify defensible space, vegetation management, and fuel modification activities, that are eligible for financial assistance under the program. The bill would specify the types of designated wildfire hazard areas eligible for funding under the program. The bill would authorize the joint powers authority administering the program to accept federal funds for the bill's purposes. The bill would require the joint powers authority to develop criteria and a scoring methodology to prioritize financial assistance provided through the program based on specific factors. The bill would impose specified reporting requirements on the joint powers authority and authorize it to enter into cooperative agreements with other federal, state, regional, and local agencies. The bill would make the operation of the program contingent upon an appropriation by the Legislature and would repeal the program's provisions on July 1, 2025.

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

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

(a) Climate change has resulted in higher year-long temperatures and increasing dry weather conditions in California, resulting in extended, sometimes multiyear, droughts; extended wildfire seasons throughout the year, with higher temperatures during dry season conditions; and impacts

on vegetation wildfire fuel loads and increasing decay and loss of vegetation due to insect infestations and plant diseases.

(b) Wildfires have grown larger and have increased in intensity over the last several decades. As compared with 1986, wildfires in the western United States have occurred nearly four times more often, burning more than six times the land area and lasting almost five times as long. Through the end of the 2017 calendar year, 11 of the 20 most destructive wildfires in California have occurred in the last 10 years. The 2018 calendar year witnessed the most destructive wildfires in California history in terms of the loss of life and structures.

(c) In terms of the size of wildfires, in the last decade, enormous wildfires have consumed vast areas, including the 2013 Rim Fire impacting national park and national forest lands, the 2017 Napa Valley, Sonoma Valley, and Santa Rosa wildfires, the 2017 Thomas Fire impacting 200,000 acres, and the 2018 Camp Fire.

(d) Wildfires, which have impacted occupied areas, have resulted in enormous human and financial costs, including the following:

(1) The 1991 Berkeley-Oakland Tunnel Fire, which resulted in 25 deaths, the loss of more than 3,000 homes, and a total financial loss of \$1.5 billion in 1991 United States dollars.

(2) The 2003 San Diego Cedar Fire, which resulted in 15 deaths and the loss of 2,000 structures.

(3) The 2017 Tubbs Fire, which resulted in 22 deaths, the loss of 5,643 structures, and a total financial loss of approximately \$1.3 billion in 2017 United States dollars.

(4) The 2017 Thomas Fire, which resulted in two deaths, the loss of more than 1,000 homes, and a total financial loss of approximately \$2.2 billion in 2018 United States dollars.

(5) The 2018 Camp Fire, which resulted in 89 deaths, the loss of 18,804 structures, and at least \$12.4 billion in 2018 United States dollars in insured losses.

(e) More than 2,000,000 California households, approximately one in four residential structures in California, are located within or in wildfire movement proximity of “high” or “very high” fire hazard severity zones identified on maps drawn by the Department of Forestry and Fire Protection. Additionally, areas subject to seismic risks confront the likelihood that wildfires could result from downed power lines and ruptures of natural gas lines caused by earthquakes.

(f) There is a pressing need for wildfire prevention and minimization strategies, on an area-specific basis, that combine increased wildfire resistance within developed areas to minimize wildfire impacts with comprehensive vegetation management measures in wildlands to prevent or severely limit large-scale wildfires from developing and spreading as follows:

(1) Wildfire minimization programs. Developed areas need to carry out comprehensive urban vegetation management programs to reduce vegetation wildfire fuel loads within developed areas. Further, there is a need to provide

funding for the hardening of homes and other structures to increase their resistance to wildfires.

(2) Wildfire prevention programs. Comprehensive wildlands vegetation management, responsive to the widely varying vegetation conditions throughout California, is required to reduce vegetation wildfire fuel loads, in relation to the flammability of different vegetation types, to the maximum extent feasible to prevent or severely limit the spread of wildfires.

(3) Wildfire response planning. Area-specific plans should include measures needed to include planning for safe wildlands access for firefighters to the maximum extent feasible.

(g) The diversity of vegetation and development patterns through the state necessitate a geographic approach to planning and implementing wildfire prevention and minimization strategies with fire prevention management agencies covering the geographic areas in which wildfires have or may occur.

(h) Local public agencies have made efforts to prevent wildfires, but, in many instances, lack the expertise, authority, or the financial resources to undertake or complete the tasks at hand.

(i) Wildfires do not respect jurisdictional boundaries or property lines.

SEC. 2. Section 1102.6f is added to the Civil Code, to read:

1102.6f. (a) On or after January 1, 2021, in addition to any other disclosure required pursuant to this article, the seller of any real property subject to this article that is located in a high or very high fire hazard severity zone, as identified by the Director of Forestry and Fire Protection pursuant to Section 51178 of the Government Code or Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, shall provide a disclosure notice to the buyer, if the home was constructed before January 1, 2010, that includes the following information:

(1) A statement as follows: “This home is located in a high or very high fire hazard severity zone and this home was built before the implementation of the Wildfire Urban Interface building codes which help to fire harden a home. To better protect your home from wildfire, you might need to consider improvements. Information on fire hardening, including current building standards and information on minimum annual vegetation management standards to protect homes from wildfires, can be obtained on the internet website <http://www.readyforwildfire.org>.”

(2) On or after July 1, 2025, a list of low-cost retrofits developed and listed pursuant to Section 51189 of the Government Code. The notice shall disclose which listed retrofits, if any, have been completed during the time that the seller has owned the property.

(3) A list of the following features that may make the home vulnerable to wildfire and flying embers. The notice shall disclose which of the listed features, if any, that exist on the home of which the seller is aware:

(A) Eave, soffit, and roof ventilation where the vents have openings in excess of one-eighth of an inch or are not flame and ember resistant.

(B) Roof coverings made of untreated wood shingles or shakes.

(C) Combustible landscaping or other materials within five feet of the home and under the footprint of any attached deck.

(D) Single pane or nontempered glass windows.

(E) Loose or missing bird stopping or roof flashing.

(F) Rain gutters without metal or noncombustible gutter covers.

(b) If, pursuant to Section 51182 of the Government Code, a seller has obtained a final inspection report described in that section, the seller shall provide to the buyer a copy of that report or information on where a copy of the report may be obtained.

(c) This section shall not be construed as a requirement, instruction, or consideration for present or future building code formulation, including, but not limited to, the Wildland Urban Interface building standards (Chapter 7A of Part 2 of Title 24 of the California Code of Regulations).

SEC. 3. Section 1102.19 is added to the Civil Code, to read:

1102.19. (a) On and after July 1, 2021, a seller of a real property subject to this article that is located in a high or very high fire hazard severity zone, as identified by the Director of Forestry and Fire Protection pursuant to Section 51178 of the Government Code or Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, shall provide to the buyer documentation stating that the property is in compliance with Section 4291 of the Public Resources Code or local vegetation management ordinances, as follows:

(1) In a local jurisdiction that has enacted an ordinance requiring an owner of real property to obtain documentation that the property is in compliance with Section 4291 of the Public Resources Code or a local vegetation management ordinance, the seller shall provide the buyer with a copy of the documentation that complies with the requirements of that local ordinance and information on the local agency from which a copy of that documentation may be obtained.

(2) In a local jurisdiction that has not enacted an ordinance for an owner of real property to obtain documentation that a property is in compliance with Section 4291 of the Public Resources Code or a local vegetation management ordinance, and if a state or local agency, or other government entity, or other qualified nonprofit entity, provides an inspection with documentation for the jurisdiction in which the property is located, the seller shall provide the buyer with the documentation obtained in the six-month period preceding the date the seller enters into a transaction to sell that real property and provide information on the local agency from which a copy of that documentation may be obtained.

(b) On and after July 1, 2021, if the seller of a real property described in subdivision (a) has not obtained documentation of compliance in accordance with paragraph (1) or (2) of subdivision (a), the seller and the buyer shall enter into a written agreement pursuant to which the buyer agrees to obtain documentation of compliance with Section 4291 of the Public Resources Code or a local vegetation management ordinance as follows:

(1) In a local jurisdiction that has enacted an ordinance requiring an owner or buyer to obtain documentation of compliance with Section 4291

of the Public Resources Code or a local vegetation management ordinance, the buyer shall comply with that ordinance.

(2) In a local jurisdiction that has not enacted an ordinance requiring an owner or buyer to obtain documentation of compliance, and if a state or local agency, or other government entity, or other qualified nonprofit entity, provides an inspection with documentation for the jurisdiction in which the property is located, the buyer shall obtain documentation of compliance within one year of the date of the close of escrow.

SEC. 4. Article 16.5 (commencing with Section 8654.2) is added to Chapter 7 of Division 1 of Title 2 of the Government Code, to read:

Article 16.5. California Wildfire Mitigation Financial Assistance Program

8654.2. The Legislature finds and declares the following:

(a) Catastrophic threats exist to lives, property, and resources in California including wildfire. Climate change, an epidemic of dead and dying trees, and the proliferation of new homes in the wildland urban interface magnify this threat and place substantially more people and property at risk than in preceding decades. More than 25 million acres of California wildlands are classified as under very high or extreme fire threat, extending that risk to over one-half the state.

(b) Certain populations in our state are particularly vulnerable to wildfire threats. These Californians live in communities that face near-term public safety threats given their location. Some residents in these areas are made further vulnerable due to factors such as age and lack of mobility. The tragic loss of life and property in the Town of Paradise during the 2018 Camp Fire demonstrates such vulnerability.

(c) While California has stringent building standards for new construction and requirements for the maintenance of defensible space in wildfire hazard areas, California must develop statewide options to encourage cost-effective structure hardening to create fire resistant homes, businesses, and public buildings within wildfire hazard areas and with a focus on vulnerable communities.

(d) It is the intent of the Legislature to offer financial assistance through a statewide program to communities for all-hazards in support of a comprehensive mitigation strategy and reduce or eliminate potential risks and impacts of disasters in order to promote faster recovery after disasters and, overall, a more resilient state.

(e) It is further the intent of the Legislature to develop a comprehensive financial assistance program to help property owners, whole communities and local governments retrofit existing housing, commercial, and public properties in wildfire hazard areas to a cost-effective standard that provides comprehensive risk reduction to protect structures from fires spreading from adjacent structures or vegetation, and to prevent vegetation from spreading fires to adjacent structures.

8654.3. For purposes of this section:

(a) “Joint powers authority” means the agency or entity designated or created pursuant to a joint powers agreement between the Office of Emergency Services and the Department of Forestry and Fire Protection, entered into pursuant to Section 8654.4, to implement this article.

(b) “Structure hardening” means the installation, replacement, or retrofitting of building materials, systems, or assemblies used in the exterior design and construction of existing nonconforming structures with features that are in compliance with Chapter 7A (commencing with Section 701A.1) of Title 24 of the California Code of Regulations, or any appropriate successor regulatory code with the primary purpose of reducing risk to structures from wildfire or conforming to the low-cost retrofit list, and updates to that list developed pursuant to paragraph (1) of subdivision (c) of Section 51189.

8654.4. The Office of Emergency Services shall enter into a joint powers agreement, in accordance with the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1) and this article, with the Department of Forestry and Fire Protection to develop and administer a comprehensive wildfire mitigation program to do both of the following:

(a) Encourage cost-effective structure hardening and retrofitting that creates fire-resistant homes, businesses, and public buildings.

(b) Facilitate vegetation management, the creation and maintenance of defensible space, and other fuel modification activities that provide neighborhood or communitywide benefits against wildfire.

8654.5. (a) The State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, shall, consistent with Section 8654.2, identify building retrofits and structure hardening measures eligible for financial assistance under the wildfire mitigation program that are both cost-effective and provide for appropriate site or structure fire risk reduction.

(b) The Department of Forestry and Fire Protection shall identify defensible space, vegetation management, and fuel modification activities eligible for financial assistance under the wildfire mitigation program that are both cost-effective and reduce the risk of wildfire for entire neighborhoods and communities.

8654.6. Designated wildfire hazard areas eligible for financial assistance under the wildfire mitigation program shall include all of the following:

(a) Local responsibility areas located within a very high fire hazard severity zone, as designated pursuant to subdivisions (a) and (b) of Section 51179.

(b) State responsibility areas located within any fire hazard severity zone, as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.

(c) Any other lands designated by the joint powers authority as consistent with the purposes of this article.

8654.7. (a) The joint powers authority may accept any federal funds granted, by act of Congress or by executive order, for all or any of the purposes of this chapter.

(b) The joint powers authority shall develop criteria and a scoring methodology to prioritize financial assistance provided under the wildfire mitigation program to areas and communities based upon criteria that include, but are not limited to, all of the following:

(1) Area and community vulnerability to wildfire.

(2) The impact of future climate risk factors on area and community wildfire vulnerability assessments.

(3) Factors that lead some populations to experience a greater risk to wildfire, adverse health outcomes, or an inhibited ability to respond to a wildfire, including socioeconomic characteristics of the areas or communities that would be protected by financial assistance. For purposes of this paragraph “relevant socioeconomic characteristics” may include, among other things, data on poverty levels, residents with disabilities, language barriers, residents over 65 or under 5 years of age, and households without a car.

(c) Subdivision (b) shall apply to all financial assistance provided under the wildfire mitigation program unless the joint powers authority determines that all, or a portion of, subdivision (b) should not apply to an award of federal funds on the basis of terms and conditions imposed by the federal government on that award of federal funds.

8654.8. (a) The joint powers authority shall develop eligibility criteria for property owners, community organizations, and local governments who may receive financial assistance under the wildfire mitigation program in accordance with this article.

(b) The joint powers authority may also establish financial assistance limits and matching funding or other recipient contribution requirements, as necessary, to ensure the viability and efficient operation of the wildfire mitigation program and to maximize the program’s impact on reducing wildfire risk in California.

8654.9. (a) The joint powers authority may enter into cooperative agreements with any of the following eligible entities to perform those functions eligible for financial assistance under the wildfire mitigation program in lieu of, or in addition to, an award of financial assistance.

(1) The California Conservation Corps.

(2) University of California fire advisors.

(3) Regional conservation corps.

(4) Resource conservation districts.

(5) Fire safe councils.

(6) Fire protection districts.

(7) State conservancies.

(8) Cities.

(9) Counties.

(10) Any other qualified state and local agencies.

(b) The Department of Forestry and Fire Protection may specify the required training, experience, or other qualifications necessary before a person may perform those functions eligible for financial assistance under the wildfire mitigation program pursuant to a cooperative agreement.

8654.10. (a) The operation of this article is contingent upon an appropriation by the Legislature in the annual Budget Act or another statute for purposes of this article.

(b) No later than July 1, 2024, the joint powers authority shall submit a report to the Legislature, in compliance with Section 9795, regarding the implementation of the wildfire mitigation financial assistance program administered pursuant to this chapter. The report shall include, but is not limited to, all of the following:

(1) An evaluation of the cost-effectiveness of the wildfire mitigation program compared to other structure hardening, defensible space, vegetation management, and fuel reduction incentive programs.

(2) An evaluation of the overall wildfire risk reduction achieved statewide through awards of financial assistance under the wildfire mitigation program.

(3) Detailed information about the quantity, monetary value, geographic distribution, and categories of awards of financial assistance made under the wildfire mitigation program.

(4) Detailed information about the sources and amounts of funds appropriated or granted to the wildfire mitigation program.

(5) Detailed information about barriers encountered to completing work awarded financial assistance under the wildfire mitigation program, including state, regional, or local permitting requirements.

(6) Any other information the office determines is necessary or convenient to evaluate the financial assistance awarded under the program.

(c) This article shall remain in effect only until July 1, 2025, and as of that date is repealed.

SEC. 5. Section 4123.7 is added to the Public Resources Code, to read:

4123.7. (a) On or before July 1, 2021, the Natural Resources Agency, in consultation with the State Fire Marshal and the Forest Management Task Force, shall review the regional capacity of each county that contains a very high fire hazard severity zone, as identified by the director pursuant to Section 51178 of the Government Code or Article 9 (commencing with Section 4201), to improve forest health, fire resilience, and safety. The review shall include, but not be limited to, all of the following:

(1) Identification of local or regional entities engaged in fire prevention work, such as resource conservation districts, fire safe councils, state conservancies, and other local agencies.

(2) A review of fire prevention organizational or capacity deficits within each county subject to the review.

(3) Recommendations to improve regional capacity and collaboration within the counties subject to review, including, but not limited to, the development of new organizations or regional districts.

(b) The Natural Resources Agency shall make the review required pursuant to subdivision (a) publicly available on its internet website.

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