

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE APRIL 26, 2005

SENATE BILL

No. 1084

Introduced by Senator Kehoe

February 22, 2005

An act to amend Section 1103.2 of the Civil Code, to add Section 13105.6 to the Health and Safety Code, and to amend Sections 4290, 4464, 4475, 4475.1, 4475.5, 4476, and 4480 of, and to add Section 4442.6 to, the Public Resources Code, relating to forest practices.

LEGISLATIVE COUNSEL'S DIGEST

SB 1084, as amended, Kehoe. Forest practices.

Under existing law, the State Board of Forestry and Fire Protection is required to classify all lands within the state to determine areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state.

The bill would require the State Fire Marshal to establish a certification program for a private individual to be trained as a fire safe inspector, fire safe plan reviewer, or fire safe plan specialist. The bill would prohibit a person from selling, offering for sale, leasing, or renting to any person a specified internal combustion engine, unless the equipment has a permanent warning label attached warning of the danger of starting a fire from sparks created by the operation of the equipment.

The bill would revise the definition of "wild land" and define "hazardous fuel reduction" for purposes of a state responsibility area.

Existing law requires the State Board of Forestry and Fire Protection to adopt minimum fire safety standards for construction approved within state responsibility areas after January 1, 1991.

This bill would require those fire safety standards to also apply to construction approved on or before ~~to~~ January 1, 1991, within state responsibility areas on a parcel that is transferred, sold, gifted, or exchanged after January 1, 2006. *The bill would require the seller of real property, where the construction was approved prior to January 1, 1991, to certify to the purchaser that the property complies with these fire safety standards.*

Existing law requires that certain natural hazards be disclosed pursuant to certain property transfers and that these disclosures be made on a specified statement.

This bill would amend the Natural Hazard Disclosure Statement to provide an acknowledgment that the property lies within a wildland or state responsibility area that may contain substantial forest fire risks and hazards and is subject to minimum fire safety standards for construction approved on or before January 1, 1991.

The bill would make related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 1103.2 of the Civil Code is amended to
2 read:

3 1103.2. (a) The disclosures required by this article are set
4 forth in, and shall be made on a copy of, the following Natural
5 Hazard Disclosure Statement:

6
7 NATURAL HAZARD DISCLOSURE STATEMENT
8 This statement applies to the following property: _____
9

10 The transferor and his or her agent(s) or a third-party consultant disclose the
11 following information with the knowledge that even though this is not a
12 warranty, prospective transferees may rely on this information in deciding
13 whether and on what terms to purchase the subject property. Transferor
14 hereby authorizes any agent(s) representing any principal(s) in this action to
15 provide a copy of this statement to any person or entity in connection with
16 any actual or anticipated sale of the property.

1 The following are representations made by the transferor and his or her
 2 agent(s) based on their knowledge and maps drawn by the state and federal
 3 governments. This information is a disclosure and is not intended to be part
 4 of any contract between the transferee and transferor.

5
 6
 7
 8
 9

THIS REAL PROPERTY LIES WITHIN THE FOLLOWING
 HAZARDOUS AREA(S):

10 A SPECIAL FLOOD HAZARD AREA (Any type Zone “A” or
 11 “V”) designated by the Federal Emergency Management Agency.

12
 13
 14
 15
 16
 17

Yes ___ No ___ Do not know and
 information not
 available from local
 jurisdiction ___

18 AN AREA OF POTENTIAL FLOODING shown on a dam failure
 19 inundation map pursuant to Section 8589.5 of the Government Code.

20
 21
 22
 23
 24
 25

Yes ___ No ___ Do not know and
 information not
 available from local
 jurisdiction ___

26 A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to
 27 Section 51178 or 51179 of the Government Code. The owner of this
 28 property is subject to the maintenance requirements of Section 51182
 29 of the Government Code.

30
 31
 32

Yes ___ No ___

1 A WILDLAND OR STATE RESPONSIBILITY AREA THAT MAY
 2 CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND
 3 HAZARDS pursuant to Section 4125 of the Public Resources Code.
 4 The owner of this property is subject to the maintenance requirements
 5 of *subdivision (c) of Section 4290 and the maintenance requirements of*
 6 *Section 4291*, of the Public Resources Code. Additionally, it is not the
 7 state’s responsibility to provide fire protection services to any building
 8 or structure located within the wildlands unless the Department of
 9 Forestry and Fire Protection has entered into a cooperative agreement
 10 with a local agency for those purposes pursuant to Section 4142 of the
 11 Public Resources Code.

12
 13 Yes ___ No ___

14
 15 AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the
 16 Public Resources Code.

17
 18 Yes ___ No ___

19
 20 A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public
 21 Resources Code.

22
 23 Yes (Landslide Zone) ___ Yes (Liquefaction Zone) ___
 24 No ___ Map not yet released by
 25 state _____

26
 27 THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE
 28 REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE
 29 ASSISTANCE AFTER A DISASTER.

30
 31 THE MAPS ON WHICH THESE DISCLOSURES ARE BASED
 32 ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT
 33 DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY
 34 WILL BE AFFECTED BY A NATURAL DISASTER. TRANSFEREE(S)
 35 AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL
 36 ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS
 37 THAT MAY AFFECT THE PROPERTY.

38
 39 Signature of Transferor(s) _____ Date _____
 40 Signature of Transferor(s) _____ Date _____

1
 2 Agent(s) _____ Date _____
 3 Agent(s) _____ Date _____
 4

5 Check only one of the following:

6
 7 Transferor(s) and their agent(s) represent that the information
 8 herein is true and correct to the best of their knowledge as of the
 9 date signed by the transferor(s) and agent(s).

10
 11 Transferor(s) and their agent(s) acknowledge that they have
 12 exercised good faith in the selection of a third-party report provider
 13 as required in Civil Code Section 1103.7, and that the
 14 representations made in this Natural Hazard Disclosure Statement
 15 are based upon information provided by the independent third-party
 16 disclosure provider as a substituted disclosure pursuant to Civil Code
 17 Section 1103.4. Neither transferor(s) nor their agent(s) (1) has
 18 independently verified the information contained in this statement
 19 and report or (2) is personally aware of any errors or inaccuracies
 20 in the information contained on the statement. This statement was
 21 prepared by the provider below:
 22

23 Third-Party
 24 Disclosure Provider(s) _____ Date _____
 25

26 Transferee represents that he or she has read and understands this
 27 document. Pursuant to Civil Code Section 1103.8, the
 28 representations made in this Natural Hazard Disclosure Statement
 29 do not constitute all of the transferor’s or agent’s disclosure
 30 obligations in this transaction.
 31

32 Signature of Transferee(s) _____ Date _____
 33 Signature of Transferee(s) _____ Date _____
 34

35 (b) If an earthquake fault zone, seismic hazard zone, very high
 36 fire hazard severity zone, or wildland fire area map or
 37 accompanying information is not of sufficient accuracy or scale
 38 that a reasonable person can determine if the subject real
 39 property is included in a natural hazard area, the transferor or
 40 transferor’s agent shall mark “Yes” on the Natural Hazard

1 Disclosure Statement. The transferor or transferor’s agent may
2 mark “No” on the Natural Hazard Disclosure Statement if he or
3 she attaches a report prepared pursuant to subdivision (c) of
4 Section 1103.4 that verifies the property is not in the hazard
5 zone. Nothing in this subdivision is intended to limit or abridge
6 any existing duty of the transferor or the transferor’s agents to
7 exercise reasonable care in making a determination under this
8 subdivision.

9 (c) If the Federal Emergency Management Agency has issued
10 a Letter of Map Revision confirming that a property is no longer
11 within a special flood hazard area, then the transferor or
12 transferor’s agent may mark “No” on the Natural Hazard
13 Disclosure Statement, even if the map has not yet been updated.
14 The transferor or transferor’s agent shall attach a copy of the
15 Letter of Map Revision to the disclosure statement.

16 (d) If the Federal Emergency Management Agency has issued
17 a Letter of Map Revision confirming that a property is within a
18 special flood hazard area and the location of the letter has been
19 posted pursuant to subdivision (g) of Section 8589.3 of the
20 Government Code, then the transferor or transferor’s agent shall
21 mark “Yes” on the Natural Hazard Disclosure Statement, even if
22 the map has not yet been updated. The transferor or transferor’s
23 agent shall attach a copy of the Letter of Map Revision to the
24 disclosure statement.

25 (e) The disclosure required pursuant to this article may be
26 provided by the transferor and the transferor’s agent in the Local
27 Option Real Estate Disclosure Statement described in Section
28 1102.6a, provided that the Local Option Real Estate Disclosure
29 Statement includes substantially the same information and
30 substantially the same warnings that are required by this section.

31 (f) (1) The legal effect of a consultant’s report delivered to
32 satisfy the exemption provided by Section 1103.4 is not changed
33 when it is accompanied by a Natural Hazard Disclosure
34 Statement.

35 (2) A consultant’s report shall always be accompanied by a
36 completed and signed Natural Hazard Disclosure Statement.

37 (3) In a disclosure statement required by this section, an agent
38 and third-party provider may cause his or her name to be
39 preprinted in lieu of an original signature in the portions of the

1 form reserved for signatures. The use of a preprinted name shall
2 not change the legal effect of the acknowledgment.

3 (g) The disclosure required by this article is only a disclosure
4 between the transferor, the transferor's agents, and the transferee,
5 and shall not be used by any other party, including, but not
6 limited to, insurance companies, lenders, or governmental
7 agencies, for any purpose.

8 (h) In any transaction in which a transferor has accepted, prior
9 to June 1, 1998, an offer to purchase, the transferor, or his or her
10 agent, shall be deemed to have complied with the requirement of
11 subdivision (a) if the transferor or agent delivers to the
12 prospective transferee a statement that includes substantially the
13 same information and warning as the Natural Hazard Disclosure
14 Statement.

15 ~~SECTION 1.—~~

16 *SEC. 2.* Section 13105.6 is added to the Health and Safety
17 Code, to read:

18 13105.6. (a) The State Fire Marshal shall establish a
19 certification program for a private individual to be trained as a
20 fire safe inspector, fire safe plan reviewer, or fire safe plan
21 specialist.

22 (b) The State Fire Marshal shall develop a training curriculum
23 for the certification program.

24 (c) The certification program shall include training on
25 providing technical and other advice to landowners to improve
26 fire safety.

27 (d) The training may be conducted through the University of
28 California at Davis extension program or through other providers
29 approved by the State Fire Marshal.

30 (e) The State Fire Marshal may adopt regulations to provide
31 additional course curriculum or requirements.

32 ~~SEC. 2.—~~

33 *SEC. 3.* Section 4290 of the Public Resources Code is
34 amended to read:

35 4290. (a) The board shall adopt regulations implementing
36 minimum fire safety standards related to defensible space that are
37 applicable to state responsibility area lands under the authority of
38 the department. These regulations apply to the perimeters and
39 access to all residential, commercial, and industrial building
40 construction within state responsibility areas approved after

1 January 1, 1991, and to construction approved on or before
2 January 1, 1991, on a parcel that is transferred, sold, gifted, or
3 exchanged on or after January 1, 2006. The board may not adopt
4 building standards, as defined in Section 18909 of the Health and
5 Safety Code, under the authority of this section. As an integral
6 part of fire safety standards, the State Fire Marshal has the
7 authority to adopt regulations for roof coverings and openings
8 into the attic areas of buildings specified in Section 13108.5 of
9 the Health and Safety Code. The regulations apply to the
10 placement of mobile homes as defined by National Fire
11 Protection Association standards. These regulations do not apply
12 where an application for a building permit was filed prior to
13 January 1, 1991, or to parcel or tentative maps or other
14 developments approved prior to January 1, 1991, if the final map
15 for the tentative map is approved within the time prescribed by
16 the local ordinance. The regulations shall include all of the
17 following:

- 18 (1) Road standards for fire equipment access.
 - 19 (2) Standards for signs identifying streets, roads, and
20 buildings.
 - 21 (3) Minimum private water supply reserves for emergency fire
22 use.
 - 23 (4) Fuel breaks and greenbelts.
- 24 (b) These regulations do not supersede local regulations that
25 equal or exceed minimum regulations adopted by the state.
- 26 (c) *The seller of real property, where the construction was*
27 *approved prior to January 1, 1991, shall certify to the purchaser*
28 *that the property complies with the regulations described in*
29 *subdivision (a). This certification shall be made in writing, and*
30 *may be included in existing transactional documents, including,*
31 *but not limited to, a real estate sales contract or receipt for*
32 *deposit, or a transfer disclosure statement completed pursuant to*
33 *Section 1102.6 or 1102.6a and Section 1103.2 of the Civil Code.*

34 ~~SEC. 3.—~~

35 *SEC. 4.* Section 4442.6 is added to the Public Resources
36 Code, to read:

37 4442.6. (a) No person shall sell, offer for sale, lease, or rent
38 to any person any internal combustion engine subject to Section
39 4442 or 4443, and not subject to Section 13005 of the Health and
40 Safety Code, unless the equipment has a permanent warning

1 label attached that is in plain view to the operator that states,
2 “WARNING—Operation of This Equipment May Create Sparks
3 That Can Start Fires Around Dry Vegetation. A Spark Arrestor
4 May be Required. The Operator Should Contact Local Fire
5 Agencies For Laws or Regulations Relating to Fire Prevention
6 Requirements.”

7 (b) The department may adopt regulations regarding the
8 lettering, design, or placement of the warning label.

9 ~~SEC. 4.—~~

10 *SEC. 5.* Section 4464 of the Public Resources Code is
11 amended to read:

12 4464. Unless the context clearly requires otherwise, the
13 following definitions govern the construction of this chapter:

14 (a) “Wild land” means any land that is classified as a state
15 responsibility area pursuant to Article 3 (commencing with
16 Section 4125) of Chapter 1 and includes any land having a
17 flammable plant cover. “Wild land” also means any land not
18 classified as a state responsibility area where the geographic
19 location of these lands and accumulation of wild land fuel is such
20 that a wild land fire occurring on these lands would pose a threat
21 to a state responsibility area.

22 (b) “Wild land fuel” means any timber, brush, grass, or other
23 flammable vegetation, living or dead, standing or down.

24 (c) “Wild land fire” means any uncontrolled fire burning on
25 wild land.

26 (d) “Prescribed burning” or “prescribed burning operation”
27 means the planned application and confinement of fire to wild
28 land fuels on lands selected in advance of that application to
29 achieve any of the following objectives:

30 (1) Prevention of high-intensity wild land fires through
31 reduction of the volume and continuity of wild land fuels.

32 (2) Watershed management.

33 (3) Range improvement.

34 (4) Vegetation management.

35 (5) Forest improvement.

36 (6) Wildlife habitat improvement.

37 (7) Air quality maintenance.

38 (e) “Prescribed burn crew” means personnel and firefighting
39 equipment of the department that are prepared to contain fire set

1 in a prescribed burning operation and to suppress any fire that
2 escapes during a prescribed burning operation.

3 (f) “Person” means any natural person, firm, association,
4 partnership, business trust, corporation, limited liability
5 company, company, or combination thereof, or any public
6 agency other than an agency of the federal government.

7 (g) “Hazardous fuel reduction” means the application of
8 practices to wild lands, the primary impact of which to the
9 vegetation is generally limited to the reduction of surface and
10 ladder wild land fuels. These practices include, but are not
11 limited, to prescribed fire, piling by machine or by hand in
12 preparation for burning, thinning, pruning, or grazing.
13 Treatments that reduce crown densities shall be prescribed only
14 for the purpose of impacting fire behavior, and where it can be
15 reasonably concluded based on the proposed treatment that the
16 likelihood for the formation of crown fires is reduced.

17 ~~SEC. 5.—~~

18 *SEC. 6.* Section 4475 of the Public Resources Code is
19 amended to read:

20 4475. The director, with the approval of the Director of
21 General Services, may enter into a contract for prescribed
22 burning or other hazardous fuel reduction that is consistent with
23 this chapter and the regulations of the board with (1) the owner
24 or any other person who has legal control of any property or (2)
25 any public agency with regulatory or natural resource
26 management authority over any property that is included within
27 any wild land for any of the following purposes, or any
28 combination thereof:

29 (a) Prevention of high-intensity wild land fires through
30 reduction of the volume and continuity of wild land fuels.

31 (b) Watershed management.

32 (c) Range improvement.

33 (d) Vegetation management.

34 (e) Forest improvement.

35 (f) Wildlife habitat improvement.

36 (g) Air quality maintenance.

37 No contract may be entered into pursuant to this section unless
38 the director determines that the public benefits estimated to be
39 derived from the prescribed burning or other hazardous fuel
40 reduction pursuant to the contract will be equal to or greater than

1 the foreseeable damage that could result from the prescribed
2 burning or other hazardous fuel reduction.

3 ~~SEC. 6.—~~

4 *SEC. 7.* Section 4475.1 of the Public Resources Code is
5 amended to read:

6 4475.1. The director, with the approval of the Director of
7 General Services, may enter into a master agreement with federal
8 land management agencies to conduct joint prescribed burning
9 operations on wild lands and federal lands where these operations
10 serve the public interest and are beneficial to the state. This
11 master agreement shall be known as the Multiagency Agreement
12 for Cooperative Use of Prescribed Fire and shall establish
13 guidelines for the cooperative management of joint prescribed
14 burning operations. The master agreement shall require the
15 completion of a project agreement for each individual prescribed
16 burn which shall include the following:

17 (a) A list of all participants.

18 (b) A joint prescribed burn plan.

19 (c) A display of the project costs to be assumed by each
20 participant.

21 (d) A summary of the benefits to be received by each
22 participant.

23 (e) An apportionment of suppression cost to each participant
24 in the event a wildfire escapes from the project.

25 Project costs to be assumed by each agency or cooperator shall
26 be based on the benefits received by each participant. The
27 apportionment of suppression cost shall be based on the
28 following:

29 (1) The benefits received by each participant.

30 (2) The amount at risk of each participant.

31 (3) The cost to produce the desired benefits received by each
32 participant.

33 (4) The total acreage included by each participant.

34 ~~SEC. 7.—~~

35 *SEC. 8.* Section 4475.5 of the Public Resources Code is
36 amended to read:

37 4475.5. (a) The state may assume a proportionate share of
38 the costs of site preparation and prescribed burning or other
39 hazardous fuel reduction conducted pursuant to this article on
40 wild lands other than wild lands under the jurisdiction of the

1 federal government. The state's share of those costs shall bear the
2 same ratio to the total costs of the operation as the public benefits
3 bear to all public and private benefits to be derived from the
4 prescribed burning operation or other hazardous fuel reduction,
5 as estimated and determined by the director. The state's share of
6 the costs may exceed 90 percent of the total costs of the
7 operation only if the director determines that no direct private
8 economic benefits will accrue or will be utilized by a person that
9 owns or controls any property under contract pursuant to Section
10 4475.

11 (b) The board shall adopt regulations establishing standards to
12 be used by the director in determining the state's share of these
13 costs and in determining whether, pursuant to Section 4475, the
14 public benefits of a prescribed burning operation or other
15 hazardous fuel reduction will equal or exceed the foreseeable
16 damage therefrom.

17 (c) The determination of public and private benefits pursuant
18 to this section shall reflect any substantial benefit to be derived
19 from accomplishing any of the purposes specified in Section
20 4475 and the prevention of degradation of air quality.

21 (d) All or part of these costs to be borne by the person
22 contracting with the department may be met by the value of
23 materials, services, or equipment furnished by that person
24 directly, or furnished by that person pursuant to an agreement
25 with a private consultant or contractor, or furnished by a
26 combination of both means, that are determined by the
27 department to be suitable for the preparation for, and the conduct
28 of, the prescribed burning operation or other hazardous fuel
29 reduction.

30 ~~SEC. 8.—~~

31 *SEC. 9.* Section 4476 of the Public Resources Code is
32 amended to read:

33 4476. Any contract which is entered into pursuant to this
34 article shall do all of the following:

35 (a) Vest in the director the final authority to determine the
36 time during which wild land fuel and structural fire hazards may
37 be burned to minimize the risk of escape of a fire set in a
38 prescribed burning operation and to facilitate maintenance of air
39 quality.

1 (b) Clearly state the obligation of each party to the contract to
2 provide, maintain, and repair equipment and indicate the number
3 of each type of equipment to be provided and the duration of its
4 availability.

5 (c) Designate an officer of the department as the fire boss with
6 final authority to approve and amend the plan and formula
7 applicable to a prescribed burning operation, to determine that
8 the site has been prepared and the crew and equipment are ready
9 to commence the operation, and to supervise the work
10 assignments of departmental employees and all personnel
11 furnished by the person contracting with the department until the
12 prescribed burning is completed and all fire is declared to be out.

13 (d) Specify the duties of, and the precautions taken by, the
14 person contracting with the department and any personnel
15 furnished by that person.

16 (e) Provide that any personnel furnished by a person
17 contracting with the department to assist in any aspect of site
18 preparation or prescribed burning or other hazardous fuel
19 reduction shall be an agent of that person for all purposes of
20 ~~worker~~ *workers'* compensation. However, any volunteer
21 recruited or used by the department to suppress a wild land fire
22 originating or spreading from a prescribed burning operation is
23 an employee of the department for all purposes of ~~worker~~
24 *workers'* compensation.

25 (f) Specify the value assigned to the materials, services, or
26 equipment furnished by the person contracting with the
27 department in lieu of payment of all or part of that person's share
28 of the actual costs.

29 (g) Specify the total costs of the prescribed burning operation
30 or other hazardous fuel reduction and the pro rata share thereof
31 for each party to the contract. Any person contracting with the
32 department shall, prior to the commencement of any work by the
33 department, place on deposit in an interest-bearing escrow or
34 trust account with a California-licensed financial institution an
35 amount equal to that person's pro rata share of the costs, less the
36 value of materials, services, or equipment specified pursuant to
37 subdivision (e). Interest earned on the account shall accrue to the
38 depositor and may be separately disbursed from the principal
39 amount upon request of the depositor. Disbursement of funds on
40 deposit in the trust or escrow account shall be authorized by the

1 depositor within 15 days after completion, to the depositor's
2 satisfaction, of all work specified in the contract to be done by
3 the department.

4 (h) Provide that the department may, in its discretion, purchase
5 a third-party liability policy of insurance that provides coverage
6 against loss resulting from a wild land fire sustained by any
7 person or public agency, including the federal government. The
8 amount of the policy, if purchased, shall be determined by the
9 director. The policy shall name the person contracting with the
10 department and the department as joint policyholders. The
11 premium shall be included as a cost prorated as provided in
12 subdivision (g). A certificate of insurance, if purchased, covering
13 each policy shall be attached to or become a part of the contract.
14 If the department elects not to purchase insurance, the
15 department shall agree to indemnify and hold harmless the
16 person or public agency contracting with the department with
17 respect to liability arising out of performance of the contract.

18 ~~SEC. 9.—~~

19 *SEC. 10.* Section 4480 of the Public Resources Code is
20 amended to read:

21 4480. In any area of the state where there are substantially
22 more requests for prescribed burning operations or other
23 hazardous fuel reduction pursuant to this article than can be
24 conducted directly by the department in a single fiscal year, the
25 director may, with the approval of the Director of Finance, enter
26 into an agreement with private consultants or contractors or with
27 other public agencies for furnishing all or a part of the state's
28 share of the responsibility for planning the operation, preparing
29 the site, and conducting the prescribed burning or other
30 hazardous fuel reduction. The private consultant or contractor or
31 other public agency, and the work assignments of its employees,
32 shall be supervised by the fire boss when conducting prescribed
33 burning operations, or designated officer of the department when
34 conducting other hazardous fuel reduction, as provided in
35 subdivision (c) of Section 4476. No agreement may be entered
36 into pursuant to this section unless the director determines that it
37 will enable the prescribed burning operation to be conducted at a

- 1 cost equal to, or less than, the cost that would otherwise be
- 2 incurred by the state.

O