

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1280 (Maienschein)
Version: March 23, 2023
Hearing Date: June 20, 2023
Fiscal: No
Urgency: No
ID

SUBJECT

Fire hazard severity zones: disclosures

DIGEST

This bill revises the Natural Hazard Disclosure Statement that must be provided by a property seller to a potential buyer to include more specific disclosures regarding whether the property falls within current local, or state, high and very high fire hazard severity zones.

EXECUTIVE SUMMARY

Current law requires sellers of property to make certain disclosures about the property to a potential buyer, including disclosures regarding natural disaster risk. However, while regulations relating to mitigating fire hazards and risks have changed over the years to reflect changes in the rising fire risks in the state, the Natural Hazard Disclosure Statement has not been amended since 1998 to reflect these changes. These changes may have significant impacts on the risk, required maintenance of, or ability to obtain insurance for a property.

To ensure that these new fire severity zones are represented in the disclosures required by law, this bill revises the specific disclosures required relating to a property's location in a high fire hazard severity zone to require disclosure of whether the property is in a high or very high fire hazard severity zone, and whether the zone is a local or state designation.

This bill is sponsored by the California Association of Realtors and is supported by the Orange County Realtors. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires a seller of residential property to make disclosures of natural hazards on a specified statement, called the Natural Hazard Disclosure Statement (NDS), to a prospective buyer if the property is within zones or areas:
 - a) A special flood zone area as defined by the Federal Emergency Management Agency;
 - b) An area of potential flooding as shown on a dam failure inundation map created by the Department of Water Resources;
 - c) A very high fire hazard severity zone as identified by the Department of Forestry and Fire Protection;
 - d) A wildland area that may contain substantial forest fire risks and hazards as identified by the Department of Forestry and Fire Protection;
 - e) An earthquake fault zone as identified by the California Geological Survey; and
 - f) A seismic hazard zone as identified by the California Geological Survey. (Civ. Code § 1103.2 (a).)
- 2) Requires, in the event an earthquake fault zone, seismic hazard zone, very high fire hazard severity zone, or wildland fire area map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a natural hazard area, the seller or seller's agent to mark "Yes" on the Natural Hazard Disclosure Statement. (Civ. Code § 1103.2 (b).)
- 3) Requires the State Fire Marshal to identify areas in the state as moderate, high, and very high fire hazard severity zones based on consistent statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas. (Gov. Code § 51178 & Pub. Res. Code § 4202.)
- 4) Requires the Board of Forestry and Fire Protection to classify all lands within the state, without regard to any classification of lands made by or for any federal agency or purpose, for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state, commonly referred to as the "State Responsibility Area." (Pub. Res. Code § 4125 (a).)
- 5) Provides that the following areas are not to be included in the State Responsibility Area:
 - a) Lands owned or controlled by the federal government or any agency of the federal government; and
 - b) Lands within the exterior boundaries of any city, except a city and county with a population of less than 25,000 if, at the time the city and county

government is established, the county contains no municipal corporations, typically referred to as a local responsibility area. (Pub. Res. Code § 4127.)

This bill:

- 1) Modifies the NDS to require disclosure of whether the property is within a high or very high fire hazard severity zone (FHSZ), and indicate specifically if the property is:
 - a) a high FHSZ in a state responsibility area;
 - b) a very High FHSZ in a state responsibility area; or
 - c) a very High FHSZ in a local responsibility area.
- 2) Modifies subsection (b) of Civil Code Section 1103.2 to include an obligation to mark yes on the NDS that the property is in a high or very high FHSZ if a high or very high FHSZ map is not of sufficient accuracy or scale for a reasonable person to determine if the property is within a natural hazard area.

COMMENTS

1. Author's comment

According to the author:

California has added fire severity zones that are not included in the current statutory residential real estate Natural Hazard Disclosure Form. To update the disclosure to align with the new zones, statutory direction is required. By adding additional fire mapping zones to the residential Natural Hazard Disclosure, this bill expands the breadth of knowledge a buyer receives when making a home purchase, which is often the most consequential purchase in person's lifetime. Buyers deserve to understand the details of the property they are purchasing prior to the close of the transaction.

2. Sponsor's comment

According to the California Association of Realtors, the bill's sponsor:

CalFire is updating its fire hazard severity mapping and the new maps will be completed later this year. The new maps will recategorize the fire severity of different areas and areas that may not have been high-risk in the previous iterations of the maps may now be categorized as riskier. Because of the incredible risk that fires pose to residential property and the fact that in this era of climate change and prolific wildfire, homebuyers can easily be unaware that the community they are moving to may be a High Fire Hazard Severity Zone,

[the association's] member REALTORS feel that it is imperative to add this additional zone to the Natural Hazard Disclosure Statement.

3. The state of wildfire hazards in California

With mostly semi-arid, desert, seasonally-dry Mediterranean climates, California's unique geography has long made the state prone to wildfires. Yet in recent years wildfires have become an increasingly major risk across California. Of the ten largest wildfires in California's history, seven have occurred within the last five years.¹ In 2020 alone, over 4.2 million acres of land was consumed by wildfires.² That is the equivalent of the entire area of Los Angeles, Orange, Santa Clara, and Santa Cruz counties combined. These fires have also been increasingly more destructive. The Camp fire, which swept through the city of Paradise in 2018, destroyed 18,804 structures and killed 85 people.³ Part of the reason for the destructiveness of recent fires relates to how much housing in California is built in areas that are next to areas of wildland (often called Wildland Urban interface, or WUI), as such areas constitute significant risks to man-made structures from wildfires in adjacent wildland as well as from the interspersed nature of fire fuel among urban development that characterizes WUIs. In recent years, California has increasingly built homes in and moved into WUIs and areas next to wildland at risk of wildfires.⁴ Given this continued development in WUIs and high risk fire zones, and the link between climate change and the increased prevalence and severity of wildfires, wildfires in California will likely continue to pose even greater threats to Californians and homes and structures throughout the state.⁵

4. The history of Fire Hazard Severity Zones

In 1980, a severe wildfire broke out in the San Bernardino Mountains, killing four people and destroying 325 structures. In response, the California Legislature passed SB 1916 (Ch. 806, Stats. 1982) to require the creation of fire hazard severity zone maps for all areas of California that are considered a state responsibility for fire protection (State Responsibility Areas, or SRA). These maps were created to help identify measures for limiting the spread of major fires like the 1980 fire and to help reduce the potential intensity of uncontrolled fires that threaten resources, life or property.⁶ The first map

¹ "Top 20 Largest California Wildfires," Cal. Dept. of Forestry & Fire Protection (Oct. 2022), available at <https://www.fire.ca.gov/our-impact/statistics>.

² Julie Cart, "California's 2020 fire siege: wildfires by the numbers," Cal Matters (Jul. 30, 2021), available at <https://calmatters.org/environment/2021/07/california-fires-2020/>.

³ "Camp Fire," California Department of Forestry and Fire Protection (Oct. 24, 2022 11:25 am), available <https://www.fire.ca.gov/incidents/2018/11/8/camp-fire/>.

⁴ Gabrielle Canon, "'Urban fire storm': suburban sprawl raising risk of destructive wildfires," The Guardian (Jan. 6, 2022 6:00 pm), available at <https://www.theguardian.com/world/2022/jan/06/urban-fire-storm-suburban-sprawl-wildfires-colorado>.

⁵ "Wildfire climate connection," National Oceanic and Atmospheric Administration (Aug. 8, 2022), available at <https://www.noaa.gov/noaa-wildfire/wildfire-climate-connection>.

⁶ See Cal. Pub. Resources Code § 4201.

was published in 1985. Subsequent fires and resulting legislation expanded the state requirements for creating fire hazard severity zone maps to local responsibility areas (LRAs), which are areas that are incorporated cities and therefore where local jurisdictions are responsible for fire protection and prevention. In 2003, another fire, the Cedar fire in San Diego, prompted the creation of state building code standards as mitigation measures to such destructive fires in areas that are zoned as very high fire hazard severity zones.

In 2007, in order to fulfil the state requirements for mapping fire hazard severity zones in SRA and LRAs, Cal Fire adopted a statewide consistent mapping model for FHSZs. This model included moderate, high, and very high zones, and assessed these zones by: prior fire history, vegetation, predicted flame length, ember production, terrain, and climate.⁷ While this new model was mapped for SRAs in 2007 and for LRAs in 2011, the maps were updated for SRAs just this year.⁸ Considering the growth in large, destructive wildfires over the last few years, as well as the growth in WUI, these new maps will likely be considerably different and include more areas of California not previously zoned as high or very high fire hazard severity zones.

5. The implications of Fire Hazard Severity Zone designations on properties

The FHSZs have significant implications for homeowners who are considering buying a home that may fall into one of the moderate, high, or very high fire hazard severity zones. FHSZs are used for implementing building standards for new construction in WUIs, including requirements around the use of fire-resistant roofing materials or determining road width. FHSZs are also used for allocating resources and in long-range planning by cities. Homes that fall into very high zones will also be subject to additional requirements for maintaining defensible space, and may have more difficulty obtaining homeowner's insurance.

6. The impact of this bill

Current state law requires that property sellers disclose if the property for sale is located in an area at risk of natural disasters, including disasters like earthquakes, floods, and wildfires. These disclosures are listed on the Natural Hazard Disclosure Statement (NDS), as described in Civil Code section 1103.2. Every NDS allows for a

⁷ See "Fire Hazard Severity Zones," Cal. Dept. of Forestry & Fire Protection, available at <https://osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/wildfire-preparedness/fire-hazard-severity-zones/>.

⁸ "Fire Hazard Severity Zones Map," Cal. Dept. of Forestry & Fire Protection (2023), <https://osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/wildfire-preparedness/fire-hazard-severity-zones/fire-hazard-severity-zones-map/>; "CAL FIRE Releases Updated Fire Hazard Severity Zone Map for Public Comment, Will Host 57 Public Hearings throughout California," Yolo County (Dec. 15, 2022 8:38 am), available at <https://www.yolocounty.org/Home/Components/News/News/13213/4918>.

three day right of rescission of a contract for purchase of a property, thus providing potential buyers with vital information about the risks and hazards present for the property they are purchasing and an opportunity to back out after considering any hazards present. The current NDS, which was last amended in 1998, before the current FHSZ models and maps were created, only requires the disclosure of whether the property falls into a very high FHSZ, and does not distinguish between high or very high zones, or whether the property is in an SRA or LRA. As different rules and obligations apply to high and very high FHSZs, as well as to SRA and LRA properties under either statewide mitigation rules or local rules, this bill will provide potential property buyers with more information about their potential obligations and hazards than currently exists.

SUPPORT

California Association of Realtors (sponsor)
Orange County Realtors

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 470 (Alvarado-Gil, 2023) extends prior authorization to January 1, 2026 for specified state agencies to make grants and direct expenditures for drought relief, and expands these funds to projects that reduce the risk of wildfires through water delivery system improvements in high and very high FHSZ communities. This bill is currently in the Assembly Committee on Water, Parks, and Wildlife.

AB 478 (Connolly 2023) regulates residential property insurance and would limit yearly premium increases for properties in high or very high FHSZs for insureds over the age of 65, and prohibit insurers from dropping insureds over the age of 65 solely based on the fact that the property is located in a high or very high FHSZ. This bill is currently in the Assembly Committee on Insurance.

SB 571 (Allen 2023) requires a proponent of a new development that would require the evacuation of 40 or more vehicles and is located in a high or very high FHSZ to create and submit an evacuation plan with the development proposal to the local government, and gives any person the ability to sue for declaratory and equitable relief if such measures are not followed. This bill is currently in the Senate Governance and Finance Committee.

Prior Legislation:

AB 38 (Wood, Ch. 391, Stats. 2019) required notices about low cost home hardening measures to be provided to all property buyers in high fire hazard severity zones.

AB 248 (Torlakson, Ch. 876, Stats. 1999) created a separate statutory section for Natural Disclosure Statements and the right to rescind a contract to purchase within three days of delivery of the NDS.

AB 337 (Bates, Ch. 1188, Stats. 1992) required the state to map very high fire hazard severity zones for all areas of the state, regardless of whether it falls under state or local responsibility, and required local jurisdictions to designate such very high fire hazard severity zones in their jurisdiction.

SB 1916 (Ch. 806, Stats. 1982) required the classification of all land within the State Responsibility Area in accordance with the severity of fire hazard present, for the purpose of identifying measures to be taken to reduce the rate of spreading and to reduce the potential intensity of uncontrolled fires that threaten resources, life, or property.

PRIOR VOTES:

Assembly Floor (Ayes 65, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)
