



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

DRAFT

Date Amended:	Chapter 8 of the First Extraordinary Session	Bill No:	<u>ABx1 29</u>
Tax Program:	State Responsibility Area Fire Prevention Fee	Author:	Blumenfield
Sponsor:	Author	Code Sections:	Chap. 1.5 to Part 2 of Div. 4 of the PRC
Related Bills:	SBx1 17 (Comm. on Budget)	Effective Date:	Effective immediately

BILL SUMMARY

Among its provisions, this budget trailer bill would, in order to fund fire prevention activities, require the State Board of Equalization (BOE) to assess and collect a fire prevention fee charged on each structure on a parcel that is within a state responsibility area (SRA). The bill would require the State Board of Forestry and Fire Protection (Fire Board), on or before September 1, 2011, to adopt emergency regulations to establish a fire prevention fee in an amount not to exceed \$150 on each structure subject to the fee. The Department of Forestry and Fire Protection (CalFire) would be required to provide the BOE information needed for the assessments.

ANALYSIS

CURRENT LAW

Under existing law, Public Resources Code (PRC) Section 4125 requires the Fire Board 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.

PRC Section 4102 defines "state responsibility areas" to mean areas of the state in which the financial responsibility for preventing and suppressing fires has been determined by the Fire Board to be primarily the responsibility of the state.

Under existing PRC provisions, CalFire has the primary responsibility for preventing and suppressing fires in areas that the Fire Board has determined are SRA's.

PROPOSED LAW

This bill would add Chapter 1.5 (commencing with Section 4210) to Part 2 of Division 4 of the Public Resources Code to, among other things, require the Fire Board on or before September 1, 2011, to adopt emergency regulations to establish a fire prevention fee in an amount not to exceed \$150 on each structure on a parcel that is within a SRA.

REVISED COST ESTIMATE

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The fire fee would be adjusted annually by the Fire Board, beginning July 1, 2013, to reflect the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as described.

Collection and Administration. Commencing with the 2011-12 fiscal year, the BOE would be required to annually assess and collect the fire prevention fee in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the BOE. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, as well as providing the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

Within 30 days of the effective date of the bill, and by each January 1 thereafter, CalFire would be required to transmit to the BOE the appropriate name and address of each person liable for the fee and the amount of the fee to be assessed. In addition, CalFire would also provide to the BOE a contact telephone number for the Fire Board to be printed on the assessment to respond to fee-payer questions about the fee.

The annual fire prevention fee is due and payable to the BOE 30 days from the date of assessment. If a timely petition for redetermination has not been filed within the 30-day period, then the amount determined to be due becomes final at the end of the 30-day period. However, if a petition for redetermination is filed within the 30-day period, then all legal actions to collect the fee must be held pending a decision by CalFire.

The BOE would not handle any appeal or claim for refund based on a determination by CalFire that a person is required to pay the fee or regarding the amount of that fee. Those would be handled by CalFire. If CalFire determines that a person is entitled to a refund, then that person would be required to make a claim for refund to the BOE.

Additionally, if it is determined by a reviewing court that a person is entitled to a refund of all or part of the fire prevention fee, then that person would file a refund claim with the BOE.

In reviewing a petition for redetermination, if CalFire determines that the fire prevention fee is due and if the fee is not paid when due and payable, then, notwithstanding the 10 percent penalty for failure to timely pay provided under the Fee Collections Procedure Law, this bill would impose a penalty of 20 percent of the fee due for each 30-day period in which the fee remains unpaid.

Beginning with the 2012-13 fiscal year, if in any given fiscal year there are sufficient funds in the State Responsibility Area Fire Prevention Fund to finance specified costs related to fire prevention activities for that fiscal year, then the fire prevention fee may not be collected that fiscal year.

State Responsibility Area Fire Prevention Fund (Fund). After deducting moneys necessary for the payment of refunds and reimbursement for expenses incurred in the collection of the fee, the BOE would be required to deposit the fire protection fees collected into the Fund, which this bill would create in the State Treasury. Moneys in

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the Fund would be available to CalFire for fire prevention activities, as specified, in SRAs, that benefit the owners of structures within the SRA.

This bill would also require that the fee revenues be used to cover any startup costs incurred over a two-year period.

Definitions. This bill defines the term “structure” to mean “a building used or intended to be used for human habitation.” A building includes, but is not limited to, a mobilehome or manufactured home. The Fire Board is required to exclude from this definition building types that require no structural fire protection services beyond those provided to otherwise unimproved lands.

This bill would define a “state responsibility area” to mean state responsibility area as defined in Section 4102 of the PRC, which means areas of the state in which the financial responsibility of preventing and suppressing fires has been determined by CalFire to be primarily the responsibility of the state.

The bill’s provisions become effective immediately.

BACKGROUND

In 2003-04, the Legislature enacted SB 1049 (Committee on Budget, Chapter 741) that imposed an annual SRA fire protection benefit fee on each parcel of land located, in whole or in part, within SRAs. The fee was to be collected by counties and used to fund fire prevention and suppression services by CalFire. However, the fee was repealed by SB 1112 (Committee on Budget, Chapter 219, Stats. 2004) before any fees were collected.

During the 2007-08 Budget process, the Legislative Analyst Office (LAO) recommended reenacting a fire protection fee in SRAs. In its report titled: “California Department of Forestry and Fire Protection: State’s Wildland Firefighting Costs Continue to Escalate,” the LAO commented that it is appropriate for the beneficiaries of state fire protection to contribute to the cost of such protection. According to the LAO, because CalFire’s fire protection provides both public benefits (the protection of watersheds, for example) and private benefits (the protection of timber lands and houses in SRAs) it is appropriate that private beneficiaries contribute to the state’s cost of doing so. The LAO recommended the enactment of legislation to reinstate fire protection fees on private property owners in SRAs so that the beneficiaries of SRAs pay a portion of their costs.

In 2008, SB 1617 (Kehoe), which was very similar to this bill, would have imposed an annual \$50 fee on residential structures located within SRAs. The bill would have required the BOE to assess and collect the \$50 fee. The bill also contained provisions prohibiting the BOE from collecting the fee in any year in which there was sufficient fees to finance specified fire prevention grants and other activities. This bill died on the Assembly inactive file.

In 2009, ABx3 41 (Evans), a budget trailer bill, would have required CalFire to adopt emergency regulations to establish a fee to cover the costs of providing fire protection services associated with structures in an SRA, based on the fire hazard severity zone in which a structure is located. The bill would have required the BOE to assess and collect a fire protection fee charged on each structure on a parcel that is subject to property taxes with a SRA. This bill was withdrawn from enrollment and held in the Legislature.

COMMENTS

1. **Sponsor and Purpose.** The purpose of this bill is to enact various provisions necessary for the implementation of the 2011-12 budget. The fire fee would fund fire and emergency response efforts in SRAs.
2. **The BOE would need a specific appropriation for administrative start up costs.** This bill is effective immediately and proposes a new fee to be collected annually by the BOE commencing with the 2011-12 fiscal year. The BOE would receive initial billing information from CalFire sometime after the rate is set by the Fire Board in September 2011. As such, the BOE would incur administrative costs beginning with the 2011-12 fiscal year in order to develop computer programs, create the notice of determination (the SRA assessments), and hire appropriate staff. To cover these administrative startup costs, the BOE would need a direct appropriation that would not have already been identified in the BOE's 2011-12 budget.
3. **When would the BOE receive the information from CalFire?** As provided in the bill, Section 4212 would require the Fire Board to adopt emergency regulations to establish the initial fee, not to exceed \$150 per structure on a parcel within an SRA, by September 1, 2011. However, subdivision (c) of Section 4213 also specifies that, within 30 days of the effective date of this chapter and each January 1 thereafter, CalFire would transmit to the BOE the name and address of each person who is liable for the fee, the amount of the fee to be assessed, and a contact phone number for the Fire Board. The bill is effective immediately upon chaptering, therefore, it seems CalFire would be required to provide the fee amount to the BOE prior to the Fire Board actually adopting regulations and setting the initial fee amount. As this is an unlikely scenario, we will assume that the BOE will receive the information from CalFire shortly after the fee amount is established by the Fire Board.

Due to the contradictory language regarding the timing of establishing the fee amount and providing feepayer information to the BOE, it is unclear when the BOE would actually receive all of the information necessary to issue assessments. With the number of assessments estimated at about one million, the BOE would be unable to issue the assessments at one time and therefore would need to stagger the issuance of the assessments over a ten-month period. The later BOE gets the information from CalFire, the higher the likelihood that the assessments would not be issued in the same fiscal year.

4. **The Fire Board would adopt emergency regulations to establish a fire prevention fee.** The Fire Board is provided a cap on the fee amount per structure subject to the fee, which may allow the Fire Board to adopt either a single flat rate fee or a fee based on criteria related to fire prevention. Depending on the simplicity or complexity of the fee structure, the BOE's administrative costs may be affected. Costs could be due to the information related to the owner of the structure, the type of structure, the number of structures on a parcel, the amount of the fee, and other factors related to fire prevention. Although CalFire would only be required to provide the appropriate name and address of each person who is liable for the fee and the amount of the fee to be assessed, it may be necessary to include additional information to the feepayers regarding how the fee amount owed was determined.

5. Additional administrative concerns. The BOE staff has administrative concerns regarding the fire prevention fee that include the following:

- As provided, commencing with the 2012-13 fiscal year, if in any given fiscal year there are sufficient amounts in the Fund to finance specified fire prevention activities, then the fee may not be collected for that fiscal year. The bill does not specify what department or agency would determine if there are or are not sufficient amounts to cover the specified costs. The BOE believes that this function would be appropriate for the LAO or Department of Finance, but not the BOE and that a timely notice should be required to be sent to the BOE. The BOE also believes this provision should be interpreted to mean that fire prevention assessments would not be issued for the fiscal year affected and should not be interpreted as a stay of collection for amounts assessed for other fiscal years. If the Legislature intended otherwise, this should be clarified.
- Each petition for redetermination, or appeal, shall be sent to the Fire Board, CalFire, and BOE. During the time that a timely appeal is pending, the BOE shall stay all collection action until CalFire makes a final determination of the appeal. As there is no stipulated timeframe for a final determination to be made, the BOE would need to periodically follow up with CalFire regarding the resolution of appeals. Additionally, after CalFire makes a final determination, the BOE would issue a notice to the feepayer which would include language regarding the 20-percent penalty that would be assessed for each 30-day period in which the fee remains unpaid. The 20-percent penalty for the appealed cases would be imposed in place of the one-time 10 percent penalty imposed under the Fee Collection Procedures Law. It appears that the 10 percent penalty would apply to those assessments that are not appealed but remain unpaid after the fee has become due and payable (30 days after assessment).

6. Legal challenges to any new fee program might be made on the grounds that the fee is a tax. Proposition 26 passed by the voters in the 2010 General Election expanded the definition of a tax and a tax increase. The Legislative Analyst Office provided an analysis of Prop. 26; for reference please see the publication at the following link: <http://cdn.sos.ca.gov/vig2010/general/pdf/english/26-title-sum-analysis.pdf>.

Although this bill has been keyed by the Legislative Counsel as a majority vote bill, opponents of this bill might question whether the fee imposed is in legal effect a “tax” required to be enacted by a two-thirds vote of the Legislature.

7. Related legislation. The Senate Committee on Budget and Fiscal Review has proposed a similar measure, SBx1 17.

COST ESTIMATE

The BOE would incur non-absorbable costs to adequately develop a new fee program and collect the fee from nearly 850,000 new feepayers. These costs would include developing computer programs, developing forms and publications, creating a feepayer registration based on billing information provided by CalFire, mailing and processing billings, carrying out compliance efforts, developing regulations, training staff, and answering fee-related inquiries.

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These costs are estimated to be as follows:

Start Up FY 2011-12	Ongoing FY 2012-13, and each year thereafter
\$ 4,853,000	\$ 5,049,000

Note. This bill would require the BOE to collect the proposed fire prevention fee annually beginning with the 2011-12 fiscal year. This cost estimate is based on the assumption that the BOE would stagger issuing assessments over a ten-month period, with approximately one-tenth (or 85,000) of the total estimated 850,000 assessments being mailed out each month. Due to the volume of assessments, the BOE’s resources cannot accommodate issuing such assessments all at one time each year.

REVENUE ESTIMATE

This bill does not specify a fee amount, but requires the Fire Board to adopt emergency regulations to establish a fire prevention fee in an amount not to exceed \$150 on each structure on a parcel that is within a SRA. Therefore, the BOE is unable to estimate the amount of revenues attributable to this bill. However, in the BOE’s most recent revenue estimate, the BOE determined that approximately 1,000,000 habitable structures would be subject to the fee (ABx3 41 (Evans, 2009)). Once the Fire Board adopts regulations to set the fire fee, the BOE may be able to estimate revenues.

Analysis prepared by:	John Cortez	916-445-6662	08/25/11
Contact:	Margaret S. Shedd	916-322-2376	
Is			0029ab1xenrolled1jc.doc

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