



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

DRAFT

Date:	01/22/13	Bill No:	<a href="#">Senate Bill 125</a>
Tax Program:	Fire Prevention Fee	Author:	Gaines
Sponsor:	Author	Code Sections:	PRC Section 4212
Related Bills:	SB 17 (Gaines) SB 147 (Gaines) AB 23 (Donnelly) AB 124 (Morrell)	Effective Date:	01/01/14

**BILL SUMMARY**

This bill exempts property owners from payment of the fire prevention fee<sup>1</sup> if they own a habitable structure located within both a state responsibility area (SRA) and a local fire district that provides fire protection service.

**ANALYSIS**

**CURRENT LAW**

**Fire Prevention Fee.** Existing law<sup>2</sup> requires the Board of Equalization (BOE) to assess and collect an annual fire prevention fee in accordance with the Fee Collection Procedures Law (FCPL).<sup>3</sup> The law<sup>4</sup> requires the State Board of Forestry and Fire Protection (Fire Board) to adopt emergency regulations to establish a fire prevention fee. The amount is not permitted to exceed \$150 per habitable structure on a parcel located within a SRA. Public Resources Code (PRC) Section 4102 defines a SRA as an area over which the Fire Board determines that the prevention and suppression of fires is a financial responsibility of the state. PRC Section 4125 requires the Fire Board to classify all state lands and then determine when the state has financial responsibility for fire prevention and suppression.

Lastly, the California Department of Forestry and Fire Protection (CAL FIRE) is responsible for fire prevention and suppression in Fire Board-determined SRA's.

Beginning July 1, 2013, the Fire Board must annually adjust the fire prevention fee. The adjustment reflects the percentage 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.

**Collection and Administration.** Commencing with the 2011-12 fiscal year (FY), the BOE assesses and collects the fire prevention fee annually. The FCPL governs the BOE's collection function.

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals

<sup>1</sup> Imposed pursuant to Chapter 1.5 (commencing with Section 4210) of Part 2 of Division 4 of the Public Resources Code (PRC).

<sup>2</sup> PRC Section 4213.

<sup>3</sup> Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

<sup>4</sup> PRC Section 4212.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*

procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

By each January 1, CAL FIRE transmits to the BOE the name, address, and assessment amount of each person liable for the fee. In addition, CAL FIRE provides to the BOE a telephone number that feepayers may use to obtain responses to their fee questions.

Annual fire prevention fee assessments are due and payable to the BOE 30 days after assessment. The amount assessed becomes final at the end of the 30-day period, unless a feepayer files a petition for redetermination within that period. If a feepayer files a timely petition for redetermination, all legal collection actions are held until CAL FIRE decides the petition's merit.

The BOE lacks authority to decide or review any petition for redetermination or claim for refund that CAL FIRE determines. CAL FIRE handles all appeals, and a person may only file a refund claim with the BOE if CAL FIRE determines that the person is entitled to a refund.

The fire prevention fee may not be collected if, in any given fiscal year, the SRA Fire Prevention Fund has sufficient funds to finance prevention activities. The law requires the fee revenues to be used to cover any startup costs incurred over a two-year period.

#### **PROPOSED LAW**

This bill exempts property owners from payment of the fire prevention fee if they own a habitable structure located within both a SRA and the boundaries of a local fire district that provides fire protection service.

If enacted, this bill takes effect on January 1, 2014.

#### **BACKGROUND**

On July 7, 2011, Governor Brown signed ABx1 29<sup>5</sup>, which required the BOE to collect the new fire fee, commencing with FY 2011-12. However, the BOE delayed implementation because the Legislature failed to appropriate sufficient funds to cover the BOE's costs.

The Governor's signing message for ABx1 29 provides in part, "A fee consistent with the 'beneficiary pays principle,' such as the one intended in this bill, can achieve significant General Fund savings. However, as currently drafted, the revenues may not materialize. I am directing the Department of Finance and CAL FIRE to work with the Legislature during the remaining legislative session to identify necessary clean-up language to realize these revenues."

Subsequently, the Governor supported ABx1 24 (Blumenfeld), amended September 1, 2011, which was intended to impose a fire protection fee to fund fire suppression and prevention services and emergency response efforts in SRAs. ABx1 24 differed from ABx1 29 in that it proposed a per acre fee along with a structure fee, and authorized funds for fire suppression. Senate Budget & Fiscal Review held the bill in committee.

Another measure, ABx1 45 (Jeffries), introduced September 2, 2011, would have repealed the fire prevention fee. The bill died at the Assembly desk.

---

<sup>5</sup> Chapter 8, Stats. 2011, added Chapter 1.5 (commencing with Section 4210) to Part 2 of Division 4 of the PRC.

In 2012, AB 1506 (Jeffries and Cook) and SB 1040 (Evans), as amended August 27, 2012, also would have repealed the fire prevention fee. The Assembly Appropriations Committee held AB 1506, while SB 1040 was held by the Budget Committee.

Last year's failed AB 2474 (Chesbro) would have provided habitable structure owners a credit of up to \$150 against the fire prevention fee for structures within a SRA if they also paid a local agency for fire protection services. The Assembly Appropriations Committee held the bill.

## COMMENTS

- 1. Sponsor and Purpose.** The author is sponsoring this bill to exempt rural property owners from what he believes to be payment of a fee that imposes an unfair and undue burden.
- 2. Are property owners exempt from the fire fee, or exempt from *payment* of the fee?** Most exemptions provide an exemption from the *imposition* of a tax or fee, not *payment*. This bill exempts certain property owners from *payment* of the fee. BOE staff believes this can be interpreted to mean that CAL FIRE may still provide BOE with the name, address, and assessment amount of each person liable for the fee and that BOE would be required to assess the fee. Those property owners that believe they are exempt from *payment* of the fee would then file an exemption with either CAL FIRE or the BOE. We recommend the author clarify the intent of the bill, and we can provide assistance drafting appropriate amendments.
- 3. Which agency would administer the fire fee exemption?** After CAL FIRE provides BOE with the name, address and fee assessment amount of each liable person, the BOE issues the assessments. Under current law, CAL FIRE handles the appeals process. Existing statutes provide clear designation of administration functions between the state agencies.

This bill does not specify which agencies would administer the proposed exemption. Since CAL FIRE has the technical expertise to identify the SRA and local fire district boundaries, BOE staff suggests CAL FIRE administer the exemption. The BOE lacks the expertise to identify impacted properties.

According to CAL FIRE, almost all current feepayers have a habitable structure located within both a SRA and local fire protection district. Based on their information, approximately 95% of existing feepayers would be eligible for the proposed exemption.

- 4. In which fiscal year does this bill take effect?** If passed, this bill takes effect on January 1, 2014, which is in the middle of FY 2013-14. Regulations<sup>6</sup> adopted by CAL FIRE hold liable for the fee the person identified as the property owner as of July 1 in state or county records. Since FY 2013-14 begins July 1, 2013 (6 months after the potential effective date of this bill), does the author intend that the proposed exemption should affect the fire fee assessments for FY 2013-14? If the fee is imposed on the owner as of July 1, 2013, but the exemption is effective January 1, 2014, is the exemption effective for FY 2013-14 assessments or the FY 2014-15 assessments? BOE staff recommends the author clarify the intent and can assist drafting appropriate amendments.

---

<sup>6</sup> Chapter 13, *State Responsibility Area Fees*, of Div. 1.5 of Title 14 of the California Code of Regulations.

The following illustrates the timing issue that needs clarification:

FY	FY Period	Fee Owed by:	Exemption effective 01/01/14
2013-14	07/01/13 – 06/30/14	Property Owner on 07/01/13	Fee already assessed, no exemption.
2014-15	07/01/14 – 06/30/15	Property Owner on 07/01/14	Exemption available.

**5. Related bills.** AB 23 (Donnelly), AB 124 (Morrell) and SB 17 (Gaines) would repeal the fire prevention fee. SB 147 (Gaines) exempts property owners with income of less than 200% of the federal poverty level from the fire prevention fee.

### **COST ESTIMATE**

The administrative concerns expressed previously may impact BOE's administrative costs. As issues are addressed, we can better identify any costs related to the proposed fire prevention fee exemption.

### **REVENUE ESTIMATE**

CALFIRE estimates that nearly 95 percent of all structures subject to the fire prevention fee are located in an area that provides local fire prevention services, and therefore are affected by this bill. Based on this information, CALFIRE further estimates that this bill would result in an annual revenue loss of \$84.9 million.

Analysis prepared by:	John Cortez	916-445-6662	03/25/13
Revenue estimate by:	Chris Butler	916-445-0840	
Contact:	Michele Pielsticker	916-322-2376	
Is			0125sb012213jc.docx

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*