



Date:	01/16/14	Bill No:	<u>Assembly Bill 1519</u>
Tax Program:	Fire Prevention Fee	Author:	Donnelly
Sponsor:	BOE Member Runner	Code Sections:	PRC Section 4225
Related Bills:	Assembly Bill 1954 (Harkey) Assembly Bill 2048 (Dahle) Senate Bill 1413 (Wyland)	Effective Date:	01/01/15

BILL SUMMARY

This bill deletes the 20% fire prevention fee penalty that is added to final redeterminations for each 30-day period the fee remains unpaid.

ANALYSIS

CURRENT LAW

Fire Prevention Fee. Existing law¹ requires the Board of Equalization (BOE) to collect an annual fire prevention fee in accordance with the Fee Collection Procedures Law (FCPL).² The fee benefits the California Department of Forestry and Fire Protection (CAL FIRE), which is responsible for fire prevention and suppression in areas that the State Board of Forestry and Fire Protection (Fire Board) has determined are state responsibility areas (SRAs). As required,³ the Fire Board adopted emergency regulations to establish a fire prevention fee. The fee amount is not permitted to exceed \$150 per habitable structure on a parcel located within an SRA, except as it is adjusted annually by the Fire Board. Public Resources Code (PRC) Section 4102 defines an SRA as an area over which the Fire Board determines that the prevention and suppression of fires is primarily the financial responsibility of the state. PRC Section 4125 requires the Fire Board to classify all state lands and determine the areas in which the state has primary financial responsibility for fire prevention and suppression.

Beginning July 1, 2013, the Fire Board must annually adjust the fire prevention fee.⁴ The adjustment reflects 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. While the Fire Board set the fiscal year (FY) 2013-14 fee at \$152.33, most bills will be for \$117.33 as most owners will receive a \$35 reduction in the fee.⁵

Collection and Administration. Commencing with FY 2011-12, the BOE 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

¹ Public Resources Code (PRC) Section 4213.

² Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

³ PRC Section 4212(a).

⁴ PRC Section 4212(b).

⁵ If a habitable structure is also within the boundaries of a local agency that provides fire protection services, the property owner will receive a \$35 reduction for each habitable structure. Over 90% of habitable structures in an SRA are also covered by a local fire protection agency.

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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's final determination.

The BOE lacks authority to decide or review any petition for redetermination or claim for refund of a fee that CAL FIRE determines is due. CAL FIRE handles all appeals, and for those cases that CAL FIRE determines the person is entitled to a refund, that person may file a refund claim with the BOE.⁶

If CAL FIRE denies a petition for redetermination, the BOE will issue a notice of redetermination. If the fee is not paid by the date specified in the notice, then the law imposes a penalty of 20% of the fee due for each 30-day period during which the fee remains unpaid. This penalty is in lieu of the 10% penalty applicable to all other liabilities not paid timely.

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

PROPOSED LAW

This bill deletes the 20% fire prevention fee penalty that is added to final redeterminations for each 30-day period the fee remains unpaid.

The bill would become effective on January 1, 2015.

BACKGROUND

On July 7, 2011, Governor Brown signed ABx1 29,⁷ which required the BOE to collect the new fire prevention fee, commencing with FY 2011-12. However, collection of the fee was delayed due to several factors, including adoption of the emergency regulations, and the costs of implementation.

Governor Brown's signing message for ABx1 29 states, 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."

⁶ PRC Section 4213(a)(3)(A) and (B) does not allow BOE to accept claims or refund on the basis that the person is not subject to the fee, or that the fee is improperly calculated. However, the BOE may directly process certain administrative refund claims (e.g. overpayments).

⁷ Chapter 8, Stats. 2011.

Since then, numerous unsuccessful bills have been introduced to repeal, replace, or provide a fire fee exemption. Bills introduced during the last two legislative sessions include:

Bill No.	Session	Author	Fire Fee Bills
AB 23	2013-14	Donnelly	Proposed repeal of the fire prevention fee.
AB 124	2013-14	Morrell	Proposed repeal of the fire prevention fee.
AB 468	2013-14	Chesbro	Would have repealed the fire prevention fee and replaced it with a 4.8% surcharge on commercial and residential fire and multi-peril insurance policy premiums.
AB 929	2013-14	Jones	Was intended to implement reimbursement procedures for persons who have paid a fire prevention fee covering a structure that was previously in an SRA, but that was determined to no longer be within a SRA's boundaries.
SB 17	2013-14	Gaines	Legislative intent to repeal the fire prevention fee.
SB 125	2013-14	Gaines	Proposed exemption from the fire prevention fee for those properties with a habitable structure that lies within both an SRA and the boundaries of a local fire district that provides fire protection service.
SB 147	2013-14	Gaines	Proposed exemption from the fire prevention fee for those property owners with income of less than 200% of the federal poverty level.
ABx1 24	2011-12	Blumenfield	Proposed a fire protection fee to fund fire suppression and prevention and emergency response efforts in SRAs.
ABx1 45	2011-12	Jeffries	Proposed repeal of the fire prevention fee.
AB 1506	2011-12	Jeffries and Cook	Proposed repeal of the fire prevention fee.
AB 2474	2011-12	Chesbro	Proposed a credit of up to \$150 against the fire prevention fee of amounts paid to a local agency for fire protection services.
SB 1040	2011-12	Evans	Proposed repeal of the fire prevention fee.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by BOE Member George Runner and is intended to repeal a penalty that he contends is substantially higher than any other penalty charged by the BOE, and it would bring the fire prevention fee penalty into conformity with other state administered fees.

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2. **The BOE may have cost savings related to the deletion of the 20% penalty.** The BOE is currently developing a Centralized Revenue Opportunity System (CROS) to replace the current legacy technology systems. As part of this development, BOE staff work to identify and resolve issues that may impact CROS implementation before they become a problem. The 20% fire prevention fee penalty may present an issue for CROS implementation, as it is not a standard penalty that is charged to any of the other unpaid tax or fee accounts. Currently, the BOE administers more than 30 tax and fee programs. In general, the more issues resolved prior to implementation, the lower the overall cost of the project.
3. **If the 20% penalty is deleted, does the 10% penalty apply?** The author should clarify whether the 10% penalty imposed pursuant to RTC Section 55086 on amounts determined to be due by the BOE pursuant to RTC Section 55061 applies to amounts that are redetermined by CAL FIRE and that become final and remain unpaid. BOE staff suggests clarifying this ambiguity by amending the bill to specify that the penalty imposed pursuant to RTC Section 55086 applies.

Additionally, to achieve possible long-term programming savings, the 20% penalty that is presently being assessed on those accounts that remain unpaid should no longer be imposed. PRC Section 4225 should be amended as follows:

4225. (a)(1) The fire prevention fee determined to be due by the department under this article is due and payable at the time it becomes final, and if it is not paid when due and payable, notwithstanding the penalty imposed pursuant to Section ~~550425~~55086 of the Revenue and Taxation Code, a penalty of 20 percent of the fee determined to be due shall be added to the amount due and payable for each 30-day period in which the fee remains unpaid.

(2) On and after January 1, 2015, the penalty imposed pursuant to paragraph (1), shall not be imposed or added to any fee that remains unpaid or any fee that is not paid when due and payable.

(b) On and after January 1, 2015, the fire prevention fee determined to be due by the department under this article is due and payable at the time it becomes final, and if it is not paid when due and payable, the penalty imposed pursuant to Section 55086 of the Revenue and Taxation Code shall be applied.

4. **Related bills.** AB 1954 (Harkey) changes the finality date of a petition for redetermination from 30 to 90 days and, within that 90 days, allows a feepayer to appeal to the BOE redeterminations that deny all or part of a refund. AB 2048 (Dahle et al) among its fire prevention fee provisions, adds definitions, makes permissive the annual rate adjustment, clarifies the imposition of the fee, provides a disaster relief provision, adds a "late protest" procedure, and replaces the 20% penalty with a 10% penalty. SB 1413 (Wyland) extends the date the annual fire prevention fee assessments are due and payable from 30 to 60 days.

COST ESTIMATE

Long-term cost savings may be associated with deleting the 20% penalty. An estimate of the potential cost savings is pending.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

In FY 2012-13, \$85,320 in 20% late payment penalties was assessed. BOE staff believes that these second fiscal year billings are representative of the outgoing years. Based on the BOE data, staff estimates an ongoing 10% late payment penalty would result in annual penalty assessments of \$19,096 (1,628 accounts x \$11.73 = \$19,096). Of the 1,628 accounts, staff estimates approximately 70% would remain unpaid after the initial billing. Given that this is a new fee program and has relatively little collection data, staff assumes these liabilities would continue to accrue the 20% penalty an additional six months. Assuming a 20% compliance rate, staff would estimate an additional revenue loss of \$31,464 ((1,140 accounts x \$23 penalty x 6 months) x 20% compliance rate = \$31,464).

REVENUE SUMMARY

Deletion of the 20% penalty would result in an overall revenue loss of \$116,784 (\$85,320 + \$31,464). However, this loss is offset by the 10% penalty that would be imposed instead. The net revenue loss would be \$97,688 (\$116,784 – \$19,096).

Qualifying Remarks. For the purposes of preparing this estimate, BOE staff assumed the bill would be amended to:⁸

- Ensure that the 20% penalty is no longer imposed on those accounts that have already been assessed the penalty and remain unpaid.
- Clarify that the 10% penalty would apply to those amounts that are redetermined by CAL FIRE and become final and remain unpaid.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

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⁸ To the extent any of the revenue assumptions are incorrect, the revenue estimate will be affected.

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