



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

DRAFT

Date Amended:	<b>09/01/11</b>	Bill No:	<a href="#"><u>ABx1 24</u></a>
Tax Program:	<b>Fire Protection Fee</b>	Author:	<b>Blumenfield</b>
Sponsor:	<b>Author</b>	Code Sections:	<b>PRC 4210 - 4228</b>
Related Bills:	<b>SBx1 7 (Budget)</b>	Effective Date:	<b>Effective immediately</b>

**BILL SUMMARY**

As directed by the Governor in his signing message of ABx1 29, the Department of Finance (DOF) and the Department of Forestry and Fire Protection (CalFire) drafted clean-up language to realize General Fund savings in CalFire’s fire protection program. As such, this bill requires the State Board of Equalization (BOE) to assess and collect a fire protection fee charged on all owners of property within a state responsibility area (SRA) as of July 1, 2011. The bill would require the State Board of Forestry and Fire Protection (Fire Board), within 60 days of enactment, to adopt emergency regulations to establish a fire protection fee in the amounts specified for each acre and structure, but not more than the reasonable costs of providing fire protection services. CalFire would be required to provide the BOE the information it needs to issue 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.

**Fire Prevention Fee.** ABx1 29 (Ch. 8, 1<sup>st</sup> Ex. Session, Stats. 2011) added 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.

The fire prevention fee will 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 (FY), the BOE is required to annually assess and collect the fire prevention fee in accordance

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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 will not handle any petition for redetermination 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. All appeals will be handled by CalFire. If CalFire determines that a person is entitled to a refund, then that person is 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 can 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, the law imposes 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 FY, then the fire prevention fee may not be collected for that FY.

**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 is required to deposit the fire protection fees collected into the Fund. Moneys in the Fund will be available to CalFire for fire prevention activities, as specified, in SRAs, that benefit the owners of structures within the SRA.

The law also requires that the fee revenues be used to cover any startup costs incurred over a two-year period.

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**Definitions.** The term “structures” means “a building used or intended to be used for human habitation.” A building includes, but is not limited to, a mobile home 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.

A “state responsibility area” means 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.

**PROPOSED LAW**

This bill makes numerous changes to Chapter 1.5 of Part 2 of Division 4 of the Public Resources Code, including the following: amend Sections 4210, 4211, 4212, 4213, 4214, 4220, and 4221; amend and renumber Section 4222.5; amend, renumber, and add Sections 4226 and 4227; add Sections 4215, 4222.1, 4222.2, 4222.3; repeal Sections 4224, 4225, and 4228; and repeal and add Sections 4222 and 4223.

The following table highlights the similarities and differences between current law (ABx1 29) and ABx1 24:

Provisions	ABx1 29 (current law)	ABx1 24
<b>Fee</b>	BOE to assess and collect fee.	Same.
<b>Basis of fee</b>	Fire prevention.	Fire protection (which includes fire suppression and fire prevention activities.)
<b>Fee imposed on</b>	Owner of a habitable structure on a parcel within a SRA.	All owners of property within a SRA as of July 1, 2011 and every July 1 thereafter.
<b>Frequency</b>	Annually.	Same.
<b>Fee rate</b>	Fire Board to adopt emergency regulations by September 1, 2011 to set the fee amount, not to exceed \$150 per structure.	Fire Board to adopt emergency regulations within 60 days of enactment to establish a fire protection fee in the amounts specified, but not more than the reasonable costs of providing fire protection services.
<b>Fee rate adjustment</b>	Fire Board will adjust fee annually, beginning July 1, 2013.	Fire Board will adjust the fee each FY by May 1 of the FY preceding the applicable FY, beginning with the 2012-13 FY.

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Provisions	ABx1 29 (current law)	ABx1 24
<b>Fee assessment info</b>	CalFire provides BOE information within 30 days of enactment and each July 1 thereafter.	CalFire provides BOE information no later than January 1, 2012 and no later than each January 1 thereafter.
<b>Appeals or claims for refund</b>	Appropriate name and address of person liable for fee, fee amount, and contact phone number.	Name and address of each property owner liable for fee, fee amount, and contact phone number.
<b>Due date of fee</b>	CalFire handles and decides petitions for redetermination and claims for refund.	Same, but clarifies that decisions by CalFire regarding redeterminations are not subject to review by BOE. BOE will also not consider settlement of fee.
<b>20% penalty</b>	30 days from date of assessment.	Same.
<b>Stay of collection</b>	Redeterminations not paid when final are subject to a 20% penalty for each 30-day period in which the fee remains unpaid.	Deleted.
<b>Non-collection of fee</b>	All legal action to collect the fee is stayed pending final determination by CalFire of a timely petition for redetermination.	Same.
<b>Tax liens</b>	Beginning with the 2012-13 FY if there are sufficient moneys in the fund, then the fee not be collected.	Deleted.
<b>BOE retains funds</b>	N/A	BOE shall use all means available to collect past due liabilities, including tax liens for such liabilities in excess of \$100.
	BOE retains funds necessary for payment of refunds and reimbursement for collection expenses.	Same.

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Provisions	ABx1 29 (current law)	ABx1 24
<b>General Fund (GF) loan</b>	N/A	DOF may authorize GF loan to BOE and CalFire to meet cash needs resulting from the delay in receipt of revenues.
<b>Public contracting exemption</b>	CalFire is exempt from laws related to public contracting for 24 months relating to the implementation of the fire prevention fee.	BOE and CalFire are exempt from laws related to public contracting for 24 months for the purposes of implementation of the fire protection fee.
<b>Appropriation</b>	\$1,000 appropriation from GF to CalFire to implement fee.	\$4.9 million appropriation to BOE and \$4.37 to CalFire from SRA Fire Protection Fund.

**Fire Protection Fee – significant changes**

**Imposition and Amount of Fee.** The fire protection fee applies to all owners of property within SRA's as of July 1, 2011, and as of every July 1 thereafter, and the owner is responsible for payment of the fee as of that date for the full fiscal year.

Within 60 days of the Governor's signature, the Fire Board will adopt emergency regulations to establish a fire protection fee in an amount specified per acre and per structure or building, but not more than the reasonable costs of providing fire protection services to an owner. The fee amounts per acre are as follows:

- \$1 per acre for the first 100 contiguous acres owned
- \$0.50 per acre for the next 900 contiguous acres owned, and
- \$0.25 per acre for each additional contiguous acre owned, not to exceed a total of \$3,000 for 10,000 acres or more owned.

The fee amounts per structure or building are as follows and are in addition to the per acre fees referenced above.

- Not less than \$175 for one building or structure, and
- \$25 for each subsequent building or structure.
- Fire Board may reduce the building or structure fee by \$25 for those property owners that are located within an established fire protection district.

The fire fee would be adjusted annually by the Fire Board, beginning with 2012-13 fiscal year, 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. The Fire Board would make the change on or before May 1 of the fiscal year immediately preceding the applicable fiscal year.

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**Collection and Administration.** Not later than January 1, 2012, and by each January 1 thereafter, CalFire would be required to transmit to the BOE the name and address of each owner of property 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 to be printed on the assessment to respond to fee-payer questions about the fee.

In the case where the incorrect owner was identified on the notice of determination, CalFire may resubmit the correct name and address and the fee amount to the BOE for a new determination to be issued.

The BOE would not handle any petition for redetermination 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. All appeals would be handled by CalFire. Additionally, the BOE is unable to consider a settlement of a liability and is unable to review or reconsider a petition for redetermination that has been decided by CalFire.

**Definitions.** This bill defines the following terms as follows:

“Owner” means a person who owns property in a state responsibility area.

“Property” includes land and building or structures, as defined by the Fire Board, in state responsibility areas.

“Fire protection fee” means a charge imposed on owners of property in state responsibility areas for a specific fire protection benefit received in state responsibility areas.

"Fire protection" means providing fire suppression and fire prevention services.

**Effective Date.** The bill’s provisions become effective upon signature of the Governor.

#### BACKGROUND

As mentioned previously, the Governor provided a signing message with ABx1 29. His message reads 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.” ABx1 24 is a product of the Governor’s direction.

#### COMMENTS

- 1. Sponsor and Purpose.** The purpose of this bill is to address the issues identified by the Governor in his signing message of ABx1 29, which is related to the 2011-12 budget. The fire protection fee would fund fire suppression and prevention services and emergency response efforts in SRAs.
- 2. This bill has a direct appropriation for BOE’s administrative start up costs to implement this act.** This bill is effective upon signature of the Governor 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 by January 1, 2012. As such, the BOE would incur administrative costs beginning with the 2011-12 fiscal year which would include the following: developing computer programs, creating forms and publications, building a fee payer registration based on billing information provided by CalFire, mailing and processing billings, carrying

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out compliance efforts, and hiring and training staff. The BOE previously worked with CalFire and DOF to establish and later revise a cost estimate for ABx1 29, the fire prevention fee, which this bill has used to make a \$4.9 million appropriation for start-up costs. Although this amount is sufficient for the current fiscal year start-up costs, the BOE will continue to evaluate the impact of ABx1 24, the fire protection fee, to determine ongoing costs.

3. **BOE's concerns regarding the timing of the information received from CalFire has been addressed.** As identified in our analysis of ABx1 29, there was contradictory language regarding the timing of establishing the fee amount and providing fee payer information to the BOE. The clean-up bill has addressed this concern and makes clear the timing of the establishment of the fee amount and for providing the necessary information to the BOE to issue assessments.
4. **Just like the current law, this clean-up bill would have the Fire Board adopt emergency regulations to establish a fire protection fee.** Whereas ABx1 29 provided a cap on the fire prevention fee (not more than \$150) on each structure, the clean-up bill provides a floor for the building or structure portion of the fee (not less than \$175 for one building or structure and \$25 for each additional). The per acre portion of the fee structure provides for a declining fee amount per acre as the number of contiguous acres owned increases. The per acre portion is capped at \$3,000. The Fire Board will not only set the fee amount, but, unless a definition is added to Section 4211, it will also need to define "structure or building," which, depending upon how narrowly or broadly this term is defined, may affect the amount of fee an owner will be assessed, or the number of billings that may be necessary, and may affect the number of fee payers. Additionally, the BOE is currently involved in discussions with CalFire to determine the potential revenue impact that would be attributed to the per acre portion of the fee. As explained by CalFire, information regarding the "contiguous acres owned," is not readily available to them. In light of these factors, the BOE's ongoing administrative costs may be affected.
5. **BOE is directed to use all means available to collect past due liabilities, including tax liens for past due liabilities in excess of \$100.** As provided in the BOE's Compliance Policy and Procedures Manual (CPPM), Section 757.060, *Policy and Minimum Amounts – Notice of State Tax Lien*, it is BOE policy to file a lien 30 days after the demand date, if there is a valid business reason. Otherwise, the lien will not be filed until after 180 days from the demand date. In most cases, a lien is filed for past due liabilities of \$2,000 or more. Moreover, and in general, a lien will not be filed for liabilities that do not include tax, or fee, on the basis that an adjustment or request for relief may be pending, but it may be issued if the liability is in excess of \$2,000.

As the annual fire protection fee consists of both a per acre and per building or structure fee component, the total of which may be well below the \$2,000 tax lien threshold, it would seem that liens issued for past due liabilities attributable to the fire protection fee and below the \$2,000 threshold would be an exception to the BOE's regular lien policy.

6. **Technical suggestion.** Section 4212(b)(2)(B) allows the Fire Board to reduce the building or structure portion of the fee by \$25 for those property owners who are located within an established fire protection district. It would seem the intent is to provide the reduction to those property owners whose "properties" are located within

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the fire protection district, not just for "owner's" who are located within the district. The difference could be that those property owners not living on their property located within a SRA and fire protection district might not be eligible to receive the \$25 reduction.

- 7. **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.

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

**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 and collection efforts, training staff, and answering fee-related inquiries. These costs are estimated to be \$4.9 million for the current FY 2011-12.

**Note.** The BOE previously worked with CalFire and DOF to establish and later revise a cost estimate for ABx1 29, the fire prevention fee, which this bill has used to make a \$4.9 million appropriation for start-up costs. Although this amount is sufficient for the current fiscal year start-up costs, the BOE will continue to evaluate the impact of ABx1 24, the fire protection fee, to determine ongoing costs.

**REVENUE ESTIMATE**

Although this bill specifies a fee amount, it requires the Fire Board to adopt emergency regulations to establish a fire protection fee in the specified amounts, but not to exceed the reasonable costs of providing fire protection services to an owner. Additionally, the Fire Board would need to define, presumably by regulation, the terms "building or structure." how narrowly or broadly this term is defined will affect the amount of fee an owner will be assessed and may affect the number of fee payers. Moreover, the per acre portion of the fee structure also involves a factor that is still being evaluated to determine its revenue impact. The per acre portion provides a declining fee amount as the "contiguous acres owned" increases. The per acre portion is capped at \$3,000. The BOE is currently involved in discussions with CalFire to determine the potential revenue impact that would be attributed to the per acre portion of the fee. As explained by CalFire, information regarding the "contiguous acres owned," is not readily available to them. Therefore, at this time, the BOE is unable to estimate the amount of revenue attributable to this bill.

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