



Date:	05/01/13	Bill No:	<u>Assembly Bill 468</u>
Tax Program:	Fire Prevention Fee	Author:	Chesbro
Sponsor:	Author	Code Sections:	PRC Chap. 1.5 of Part 2 of Div. 4
Related Bills:	<u>AB 23</u> (Donnelly) <u>AB 124</u> (Morrell) <u>AB 929</u> (Jones) <u>SB 17</u> (Gaines) <u>Senate Bill 125</u> (Gaines) <u>Senate Bill 147</u> (Gaines)	Effective Date:	Repeal effective immediately, but surcharge operative 01/01/14

This analysis only addresses the portion of the bill that impacts the Board of Equalization (BOE)

BILL SUMMARY

This bill repeals the fire prevention fee and substitutes a 4.8% surcharge on commercial and residential fire and multi-peril insurance policy premiums.

Summary of Amendments

Since the previous analysis, this bill was amended to add an urgency provision.

ANALYSIS

CURRENT LAW

Fire Prevention Fee – Generally

Existing law¹ requires the BOE to assess and collect an annual fire prevention fee in accordance with the Fee Collection Procedures Law (FCPL).² The law³ requires the State Board of Forestry and Fire Protection (Fire Board) to adopt emergency regulations to establish the fire prevention fee. The amount must not exceed \$150 per habitable structure on a parcel located within a State Responsibility Area (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.

The California Department of Forestry and Fire Protection (CAL FIRE) is responsible for fire prevention and suppression in Fire Board-determined SRAs.

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.

¹ PRC Section 4213.

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

³ PRC Section 4212.

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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 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 for each person liable for the fee. In addition, CAL FIRE provides to the BOE a telephone number that fee payers 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 fee payer files a petition for redetermination within that period. If a fee payer 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.

Tax on Insurers⁴

Current law imposes an annual tax⁵ on all insurers doing business in this state. RTC Section 12202 sets the current rate of the annual tax at 2.35%, except for specified premiums that are taxed at 0.5%.

For insurers other than title insurers and ocean marine insurers, the annual tax basis is gross premiums, less return premiums, received by the insurer on business done in this state.⁶ For insurers transacting title insurance,⁷ the tax basis is all income from business done in this state except interest and dividends, real property rent, investment sale profits, and investment income. For insurers transacting ocean marine insurance,⁸ the annual 5% tax is measured by that proportion of the insurer's underwriting profit from the ocean marine insurance written in the United States, which the gross premiums from ocean marine insurance written in this state bear to the gross premiums from ocean marine insurance written within the United States.

Under RTC Section 12204, the insurance tax is imposed in lieu of all other state, county, and municipal taxes and licenses, including income taxes, with specified exceptions.

⁴ Part 7 (commencing with Section 12001) of Division 2 of the RTC.

⁵ RTC Section 12201.

⁶ RTC Section 12221.

⁷ RTC Section 12231.

⁸ RTC Section 12101.

Tax on Insurers – Administration

The insurance tax is administered by three state agencies: the BOE, the Department of Insurance (DOI), and the State Controller (Controller). The Controller acts as a tax collector. The DOI is primarily responsible for licensing and regulating insurers under the Insurance Code. The DOI processes insurance tax returns and assesses the amount of tax each insurer is required to pay. The BOE issues the assessments provided by DOI and decides the validity of any petition for redetermination.

PROPOSED LAW

This bill repeals Chapter 1.5 (commencing with Section 4210) of Part 2 of Division 4 of the PRC, the State Responsibility Area Fire Prevention Fees.

This bill also adds Section 16031 to the Insurance Code to require persons who purchase insurance (insureds) to pay a special purpose surcharge on each commercial and residential fire and multi-peril insurance policy issued or renewed on or after January 1, 2014. The bill imposes a 4.8% surcharge on the premium written on residential fire and multi-peril insurance or the property exposure for commercial policies in California. Admitted insurers, licensed by the DOI to do business in California, must collect the surcharge from the insureds and separately state the surcharge on each policy. The admitted insurers must remit surcharge funds to the Office of Emergency Services (OES), or other state agency designated to collect the surcharge on OES's behalf.

Funds collected must be deposited into the newly created Disaster Management, Preparedness, and Assistance Fund. Upon appropriation, the money would fund the emergency activities of the OES, CAL FIRE, and Military Department. Funds could also be used for local government disaster planning and response.

The bill takes effect immediately and repeals the fire fee upon chaptering, but the surcharge would not become operative until January 1, 2014.

BACKGROUND

On July 7, 2011, Governor Brown signed ABx1 29,⁹ 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.

⁹ Chapter 8, Stats. 2011, added Chapter 1.5 (commencing with Section 4210) to Part 2 of Division 4 of the PRC.

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

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 repeal the fire prevention fee that he claims is inherently unfair, regressive, and charged only to residents living in SRA's. With respect to the special purpose surcharge, the author contends the surcharge funds will ensure California is prepared for all disasters by providing first responders with needed resources.
- 2. The May 1, 2013 amendment** added an urgency provision.
- 3. The bill calls for the OES to administer the surcharge on insurers.** The BOE currently has a limited role in the insurance tax administration, while two other agencies process the returns (DOI) and collect the tax (Controller). This bill designates OES as the agency to collect the proposed surcharge, bringing the total of agencies involved in insurance taxes to four. However, under the proposed law, another state agency may be designated to collect the surcharge on OES's behalf. It is unclear who has the authority to "designate," or why another agency, besides the Controller, would need to be involved in collection of the proposed surcharge.
- 4. The BOE may incur costs related to the repeal of the fire prevention fee program.** The BOE is responsible for the issuance of fee assessments and collection of the fee, as well as processing CAL FIRE's adjustments to the fee that may result in a refund. Depending on the timing and the number of assessments issued, the BOE may have costs related to the unwinding of the fee program and refunding collected fees.
- 5. Related bills.** AB 23 (Donnelly) and AB 124 (Morrell) repeal the fire prevention fee, while SB 17 (Gaines) states the intent to do so. AB 929 (Jones) requires the Fire Board, in collaboration with the BOE, to develop a procedure for reimbursement of persons who have paid a fire prevention fee covering a structure that was previously in a SRA, but that was determined to no longer be within a SRA's boundaries. SB 125 (Gaines) exempts property owners from payment of the fire prevention fee if they have a habitable structure that lies within both a SRA and the boundaries of a local fire district that provides fire protection service. SB 147 (Gaines) exempts property owners from payment of the fire prevention fee if they have income of less than 200% of the federal poverty level.

COST ESTIMATE

The BOE may need to process refunds in the event the fire prevention fee is repealed. Costs would depend on the number of assessments and fees collected prior to the repeal. According to a [BOE news release](#), the BOE has been contacted by CAL FIRE

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with a request to postpone the assessments for the FY 2012-13. At this time we are unable to estimate the costs that may be incurred after the repeal of the fire prevention fee.

REVENUE ESTIMATE

Repeal of the fire prevention fee would result in revenues not being assessed or collected. The Governor's FY 2013-14 proposed budget estimates revenues of \$90.7 million. Accordingly, revenue loss from this bill is \$90.7 million.

Assessment and collection of the surcharge is the responsibility of the OES. Thus, no revenue estimate will be provided.

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