



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

DRAFT

Date Amended:	06/28/09	Bill No:	<u>ABx3 41</u>
Tax:	State Responsibility Area Fire Fee	Author:	Evans
Related Bills:			

This analysis will only address the bill's provisions which impact the State Board of Equalization.

BILL SUMMARY

Among its provisions, this budget trailer bill would, in order to fund fire protection activities, require the State Board of Equalization (Board) to assess and collect a fire protection fee charged on each structure on a parcel that is subject to property taxes and is within a state responsibility area.

ANALYSIS

CURRENT LAW

Under existing law, Public Resources Code (PRC) Section 4125 requires the State Board of Forestry and Fire Protection 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 of preventing and suppressing fires has been determined by the State Board of Forestry and Fire Protection to be primarily the responsibility of the state.

Under existing PRC provisions, the Department of Forestry and Fire Protection (known as Cal Fire) has the primary responsibility for preventing and suppressing fires in areas that the State Board of Forestry and Fire Protection has determined are state responsibility areas.

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 Cal Fire to adopt emergency regulations to establish a fee to cover the cost of providing fire protection services associated with structures in a state responsibility area (SRA), based on the fire hazard severity zone in which a structure is located. The fee would be charged on each structure on a parcel that is subject to property taxes and is within a SRA. Cal Fire would establish a fee schedule as follows:

- A \$30 fee per structure in SRAs designated by Cal Fire as having moderate fire hazard severity;
- A \$40 fee per structure in SRAs designated by Cal Fire as having high fire hazard severity; or

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- A \$50 fee per structure in SRAs designated by Cal Fire as having very high fire hazard severity.

The fire fees would be adjusted annually by Cal Fire beginning July 1, 2010, 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 2010-11 fiscal year, the Board would be required to annually collect the fire protection fee in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). 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.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. 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 Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

Cal Fire would be required to transmit to the Board, by January 1, 2010, and annually thereafter, the name and address of each person liable for the fee and the amount of the fee to be assessed. In addition, Cal Fire would also provide to the Board a contact telephone number for Cal Fire to be printed on the bill (assessment) to respond to fee-payer questions about the fee.

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

State Responsibility Area Fire Fund (Fund). After deducting moneys necessary for the payment of refunds and reimbursement for expenses incurred in the collection of the fee, the Board would be required to deposit the fire protection fees collected into the Fund, which this bill would create in the State Treasury. Moneys in the Fund would be available to Cal Fire for fire protection and prevention activities, as specified, in SRAs, attributable to benefits conferred on structures subject to the fee.

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. Cal Fire 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 Cal Fire to be primarily the responsibility of the state.

This bill would also define “department” to mean the Department of Forestry and Fire Protection (referred to as Cal Fire), or its successor.

The bill’s provisions would become effective on the 91st day after adjournment of the special session upon passage of the bill; however, the fees would not be collected by the Board until the 2010-11 fiscal year.

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 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 Cal Fire’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 Board to assess and collect the \$50 fee. The bill also contained provisions prohibiting the Board from collecting the fee in any year in which there is sufficient fees to finance specified fire prevention grants and other activities. This bill died on the Assembly inactive file.

COMMENTS

1. **Purpose.** The purpose of this bill is to enact various provisions necessary for the implementation of the 2009-10 Resources and Environmental Protection budget. The fire fee would fund fire and emergency response efforts in SRAs.
2. **This bill should contain a specific appropriation for the Board’s administrative start-up costs.** This bill proposes a new fee to be collected annually by the Board commencing with the 2010-11 fiscal year. The Board would receive initial billing information from Cal Fire Department by January 1, 2010. As such, the Board would incur administrative costs beginning with the 2009-10 fiscal year in order to develop computer programs, create the notice of determination (the SRA fire protection bill), and hire appropriate staff. To cover these administrative startup costs, the Board would need a direct appropriation that would not have already been identified in the Board’s 2009-10 budget.

In addition, PRC Section 4214(b)(2) in the bill states that the Fund shall cover all startup costs incurred over a period not to exceed two years. However, as

previously stated, the Board would need an appropriation since its startup costs are not part of its 2009-10 budget. Because collection of the fees would not occur until fiscal year 2010-11, the bill's provisions should specify that the Board would be reimbursed for its implementation costs through a General Fund loan to the Board to be paid back with fire protection fees collected during the 2010-11 fiscal year.

3. Suggested technical amendments. Board staff notes several technical concerns with this bill that would need to be addressed in order for the Board to successfully administer the proposed fee program. These concerns are as follows:

- PRC Section 4214 (a)(1) requires that the fee revenues be spent, upon appropriation by the Legislature, for specified SRA-related purposes. The provisions also require that the Board retain monies for the payment of refunds and for reimbursement of its start-up and ongoing administrative costs. However, it is not clear whether the monies retained for payment of refunds and reimbursement of the Board's administrative costs would be subject to appropriation by the Legislature. Because the provisions authorizing the Board to retain monies for these purposes comes after the phrase *upon appropriation by the Legislature*, it is not clear if the Board must wait for an appropriation from the Legislature before it can make a refund.
- PRC Section 4212 (c)(1) requires CalFire to adjust the fees pursuant to a specified inflation index, on July 1, 2010, and annually thereafter. Presumably, the adjustment made on each July 1 would be effective for the next fiscal year. However, the bill does not clearly state that. We recommend amending the provision to read:
 - “(c)(1) On July 1, 2010, and annually thereafter, the department shall adjust the fees imposed pursuant to this chapter for the 2011-12 fiscal year, and each fiscal thereafter, 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 calculated by the United States Department of Commerce for the 12-month period in the third quarter of the prior calendar year, as reported by the Department of Finance.”
- PRC Section 4213 (a)(2) provides that a petition for redetermination would be handled by CalFire pursuant to specified provisions under the PRC, and would not be subject to a petition for redetermination by the Board. PRC Section 4221 provides that a petition for redetermination shall be made in writing and shall be sent to both CalFire and the Board. However, to ensure a stay of collection activities while the petitioner's appeal is pending, the bill should require CalFire to provide notice the Board of its acceptance of a timely petition for redetermination from the petitioner.

4. Legal challenges to any new fee program might be made on the grounds that the fee is a tax. In July 1997, the California Supreme Court held in *Sinclair Paint Company v. State Board of Equalization* (1997) 15 Cal.4th 866 that the Childhood Lead Poisoning Prevention Act of 1991 imposed bona fide regulatory fees and not taxes requiring a two-thirds vote of the Legislature under Proposition 13. In summary, the Court found that, while the Act did not directly regulate by conferring a specific benefit on, or granting a privilege to, those who pay the fee, it nevertheless imposed regulatory fees under the police power by requiring manufacturers and

others whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating those products' adverse health effects.

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.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop a new fee program and collect the fee from nearly 1 million new fee payers. These costs would include developing computer programs, developing forms and publications, creating fee payer 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.

These costs are estimated to be as follows:

Start Up FY 2009-10	Ongoing FY 2010-11	Ongoing FY 2011-12	Ongoing FY 2012-13, and each year thereafter
\$ 2,518,000	\$ 3,812,000	\$ 3,456,000	\$ 3,044,000

Note. This bill would require the Board to collect the proposed fire protection fee annually beginning with the 2010-11 fiscal year. This cost estimate is based on the assumption that the Board would stagger issuing assessments over a ten-month period, with approximately one-tenth (or 100,000) of the total estimated 1 million assessments being mailed out each month. Due to the volume of assessments, the Board's resources cannot accommodate issuing such assessments on a one-time basis.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

According to the LAO, in its report dated March 27, 2007, titled "California Department of Forestry and Fire Protection: State's Wildland Firefighting Costs Continue to Escalate," there were approximately 31.1 million acres and 860,000 residential structures in SRAs as of 2005. The LAO also reported that, while the total acreage in SRAs had remained stable over the last 15 years (from 1990 to 2005), the number of residential structures in SRAs had increased by approximately 15 percent over this period.

For the purposes of this estimate, we will use the number of residential structures of 860,000 based on the 2005 data. However, we need to grow this number to 2009. As noted by the LAO, there has been an upward trend, over the period of 1990 through 2005, in the number of residential structures in SRAs by 15 percent. We note that most of this increase (approximately 12 percent) occurred during the period 2000 to 2005. Additionally, the actual number of new residential structures in SRAs for the period 2005-2009 is unknown. For the purposes of this estimate, we will assume a total increase of 150,000 for this period. Accordingly, we estimate there to be 1,010,000 residential structures in SRAs (860,000 + 150,000).

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In addition, this bill would require CalFire to establish a schedule of fees, based on the fire hazard severity zone in which a structure is located. The fee schedule would be as follows:

- \$30 per each residential structure located in a SRA and designated as having a moderate fire hazard severity;
- \$40 per each residential structure located in a SRA and designated as having a high fire hazard severity;
- \$50 per each residential structure located in a SRA and designated as having a very high fire hazard severity;

According to CalFire, the number of structures designated as having a specified fire hazard severity is unknown. Therefore, for the purposes of this estimate, we will assume an average of \$40 per each residential structure located in a SRA.

Based on this estimate and the assumption that all subject structure owners would comply with the proposed fees, the total revenue generated would be about \$40.4 million (1,010,000 structures X \$40 average fee = \$40.4 million).

REVENUE SUMMARY

The annual revenue impact from imposing an average fee of \$40 on residential structures that are subject to property taxes and are within SRAs would amount to an estimated \$40.4 million in revenue.

Qualifying Remarks. The fire protection fee, as proposed, would be adjusted annually by CalFire beginning July 1, 2010, 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 determined pursuant to Public Resources Code Section 4212(b).

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