



| | | | |
|----------------|--|-----------------|--|
| Date: | 02/20/14 | Bill No: | <u>Assembly Bill 2048</u> |
| Tax Program: | Fire Prevention Fee | Author: | Dahle, et al. |
| Sponsor: | Author | Code Sections: | PRC Sections 4211, 4212, 4213, 4214, 4220, 4221, and 4225 |
| Related Bills: | Assembly Bill 1519 (Donnelly) Assembly Bill 1954 (Harkey) Senate Bill 1413 (Wyland) | Effective Date: | 01/01/15 |

BILL SUMMARY

Among its provisions, this bill makes changes to numerous fire prevention fee processes, including:

- Makes optional the Fire Board’s annual rate adjustment;
- Provides fee relief for a disaster;
- Adds a “late protest” administrative procedure to be administered by CAL FIRE;
- Eliminates the requirement to notify both the BOE and the Fire Board of a petition for redetermination; and
- Replaces the recurring 20% penalty with a one-time 10%penalty.

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

¹ Public Resources Code (PRC) Section 4213.

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

³ PRC Section 4212(a).

⁴ PRC Section 4212(b).

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.

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 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 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'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

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 makes numerous changes to fire prevention fee provisions.

Definitions. This bill codifies definitions related to the fire prevention fee that are already defined in pertinent regulations or a related statute. "Habitable structure" is substantially similar to the definition used in the fire prevention fee regulations. "Owner of a habitable structure" has the same meaning as the term "property owner," which is defined in the fire prevention fee regulations.⁷ "Person" as defined in this bill has the same meaning as defined in the FCPL.⁸

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.

⁶ PRC Section 4213(a)(3)(A) and (B) does not allow BOE to accept claims for 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 Section 1665.2 (Definitions), of Chapter 13 (State Responsibility Area (SRA) Fees), of Division 1.5 of Title 14 of the California Code of Regulations.

⁸ RTC Section 55002.

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.

Fire Board annual rate adjustment. This bill amends PRC Section 4212 to change “shall” to “may” providing the Fire Board discretion to annually change the fire prevention fee rate.

Imposition of the fire prevention fee. This bill amends PRC Section 4213 to clarify that the fee is imposed upon the owner of a habitable structure within the SRA, if that person owned the habitable structure on July 1 of the year for which the fee is due. This provision codifies the current fire prevention fee regulations regarding responsibility for the fee.⁹

New disaster relief provision. An exemption from the fire prevention fee is added for any habitable structure that is subsequently deemed uninhabitable as a result of a natural disaster during the year for which the fee is due. If the habitable structure has not been repaired or rebuilt, then the exemption may apply to one subsequent year.

The Fire Board is responsible for preparing certification requirement forms and may grant an exemption if the habitable structure owner satisfies the following conditions:

- certifies that the structure is not habitable as a result of a natural disaster.
- documents either of the following two requirements:
 - that the habitable structure passed a defensible space inspection conducted by CAL FIRE or its agent within one year of the date the structure was damaged or destroyed, or
 - certifies that clearance, as required under PRC Section 4291, was in place at the time that the structure was damaged or destroyed as a result of a natural disaster.

CAL FIRE late protest procedure. This bill amends PRC Section 4220 to authorize CAL FIRE to treat a petition for redetermination filed after the current 30-day period as an administrative protest or claim for refund provision (late protest). CAL FIRE may treat the late protest as a timely petition for redetermination if it determines that the facts presented indicate that the fire fee may have been excessive or that the amount or the application of the fee may have been in error.

Petition for redetermination filing requirement. PRC Section 4221 is amended to change the petition for redetermination filing requirement so that the Fire Board and the BOE no longer need to be sent the petition for redetermination. A petition for redetermination must be sent to CAL FIRE or its designee.

20% penalty replaced with a 10% penalty. The bill eliminates the recurring 20% penalty and instead imposes a one-time 10% penalty. Unlike the current 20% penalty, the new penalty will *not* be imposed for each 30-day period during which the fee remains unpaid.

The bill would become effective on January 1, 2015.

BACKGROUND

On July 7, 2011, Governor Brown signed ABx1 29,¹⁰ which required the BOE to collect the new fire prevention fee, commencing with FY 2011-12. However, collection of the

⁹ Section 1665.2 (“Property Owner”), and Section 1665.4 (Imposition of the Fee).

¹⁰ Chapter 8, Stats. 2011.

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.”

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. |

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.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the authors and is intended to clarify the fire prevention fee statutes. The authors wish to provide homeowners with fee relief after a catastrophic fire or natural disaster while also aligning penalty provisions with other BOE-administered fees.
2. **Clarification needed on collection actions during a “late protest.”** Although CAL FIRE will handle all decisions regarding the late protest administrative procedure, BOE staff must be aware of receipt, identification, transfer, and follow-up of each late protest. The bill should be amended to clarify whether or not collection actions should be held pending a decision. At a minimum, CAL FIRE should address this issue by regulation.
3. **Petition for redetermination standing must also be shared.** Under proposed changes, a petition for redetermination must be sent to CAL FIRE or its designee, which would not necessarily be the BOE. Currently, a copy of the petition for redetermination sent to the BOE allows the BOE to concurrently be aware of the petition and hold all legal collection actions until CAL FIRE’s final determination. The bill should be amended to prescribe and specify the means by which CAL FIRE will notify the BOE of a filed petition in order to avoid any illegal collection actions. Alternatively, CAL FIRE may address this issue by regulation.
4. **BOE may have cost savings with 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.

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 ~~55042~~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.

5. **BOE staff does not have administrative issues with other provisions.** The bill's provisions dealing with definitions, rate adjustments, fee imposition, and disaster relief are all administered by CAL FIRE and/or the Fire Board. Accordingly, the BOE has no administrative concerns or comments.
6. **Related bills.** Assembly Bill 1519 (Donnelly) also deletes the 20% fire prevention fee penalty that is added to final redeterminations for each 30-day period the fee remains unpaid. Assembly Bill 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 those redeterminations that deny all or part of a refund. SB 1413 (Wyland) extends the date the annual fire prevention fee assessments are due and payable from 30 to 60 days.

COST ESTIMATE

The bill's late protest procedure provisions and the change in the filing of a petition for redetermination may have costs associated with them, if certain issues are not addressed. Currently, BOE staff are directly notified of a petition for redetermination which allows staff to timely update the account and withhold any collection actions pending a final decision by CAL FIRE. To the extent this issue is not addressed, BOE staff may have costs associated with additional collection contacts, refunds, and additional notices.

Long-term cost savings may be associated with deleting the 20% penalty. An estimate of the potential costs and 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:¹¹

- Ensure that the 20% penalty is no longer imposed on those accounts that have already been assessed the penalty and remain unpaid.

¹¹ To the extent any of the revenue assumptions are incorrect, the revenue estimate will be affected.

- 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.

| | | | |
|-----------------------|---------------------|--------------|----------|
| Analysis prepared by: | John Cortez | 916-445-6662 | 04/02/14 |
| Contact: | Michele Pielsticker | 916-322-2376 | |

ls

2048ab022014jc.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.