

## **History**

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 CAL FIRE. However, the fee was repealed by SB 1112 (Committee on Budget, Chapter 219, Stats. 2004) before any fees were collected.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 Legislative Analyst Office (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," ([http://www.lao.ca.gov/analysis\\_2007/resources/resource\\_anl07.pdf#page=77](http://www.lao.ca.gov/analysis_2007/resources/resource_anl07.pdf#page=77)) 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. It was almost identical, in that it focused on prevention as well. This bill died on the Assembly inactive file.

In 2009, ABx3 41 (Evans), a budget trailer bill, would have required CAL FIRE to adopt emergency regulations to establish a fee to cover the costs of providing fire protection services associated with structures in an SRA, based on the fire hazard severity zone in which a structure is located. This bill was withdrawn from enrollment and held in the Legislature.

## **Overview**

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 of preventing and suppressing fires has been determined by the Board to be primarily the responsibility of the state.

Under the PRC, CAL FIRE has the primary responsibility for preventing and suppressing fires in areas that the Board has determined are SRA's.

This new law adds Chapter 1.5 (commencing with Section 4210) to Part 2 of Division 4 of the Public Resources Code to require the 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 fee would 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 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 would be required to deposit the fire protection fees collected into the Fund, which this law would create in the State Treasury. Moneys in the Fund would be available to CAL FIRE for fire prevention activities, as specified, in SRAs, that benefit the owners of structures within the SRA. It also requires that the fee revenues be used to cover any startup costs incurred over a two-year period.

### **Time Frame**

*(a) (1) By September 1, 2011, the board shall adopt emergency regulations to establish a fire prevention fee for the purposes of this chapter in an amount not to exceed one hundred fifty dollars (\$150) to be charged on each structure on a parcel that is within a state responsibility area.*

The Board adopted the initial regulation on August 22<sup>nd</sup>. It did not submit the regulation to OAL for review and final clearance, deferring to the Governor instead, as the administration had suggested clean-up language to address various issues. The legislature chose not to adopt clean-up language.

### **Intent of Law**

*(f) It is necessary to impose a fire prevention fee to pay for fire prevention activities in the state responsibility areas that specifically benefit owners of structures in the state responsibility areas.*

This law addresses prevention. This is not a law that addresses protection (suppression) issues.

### **Habitable Structure**

From reviewing the bill analysis and reading the law's language, it is intended to address homes (human habitation). It is not intended to address all structures (outbuildings, barns, etc.). These features are the source of most human activity, and hence, a potential source of ignitions and fuel. They are also the most (generally) valuable features within the SRA.

*(a) "Structure" means a building used or intended to be used for human habitation. For purposes of this subdivision, a building includes, but is not limited to, a mobilehome or manufactured home. The board shall exclude from this definition building types that require no structural fire protection services beyond those provided to otherwise unimproved lands.*

### **Costs**

The law is intended to address costs associated with homeowners in SRA.

The issue of costs must be looked at from at least two ways. Most tend to focus on defense of homes, but we must also look at homes as a source of ignition. This is in keeping with policy and law which addresses the department's firefighting vis a vis homes to prevent spread into SRA. Proper defensible space techniques and planning help prevent the spread of a home fire

into SRA. Additionally, the presence of human activity may also increase the likelihood of unwanted ignitions. Even if the department or other fire agencies are tasked primarily with fighting a wildland fire, a home fire in SRA is a threat to SRA lands. Measures taken to reduce that threat to SRA lands reduce costs to the state. Additionally, if good techniques are utilized by homeowners (defensible space and fuel reduction), it provides a basis for implementing attack on a wildland fire that is encroaching into populated areas, making the attack more efficient and effective.

We cannot, however, ignore the defense of the homes themselves. This is true for two reasons. One is that the homes themselves can add to fire in SRA, as they themselves can add to fuel load and combustibility. If we look at homes as potential fuels in the SRA, they have the potential to increase embers and intensity. We also cannot disregard the human impulse to protect others. No firefighter wishes to see a home lost, and the resultant tragedy of loss for the respective homeowner. Natural instinct is to protect human life and possessions.

We can see that there is a potential cost benefit to ameliorating the human presence in SRA, as a source of ignition, fuel, or as a point of attack against a wildland fire.

### **Fee**

*(2) The Legislature finds and declares that a fire prevention fee of not more than one hundred fifty dollars (\$150) is a reasonable amount for the necessary fire prevention activities of the state that benefit the owner of a structure within a state responsibility area.*

Typically, taxes are considered either a general tax imposed for general governmental purposes or a specific tax imposed for specific purposes or imposed by a special purpose district. Once approved, taxes are levied on persons within the state or within the boundaries of a particular governmental entity to the extent of the tax liability of a person or entity. The proceeds of general taxes – such as income taxes, property taxes and sales taxes – are used to pay for services or projects that are of **general benefit** – such as education, health services and prisons. The proceeds of special taxes are used for the **specific purpose** for which such taxes were approved. On the other hand, fees are typically imposed on specific businesses or individuals **to defray the costs of services or programs of particular benefit or interest to those persons or entities**. Fees may also be used to defray costs incurred by the state or local government as a result of the activities of private parties.

Whether a levy is a tax or a fee depends upon who imposes the levy, who pays the levy and the purpose of the levy. A tax raises money from any or all citizens, is contributed to the general fund and is spent for the benefit of the entire community. A levy is typically collected by an agency from a particular industry or segment of the community and is used to provide narrow benefits or defray the costs of regulation. Tax has no fixed meaning and the distinction between taxes and fees is frequently blurred taking on different meanings in different contexts. There are separate categories of levies:

- **Special assessments, based upon the value of benefits conferred upon property**
- **Development fees, exacted in return for permits or other government privileges**
- **Regulatory fees imposed under the police power**

A special assessment on property, or a similar business charge, is not a special tax if it is imposed **in an amount that reasonably reflects the value of those benefits conferred by improvements funded by that assessment.** Court cases have determined that in establishing the amount of the charge for a regulatory scheme legislators need only apply sound judgment and consider probabilities according to the best honest viewpoint of informed officials. What is required is a reasonable relationship between the fees charged and the estimated cost of the service or the regulatory program provided.

If the fees collected will exceed the costs by more than an incidental amount the government bears the burden of proof at trial to establish the estimated cost of the service and the basis for determining a manner in which the costs are proportioned. The fee is allocated to bear a reasonable relationship to the payers. State responsibility area is an area of the state in which the financial responsibility for preventing and suppressing fires has been determined by the board to be the primary responsibility of the state. The law includes a legislative finding that there a reasonable amount for the necessary fire prevention activities that are appropriate and attributable to the presence of a structure in a state responsibility area. The law requires that the revenue could be expended upon appropriation.

Expenditure is limited to specified prevention activities relating to the presence of structures, keeping in mind that the government should bear the burden of proving those findings. While the public may have benefited incidentally from services provided, the fee would have benefits of specially enhanced services designed to contribute to the safety of the owners of structures in SRA. Does the presence of structures used for human habitation necessarily require greater resources to be used to prevent wildland fires? Do the activities attended to the habitation of structures in the state responsibility area increase the likelihood that fire requiring greater suppression resources would occur?

Adding criteria to consideration complicates the assessment of the fee and adds to the cost of administration, both in the gathering of information, and in the potential for appeals. The Board should consider utilizing easily available information (e.g., parcel data) at least in the initial phase to provide a system that is less costly and more easily implemented.

### **Legal issues**

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://www.lao.ca.gov/ballot/2010/26\\_11\\_2010.aspx](http://www.lao.ca.gov/ballot/2010/26_11_2010.aspx)

There are several ways the regulation can defend the proposition that it is a fee:

1. The regulation itself can spell out costs and fees to be recovered directly. This is what the initial adoption tried to achieve. One drawback with this approach is that it adds many moving parts, rendering it difficult to track and administer, and adding to costs of implementation.
2. The findings of the regulation can outline the rationale for the fee proposed. This, in turn could be done one of two ways.

- a. It could provide studies and detailed data showing the nexus between costs and service
- b. It could rely on the legislature's findings

A key question for both 1 and 2 a above is that they require additional information as to the cost of the Department's activities for prevention. This is difficult, as many prevention activities are under taken by individuals associated with the protection, not prevention, program.

For 2 b the legislature has made two key points:

1. "The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for the purpose of enacting statutory changes relating to the Budget Act of 2011. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill states that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution."

2. "New Fire Protection Fee in State Responsibility Areas. Imposes an annual \$150 fire prevention fee on structures located in the State Responsibility Areas (SRA); requires fee revenues to be available to the Board of Forestry (Board) and California Department of Forestry and Fire Protection (CDF), upon appropriation by the Legislature, for fire prevention and protection activities in SRAs."

In addition:

"Provides Funding for Specific Benefits . Requires the fee proceeds to be available, upon appropriation by the Legislature, for fire prevention activities in SRAs, attributable to benefits conferred on structures subject to the fire prevention fee."

It should be noted that a legal challenge is very likely regardless of approach. Such a challenge will likely prevent collection of fees while it is being contested.

### **Grant Program**

*(c) It is the intent of the Legislature that the moneys in this fund be fully appropriated to the board and the department each year in order to effectuate the purposes of this chapter.*

*(d) Moneys in the fund shall be used only for the following fire prevention activities, which shall benefit owners of structures within the state responsibility areas who are required to pay the annual fire prevention fee pursuant to this chapter:*

- (1) Local assistance grants pursuant to subdivision (e).*
- (2) Grants to Fire Safe Councils, the California Conservation Corps, or certified local conservation corps for fire prevention projects and activities in the state responsibility areas.*

*(3) Grants to a qualified nonprofit organization with a demonstrated ability to satisfactorily plan, implement, and complete a fire prevention project applicable to the state responsibility areas. The department may establish other qualifying criteria.*

*(4) Inspections by the department for compliance with defensible space requirements around structures in state responsibility areas as required by Section 4291.*

*(5) Public education to reduce fire risk in the state responsibility areas.*

*(6) Fire severity and fire hazard mapping by the department in the state responsibility areas.*

*(7) Other fire prevention projects in the state responsibility areas, authorized by the board.*

*(e) (1) The board shall establish a local assistance grant program for fire prevention activities designed to benefit structures within state responsibility areas, including public education, that are provided by counties and other local agencies, including special districts, with state responsibility areas within their jurisdictions.*

*(2) In order to ensure an equitable distribution of funds, the amount of each grant shall be based on the number of structures in state responsibility areas for which the applicant is legally responsible and the amount of moneys made available in the annual Budget Act for this local assistance grant program.*

Grants can be made to almost any project the Board authorizes. This could include grants to fire protection district for inspection programs, Fire Safe Council vegetation management, development of county fire plans, etc. The Board is not limited, except from the standpoint that it must be used for fire prevention, not protection.

## **Appeals**

*4222. If a petition for redetermination of the application of this chapter is filed within the 30-day period, the department shall reconsider whether the fee is due and make a determination in writing. The department may eliminate the fee based on a determination that this chapter does not apply to the person who filed the petition.*

It is likely that numerous appeals will be received initially. If appeals were handled by the department and the board, it could necessitate time consuming diversion of resources and the need for additional personnel. This would add to costs, and reduce the amount of money available at the local level. When the SRA fee was proposed in 2004, the idea of using a third party contractor to review the appeals was utilized. The board should give this consideration as a cost effective approach (at least in the initial period of the fee), as most appeals are likely to be based upon improper categorization of the subject structure (not in SRA, not habitable, etc.)

## **LAO FIRE PROTECTION**

[http://www.lao.ca.gov/laoapp/laomenus/sections/lao\\_sectionpage.aspx?catid=12](http://www.lao.ca.gov/laoapp/laomenus/sections/lao_sectionpage.aspx?catid=12)

## **BILL LANGUAGE**

[http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0001-0050/abx1\\_29\\_bill\\_20110708\\_ab\\_29.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/abx1_29_bill_20110708_ab_29.pdf)