

AMENDED IN ASSEMBLY AUGUST 8, 2008

AMENDED IN ASSEMBLY JULY 14, 2008

AMENDED IN ASSEMBLY JUNE 24, 2008

AMENDED IN ASSEMBLY JUNE 9, 2008

AMENDED IN SENATE MAY 27, 2008

AMENDED IN SENATE APRIL 24, 2008

AMENDED IN SENATE APRIL 21, 2008

AMENDED IN SENATE APRIL 1, 2008

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1617

Introduced by Senator Kehoe

February 22, 2008

An act to add Chapter 1.5 (commencing with Section 4210) to Part 2 of Division 4 of the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1617, as amended, Kehoe. State responsibility areas: fire prevention fees.

Existing law requires the state to have the primary financial responsibility for preventing and suppressing fires in areas that the State Board of Forestry and Fire Protection has determined are state responsibility areas.

This bill would require the board, on or before July 1, 2009, to adopt emergency regulations to establish a fire prevention fee of \$50 to be

charged on each structure on a parcel that is subject to property taxes and is within a state responsibility area. The board would be required to adjust the fire prevention fee annually using the prescribed methods.

The bill would require the State Board of Equalization to collect the fire prevention fees, as prescribed. The bill would require, by January 1, 2010, and each January 1 thereafter, the Department of Forestry and Fire Protection to transmit the appropriate names and addresses of persons who are liable for the fire prevention fee and the amount of the fire prevention fee to be assessed by the State Board of Equalization.

The bill would require the ~~board~~ *State Board of Equalization* to collect the fee commencing with the 2010–11 fiscal year. Commencing with the 2011–12 fiscal year, if there are sufficient amounts of moneys in the State Responsibility Area Fire Prevention Fund to finance the costs of specified fire prevention activities for a fiscal year, the bill would prohibit the ~~board~~ *State Board of Equalization* from collecting the fee for that fiscal year.

The bill would establish the State Responsibility Area Fire Prevention Fund and would require the fire prevention fees collected, except that portion retained by the State Board of Equalization, to be deposited into the fund and to be available, upon appropriation by the Legislature, for certain specified fire prevention activities in state responsibility areas and attributable to benefits conferred on structures subject to the fire prevention fee, including, but not limited to, ~~recoupment of covering~~ startup costs, and for the costs of administration, as specified.

The State Board of Equalization would be required to retain and expend, upon appropriation by the Legislature, the funds necessary to pay refunds and for its expenses incurred in collection.

This bill would require the board, on and after January 1, 2011, to submit an annual written report to the Legislature on specified topics.

This bill would permit a person from whom a fire prevention fee is determined to be due to use an appeals process and, if applicable, a refund process that would be established by the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 1.5 (commencing with Section 4210) is
2 added to Part 2 of Division 4 of the Public Resources Code, to
3 read:

1 CHAPTER 1.5. STATE RESPONSIBILITY AREA FIRE PREVENTION
2 FEES

3
4 Article 1. General Provisions
5

6 4210. The Legislature finds and declares all of the following:

7 (a) Fire protection of the public trust resources on lands in the
8 state responsibility areas remains a vital interest to California.
9 Lands that are covered in whole or in part by a diverse plant
10 community prevent excessive erosion, retard runoff, reduce
11 sedimentation, and accelerate water percolation to assist in the
12 maintenance of critical sources of water for environmental,
13 irrigation, domestic, or industrial uses.

14 (b) The presence of structures within state responsibility areas
15 can pose an increased risk of fire ignition and an increased potential
16 for fire damage within the state’s wildlands and watersheds. The
17 presence of structures within state responsibility areas can also
18 impair wildland firefighting techniques that could result in greater
19 damage to state lands caused by wildfires.

20 (c) The costs of fire prevention activities aimed at reducing the
21 exacerbating effects of structures in state responsibility areas should
22 be borne by the owners of these structures.

23 (d) Individual owners of structures within state responsibility
24 areas receive a disproportionately larger benefit from fire
25 prevention activities than that realized by the state’s citizens
26 generally.

27 (e) It is the intent of the Legislature that the economic burden
28 of fire prevention activities that are associated with structures in
29 state responsibility areas shall be equitably distributed among the
30 citizens of the state who generally benefit from those activities
31 and those owners of structures in the state responsibility areas who
32 receive a specific benefit other than that general benefit.

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

36 (g) All revenues generated by state responsibility area fire
37 prevention fees imposed under this chapter and used for the
38 purposes for which they are imposed, are not proceeds of taxes
39 subject to Article XIII B, C, or D of the California Constitution.

1 4211. For the purposes of this chapter, the following terms
2 shall have the following meanings:

3 (a) “Structure” means a building used or intended to be used
4 ~~for supporting or sheltering occupancy~~ *human habitation*. For
5 purposes of this subdivision, a building includes, but is not limited
6 to, a mobilehome or manufactured home. The board ~~may~~ *shall*
7 exclude from this definition building types that require no structural
8 fire protection services beyond those provided to otherwise
9 unimproved lands.

10 (b) “State responsibility area” means state responsibility area
11 as defined in Section 4102.

12 4212. (a) (1) By July 1, 2009, the board shall adopt emergency
13 regulations to establish a fire prevention fee for the purposes of
14 this chapter of fifty dollars (\$50) to be charged on each structure
15 on a parcel that is subject to property taxes and is within a state
16 responsibility area.

17 (2) The Legislature finds and declares that this fire prevention
18 fee is a reasonable amount for the necessary fire prevention
19 activities that are appropriate and attributable to the presence of a
20 structure within a state responsibility area.

21 (b) On July 1, 2010, and annually thereafter, the board shall
22 adjust the fire prevention fees imposed pursuant to this chapter to
23 reflect the percentage of change in the average annual value of the
24 Implicit Price Deflator for State and Local Government Purchases
25 of Goods and Services for the United States, as calculated by the
26 United States Department of Commerce for the 12-month period
27 in the third quarter of the prior calendar year, as reported by the
28 Department of Finance.

29 (c) Emergency regulations adopted pursuant to subdivision (a)
30 shall be adopted in accordance with the rulemaking provisions of
31 the Administrative Procedure Act (Chapter 3.5 (commencing with
32 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
33 Code). The adoption of emergency regulations shall be deemed
34 an emergency and necessary for the immediate preservation of the
35 public peace, health, and safety, or general welfare.

36 4213. (a) (1) Commencing with the 2010–11 fiscal year, the
37 fire prevention fee imposed pursuant to Section 4212 shall be
38 collected annually by the State Board of Equalization in accordance
39 with the Fee Collection Procedures Law (Part 30 (commencing

1 with Section 55001) of Division 2 of the Revenue and Taxation
2 Code).

3 (2) Notwithstanding the appeal provisions in the Fee Collection
4 Procedures Law, a determination by the department that a person
5 is required to pay a fire prevention fee, or a determination by the
6 department regarding the amount of that fee, is subject to review
7 under Article 2 (commencing with Section 4220) and is not subject
8 to a petition for redetermination by the State Board of Equalization.

9 (3) (A) Notwithstanding the refund provisions in the Fee
10 Collection Procedures Law, the State Board of Equalization shall
11 not accept any claim for refund that is based on the assertion that
12 a determination by the department improperly or erroneously
13 calculated the amount of the fire prevention fee, or incorrectly
14 determined that the person is subject to that fee, unless that
15 determination has been set aside by the department or a court
16 reviewing the determination of the department.

17 (B) If it is determined by the department or a reviewing court
18 that a person is entitled to a refund of all or part of the fire
19 prevention fee, the person shall make a claim to the State Board
20 of Equalization pursuant to Chapter 5 (commencing with Section
21 55221) of Part 30 of Division 2 of the Revenue and Taxation Code.

22 (b) The annual fire prevention fee shall be due and payable 30
23 days from the date of assessment by the State Board of
24 Equalization.

25 (c) The department shall transmit to the State Board of
26 Equalization by January 1, 2010, and each January 1; thereafter,
27 the appropriate name and address of each person who is liable for
28 the fire prevention fee and the amount of the fee to be assessed,
29 as authorized by this article, and at the same time the department
30 shall provide to the State Board of Equalization a contact telephone
31 number for the board to be printed on the bill to respond to
32 questions about the fee.

33 (d) Commencing with the 2011–12 fiscal year, if in any given
34 year there are sufficient amounts of money in the State
35 Responsibility Area Fire Prevention Fund created pursuant to
36 Section 4214 to finance the costs of the programs under subdivision
37 (d) of Section ~~4212~~ 4214 for that fiscal year, the fee may not be
38 collected that fiscal year.

1 4214. (a) Fire prevention fees collected pursuant to this chapter
2 shall be expended, upon appropriation by the Legislature, as
3 follows:

4 (1) The State Board of Equalization shall retain moneys
5 necessary for the payment of refunds pursuant to Section 4228 and
6 reimbursement of the State Board of Equalization for expenses
7 incurred in the collection of the fee.

8 (2) The moneys collected, other than that retained by the State
9 Board of Equalization pursuant to paragraph (1), shall be deposited
10 into the State Responsibility Area Fire Prevention Fund, which is
11 hereby created in the State Treasury and shall be available to the
12 board and the department for fire prevention activities specified
13 in subdivision (d), in state responsibility areas, attributable to
14 benefits conferred on structures subject to the fire prevention fee.
15 All moneys in excess of the costs of administration of the board
16 and the department shall only be expended for fire prevention
17 activities in *counties with* state responsibility areas.

18 (b) (1) The fund may also be used to cover the costs of
19 administering this chapter.

20 (2) The fund shall cover all startup costs incurred over a period
21 not to exceed two years.

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

25 (d) Moneys in the fund shall be used only for the following fire
26 prevention activities relating to the presence of structures within
27 the state responsibility areas:

28 (1) Local assistance grants pursuant to subdivision (e).

29 (2) Grants to Fire Safe Councils, the California Conservation
30 Corps, or certified local conservation corps for fire prevention
31 projects and activities in the state responsibility areas.

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

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

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

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

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

5 (e) (1) The board shall establish a local assistance grant program
6 for fire prevention activities relating to the presence of structures
7 within state responsibility areas, including public education, that
8 are provided by counties and other local agencies, including special
9 districts, with state responsibility areas within their jurisdictions.

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

15 (f) By January 1, 2011, and annually thereafter, the board shall
16 submit to the Legislature a written report on the status and uses of
17 the fund pursuant to this chapter. The written report shall also
18 include an evaluation of *the benefits received by counties based*
19 *on the number of structures in state responsibility areas within*
20 *their jurisdictions*, the effectiveness of the board’s grant programs,
21 the number of defensible space inspections in the reporting period,
22 the degree of compliance with defensible space requirements,
23 measures to increase compliance, if any, and any recommendations
24 to the Legislature.

25 (g) It is essential that this article be implemented without delay.
26 To permit timely implementation, the department may contract
27 for services related to the establishment of the fire prevention fee
28 collection process. For this purpose only, and for a period not to
29 exceed 24 months, the provisions of the Public Contract Code or
30 any other provision of law related to public contracting shall not
31 apply.

32
33 Article 2. Appeals Process
34

35 4220. A person from whom the fire prevention fee is
36 determined to be due under this chapter may petition for a
37 redetermination of that fee within 30 days after ~~receipt of the charge~~
38 *service upon him or her of a notice of the determination*. If a
39 petition for redetermination is not filed within the 30-day period,

1 the amount determined to be due becomes final at the expiration
2 of the 30-day period.

3 4221. Each petition for redetermination of the fire prevention
4 fee shall be in writing and be sent to the department, the board,
5 and the State Board of Equalization. The petition shall state the
6 specific grounds upon which the petition is founded and include
7 supporting documentation. The petition may be amended to state
8 additional grounds or provide additional documentation at any
9 time prior to the date that the department issues its order or decision
10 with regard to the petition for redetermination.

11 4222. If a petition for redetermination of the fire prevention
12 fee is filed within the 30-day period, the department shall
13 reconsider the fee determined to be due and make a determination
14 in writing. The department may eliminate the fee.

15 4222.5. If a timely petition for redetermination has been filed
16 pursuant to Section 4220, all legal action to collect the fire
17 prevention fee shall be stayed pending the final determination of
18 the department pursuant to Section 4224.

19 4223. Notice of the determination of the department pursuant
20 to Section 4222 shall be served, on the same date, to the board,
21 the State Board of Equalization, and the person who filed the
22 petition.

23 4224. The order or decision of the department upon a petition
24 for redetermination of the fire prevention fee shall become final
25 30 days after service upon the petitioner of notice of the
26 determination.

27 4225. The fire prevention fee determined to be due by the
28 department under this article is due and payable at the time it
29 becomes final, and if it is not paid when due and payable,
30 *notwithstanding the penalty imposed pursuant to Section 55042*
31 *of the Revenue and Taxation Code*, a penalty of 20 percent of the
32 fee determined to be due shall be added to the amount due and
33 payable for each 30-day period in which the fee remains unpaid.

34 4226. Written notice required by this article shall be served as
35 follows:

36 (a) The notice shall be placed in a sealed envelope, with postage
37 paid, addressed to the petitioner at his or her address as it appears
38 in the records of the department. The giving of notice shall be
39 deemed complete at the time of the deposit of the notice in a United
40 States Post Office, or a mailbox, subpost office, substation, mail

1 chute, or other facility regularly maintained or provided by the
2 United States Postal Service without extension of time for any
3 reason.

4 (b) In lieu of mailing, a notice may be served personally by
5 delivering it to the person to be served and service shall be deemed
6 complete at the time of delivery. Personal service to a corporation
7 may be made by delivery of a notice to any person designated in
8 the Code of Civil Procedure to be served for the corporation with
9 summons and complaint in a civil action.

10 4227. A dispute regarding the fire prevention fee imposed by
11 this chapter shall be resolved pursuant to this article only.

12 4228. If the department determines that a person is entitled to
13 a refund of all or part of the fire prevention fee paid pursuant to
14 this chapter, the person shall make a claim to the State Board of
15 Equalization pursuant to Chapter 5 (commencing with Section
16 55221) of Part 30 of Division 2 of the Revenue and Taxation Code.

O