

Assembly Bill No. 2048

CHAPTER 895

An act to amend Sections 4211, 4212, 4213, 4214, 4221, and 4225 of, and to add Sections 4213.1 and 4220.1 to, the Public Resources Code, relating to fire prevention.

[Approved by Governor September 30, 2014. Filed with
Secretary of State September 30, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2048, Dahle. Fire prevention fees: state responsibility areas.

Existing law requires the State Board of Forestry and Fire Protection, on or before September 1, 2011, to adopt emergency regulations to establish a fire prevention fee in an amount not to exceed \$150 to be charged on each structure, defined as a building used or intended to be used for human habitation, on a parcel that is within a state responsibility area.

This bill would delete the definition of "structure" for purposes of the fire prevention fee and instead use "habitable structure," which the bill would define to mean a building that contains one or more dwelling units that can be occupied for residential use, as provided. The bill would also include the definition of "person" and "owner of a structure," as provided.

The bill would require the fee to be levied upon the owner of a habitable structure identified by the department as located within the state responsibility area if that person owns the habitable structure on July 1 of the year for which the fee is due. The bill would authorize the board to exempt from the fire prevention fee any habitable structure that is subsequently deemed uninhabitable as a result of a natural disaster during the year the fee is due if certain conditions are met.

Existing law requires the board to adjust the fire prevention fee annually using prescribed methods.

This bill would instead authorize the board to adjust the fee using those methods.

Existing law establishes the State Responsibility Area Fire Prevention Fund and requires the board to report to the Legislature every January 1 on the status and uses of the fund.

This bill would instead require the board to report to the Legislature every January 31.

Existing law authorizes a person from whom the fire prevention fee is determined to be due to petition for a redetermination of whether the fee applies to that person within 30 days after service upon the person of a notice of determination. Existing law requires the petition for redetermination to be in writing and be sent to the department, the board, and the State Board of Equalization.

This bill would, if a petition for redetermination is filed after the expiration of the 30-day time period, authorize the petition to be treated as an administrative protest or claim for refund if the department determines that the facts presented indicate that the fire prevention fee originally determined may have been excessive or the amount or the application of the fee may have been the result of an error by the department, its agent, or the State Board of Equalization. This bill would delete the requirements that the petition for redetermination be sent to the board and the State Board of Equalization.

Existing law requires a penalty of 20% of the fee determined to be due to be added to the amount due and payable for each 30-day period in which the fee remains unpaid.

This bill would prohibit the above penalty from being imposed or added after January 1, 2015, to any fee that remains unpaid or any fee that is not paid when due and payable. The bill would instead add a penalty of 10% to the amount due in accordance with existing law relating to late fee payments.

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

SECTION 1. Section 4211 of the Public Resources Code is amended to read:

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

(a) "Habitable Structure" means a building that contains one or more dwelling units or that can be occupied for residential use. Buildings occupied for residential use include single family homes, multidwelling structures, mobile and manufactured homes, and condominiums. Habitable structures do not include commercial, industrial, or incidental buildings such as detached garages, barns, outdoor sanitation facilities, and sheds.

(b) "State responsibility area" means state responsibility area as defined in Section 4102.

(c) "Person" means an individual, trust, joint stock company, business concern, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(d) "Owner of a habitable structure" means the person that is the owner of record of a habitable structure in the county tax assessor rolls or as recorded in the records of the Department of Housing and Community Development on July 1 of the state fiscal year for which the fee is due.

SEC. 2. Section 4212 of the Public Resources Code is amended to read:

4212. (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 habitable structure on a parcel that is within a state responsibility area.

(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 habitable structure within a state responsibility area.

(b) On July 1, 2013, and annually thereafter, the board may adjust the fire prevention fees imposed pursuant to this chapter 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.

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

SEC. 3. Section 4213 of the Public Resources Code is amended to read:

4213. (a) (1) Commencing with the 2011–12 fiscal year, the fire prevention fee imposed pursuant to Section 4212 shall be collected annually by the State Board of Equalization in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

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

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

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

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

(c) On or before each January 1, the department shall annually transmit to the State Board of Equalization the appropriate name and address of each person who is liable for the fire prevention fee and the amount of the fee to be assessed, as authorized by this article, and at the same time the department shall provide to the State Board of Equalization a contact telephone number for the board to be printed on the bill to respond to questions about the fee.

(d) Commencing with the 2012–13 fiscal year, if in any given fiscal year there are sufficient amounts of money in the State Responsibility Area Fire Prevention Fund created pursuant to Section 4214 to finance the costs of the programs under subdivision (d) of Section 4214 for that fiscal year, the fee may not be collected that fiscal year.

SEC. 4. Section 4213.1 is added to the Public Resources Code, to read:

4213.1. (a) The fire prevention fee imposed pursuant to Section 4212 shall be levied upon the owner of a habitable structure identified by the department as located within the state responsibility area, if that person owns the habitable structure on July 1 of the year for which the fee is due.

(b) The board may exempt from the fire prevention fee any habitable structure that is subsequently deemed uninhabitable as a result of a natural disaster during the year for which the fee is due, as well as one subsequent year if the habitable structure has not been repaired or rebuilt. The board shall consider granting an exemption only if both of the following conditions are met:

(1) The owner of the habitable structure certifies that the structure is not habitable as a result of a natural disaster.

(2) The owner of the habitable structure either documents that the habitable structure passed a defensible space inspection conducted by the department or by one of its agents within one year of the date the structure was damaged or destroyed or certifies that clearance as required under Section 4291 was in place at the time that the structure was damaged or destroyed as a result of a natural disaster.

(c) The board shall prepare forms for purposes of the certification requirements in subdivision (b).

SEC. 5. Section 4214 of the Public Resources Code is amended to read:

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

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

(2) The moneys collected, other than those retained by the State Board of Equalization pursuant to paragraph (1), shall be deposited into the State Responsibility Area Fire Prevention Fund, which is hereby created in the State Treasury, and shall be available to the board and the department to expend for fire prevention activities specified in subdivision (d) that benefit the owners of habitable structures within a state responsibility area who are required to pay the fire prevention fee. The amount expended to benefit the owners of habitable structures within a state responsibility area shall be

commensurate with the amount collected from the owners within that state responsibility area. All moneys in excess of the costs of administration of the board and the department shall be expended only for fire prevention activities in counties with state responsibility areas.

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

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

(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 habitable 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 habitable 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 habitable 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 habitable 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.

(f) By January 31, 2015, and annually thereafter, the board shall submit to the Legislature a written report on the status and uses of the fund pursuant to this chapter. The written report shall also include an evaluation of the benefits received by counties based on the number of habitable structures in state responsibility areas within their jurisdictions, the effectiveness of the board's grant programs, the number of defensible space inspections in

the reporting period, the degree of compliance with defensible space requirements, measures to increase compliance, if any, and any recommendations to the Legislature.

(g) (1) The requirement for submitting a report imposed under subdivision (f) is inoperative on January 31, 2017, pursuant to Section 10231.5 of the Government Code.

(2) A report to be submitted pursuant to subdivision (f) shall be submitted in compliance with Section 9795 of the Government Code.

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

SEC. 6. Section 4220.1 is added to the Public Resources Code, to read:

4220.1. If a petition for redetermination is filed after the expiration of the time period specified in Section 4220, the untimely petition may be treated as an administrative protest or claim for refund if the department determines that the facts presented indicate that the fire prevention fee originally determined may have been excessive or that the amount or the application of the fee may have been the result of an error by the department, its agent, or the State Board of Equalization. Petitions filed pursuant to this section shall generally be reviewed in the same manner as a timely petition for redetermination.

SEC. 7. Section 4221 of the Public Resources Code is amended to read:

4221. A petition for redetermination of the application of this chapter shall be in writing and be sent to the department or its designee. The petition shall state the specific grounds upon which the petition is founded and include supporting documentation. The petition may be amended to state additional grounds or provide additional documentation at any time prior to the date that the department issues its order or decision with regard to the petition for redetermination.

SEC. 8. Section 4225 of the Public Resources Code is amended to read:

4225. (a) (1) The fire prevention fee determined to be due by the department pursuant to 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 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 pursuant to 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.

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