

Assembly Bill No. 29

CHAPTER 8

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, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor July 7, 2011. Filed with Secretary of State July 8, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 29, Blumenfield. 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 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 on a parcel that is within a state responsibility area. The board would be required to adjust the fire prevention fee annually using prescribed methods.

The bill would require the State Board of Equalization to collect the fire prevention fees, as prescribed. The bill would require, within 30 days of the effective date of its provisions, and each January 1 thereafter, the Department of Forestry and Fire Protection to transmit to the State Board of Equalization 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 State Board of Equalization to collect the fee commencing with the 2011–12 fiscal year. Commencing with the 2012–13 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 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, which would benefit the owners of structures in state responsibility areas who are subject to the fire prevention fee, including, but not limited to, 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, 2013, 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.

The bill would appropriate \$1,000 from the General Fund to the Department of Forestry and Fire Protection for administrative costs to implement its provisions.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

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

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

CHAPTER 1.5. STATE RESPONSIBILITY AREA FIRE PREVENTION FEES

Article 1. General Provisions

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

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

(b) The presence of structures within state responsibility areas can pose an increased risk of fire ignition and an increased potential for fire damage within the state's wildlands and watersheds. The presence of structures within state responsibility areas can also impair wild land firefighting techniques and could result in greater damage to state lands caused by wildfires.

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

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

(e) It is the intent of the Legislature that the economic burden of fire prevention activities that are associated with structures in state responsibility areas shall be equitably distributed among the citizens of the state who

generally benefit from those activities and those owners of structures in the state responsibility areas who receive a specific benefit other than that general benefit.

(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.

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

(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.

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

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 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 structure within a state responsibility area.

(b) On July 1, 2013, and annually thereafter, the board shall 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.

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) Within 30 days of the effective date of this chapter, the department shall transmit to the State Board of Equalization, and each January 1 thereafter, 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.

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 that 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 structures within a state responsibility area who are required to pay the fire prevention fee. The amount expended to benefit the moneys of 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 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.

(f) By January 1, 2013, 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 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 1, 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.

Article 2. Appeals Process

4220. A person from whom the fire prevention fee is determined to be due under this chapter may petition for a redetermination of whether this chapter applies to that person within 30 days after service upon him or her of a notice of the determination. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration of the 30-day period.

4221. Each petition for redetermination of the application of this chapter shall be in writing and be sent to the department, the board, and the State Board of Equalization. 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.

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.

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

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

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

4225. 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 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.

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

(a) The notice shall be placed in a sealed envelope, with postage paid, addressed to the petitioner at his or her address as it appears in the records of the department. The giving of notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox, subpost office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason.

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

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

4228. If the department determines that a person is entitled to a refund of all or part of the fire prevention fee paid pursuant to this chapter, 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.

SEC. 2. There is hereby appropriated one thousand dollars (\$1,000) from the General Fund to the Department of Forestry and Fire Protection for administrative costs to implement this act.

SEC. 3. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

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