



Legislation Text

File #: 11-0817, **Version:** 1

Supervisor Sweeney recommending the Board direct County Counsel, as lead, to prepare an appeal from the imposition of the "Fire Prevention Fees" being imposed by the State of California pursuant to ABX1 29 of 2011 (signed by Governor July 7, 2011) on behalf of all affected land owners of the County of El Dorado.

Such appeal would be pursuant to Public Resources Code Section 4220 et seq as set forth in the legislation and would be signed by the Board Chair. (Est. Time: 1 Hr.)

BACKGROUND

(Note: all of the following sections are from the California Public Resources Code)

ABX1 29 provides as follows:

The setting of the fee:

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.

The appeals:

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.

In addition, existing law provides as follows:

4102. "State responsibility areas" means areas of the state in which the financial responsibility of preventing and suppressing fires has been determined by the board pursuant to Section 4125, to be primarily the responsibility of the state.

4125. (a) The board shall 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. The prevention and suppression of fires in all areas that are not so classified is primarily the responsibility of local or federal agencies, as the case may be.

(b) On or before July 1, 1991, and every 5th year thereafter, the department shall provide copies of maps identifying the boundaries of lands classified as state responsibility pursuant to subdivision (a) to the county assessor for every county containing any of those lands. The department shall also notify county assessors of any changes to state responsibility areas within the county resulting from periodic boundary modifications approved by the board.

(c) A notice shall be posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map, and of any information received by the county subsequent to the receipt of the map regarding changes to state responsibility areas within the county.

4126. The board shall include within state responsibility areas all of the following lands:

(a) Lands covered wholly or in part by forests or by trees producing or capable of producing forest products.

(b) Lands covered wholly or in part by timber, brush, undergrowth, or grass, whether of commercial value or not, which protect the soil from excessive erosion, retard runoff of water or accelerate water percolation, if such lands are sources of water which is available for irrigation or for domestic or industrial use.

(c) Lands in areas which are principally used or useful for range or forage purposes, which are contiguous to the lands described in subdivisions (a) and (b).

BASIS FOR APPEAL

- 1.. This law imposes a fee that is actually a tax and is likely a violation of Proposition 13 and Proposition 26;
- 2.. This law imposes a fee for purported services which are already provided by local fire districts and paid for partially by local property taxes;
- 3.. The imposed fee would make it difficult for local districts to convince voters to levy a local fee increase;
- 4.. This law imposes a fee for the benefit of an organization which is not ordinarily the first agency on scene of fires in this county;
- 5.. This imposed fee would be an extraordinary burden on local property owners;
- 6.. This imposed fee is discriminatory against rural land owners that already preserve their lands and open spaces to the benefit of the urban lands;
- 7.. This imposed fee relieves the obligation of the State general fund to protect the natural resources of this State for ALL of our people;
- 8.. The parties upon whom this fee is being imposed are not readily determinable as the State Responsibility Area (SRA) maps are not readily available and are said not to be of a scale to determine which parcels are actually within the SRA;
- 9.. The parties upon whom the fee would be imposed are not readily identifiable under the subjective definition of SRA per section 4126 of the Public Resources Code.

Supervisor Sweeney urges and appreciates the support of the Board of Supervisors in this matter as I believe many of our land owners will be affected by this proposed imposition and they will appreciate our efforts on their behalf.

We should share this proposal with CSAC and RCRC and with every county in the State.