

BOARD OF FORESTRY AND FIRE PROTECTION

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August 26, 2015

Increase for SRA Fee- background

The Board is required to consider adjusting the SRA Fire Prevention Fee each and every year by statute and regulation. Prior to 2015, the Board had no choice in the matter and the fee adjustment was automatic and implemented by Board staff via the Section 100 rule revision process. Recent revision to the PRC § 4212 through Assembly Bill 2048, signed into law on September 30, 2014, now provides the Board the authority to select if the fee is to be adjusted in a given year. The amount in which the fee is to be adjusted is pre-determined and not subject to revision, but if the fee is to be adjusted by this pre-determined amount is subject to determination by the Board. Below is a description of the action and analysis.

I. Public Resources Code

PRC dictates that the Board may increase the fee beginning in 2013:

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.

II. Title 14 CCR

Our regulations repeat this in more or less verbatim language:

§ 1665.6. Fee Structure.

- (a) The Board of Forestry and Fire Protection has been directed by the Legislature to impose a Fee that will provide funding necessary for fire prevention activities.
- (b) The Fee shall be one hundred-fifty-two dollars and thirty-three cents (\$152.33) per Habitable Structure.
- (c) Fees shall be deposited in the Fire Prevention Fund.

The Board's mission is to lead California in developing policies and programs that serve the public interest in environmentally, economically, and socially sustainable management of forest and rangelands, and a fire protection system that protects and serves the people of the state.



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- (d) On July 1, 2013 and, annually thereafter, at its June meeting prior to each subsequent July 1, the Board of Forestry and Fire Protection may adjust the Fee rate 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.

III. Revisions to the Required Regulatory Process with Recent Revision to State Law

The Section 100 regulatory action can no longer be utilized by the Board now that the Board has been provided discretion in adjusting the SRA Fire Prevention Fee. Absent some other statutorily derived directive or mandate, the Board now is required to use the regular rulemaking process when exercising its discretion to amend the fee.

Under the standard rule making process, the Board is required to provide necessity for the rulemaking action. It is important to remember that the Board does not have discretion in determining *how much* the fee is raised, only *if* the pre-determined amount is appropriate. Therefore, the necessity, as identified by the Board, must justify the predetermined rate of fee increase. The necessity of increase would likely be characterized through interactions with the Board of Equalization and CAL FIRE.

Timing also becomes a critical factor for the Board to consider given that the standard rule making process is also required. Regulatory revision to existing regulations for the SRA Fire Prevention Fee (14 CCR § 1665 *et. seq.*) are not promulgated per the Forest Practices Act, and therefore have multiple effective dates throughout the year as provided for in the Administrative Procedures Act (APA). These effective dates are as follows:

Gov. 11343.4. (a) Except as otherwise provided in subdivision (b), a regulation or an order of repeal required to be filed with the Secretary of State shall become effective on a quarterly basis as follows:

(1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.

(2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.

(3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.

(4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

The Board and Board staff need to consider the timelines associated with standard rule when discussing this matter. These timelines includes Noticing for public comment periods, Hearings, staff preparation of rulemaking documents for submittal to Office of Administrative Law (OAL) and staff response to OAL comments during the review process of the proposed regulation. These process and staff availability based timelines need to additionally be balanced against those of the Department billing cycle timelines, which generally commence the second week in March of each year.



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IV. Calculation of change

“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”

3rd quarter 2014 (IPD) - 111.21

3rd quarter 2013 (IPD) - 109.57

Calculation	
$(111.21 - 109.57) / 109.57 =$ 01.50%	1.50%
$\$152.33 * 1.50\% = \2.28	\$2.28
FY 14/15 Fee = 152.33	\$152.33
$\$152.33 + \$2.28 = \$154.61$	\$154.61
$\$154.61 - \$35 = \$119.61$	\$119.61