



# City of Corning

794 Third St. Corning, CA 96021 (530) 824-7020 Fax (530) 824-2489

## THE CORNING FRIDAY NOTES

**TO: MAYOR AND COUNCIL**  
**FROM: STEPHEN J. KIMBROUGH, CITY MANAGER**  
**DATE: DECEMBER 15, 2011**

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### **FURLOUGH DAYS:**

#### **December:**

Friday, December 16<sup>th</sup>  
Friday, December 30<sup>th</sup>

### **HOLIDAYS:**

#### **December:**

Friday, December 23<sup>rd</sup>  
Monday, December 26<sup>th</sup>

### **HOLIDAYS:**

#### **January**

Monday, January 2<sup>nd</sup>

### **SCHEDULES:**

#### **December 22 Christmas Party:**

This year's Council/Employees (and their families of course) annual Christmas pot luck party will be held on Thursday, December 22<sup>nd</sup> at the Corning Fire Hall beginning at noon. We hope to see you there for some good food and company. Be sure to bring your favorite casserole, salad or desert.

**John Stoufer:** John will be out of the office beginning December 27<sup>th</sup> for knee surgery. Barring no complications, he should be returning to work within 4-6 weeks.

### **CITY MANAGER:**

**New Mayors and Council Members Academy in January 2012: Need to Schedule ASAP if planning on attending, please contact Lisa at 824-7033 if interested.**

The City still budgets for City Council attendance at important training sessions produced by the League of California Cities. The Conference, in Sacramento this year, starts on Wednesday, January 18, 2012 at 8:00 a.m. and ends Friday, January 20, 2012 at noon. New Council Member Dave Linnet has not had the opportunity to attend this training, and normally the Mayor would attend with the new Council Member. This is the most important League session that a Council Member can attend.

#### **2012 Economic Forecast Conference:**

Corning City Council and Managers have often attended the annual Economic Forecast presented by the Chico State Center for Economic Development. This year the conference will be held at the Gold Country Event Center in Oroville. Though the registration is \$65 each, we have been informed that the fee will be waived for elected officials in an effort to encourage greater attendance of City and County officials. The date is Thursday, January 12, 2012, from 8:30 a.m. to 3:30 p.m. Steve Kimbrough will be attending and has room for three more attendees in his truck.

In the past, we have found the information to be valuable, but not specific enough to Tehama County to justify the investment of a large number of us attending. This time we should take advantage of the registration fee waiver. Attendance will give the Council a much better idea of where the State economy is going in what continues to be a precarious economy.

**Unemployment and Family income in Corning**

I asked the Job Training Center for current unemployment information on Tehama County and specifically for Corning in order to provide a perspective to judge how the Community as a whole is doing in light of our continued retail sales recovery.

Amanda Wigno at JTS forwarded me this information which tells us a lot. It is sobering and makes me count my Blessings!

The unemployment rate for Corning is Oct 2011 data, the most recent available.

**Monthly Labor Force Data for Cities and Census Designated Places (CDP)  
October 2011 - Preliminary  
Data Not Seasonally Adjusted**

Area Name	Unemployment Rate
Tehama County	13.8%
Corning City	16.1%

There is no 2010 census data available on family income so she provided this.

**Corning City, California**

**S1901. Income in the Past 12 Months (In 2009 Inflation-Adjusted Dollars)**

Data Set: **2005-2009 American Community Survey 5-Year Estimates**

Survey: **American Community Survey**

NOTE. For information on confidentiality protection, sampling error, non-sampling error, and definitions, see [Survey Methodology](#).

Subject	Households	Families	Nonfamily households
<b>Total</b>	<b>2,796</b>	<b>1,910</b>	<b>886</b>
Less than \$10,000	13.1%	6.9%	26.5%
\$10,000 to \$14,999	12.6%	11.2%	22.5%
\$15,000 to \$24,999	16.2%	11.6%	20.3%
\$25,000 to \$34,999	13.1%	16.2%	9.8%
\$35,000 to \$49,999	24.1%	28.2%	14.0%
\$50,000 to \$74,999	11.2%	13.4%	3.4%
\$75,000 to \$99,999	4.2%	5.8%	0.9%
\$100,000 to \$149,999	4.1%	5.4%	2.6%
\$150,000 to \$199,999	1.0%	0.9%	0.0%
\$200,000 or more	0.4%	0.6%	0.0%
Median income (dollars)	31,282	36,724	15,336
Mean income (dollars)	37,132	43,160	21,832
Household income in the past 12 months	32.3%	(X)	(X)
Family income in the past 12 months	(X)	33.4%	(X)
Nonfamily income in the past 12 months	(X)	(X)	27.4%

Jocie Boyer, Northern Region Manager  
EDD Labor Market Information Division  
1325 Pine Street, Redding, CA 96001  
(530) 225-2562  
[jboyer@edd.ca.gov](mailto:jboyer@edd.ca.gov)

**CalFire Parcel Tax:**

You have all read about the State Parcel "Fee" adopted to fund CalFire. Attached at the end of the Friday Notes is the response by our Tehama County Board of Supervisors pointing out the several reasons why the imposition of the tax/fee is "inequitable...unworkable: and unconstitutional. I though you would all appreciate the aggressiveness of our Board of Supervisors and County Counsel. Supervisor Ron Warner had it forwarded to me to share with you. **(See attachment)**

**PUBLIC WORKS DEPARTMENT:**

**Clark Park Well:**

Workers are installing HVAC equipment in the building to keep the electronics at safe operating temperatures. The window louvers are now in and installed. The louvers are anodized metal that's a color different than the doors. Upon completion of the project, we'll finish painting the doors to better match the louvers.

**Library Wall Seepage:**

The Library staff notified the City of significant moisture seeping through the masonry east wall. They have collected quite a lot of alkali residue from the inside of the building that is an indicator of moisture seepage. We were surprised due to the dry weather so far this fall. The seepage was significant enough that some books were damaged. We've asked the Staff to provide an estimate of the replacement costs for the damaged books. John spoke with Steve about the damaged book matter and the moisture issue.

We found that some of the lawn sprinklers were over-spraying onto the east and north walls and believe that is the source of much of the wall moisture. We have turned off the sprinklers and have adjusted them so that when they do operate they'll not water the walls.

Additionally, we have noticed some alkali residue in the carpet along the east wall. That may indicate some "wicking" from the ground through the concrete foundation. We'll have some missing roof downspouts replaced so that rainwater is efficiently conveyed thru the adjacent planters and away from the building.

**Leaf Pick-up:**

Public Works staff continues to retrieve leaves from the residential neighborhoods throughout the City.

**Meeting with North Valley Services:**

On Wednesday, John, Carl & Pat met with representatives of North Valley Services (NVS) to investigate the possibility of contracting for some parks maintenance services. NVS employs about 270 developmentally disabled people in Glenn, Lassen and Tehama Counties. They also employ about 130 supervisory and administrative staff. NVS maintain Rest Areas, public buildings and parks, and other buildings and facilities throughout the three counties and are capable and interested in providing their services here in Corning. This alternative is particularly timely since we'll soon be significantly expanding our parks acreage, from 18 to over 32 acres with the addition of the new park at Jewett Creek.

Public Works will compile a draft scope of work and provide it to NVS for their review and use in preparing a proposal for maintenance services for City Council consideration. We expect to have a draft scope of work compiled right after the first of the year.

**On-street Parking and Lane Marking:**

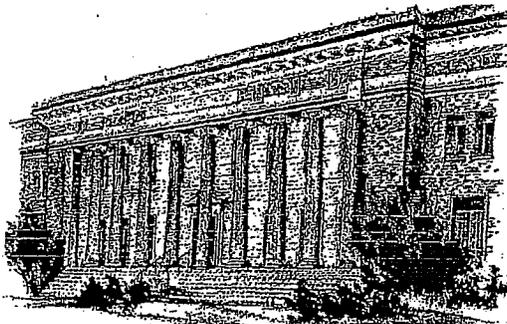
Councilmember Dave Linnet inquired about the No Parking Zone along the “Starbucks” and RaboBank frontages of Highway 99-W. He asked whether some of that frontage might be suitable for on-street parking. He was particularly interested in the area located south of the common driveway in front of the bank building. Staff discussed this issue at our weekly meeting on Wednesday. The consensus of staff was to retain the No Parking Zone for both frontages. The No parking zone is intended to keep motorists from parking adjacent to the driveways and then diminishing sight distance from the respective driveways; one that provides primary access to several commercial uses, and the second that provides egress from the Rabobank drive-thru lanes. Sight distance is intensely interrupted when larger vehicles park next to driveways. Because of its location, many large vehicles such as trucks and R-V’s regularly use the route. If on-street parking were permitted, motorists exiting the commercial driveways would have limited sight distance, resulting in hazardous traffic conditions.

Public Works staff will do some shoulder grading along the unimproved frontage across the highway to accommodate parked northbound vehicles in the area.

Councilmember Linnet also mentioned consideration of eliminating the segregated right turn and left turn lanes at north bound Toomes Avenue at the Solano Street intersection. The primary reason is the minimal right turn radius at the northwest corner of the “Ranch Grande” site. Coincidentally, he posed the question at about the same time as the new traffic detector loops and pavement marking was occurring. In similar circumstances at Solano and Marguerite, we eliminated the segregated lanes. Of course, that was a case of a new signalization project. Toomes and Solano is a long-existing signal to which the public has grown accustomed. John will speak with the City Engineer about the matter next time Ed’s in town.

*Board of Supervisors*  
COUNTY OF TEHAMA

District 1 – Gregg Avilla  
District 2 – George Russell  
District 3 – Dennis Garton  
District 4 – Bob Williams  
District 5 – Ron Warner



*Tehama County Courthouse*

Williams J. Goodwin  
Chief Administrator

November 29, 2011

OAL Reference Attorney  
300 Capitol Mall, Suite 1250  
Sacramento, California 95814

**VIA EMAIL TO: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)**  
**AND FAX TO: (916) 323-6826**

George Gentry  
Executive Officer  
California Board of Forestry and Fire Protection  
P.O. Box 944246  
Sacramento, CA 944244-2460

**VIA EMAIL TO:**  
**[Board.public.comments@fire.ca.gov](mailto:Board.public.comments@fire.ca.gov)**  
**AND FAX TO: (916) 653-0989**

Re: Department of Forestry and Fire Protection State Responsibility Fees Proposed  
Emergency Regulation

Dear Sir or Madam:

The County of Tehama respectfully requests that the Office of Administrative Law disapprove the proposed State Responsibility Fees Emergency Regulations submitted by the Department of Forestry and Fire Protection. Tehama County remains deeply opposed to the "Fire Fee" in principle, as it is grossly inequitable for rural residents and represents unwise and unworkable public policy. The County also seriously questions whether such "fees," in any amount, may lawfully be imposed without full compliance with the constitutional provisions applicable to state *taxes*. However, in recognition of OAL's limited role, we have restricted our comments to the procedural and substantive criteria relevant to this step in the regulatory process.

**There is no "Emergency."** Assembly Bill X1 29 directs the California Board off Forestry to "adopt emergency regulations to establish a fire prevention fee" by September 1, 2011.<sup>1</sup> The Board fulfilled this obligation by adopting emergency

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<sup>1</sup> (Pub. Resources Code, § 4212, subd. (a)(1).)

regulations on August 22, 2011 (which provided for a considerably lower "fee" than presently proposed).<sup>2</sup> The Department could have - and should have - promptly submitted the August regulations to OAL for approval. Instead, the Department waited for nearly three months, and then adopted an amended set of "emergency" regulations dramatically increasing the proposed fees without meaningful public input.<sup>3</sup> Assembly Bill X1 29 does not go so far. The Legislature's limited authorization for emergency rulemaking was not a declaration of permanent emergency allowing the Department to perpetually revise its regulatory actions without public scrutiny. Rather, having *actually adopted* the emergency regulations authorized by statute, the Department's further regulatory actions are subject to the ordinary provisions of the Administrative Procedure Act. Those provisions permit emergency rulemaking only upon *express written findings* clearly demonstrating that the proposed regulation is "necessary for the immediate preservation of the public peace, health and safety, or general welfare." Such findings are wholly absent from the proposed rulemaking package here. Rather, the Department has attempted to rely exclusively upon the Legislative authorization for initial adoption of emergency regulations "by September 1, 2011." As set forth above, that reliance is unavailing for this *second set* of regulations, and the proposed regulatory package here should thus be disapproved for noncompliance with Government Code section 11346.1.<sup>4</sup>

**The proposed \$150 fee fails to meet the "Authority" and "Consistency" requirements of the Administrative Procedure Act.** Even emergency regulations must be authorized by law, and must be consistent "with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." In this

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<sup>2</sup> The August regulations are available online at:  
[http://www.bof.fire.ca.gov/regulations/proposed\\_rule\\_packages/sra\\_fire\\_prevention\\_benefit\\_fee\\_2011/srafeeemergencyruleadopted082211.pdf](http://www.bof.fire.ca.gov/regulations/proposed_rule_packages/sra_fire_prevention_benefit_fee_2011/srafeeemergencyruleadopted082211.pdf)

<sup>3</sup> Documents prepared by Department staff indicate that this decision was made in "defer[ence] to the Governor," "as the administration had suggested clean-up language to address various issues. *The legislature chose not to adopt clean-up language.*" (See California Board of Forestry and Fire Protection, Resource Protection Committee, *SRA Fee Memo* (Nov. 1, 2011), p. 2.) Notwithstanding the obvious lack of legislative sanction to "clean up" the fee program as set forth in the August regulations, the Department is attempting to accomplish precisely that result with these amended "emergency" regulations. This further suggests that the Department has strayed from the procedural and substantive authorization actually set forth in the governing statutes. (The Department's *SRA Fee Memo* is attached hereto as Attachment "A," and is also available online at:  
[http://www.bof.fire.ca.gov/board\\_committees/resource\\_protection\\_committee/current\\_projects/resources/sra\\_fee\\_memo\\_11-1-11.pdf](http://www.bof.fire.ca.gov/board_committees/resource_protection_committee/current_projects/resources/sra_fee_memo_11-1-11.pdf))

<sup>4</sup> (The County expresses no opinion regarding whether the Department's initial regulatory package could properly be re-adopted and submitted to OAL as an emergency regulation, or whether the Department could lawfully adopt and genuine emergency findings in accordance with the APA.)

case, Assembly Bill X1 29 authorizes the Department to "establish a fire prevention fee . . . in an amount not to exceed one hundred fifty dollars (\$150)," and declares that a fee within this range is "reasonable." However, it does not *command* the Department to adopt the maximum fee, and the Department's determination of the fee amount *within the statutory range* (i.e., \$0 to \$150) is subject to extensive constitutional requirements designed to ensure that "fees" do not exceed the reasonable cost of providing the relevant service to the fee-payer (including, but not limited to, Proposition 26<sup>5</sup>). Under these constitutional provisions, the *burden is on the government* to justify the amount of the fee, and fees adopted without evidence supporting this justification are invalid. These limitations were actually recognized by Department staff,<sup>6</sup> and the Department's August regulations made some attempt to justify the amount of the fee in accordance with these requirements. By contrast, the current proposed regulation package makes no such attempt, appearing to assume that the authorization "establish a fire prevention fee . . . in an amount *not to exceed* one hundred fifty dollars (\$150)" provides carte blanche to impose the maximum possible fee without regard for these constitutional requirements. However, Assembly Bill X1 29 authorizes no such thing. If the Legislature meant to simply impose a \$150 fee, it would have done so. Instead, it provided a "cap" for the Department's fee, and relied upon the Department to lawfully set the amount of the fee within that cap. The Department's failure to meet its legal burden to establish a "nexus" between the costs of the services in question and the fee amount (as suggested by its own staff) places the fee beyond the authority provided by Assembly Bill X1 29, and renders it inconsistent with the foregoing constitutional provisions. As such, OAL should disapprove the proposed regulations for noncompliance with Government Code section 11349.1.

**The proposed imposition of fee upon "building[s] . . . that can be occupied for non-residential use" exceeds the Department's "Authority" under Assembly Bill X1 29.** Public Resources Code sections 4211 and 4212 authorize fees "to be charged on each structure" in the State Responsibility Area, and defines "structure" as "a building used or intended to be used *for human habitation*." The plain meaning of "habitation" is "a *dwelling* place" - i.e., a residence.<sup>7</sup> There is nothing in either the text of Assembly Bill X1 29 or legislative history suggesting that the Legislature intended any different meaning here.<sup>8</sup> However, the proposed regulations purport to impose the fee not only on

<sup>5</sup> (Cal. Const., art. XIII A, § 3.)

<sup>6</sup> (*SRA Fee Memo*, pp. 3-5.)

<sup>7</sup> (See *Collier v. Menzel* (1985) 176 Cal.App.3d 24, 31; Black's Law Dictionary (9th ed. 2009).)

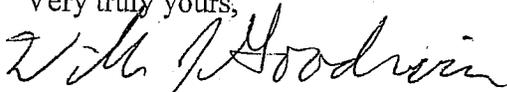
<sup>8</sup> Interestingly, Department staff appears to have interpreted the legislation this way as well. (See *SRA Fee Memo*, p. 2 ["From reviewing the bill analysis and reading the law's language, it is intended to address *homes (human habitation)*. It is not intended to address all structures (outbuildings, barns, etc.)"].) Further, the Department's August regulations properly limited the fees to "a permanent *dwelling*, and includes mobile homes and manufactured homes."

“dwelling units,” but also on “non-residential” structures, which “include, but are not limited to, office buildings, industrial property, stores, warehouses, hotels, hospitals, medical centers, clinics, libraries, museums, and government buildings, including jails.”<sup>9</sup> This remarkable expansion of the fee “amends” and “enlarges” the provisions of Assembly Bill X1 29,<sup>10</sup> and exceeds the Department’s authority under that statute. Simply put, the imposition of these fees on non-residential structures is absolutely unauthorized by law, and places drastic and unlawful burdens on rural business owners. (The proposed regulations also include government buildings within the fee program, thereby placing additional unauthorized – and unpublicized – burdens on cash-strapped local governments, many of whom are struggling to provide the same fire protection services that this fee is intended to support.) For these reasons, OAL should disapprove the proposed regulations for noncompliance with Government Code section 11349.1.

The foregoing represent only some of the county’s serious objections to the proposed fee program – i.e., only those comments that could be developed within the extremely short period provided for emergency regulations. OAL should send the proposed regulations back to the Department for due public process in accordance with the Administrative Procedure Act, so that the County and other interested parties can be fairly heard on these and other issues.

Please do not hesitate to contact us if you have any questions.

Very truly yours,



Williams J. Goodwin  
Chief Administrator

C:RCRC

Assemblyman Nielson  
Senator Doug LaMalfa  
Supervisor Gregg Avilla  
Supervisor George Russell  
Supervisor Dennis Garton  
Supervisor Bob Williams  
Supervisor Ron Warner

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<sup>9</sup> (Proposed Cal. Code Regs., tit. 14, §§ 1665.2, 1665.4, 1665.6.)

<sup>10</sup> (See Cal. Code Regs., tit. 1, § 14, subd. (c)(1)(A).)

# Attachment "A"

## History

In 2003-04, the Legislature enacted SB 1049 (Committee on Budget, Chapter 741) that imposed an annual SRA fire protection benefit fee on each parcel of land located, in whole or in part, within SRAs. The fee was to be collected by counties and used to fund fire prevention and suppression services by CAL FIRE. However, the fee was repealed by SB 1112 (Committee on Budget, Chapter 219, Stats. 2004) before any fees were collected.

During the 2007-08 Budget process, the Legislative Analyst Office (LAO) recommended reenacting a fire protection fee in SRAs. In its report titled: "California Department of Forestry and Fire Protection: State's Wildland Firefighting Costs Continue to Escalate," ([http://www.lao.ca.gov/analysis/2007/resources/resource\\_anl07.pdf#page=77](http://www.lao.ca.gov/analysis/2007/resources/resource_anl07.pdf#page=77)) the LAO commented that it is appropriate for the beneficiaries of state fire protection to contribute to the cost of such protection. According to the LAO, because Cal Fire's fire protection provides both public benefits (the protection of watersheds, for example) and private benefits (the protection of timber lands and houses in SRAs) it is appropriate that private beneficiaries contribute to the state's cost of doing so. The LAO recommended the enactment of legislation to reinstate fire protection fees on private property owners in SRAs so that the beneficiaries of SRAs pay a portion of their costs.

In 2008, SB 1617 (Kehoe), which was very similar to this bill, would have imposed an annual \$50 fee on residential structures located within SRAs. It was almost identical, in that it focused on prevention as well. This bill died on the Assembly inactive file.

In 2009, ABx3 41 (Evans), a budget trailer bill, would have required CAL FIRE to adopt emergency regulations to establish a fee to cover the costs of providing fire protection services associated with structures in an SRA, based on the fire hazard severity zone in which a structure is located. This bill was withdrawn from enrollment and held in the Legislature.

## Overview

PRC Section 4125 requires the Fire Board to 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.

PRC Section 4102 defines "state responsibility areas", to mean areas of the state in which the financial responsibility of preventing and suppressing fires has been determined by the Board to be primarily the responsibility of the state.

Under the PRC, CAL FIRE has the primary responsibility for preventing and suppressing fires in areas that the Board has determined are SRA's.

This new law adds Chapter 1.5 (commencing with Section 4210) to Part 2 of Division 4 of the Public Resources Code to 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 on each structure on a parcel that is within a SRA.

The fire fee would be adjusted annually by the Fire Board beginning July 1, 2013, 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 described State Responsibility Area Fire Prevention Fund (Fund). After deducting moneys necessary for the payment of refunds and reimbursement for expenses incurred in the collection of the fee, the BOE would be required to deposit the fire protection fees collected into the Fund, which this law would create in the State Treasury. Moneys in the Fund would be available to CAL FIRE for fire prevention activities, as specified, in SRAs, that benefit the owners of structures within the SRA. It also requires that the fee revenues be used to cover any startup costs incurred over a two-year period.

### Time Frame

(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.

The Board adopted the initial regulation on August 22<sup>nd</sup>. It did not submit the regulation to OAL for review and final clearance, deferring to the Governor instead, as the administration had suggested clean-up language to address various issues. The legislature chose not to adopt clean-up language.

### Intent of Law

(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.

This law addresses prevention. This is not a law that addresses protection (suppression) issues.

### Habitable Structure

From reviewing the bill analysis and reading the law's language, it is intended to address homes (human habitation). It is not intended to address all structures (outbuildings, barns, etc.). These features are the source of most human activity, and hence, a potential source of ignitions and fuel. They are also the most (generally) valuable features within the SRA.

(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.

### Costs

The law is intended to address costs associated with homeowners in SRA.

The issue of costs must be looked at from at least two ways. Most tend to focus on defense of homes, but we must also look at homes as a source of ignition. This is in keeping with policy and law which addresses the department's firefighting vis a vis homes to prevent spread into SRA. Proper defensible space techniques and planning help prevent the spread of a home fire

into SRA. Additionally, the presence of human activity may also increase the likelihood of unwanted ignitions. Even if the department or other fire agencies are tasked primarily with fighting a wildland fire, a home fire in SRA is a threat to SRA lands. Measures taken to reduce that threat to SRA lands reduce costs to the state. Additionally, if good techniques are utilized by homeowners (defensible space and fuel reduction), it provides a basis for implementing attack on a wildland fire that is encroaching into populated areas, making the attack more efficient and effective.

We cannot, however, ignore the defense of the homes themselves. This is true for two reasons. One is that the homes themselves can add to fire in SRA, as they themselves can add to fuel load and combustibility. If we look at homes as potential fuels in the SRA, they have the potential to increase embers and intensity. We also cannot disregard the human impulse to protect others. No firefighter wishes to see a home lost, and the resultant tragedy of loss for the respective homeowner. Natural instinct is to protect human life and possessions.

We can see that there is a potential cost benefit to ameliorating the human presence in SRA, as a source of ignition, fuel, or as a point of attack against a wildland fire.

### Fee

*(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.*

Typically, taxes are considered either a general tax imposed for general governmental purposes or a specific tax imposed for specific purposes or imposed by a special purpose district. Once approved, taxes are levied on persons within the state or within the boundaries of a particular governmental entity to the extent of the tax liability of a person or entity. The proceeds of general taxes – such as income taxes, property taxes and sales taxes – are used to pay for services or projects that are of general benefit – such as education, health services and prisons. The proceeds of special taxes are used for the specific purpose for which such taxes were approved. On the other hand, fees are typically imposed on specific businesses or individuals to defray the costs of services or programs of particular benefit or interest to those persons or entities. Fees may also be used to defray costs incurred by the state or local government as a result of the activities of private parties.

Whether a levy is a tax or a fee depends upon who imposes the levy, who pays the levy and the purpose of the levy. A tax raises money from any or all citizens, is contributed to the general fund and is spent for the benefit of the entire community. A levy is typically collected by an agency from a particular industry or segment of the community and is used to provide narrow benefits or defray the costs of regulation. Tax has no fixed meaning and the distinction between taxes and fees is frequently blurred taking on different meanings in different contexts. There are separate categories of levies:

- **Special assessments, based upon the value of benefits conferred upon property**
- **Development fees, exacted in return for permits or other government privileges**
- **Regulatory fees imposed under the police power**

A special assessment on property, or a similar business charge, is not a special tax if it is imposed **in an amount that reasonably reflects the value of those benefits conferred by improvements funded by that assessment.** Court cases have determined that in establishing the amount of the charge for a regulatory scheme legislators need only apply sound judgment and consider probabilities according to the best honest viewpoint of informed officials. What is required is a reasonable relationship between the fees charged and the estimated cost of the service or the regulatory program provided.

If the fees collected will exceed the costs by more than an incidental amount the government bears the burden of proof at trial to establish the estimated cost of the service and the basis for determining a manner in which the costs are proportioned. The fee is allocated to bear a reasonable relationship to the payers. State responsibility area is an area of the state in which the financial responsibility for preventing and suppressing fires has been determined by the board to be the primary responsibility of the state. The law includes a legislative finding that there a reasonable amount for the necessary fire prevention activities that are appropriate and attributable to the presence of a structure in a state responsibility area. The law requires that the revenue could be expended upon appropriation.

Expenditure is limited to specified prevention activities relating to the presence of structures, keeping in mind that the government should bear the burden of proving those findings. While the public may have benefited incidentally from services provided, the fee would have benefits of specially enhanced services designed to contribute to the safety of the owners of structures in SRA. Does the presence of structures used for human habitation necessarily require greater resources to be used to prevent wildland fires? Do the activities attended to the habitation of structures in the state responsibility area increase the likelihood that fire requiring greater suppression resources would occur?

Adding criteria to consideration complicates the assessment of the fee and adds to the cost of administration, both in the gathering of information, and in the potential for appeals. The Board should consider utilizing easily available information (e.g., parcel data) at least in the initial phase to provide a system that is less costly and more easily implemented.

### **Legal issues**

Legal challenges to any new fee program might be made on the grounds that the fee is a tax. Proposition 26 passed by the voters in the 2010 General Election expanded the definition of a tax and a tax increase. The Legislative Analyst Office provided an analysis of Prop. 26; for reference please see the publication at the following link:

[http://www.lao.ca.gov/ballot/2010/26\\_11\\_2010.aspx](http://www.lao.ca.gov/ballot/2010/26_11_2010.aspx)

There are several ways the regulation can defend the proposition that it is a fee:

1. The regulation itself can spell out costs and fees to be recovered directly. This is what the initial adoption tried to achieve. One drawback with this approach is that it adds many moving parts, rendering it difficult to track and administer, and adding to costs of implementation.
2. The findings of the regulation can outline the rationale for the fee proposed. This, in turn could be done one of two ways.

a. It could provide studies and detailed data showing the nexus between costs and service

b. It could rely on the legislature's findings

A key question for both 1 and 2 a above is that they require additional information as to the cost of the Department's activities for prevention. This is difficult, as many prevention activities are under taken by individuals associated with the protection, not prevention, program.

For 2 b the legislature has made two key points:

1. "The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for the purpose of enacting statutory changes relating to the Budget Act of 2011. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill states that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution."

2. "New Fire Protection Fee in State Responsibility Areas. Imposes an annual \$150 fire prevention fee on structures located in the State Responsibility Areas (SRA); requires fee revenues to be available to the Board of Forestry (Board) and California Department of Forestry and Fire Protection (CDF), upon appropriation by the Legislature, for fire prevention and protection activities in SRAs."

In addition:

"Provides Funding for Specific Benefits . Requires the fee proceeds to be available, upon appropriation by the Legislature, for fire prevention activities in SRAs, attributable to benefits conferred on structures subject to the fire prevention fee."

It should be noted that a legal challenge is very likely regardless of approach. Such a challenge will likely prevent collection of fees while it is being contested.

### **Grant Program**

*(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.

Grants can be made to almost any project the Board authorizes. This could include grants to fire protection district for inspection programs, Fire Safe Council vegetation management, development of county fire plans, etc. The Board is not limited, except from the standpoint that it must be used for fire prevention, not protection.

### Appeals

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.

It is likely that numerous appeals will be received initially. If appeals were handled by the department and the board, it could necessitate time consuming diversion of resources and the need for additional personnel. This would add to costs, and reduce the amount of money available at the local level. When the SRA fee was proposed in 2004, the idea of using a third party contractor to review the appeals was utilized. The board should give this consideration as a cost effective approach (at least in the initial period of the fee), as most appeals are likely to be based upon improper categorization of the subject structure (not in SRA, not habitable, etc.)

### LAO FIRE PROTECTION

[http://www.lao.ca.gov/laoapp/laomenu/sections/lao\\_sectionpage.aspx?catid=12](http://www.lao.ca.gov/laoapp/laomenu/sections/lao_sectionpage.aspx?catid=12)

### BILL LANGUAGE

[http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0001-0050/abx1\\_29\\_bill\\_20110708\\_ab\\_29.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/abx1_29_bill_20110708_ab_29.pdf)