

Use of California fire fees questioned

By Kevin Yamamura, Sacramento Bee

Gov. Jerry Brown's administration for two years has devoted a share of new fire fees to a special unit that chases fire starters, a funding arrangement the Legislature's attorney considers illegal.

State leaders indicated in 2011 that they would use annual fire fees for preventive measures such as inspecting forest homes and creating new fire maps. But Brown's Department of Finance said Monday that the state also has used the fees for wildfire investigations, which the state Office of Legislative Counsel deems unconstitutional, according to the nonpartisan Legislative Analyst's Office.

It is another questionable fiscal practice related to the CalFire's wildfire cost-recovery program after the department hid settlement funds for several years in a nonprofit account.

In the face of multibillion-dollar deficits since 2008, state leaders have pursued cash in aggressive ways. That includes imposing new fees and seeking compensation from individuals and businesses alleged to have sparked wildfires.

In 2011, Brown and Democratic lawmakers approved an annual fire fee on owners of roughly 825,000 rural properties, later set at \$150 per year. Because lawmakers passed the fee on a majority vote, rather than two-thirds, revenues must be spent in a way that directly benefits property owners. The state is expected to collect \$90.8 million in such fees next fiscal year.

The original legislation, Assembly Bill 1X 29, spelled out how the money would be spent, on such things as defensible-space

inspections and education efforts for rural residents. It did not specifically mention funding wildfire investigation and pursuing costs from fighting fires.

“Legislative counsel doesn’t think this fits into the definitions of what the fees can be used for,” said Lia Moore, a resources specialist with the Legislative Analyst’s Office, which received a verbal opinion late last week from attorneys who serve the Legislature.

Department of Finance spokesman H.D. Palmer said the last two state budgets have used a share of fire fees to pay for Cal Fire’s 24-person Civil Cost Recovery Program, including retroactively for 2011-12 because property owners didn’t start paying until late 2012.

State leaders consider the \$3.7 million program a revenue driver for the state, recouping \$25.9 million in 2011-12.

Palmer said collecting wildfire damages – which can range from tens of thousands of dollars for individuals to millions of dollars for deep-pocketed companies – serves as a deterrent. As such, he said it is a fire-prevention program because it protects rural homeowners from future fires.

“If you’re looking at a fine in the tens of thousands, if not hundreds of thousands, you’re going to think twice about letting that chain drag from that truck,” Palmer said.

The Office of Legislative Counsel found at least three legal problems with this approach, Moore said: AB 1X 29 specified other ways in which the state would spend fire fee money; the deterrence effect is not a direct benefit to fee payers; and collecting money from alleged fire starters benefits the overall state rather than fee payers alone, as the constitution requires.

In his January budget proposal, Brown asked lawmakers to permanently add 10 staff positions to the Civil Cost Recovery

Program and fund them with fire fee revenues. That drew criticism from Republicans.

What they did not know is that Brown had already funded the cost-recovery program the last two years with fire fees.

The Legislative Analyst's Office also was unaware of that funding arrangement.

When asked Monday about Brown's proposal to broaden the use of fire fees, Palmer said the state had done so in two prior years.

He said the administration can determine what falls within the bounds of fire prevention under AB 1X 29.

State Sen. Jim Nielsen, R-Gerber, who represents vast sections of forests in Northern California, called the administration's deterrence argument "baloney."

"The whole purpose of this tax, and it is a tax, is simply to get more money for government," Nielsen said.

The Howard Jarvis Taxpayers Association filed suit in October challenging the fee as an illegal tax. The group's president, Jon Coupal, said he was unaware the state was using the fees for wildfire investigations.

"Wow," he said. "If anything, I think they've just made our case easier for us if that's where they spend the money."