



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

**DRAFT**

Date Amended:	<b>06/13/05</b>	Bill No:	<b>AB 1029</b>
Tax:	<b>Administration</b>	Author:	<b>J. Horton</b>
Related Bills:			

**BILL SUMMARY**

This bill would do the following:

1. Require Senate confirmation when the Board appoints its executive officer.
2. Prohibit Board Members from participating in the personnel process, except as specified.
3. Require a Board Member to disclose an ex parte communication on any matter pending before the Board for adjudication, as specified and defined.
4. Specify that all relevant information on any matter set for an adjudicatory hearing before the Board shall be provided to all parties to the matter and Board proceeding staff at least 14 days prior to the hearing.
5. Specify that if any relevant information is offered or provided by the taxpayer that was not made available to all parties to the proceeding, the hearing shall be continued to a hearing date not less than 14 days after the information is made available to the parties.
6. Allow the parties to the matter to agree to waive the continuance if they determine continuance is unnecessary for fair resolution of the matter.
7. Require the Board to make public and readily available on the Internet all Board decisions and determinations.
8. Allow the Board to sell copies of any decision or determination that are required to be published.

**Summary of Amendments**

Since the previous analysis, this bill deleted the provisions that (1) stated the legislative findings and declarations that the Board, the Franchise Tax Board (FTB), and the Employment Development Department (EDD) shall cooperate with each other to acquire new technology, computers and equipment that are compatible, and (2) required the Board, the FTB, and the EDD to use a common identification number for purposes of sharing any information regarding any person with a matter before any of the agencies. In addition, these amendments, among other things, modify the ex parte communications provisions so that all such communications be disclosed upon commencement of the hearing, and that all relevant information on any matter set for adjudicatory hearing be provided to all parties to the matter at least 14 days prior to the hearing.

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**ANALYSIS****Current Law**

The Board administers the sales and use tax and various excise taxes; sets values for property for state-assesseees; monitors the property tax assessment practices of county assessors; reviews, equalizes and adjusts assessments of certain land owned by local government; and hears appeals of income and bank and corporation taxes administered by the Franchise Tax Board. The California Constitution establishes that the Board consist of 5 voting members: The Controller and four members elected at gubernatorial elections from districts for 4-year terms. Current law does not prohibit or restrict ex parte communications.

Under existing law, a taxpayer who disagrees with the Board's determination of taxes may file a petition for redetermination. All of the taxpayer's contentions, including substantiating evidence in the form of books, records, or other documentation, are addressed with the auditor or appropriate Board staff. If Board staff confirm the legitimacy of the taxpayer's claims, a Notice of Redetermination is issued. If the taxpayer disagrees with the staff's decision on the petition, he or she may request an Appeals conference to present facts and material in support of his or her position. After the case information is examined and authorities are researched, a Decision and Recommendation is issued by an Appeals attorney or auditor. If a taxpayer or the program department of the Board does not agree with the Decision and Recommendation, either may request a hearing before the Members of the Board.

The Board's role in appeals of FTB cases is different than for sales and use taxes or other taxes and fees administered by the Board. The taxpayer's forum for appealing a FTB action on a protest is a hearing before the Members of the Board, who serve as the administrative appellate body in final actions of the FTB. A Board hearing is typically not scheduled until all other opportunities for resolution are exhausted, so that every attempt to resolve cases at the lowest possible level is afforded. If the taxpayer disagrees with the Board Members' decision, he or she may then file suit in Superior Court.

**Proposed Law**

This bill would make the following changes to the Government Code:

- Amend Section 15604 to substitute "executive officer" for "secretary," require Senate confirmation when the Board appoints its executive officer, and prohibit a Board Member from participating in the personnel process, except for (1) hiring that is at or above the level of Career Executive Assistant or district administrator, or hiring immediate staff, (2) legal matters coming before the Board in connection with personnel, and (3) as otherwise necessary to carry out its Constitutional duties.
- Add Section 15606.2 to do the following:
  - Specify that if an ex parte communication occurs between a Board Member and any interested party to any matter pending before the Board for adjudication, the Board Member must disclose the ex parte communication on the record of the

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Board proceedings at the commencement of the hearing on the matter. The disclosure must include the name and position of each interested party, the date, the subject matter discussed, and the information provided to the Board Member.

- Define “ex parte communication” as any oral or written communication between a Board Member and an interested person, about an adjudicatory matter before the Board, other than purely procedural matters, that does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.
- Define “interested party” as any person that has an interest in the outcome of the adjudicatory matter pending before the Board, whether direct or indirect or whether pecuniary or not, including, but not limited to, the taxpayer, the taxpayer's representatives, and any other person who intends to influence the decision of a Board Member on an adjudicatory matter pending before the Board.
- Specify that all relevant information on any matter set for an adjudicatory hearing before the Board shall be provided to all parties to the matter, as well as to Board proceeding staff, at least 14 days prior to the hearing. If any relevant information is offered or provided by the taxpayer that was not made available to all parties to the proceeding and to the Board proceedings staff, the bill would specify that the hearing on the matter be continued to a hearing date not less than 14 days after the information is made available to the parties to the proceeding and to the Board proceeding staff.
- Allow the parties to the matter to agree to waive the continuance required under this subdivision if they determine a continuance is not necessary for fair resolution of the matter.
- Add Section 15622 to allow the Board to sell copies of any decision or determination that are required to be published pursuant to Section 15622.5, as added by this measure.
- Add Section 15622.5 to require the Board to make public and readily available on the Internet all Board decisions and determinations.

The bill would become operative January 1, 2006.

**COMMENTS**

1. **Sponsor and Purpose.** According to the author's office, this bill is sponsored by the SEIU Local 1000. With regard to the provisions regarding compatible systems among the tax agencies and the common identification number, the author notes that such changes would create more efficiencies in tax administration and collection. With regard to the ex parte communications provisions, the purpose is to provide a means of maintaining the integrity of the adjudicatory process. The author notes that taxpayers or their representatives often provide new information to Board Members or their staff immediately prior to the hearing, without the Board staff having the opportunity to fully analyze the new information presented. Finally, the purpose of the publishing of all Board decisions and determinations is to disclose to all interested parties the decisions of the Board.
2. **The June 13 amendments** delete the provisions that (1) stated the legislative findings and declarations that the Board, the Franchise Tax Board (FTB), and the Employment Development Department (EDD) shall cooperate with each other to acquire new technology, computers and equipment that are compatible, and (2) would have required the Board, the FTB, and the EDD to use a common identification number for purposes of sharing any information regarding any person with a matter before any of the agencies. In addition, the amendments modify the ex parte communications provisions so that all such communications be disclosed upon commencement of the hearing, and that all relevant information on any matter set for adjudicatory hearing be provided to all parties to the matter at least 14 days prior to the hearing. Also, the amendments allow the parties to the matter to agree to waive the continuance required under the bill if they determine a continuance is unnecessary for fair resolution. Finally, these amendments substitute "executive officer" for "secretary" in one section of the Government Code, define "interested party," and require the Board to "make public and readily available on the Internet" all Board decisions, rather than "publish and make readily available on the Internet."
3. **The Board is currently engaged in a comprehensive review of its Rules of Practice.** This review includes, among other things, developing (1) criteria for publishing Board decisions and (2) timelines for submissions of briefs and other materials by the parties to a case before the Board. In this regard, the Legal staff is researching the California Rules of Court for requirements the Courts of Appeal use in publishing decisions and the timing of brief submissions. This review will also involve an interested party meeting process, in which all stakeholders can have their concerns addressed on both issues. Given this current undertaking by the Board, this bill seems premature with respect to (1) providing in statute that ALL Board decisions shall be published, regardless of any other factors, and (2) creating a burdensome tracking and disclosure system for communications by parties to Board Members, without considering alternatives to be made through the deliberative interested parties process.
4. **The public notice of cases on the Board's agenda is required to be issued 10 days prior to the hearing.** However, the bill would restrict ex parte

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communications 14 days prior to the hearings. The Members of the Board would not necessarily know which taxpayers are on the agenda during this 4-day gap of time.

5. **No disclosures required on ex parte communications with Board Members' staff.** It appears the definition of ex parte communication would not require the disclosure of ex parte communications with the staff of Board Members. In other words, it appears interested persons could meet directly with Board Members' staff or provide written communications to the staff and such communications would not be required to be disclosed. This would essentially provide a mechanism to allow for ex parte communications with Board Member staff, who then, in turn, would simply provide the information to the Board Members. Is this the author's intent?
6. **The bill is vague regarding ex parte communications on consent items.** Presumably, such a communication would change the consent item into an adjudicatory matter. It could be argued that, since, at the time the ex parte communication occurred, the item was not adjudicatory, and therefore, the communication would not be subject to the disclosure requirements.
7. **Restrictions on submission of relevant information could hamper the ability of resolving some disputes at the lowest possible level.** On occasion, information and documentation from taxpayers or their representatives with Board staff involved in the case immediately prior to the Board hearing date results in resolution of the matter, without the necessity of the taxpayer and Board staff appearing before the Board to argue the case. With the 14-day restriction proposed in this measure, in such cases, the matter would appear to be required to be put over.
8. **Postponement of adjudicatory proceedings could result in conflicts with other statutory deadlines.** For example, under Section 744 of the Revenue and Taxation Code, decisions by the Board on petitions for reassessments of state-assessed property must be made by December 31. If relevant information is offered within 2 weeks of a late December proceeding, and the deadline was passed, what statute would be controlling?
9. **Language in the bill requiring the publishing all Board decisions and determinations is unclear.** Under proposed Section 15622.5, the bill would require the Board to make public and readily available on the Internet *all* board decisions and determinations. This is unclear. Would the Board be required to start publishing all of the decisions, including the outcome of non-appearance matters, that merely state the outcome of the petition or appeal but that have no analysis?
10. **The bill has no time limit on Senate confirmation of the Board's executive officer.** The bill would require Senate confirmation of the Board's executive officer. However, in cases where the Senate delays confirmation, or rejects the confirmation, who would serve as an acting executive officer, or would the position remain open until such time as the Senate confirms? And, should a time period in which the Senate confirm the appointment be incorporated into the bill?

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**COST ESTIMATE**

Costs would be incurred in making public all board decisions and tracking ex parte communications between Board Members and interested parties on adjudicatory matters. A detailed cost estimate is pending.

**REVENUE ESTIMATE**

Enactment of this bill would appear to impact revenues.

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