



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

Date Amended:	06/01/05	Bill No:	AB 1029
Tax:	Administration	Author:	J. Horton
Related Bills:			

BILL SUMMARY

This bill would do the following:

1. State 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.
2. Require 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.
3. Require Senate confirmation when the Board appoints its secretary.
4. Prohibit the Board from participating in the personnel process, except as specified.
5. Prohibit a Board Member or any person who intends to influence the decision of a Board Member on an adjudicatory matter before the Board to conduct an ex parte communication, as defined, during the 2-week period preceding that adjudicatory proceeding.
6. Requires the Board to publish and make readily available on the Internet all Board decisions and determinations.
7. Allows the Board to sell copies of any decision or determination that are required to be published.

ANALYSIS

Current Law

The Board administers the sales and use tax and various excise taxes; sets values for property for state-assessees; 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

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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:

- Add Section 8335 to 1) state 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) require the Board, the FTB, and the EDD to use a common identification number in order to facilitate the sharing of any information regarding any person with a matter before any of the agencies.
- Amend Section 15604 to require Senate confirmation when the Board appoints its secretary, and prohibit the Board 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:
 - Prohibit a Board Member or any person who intends to influence the decision of a Board Member on an adjudicatory matter before the Board except a staff member of the Board acting in his or her official capacity, to conduct an ex parte communication during the 2-week period preceding that adjudicatory proceeding.
 - 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

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hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.

- Specify that if an ex parte communication occurs during the two weeks preceding an adjudicatory proceeding on the matter, a full disclosure of the ex parte communication shall be entered in the Board's record. The disclosure of an ex parte communication shall include the names of the participants, the action discussed, and the position of the party in the communication.
- Specify that communications cease to be ex parte communications prior to the two weeks preceding an adjudicatory proceeding on the matter when either 1) the Board Member or the person engaged in the communication with the Board Member fully discloses the communication and requests in writing that it be placed in the Board's official record of the proceeding, or 2) when two or more Board Members receive substantially the same written communication, or are party to the same oral communication from the same party on the same matter and a single Board Member fully discloses the communication on behalf of the other Board Member or Members, and requests in writing that it be placed in the Board's official record of the proceeding.
- Specify that if an ex parte communication occurs in violation of these provisions, the Board shall postpone the adjudicatory proceeding for at least two weeks after the date on which the Board Member fully discloses and makes public the ex parte communication.
- 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 publish and make 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.

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2. **The Board is currently engaged in a comprehensive review of its Rules of Practice.** This review includes 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.
3. **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 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.
4. **No restriction on ex parte communications with Board Members' staff.** The definition of ex parte communication essentially allows ex parte communications with a "staff member of the board acting in his or her official capacity." This would appear to allow an interested person to either meet directly with Board Members' staff or provide written communication within the 2-week period. This language appears to 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 Member after the 2-week deadline. Is this the author's intent?
5. **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.
6. **The terms "interested person" and "procedural matters" are undefined.** Within the definition of "ex parte communication" the bill references "interested person" and "procedural matters." These terms are vague and ambiguous.
7. **What would be the starting date of the 2-week period?** The bill makes reference to communications occurring two weeks preceding the adjudicatory proceedings. With respect to written communications, would the 2-week period commence on the date the communication is actually received in the Member's office, the post-marked date, or when the member actually read the communication?
8. **Restrictions on ex parte communications could hamper the ability of resolving some disputes at the lowest possible level.** On occasion, communications 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

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necessity of the taxpayer and Board staff appearing before the Board to argue the case. With the ex parte restrictions proposed in this measure, in such cases, the matter would appear to be required to be put over.

9. **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 an ex parte communication occurred within 2 weeks of a late December proceeding, and the deadline was passed, what statute would be controlling?
10. **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 publish and make 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?
11. **Common identification number.** This issue has been discussed for many years and specifically as part of the Governor's Strategic Tax Initiative in the early 1990's. Those discussions concluded that even within each of the three key tax agencies, there are several levels of work to be done across programs. The real effort to accomplish a linkage to a single common identifier is the work necessary to verify that individuals and entities identified in one program are the same as those identified in another program. Although costs to implement such a program could be significant, benefits to implementing a common identification number would include:
 - Simplified information sharing between state agencies for customer service and regulatory purposes
 - Improved compliance and enforcement capabilities
 - Increased revenue to the State
 - Increased customer service and staff efficiency by allowing certain transactions completed by taxpayers/businesses to apply across programs/departments.
12. **The bill has no time limit on Senate confirmation of the Board's secretary (Executive Director)?** The bill would require Senate confirmation of the Board's secretary. However, in cases where the Senate delays confirmation, or rejects the confirmation, who would serve as an acting Secretary, 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?
13. **Technical issue.**
 - For the past several years, the Board's "Secretary" has used the title "Executive Director." Perhaps all the Government Code references to "secretary" should be replaced with the title currently in use.

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