



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>07/07/05</b>	Bill No:	<b>AB 1655</b>
Tax:	<b>Administration</b>	Author:	<b>J. Horton</b>
Related Bills:	<b>AB 1029</b>		

### **BILL SUMMARY**

This bill would do the following:

1. Substitute “executive officer” for “secretary” in one provision of the Government Code relating to the Board.
2. Prohibit Board Members from hiring, dismissal, or promoting personnel, except as specified.
3. Require the Board to make public and readily available on the Internet all staff decisions and recommendations (D & Rs) for which a Board decision was rendered.
4. Allow the Board to sell copies of any staff D & R that is required to be made public pursuant to this measure.

### **Summary of Amendments**

The July 7 amendments would require the Board to make public and readily available on the Internet all staff D & Rs for which the Board has rendered a decision, and would clarify that the Board would be prohibited from the hiring, dismissal and promotion of Board personnel, except as specified.

### **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.

Under Section 15606 of the Government Code, the Board is required to keep a record of all its proceedings. Consistent with that provision, the Board makes available the minutes of all Board hearings and publishes the minutes on the Board’s website.

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### Proposed Law

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

- Amend Section 15604 to substitute “executive officer” for “secretary,” 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 15622 to allow the Board to sell copies of any decision that is 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 staff D & Rs for which the Board has rendered a decision.

The bill would become operative January 1, 2006.

### In General

A taxpayer that disagrees with the Board’s determination of taxes may file a petition for redetermination. This petition prevents collection of the amount determined. 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 the taxpayer does not provide sufficient evidence or documentation to substantiate his or her contentions, and disagrees with the staff’s findings, the taxpayer may request an Appeals conference, at which the taxpayer may present facts and documents in support of his or her position. After the taxpayer’s information is examined and authorities are researched, a staff D & R is issued by a Board Appeals Section attorney or auditor containing an analysis, conclusion, and recommendation for the resolution of the case. If a taxpayer does not agree with the D & R, the taxpayer may request a hearing with the Members of the Board.

### COMMENTS

1. **Sponsor and Purpose.** According to the author’s office, this bill is sponsored by the SEIU Local 1000. The purpose of the bill is to require the Board to publish on the Internet all staff D & Rs for which a Board decision was made in order to disclose to all interested parties the decisions of the Board, and to prohibit the Board Members from generally participating in the personnel process.
2. **The July 7 amendments** would attempt to clarify that the Board Members may not participate in the hiring, dismissal, or promoting of Board personnel, except as specified, and would require the Board to make public and readily available on the Internet all staff decisions and recommendations for which the Board has rendered a decision. **The June 23 amendments** delete the entire contents of the bill that related to satellite wagering, and incorporate, in part, provisions contained in AB 1029 (J. Horton) related to Board Members participation in the personnel process and the making public of all Board decisions and determinations.

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3. **What does “participate in the hiring, dismissal, or promoting” really mean?**

The bill attempts to address a concern raised in the previous staff analysis regarding to what extent “participate in the personnel process” applies. In doing so, the bill, as proposed to be amended, would prohibit Board Members from participating in the hiring, dismissal, or promoting of personnel, except as specified. However, there continues to be significant ambiguity with respect to what the Board Members can or cannot do with respect to personnel. For example, the Board maintains a Superior Accomplishment Award Program which recognizes individual employees, or groups of employees, for exceptional job performance. The Board Members participate in the awards ceremony by presenting the awards to the recipients. Could this be construed as “participating” in the hiring or promoting of employees?

Regarding the extent to which this prohibition would apply, there are a variety of situations in which the Board Members, either independently, or as a whole, come in contact with “personnel process.” For example, would a Member encouraging an employee known to the Member to apply for a particular opening be regarded as participating in the hiring or promoting process? What if a Member receives a letter praising a particular employee, and the Member sends the letter to the Executive Director with instructions to send a copy to be placed in the employee's personnel file? What about Board Member participation in the reorganization of the Board's duties, responsibilities, and reporting relationships? Would these situations be regarded as “participation in the hiring, dismissal, or promoting process”?

4. **Staff D & Rs contain significant confidential and proprietary taxpayer information.**

There is a delicate balance between providing the public with information on Board decisions and protecting a taxpayers' right to privacy. Although the Revenue and Taxation Code prohibits the Board from releasing any information regarding the business affairs of taxpayers reporting tax information to the Board, when a taxpayer appeals a tax matter to the Board at a public hearing, the taxpayer has, in essence, waived his or her right to privacy. Thus, following a Board hearing, the Board has for several years publicized on the Internet the minutes of every Board hearing it holds. This includes specifying the Board's action on each item for discussion on the agenda before it, including, among other things, all decisions the Board has made on taxpayer appeals. However, the D & R that the staff prepares in connection with an appeal of a tax or fee issue routinely contains significant private information about taxpayers, and has not been made available to the public.

5. **Would the benefit of placing the D & Rs on the Internet outweigh the intrusions into taxpayers' privacy?**

Placing staff D & Rs on the Internet is not without controversy. Opponents note that such public disclosure infringes on basic constitutional rights, especially the fourth amendment and the right to privacy. This invasion of privacy is not just an abstract problem, but would create daily, adverse consequences to individuals and businesses. Information contained in staff D & Rs often include such private matters as medical conditions, immoral behavior, financial difficulties, and family conflicts. Placing the D & Rs on the Internet would not only gratuitously expose a person's or business' private affairs to everyone — nosy neighbors, stalkers, coworkers, and relatives performing a random Internet search —

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but could also injure businesses by presenting an incomplete financial picture to competitors or by revealing trade secrets. This would greatly inhibit a taxpayer's willingness to appeal their tax issues before the Board.

6. **Redacting confidential tax information prior to placing the D & Rs on the Internet has its own inherent problems.** In order to minimize the egregious effects of publicizing confidential taxpayer information disclosed in staff D & Rs over the Internet, a redaction of confidential information would be necessary. However, since the taxpayers names are noticed on the public agenda, unless the information in the D & R is significantly redacted, tying the redacted staff D & R to the actual taxpayer's identity disclosed on the public agenda notice would not be particularly difficult, especially on a day in which only a few hearings are held. Also, it should be noted that if there were only a partial publicity of the decision, then the public would probably not have enough information for it to be meaningful. This could lead to further confusion in compliance with the tax laws. Also, redaction is expensive. Not only the specific information disclosing the taxpayers' identification would have to be removed, but a review and analysis of the entire document in context would be required in order to redact any information which could lead to the identification of the taxpayer, customers, vendors, and any other party directly or indirectly involved in the discussion.

7. **Board decisions may differ from staff D & R, which could cause confusion.** Supporters of the bill argue that, in order for internal Board staff to have more consistency in applying the law, Board decisions and staff D & Rs should be readily available on the Internet. However, D & Rs don't always fully reflect the Board's decision. In cases where a taxpayer provides substantiating evidence subsequent to the issuance of D & R but prior to the Board hearing, and the Board rules in favor of the taxpayer, publicizing the D & R would only provide a new level of confusion. These situations would have the opposite effect of the goal of the bill.

Also, it should be noted that Board auditors throughout the state as well as in our out-of-state district offices are guided by several levels of management, including the Chief of Field Audits, District Administrators, District Principal Auditors, and other lower level supervisory staff who provide field office staff with the instruction and tools necessary to apply the law and perform audit techniques consistently. Also, the Board has audit and compliance manuals, operations memoranda, and law guides that are provided to each field auditor to reference when conducting audits of taxpayers. Any decision the Board makes that is not reflected in these reference guides is readily conveyed to staff through the Chief of Field Operations and District Administrators.

8. **The Board already publicizes its decisions.** The Board has for several years publicized on the Internet the minutes of every Board hearing it holds. This includes specifying the Board's action on each item for discussion on the agenda before it, including, among other things, all decisions the Board has made on taxpayer appeals, proposed regulatory action, and even non-appearance matters.

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9. **The Board is currently engaged in a comprehensive review of its Rules of Practice.** This review includes, among other things, developing criteria for publishing Board decisions. In this regard, the Legal staff is researching the California Rules of Court for requirements the Courts of Appeal use in publishing decisions. This review will also involve an interested party meeting process, in which all stakeholders can have their concerns addressed. Given this current undertaking by the Board, this bill seems premature with respect to making staff D & Rs readily available on the Internet, since a less invasive alternative can be fashioned through the deliberative interested party process.

**COST ESTIMATE**

Enactment of this measure, as proposed to be amended, could result in substantial administrative costs attributable to reviewing, analyzing, and redacting information in the staff decisions and recommendations that could reveal the identity or any other confidential information of a taxpayer, and storage space to accommodate the increased volume of information that would require placement on the Board’s website. These costs are estimated to be in the range of \$250,000 to \$500,000.

**REVENUE ESTIMATE**

Enactment of this bill would not appear to impact revenues.

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