



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

Date Introduced:	01/07/02	Bill No:	AB 1752
Subject:	Open Meetings	Author:	Migden
Board Position:		Related Bills:	SB 445 (2000)

BILL SUMMARY

This bill would require the Board of Equalization to distribute public writings pertaining to a topic under consideration at a public meeting to all persons who request notice in writing, as well as post that information on the Internet, and make the writings available for public inspection at the meeting, prior to the time the item is scheduled to be heard.

ANALYSIS

Bagley-Keene Open Meeting Act

Current Law

Under current law, the Bagley-Keene Open Meeting Act (commencing with Government Code Section 11120) requires that meetings of state bodies be conducted openly, and that public writings pertaining to a matter subject to discussion or consideration at a public meeting be made available for public inspection. Disclosable public writings that are distributed to Board Members prior to Board meetings are made available upon request, but are not mailed to all persons who have requested notice of the hearing in writing and all are not currently placed on the Internet.

Section 11125.1 of the Government Code requires the Franchise Tax Board, prior to taking final action on any item, to 1) make available for public inspection, 2) distribute to all persons who request notice in writing, and 3) make available on the Internet, all items that are public records and distributed to its members by Franchise Tax Board staff or individual members prior to or during a meeting.

Proposed Law

This bill would amend Government Code Section 11125.1 to require that any writings pertaining to any item to be considered at a Board of Equalization meeting, which are disclosable public records and are distributed to Board Members prior to or during a meeting, be distributed to all persons that request written notice, be made available on the Internet, and be made available for public inspection at the meeting, prior to the time the item is scheduled to be heard.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Background

Section 11125.1 was amended last year by Senate Bill 445 (Ch. 670, 2000, Burton) to specifically require the Franchise Tax Board to distribute certain written public records prior to or during a Franchise Tax Board meeting. The Board of Equalization had also been included in the provisions of the bill until the Board staff gave assurances to Senator Burton's office that the information needed would be made available without the costly requirement of posting a lot of extraneous information on the Internet. Since the passage of SB 445, the Board has made the following changes to its web site:

- Added more information on the Public Agenda Notice, including links to the different Committee pages.
- Added the names of cases to be heard.
- Added rulemaking information, including type of action (e.g. 15-day file) and regulation titles. The site includes a link to each regulation.
- Added a list of nonappearance matters under Board Member consideration.
- Added an email link and a telephone number to allow interested parties to request additional information and receive it either electronically, by fax, or by mail.
- Added a new icon on the Board Internet home page to aid in finding hearing information.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author with the intent to ensure that the Board handles its public records in the same manner as the Franchise Tax Board, as required by SB 445 of last year.
2. **More changes are already in the works for upgrading the BOE web page.** As explained in the Background portion of this analysis, the Board has already made numerous changes to address interested party concerns that not enough information is available prior to and during Board hearings. The Board is not attempting to limit the amount of non-confidential information available to the public, but would like to limit the amount of extraneous information that last year's Senate Bill 445, and this bill, would require the agency to post on the web site.

In addition to the changes already implemented, the Board is working on the following improvements:

- Adding coordinated links between regulations under Board consideration and the associated issues paper prepared by Board staff, accessible through the Committee meeting icon.
- Adding a list by case name of non-appearance items, including the reference number used by the Board Members in order for the audience to more easily follow along with Board Member discussions.

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3. **The Open Meeting Act currently requires that *disclosable public records be made available upon request*.** However, many documents that are distributed to Board Members prior to Board meetings are exempt from public disclosure because they contain confidential taxpayer information or are protected by the attorney-client privilege. While this bill would provide another avenue in which to obtain records, it would not require that additional information, such as documents that are currently *not disclosable*, be distributed as specified and placed on the Internet.
4. **The implications of this bill could be very broad and result in unintended consequences.** For example, the briefs prepared for Franchise Tax Board cases heard by the Members of the Board of Equalization are disclosable public records. These briefs may contain detailed and often very personal information about taxpayers, including their social security number, credit card bills, expense reports and all sorts of other information that they submit as evidence to support their tax appeal. While a taxpayer may not be concerned when individual requests for these documents are provided, posting this information on the Internet, as this bill would require, seems extreme and unnecessary. Board staff estimates that the Franchise Tax Board information averages between 3,500 and 6,000 pages per meeting, which are held every three weeks.

Another unintended consequence could occur if an individual intentionally delayed Board action on certain matters by continuously providing information that must be disseminated in accordance with this bill. If it is the author's intent that disclosable information be disseminated prior to its distribution to, and final action by, Board Members, the author may wish to consider amendments that distinguish between documents prepared by the Board staff and those prepared by other persons, as provided in Government Code Section 11125.1(b).

5. **There may be individuals who want to receive notice of Board meetings without necessarily receiving copies of all of the disclosable documents that may be discussed.** The author may wish to amend Government Code Section 11125.1(c) to distinguish between those who have "requested notice" of a meeting and those who have requested copies of disclosable documents.
6. **This bill would require that budget information be posted on the Internet.** This would include budget change proposals and baseline budget numbers which must be approved by the Board prior to advancing to the Department of Finance and Legislative Budget Committees. By requiring that this information be made available on the Board's website, this bill could subject the Board to scrutiny and lobbying efforts from potential vendors or other parties who may have an interest in the approval of certain budget changes. Also, budget information that would be required to be made available online would need to be continually updated as the budget moves through the review process. This could cause confusion and may mislead readers who might think that once the information is online, it is already in its final form.

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COST ESTIMATE

This bill would result in unabsorbable costs related to the requirement that Board staff mail and post all disclosable public documents on the Internet, as specified (estimated to be an additional 6,000 pages per month). These costs are estimated to be \$130,000 in 2002/03 (6 months) and \$147,000 beginning in 2003/04 and annually thereafter. 2002/03 costs include a one-time \$34,000 purchase for special scanning equipment. It should be noted that this bill does not include an appropriation to accommodate the 2002-03 estimated costs; therefore, consideration should be given to change the effective date to July 1st to coincide with the budget development process.

REVENUE ESTIMATE

This bill would not impact the state's revenues.

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