



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

Date Amended:	03/26/01	Bill No:	SB 445
Subject:	Open Meetings Kopp Act Taxpayers' Bill of Rights	Author:	Burton
Board Position:		Related Bills:	

BILL SUMMARY

This bill would:

1. Require the Board of Equalization and the Franchise Tax Board to distribute public writings pertaining to a topic under consideration at a public meeting to all persons that request notice in writing, as well as 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.
2. Require that a contribution aggregating \$250 or more from a committee controlled by a party, participant, or agent be included among contributions subject to Kopp Act provisions.
3. Amend the Sales and Use Tax Law and the Franchise and Income Tax Law Taxpayers' Bill of Rights to declare that the purpose of any tax proceeding is the correct determination of the taxpayer's liability.

This bill is sponsored by Senator Burton in an effort to more efficiently provide interested parties with information pertaining to public meetings, subject contributions from Political Action Committees (PAC's) to the Kopp Act provisions, and declare that tax proceedings are performed to correctly determine the taxpayer's liability.

ANALYSIS

Bagley-Keene Open Meeting Act

Government Code Section 11125.1

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. Public writings that are distributed to Board Members prior to Board meetings are made available upon request, and are also available for public inspection at the meeting, 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.

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.

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 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, made available on the Internet, and made available for public inspection at the meeting, prior to the time the item is scheduled to be heard.

Comments

The Open Meeting Act provisions currently require 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.

An individual could intentionally delay 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), to address this situation.

Budget information, such as budget change proposals and baseline budget, 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 BOE 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 provided online, it is already in its final form.

Also, since 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 also 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.

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Kopp Act

Government Code Section 15626

Current Law

As part of a comprehensive governmental ethics reform measure, Senate Bill 1738 (Chapter 84, Statutes of 1990) enacted the Quentin L. Kopp Conflict of Interest Act of 1990 (Section 15626 of the Government Code). The Act requires that, prior to rendering any decision in any adjudicatory proceeding before the Board, each member who knows or has reason to know that he or she received a contribution of \$250 or more within the preceding 12 months from a party or participant, or his or her agent, shall disclose that fact on the record of the proceeding, as specified. Further, each member is prohibited from participating in the decision or using his or her position to influence the decision if a contribution was made, as specified. The Act also provides that a party or a participant is required to disclose for the record if there has been a contribution to a member of \$250 or more in the preceding 12 months. The Act further requires that Board staff must inquire and report to the Board whether any such contributions have been made. Any person who knowingly or willfully violates any of those provisions is guilty of a misdemeanor. Currently, contributions by PACs are not subject to the contribution limits and disclosure requirements in the Act.

Proposed Law

This bill would amend Government Code Section 15626 to provide that contributions by a committee that is controlled by a party, participant, or agent would also be subject to the Kopp Act contribution and disclosure provisions.

Comments

An October 29, 2000 newspaper article suggested that some companies' taxes were reduced as a result of BOE decisions that may have been influenced by permissible contributions to Members. These companies were corporate members of the Taxpayers Political Action Committee (Tax PAC), and PAC contributions are currently not subject to the conflict of interest provisions. These amendments would close an unintended loophole in the Kopp Act by making contributions from a controlled PAC, as defined, subject to the Kopp Act provisions. However, whether or not a PAC is controlled by a party, participant or agent may not always be evident.

Related legislation. Previous Legislative attempts to revise the Kopp Act provisions have been unsuccessful, although those measures were broader than this bill's provisions. Those bills were: Senate Bill 139 (Kopp, 1993), Senate Bill 1806 (Kopp, 1992), Senate Bill 80 (Kopp, 1991), and Senate Bill 438 (Kopp, 1989). Those bills were vetoed by Governors Wilson (SB 139, SB 1806, and SB 80) and Deukmejian (SB 438).

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Taxpayers' Bill of Rights

Revenue and Taxation Code Sections 7081 and 21002

Current Law

The Sales and Use Tax Law, and the Franchise and Income Tax Law contain Taxpayers' Bill of Rights provisions to ensure that the Franchise Tax Board (FTB) and Board of Equalization (BOE) conduct assessment and collection operations that protect California taxpayers' privacy and property rights. The Bill of Rights contain specific findings and declarations of intent regarding the expectations and responsibilities of taxpayers and both Boards. Taxpayers' Bill of Rights provisions have also been enacted for many other BOE tax and fee programs.

Proposed Law

This bill would amend Revenue and Taxation Code Sections 7081 and 21002 to add Legislative findings that the purpose of any proceeding between the BOE or the FTB and a taxpayer is the correct determination of the taxpayer's liability. This bill would also state the Legislature's intent that both the BOE and the FTB and the taxpayer be accorded every opportunity to present and consider all relevant information pertaining to the disputed liability.

Comments

Historically, legislators, taxpayers, tax practitioners, tax attorneys, and FTB members have expressed concern with the length of time it takes the department to resolve protests and appeals. A Federal Taxpayer Bill of Rights required that FTB, in cooperation with BOE, the state bar association, certified public accountants, and other interested parties, develop a plan to reduce the time to resolve protests and appeals. The plan was implemented by FTB in 1989, and informational packages were developed to inform taxpayers of the new procedures. However, the Office of Administrative Law determined that those packages were invalid regulations.

The FTB recently proposed protest regulations to specify the procedures necessary for staff to make a "determination of the correct amount of tax." The protest regulations would have shortened the time for FTB action on a protest from 33 months, which is an average time now taken, to 24 months. They also would have prohibited a re-audit of a taxpayer as part of the protest process unless the taxpayer had opened up new issues or failed to provide information during the audit.

This bill appears to shift the focus of determination procedures to the process that is followed, "correct determination of the taxpayer's liability," rather than the outcome, "determination of the correct amount of tax." According to FTB staff, the provisions in this bill are intended to overturn FTB's recently proposed protest regulations. However, those regulations have already been rejected by the Secretary of State and Consumer Services Agency. The BOE recently acted to expedite business tax appeals by requiring staff to issue a decision and recommendation within 90 after the submission of additional documents to the conference holder. BOE staff do not anticipate that the provisions in this bill would have a material impact on its procedures.

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COST ESTIMATE

This bill would result in costs related to the requirements that Board staff inquire about, and report on, contributions made by PACs, and mail and post all disclosable public documents on the Internet, as specified. A cost estimate is pending.

REVENUE ESTIMATE

This bill would not impact the state's revenues.

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