



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	Vetoed	Bill No:	SBx8 29
Tax:	Administration	Author:	Steinberg, et al
Related Bills:	AB 2008 (Arambula)		

BILL SUMMARY

Among other things, this bill exempts from furloughs employees of the Board of Equalization (BOE).

ANALYSIS

CURRENT LAW

Existing Government Code sections establish the general policy of a state employee workweek of 40 hours. Chapter 10.3 (commencing with Section 3512) of Division 4 contains the provisions related to State Employer-Employee Relations.

PROPOSED LAW

Among other things, this bill adds Section 19852.4 to the Government Code to specifically exempt employees of the BOE and Franchise Tax Board (FTB) from furloughs implemented by any state agency, board, or commission. The section also states that nothing in the section shall be construed as legal authorization for the imposition of furloughs on employees through an Executive Order.

The bill also adds Section 19582.3 to exempt from furloughs employees in positions funded at least 95% by sources other than the General Fund.

As special session legislation, the bill would become operative on the 91st day after adjournment of the session.

BACKGROUND

On December 19, 2008, Governor Schwarzenegger issued [Executive Order S-16-08](#) to implement a furlough or represented state employees and supervisors for two day per month, regardless of funding source, for the period February 1, 2009 through June 30, 2010. The order was issued based on “an emergency pursuant to Government Code section 3516.5...” The BOE Members, however, declined to participate, arguing that as constitutional officers, they were not required to follow the direct edicts of the Governor and would instead make other budget cuts to do their part to deal with the fiscal emergency.

On July 1, 2009, since the state’s revenues continued to fall below expectations, a third furlough day was ordered by the Governor through [Executive Order S-13-09](#). Again, the BOE declined to participate.

Since the BOE, along with other independently elected constitutional officers, declined to participate in the furloughs, the Governor sued to force the Controller to withhold 14% of the pay of constitutional office employees. A Sacramento Superior Court judge agreed the Governor had such authority. However, the furloughs have been stayed while the Third Appellate District Court hears the Controller’s appeal.

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.

While the BOE has not directly participated in the furloughs, the agency did take an equivalent budget cut (\$41million). In order to do this, BOE had to implement several cost savings measures, including:

- A hard hiring freeze effective Aug. 1, 2009, which has left many positions vacant, of which 250-300 are tied to revenue generating functions.
- A voluntary leave program, whereby over 1,200 BOE employees voluntarily reduced their pay 5-10% (while continuing to work full time), in order to avoid the layoff of lower level staff. These employees receive 1-2 days leave credits that they can use at a future time, or they may also cash out the credits when they separate or retire.
- Reducing operational expenditures, travel and equipment purchases to only mission critical items.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Senate President pro Tem to stem General Fund revenue losses by those agencies that generate revenues.
2. **The March 4 amendments** added numerous co-authors and made a number of non-substantive changes.
3. **Impact on revenues due to funding reduction to the BOE.** While BOE staff has not been furloughed, approximately \$41 million in funding, equivalent to three furlough days, was eliminated from our budget. Had the 3 day furloughs been implemented, we estimate a revenue loss/delay of approximately \$264 million in the current year, of which \$156 million is General Fund (GF), with a salary savings of approximately \$24 million in GF. Again, while BOE employees are not furloughed, the vacancy factor is resulting in approximately the same amount of revenue loss.
4. **Accounts receivable balance is on the rise.** Tax liabilities are one of the first bills to go unpaid during a time of financial hardship. The BOE's outstanding retail sales tax owed and considered collectible has jumped 38% since 2007. As of December 31, 2009, that amount was \$1.26 billion.

As for the special taxes administered by the BOE, the increase in accounts receivable has been 20%, with \$280 million outstanding as of December 31, 2009. Overall, the BOE is owed \$1.54 billion, an increase of \$540 million from two years ago.

The growth in accounts receivable is not completely tied to voluntary nonpayment. Vacant collector positions at the BOE have resulted in lost opportunities to collect money before a statute of limitation expires, or collection activity begins on a closed business, or liens and bankruptcy claims can be filed timely. A 14% reduction in staffing can only result in fewer collections. Such was the rationale for the request for restored funding to the BOE's collection programs.

5. **This measure provides clear intent on the question of furloughs.** The proposed language is very explicit that BOE and FTB staff would not be subject to any further furloughs. However, to make explicit that policy, there should be some language that constitutes a "blanket prohibition" against the Governor using his emergency powers or any other authorization or power found in any other provision of law to impose furloughs on the BOE or FTB. In this respect, it would be advisable if the limitations on the Governor's furlough authority in Section 3 were very clear.

Additionally, it is possible that this legislation would be applied prospectively, and not apply to furloughs implemented prior to the date of its enactment. If this is intended to be retroactive and declaratory of existing law (which is in BOE's best interests), then express language to that effect should be added.

6. **Should constitutional officers be given their own flexibility to furlough?** Just as the constitutional officers of various state agencies declined to participate in the governor ordered furloughs, but instead used other means to reduce expenses without furloughing employees, the Members of the BOE may wish to retain the option to actually implement furloughs at their discretion during a future budget crisis, in an attempt to avoid layoffs or other less desirable cuts. BOE staff would be willing to provide language clarifying the BOE Members' authority to work with their agency's staff to reach a consensus agreement on providing the best option for their own employees within the framework of valid bargaining agreements to address all future financial crises.
7. **Suggested amendments.** Proposed Section 19852.2 contains Legislative findings and declarations. Subdivision (f) specifically cites BOE as an agency which is subject to furloughs. The BOE is not a 'department' subject to furloughs but in fact a 'constitutional agency.' Since the BOE has not been subject to furloughs, and to avoid any impact on pending litigation, the following amendment is suggested:
- (f) In addition to departments whose employees are not paid from the General Fund, the furloughs extend even to ~~those~~ departments that generate new revenue, including the Franchise Tax Board and the State Board of Equalization.
8. **Related Legislation.** [AB 2008](#) (Arambula) would also specifically exempt the BOE from furloughs. According to the author's office, however, the introduced version is a spot bill.

COST ESTIMATE

The cost associated with this measure is the restoration of the funding deleted from the BOE's budget. Ideally, the BOE would request approximately \$9 million (\$5.3 million GF) effective March 1, in order to begin to fill revenue positions as a priority to stem the loss of revenue from the current vacant positions held open because of the self-imposed hard freeze.

REVENUE ESTIMATE

We estimate that the \$41.5 million cut in the BOE's 2009-10 budget (500 vacant positions due to hard freeze and loss of retired annuitants and student assistants) resulted in uncollected tax revenues of approximately \$264 million (\$157 million GF). Restoration of those cuts, as proposed in the Governor's 2010-11 budget, would result in similar revenue gains.

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