



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

Date Amended:	04/22/04	Bill No:	AB 2442
Tax:	Property	Author:	Harman
Board Position:		Related Bills:	

BILL SUMMARY

This bill would authorize the Legislative Analyst to conduct a study to describe and analyze the effect on property tax revenues of legislation that transferred the assessment jurisdiction of certain electrical generation plants from county assessors to the Board of Equalization.

Summary of Amendments

The amendments to this bill since the prior analysis delete its prior provisions which would have given cities and counties certain rights to participate in the assessment appeal process when state assessed electric generation facility files a petition with the Board to lower the assessed value of its property. As amended, this bill authorizes the Legislative Analyst to study the revenue impact of Assembly Bill 81 (Ch. 57, Stats of 2002).

Current Law

Each year the Board of Equalization (Board) determines the fair market value of electric generation facilities subject to state assessment. Section 721.5 of the Revenue and Taxation Code provides that the Board is to annually assess every electric generation facility with a generating capacity of 50 megawatts or more that is owned or operated by an electrical corporation, as defined in subdivisions (a) and (b) of Section 218 of the Public Utilities Code. Qualifying small power production facilities and qualifying co-generation facilities are excluded from state assessment – these are assessed by the local county assessor.

Proposed Law

This bill would provide that the Legislative Analyst may, utilizing moneys within her or his existing budget, conduct a study to describe and analyze the effect that Section 721.5 of the Revenue and Taxation Code, as added by Chapter 57 of the Statutes of 2002 (AB 81), has had on the amount of ad valorem property taxes required to be paid by an electrical corporation for an electric generation facility that is assessed by the Board pursuant to that section.

Background

Section 19 of Article XIII of the California Constitution provides that “[t]he Board shall annually assess * * * property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity.” Differences in opinion have been expressed as to whether this means that the assessment jurisdiction of the Board extends to any company that transmits or sells electricity or only “regulated” companies. Any property subject to property tax that is not within the Board’s jurisdiction, or where the Board declines to assert jurisdiction, is subject to property tax assessment by the local county assessor.

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.

Deregulation. Local county assessors have historically assessed all electrical generation facilities except those owned by the regulated public utilities. For instance, county assessors have always assessed co-generation facilities as well as facilities using renewable sources of energy such as wind or solar. Since 1999, county assessors additionally assumed the assessment of power plants divested by regulated public utilities as well as newly constructed power plants built by private companies post-deregulation. The transfer of assessment jurisdiction of divested plants was a result of a Board regulation, Rule 905, as discussed below. The Board maintained, and continues to assess, generation facilities still owned by public utilities (primarily hydroelectric and nuclear facilities.) However, beginning in 2003, the Board reasserted its jurisdiction over divested electrical generation facilities as well as certain newly constructed facilities, as noted below.

Local Assessment of Electrical Generation Facilities from 1999 to 2002: *Transfer of divested power plants from state to local assessment and local assessment of future newly constructed facilities.* As a result of electrical deregulation, 22 electrical generation facilities previously owned by public utilities were sold to private companies. As an additional consequence of deregulation, it was anticipated that non-public utility companies would construct future generation facilities. Because of these developments, the Board decided to examine the question of the boundaries of its assessment jurisdiction over companies selling electricity in a post-deregulation era.

Formal discussion of assessment jurisdiction began in November 1998 and a series of Board hearings and interested parties meetings were held. Following a public hearing on July 29, 1999, and after accepting and publishing proposed amendments, the Board, on September 1, 1999, adopted Rule 905, *Assessment of Electric Generation Facilities*. Rule 905 was approved by the Office of Administrative Law, and became effective on November 27, 1999.

Property Tax Rule 905 provided that electrical generation facilities would be state assessed only if:

- (1) “the facility was constructed pursuant to a certificate of public convenience and necessity issued by the California Public Utilities Commission to the company that presently owns the facility; or,
- (2) the company owning the facility is a state assessee for reasons other than its ownership of the generation facility or its ownership of pipelines, flumes, canals, ditches, or aqueducts lying within two or more counties.”

In practical application, this generally limited state assessment of electrical generation facilities to those owned by rate regulated public utilities, such as Pacific Gas and Electric Company. Consequently, after this regulation was adopted, the jurisdiction to assess the 22 conveyed electrical generation facilities was transferred from the Board to the local assessors in the counties in which the facilities are located.

State Assessment of Electrical Generation Facilities Commencing in 2003: *Transfer of divested power plants and newly constructed plants from local to state assessment in 2003.* In mid-2001, certain changed conditions and developments in the electric energy industry on a statewide basis, as well as the experience of two years of application of the existing Rule 905, led the Board to reconsider its 1999 decision regarding their assessment jurisdiction pursuant to Article XIII, Section 19. Among those facts and developments were: the bankruptcy of the Power Exchange in January 2001; the rolling blackouts that were required to match the

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supply of electricity to the demand; the fluctuation in prices being charged for electrical power in the market place; the execution of long term contracts between the State Department of Water Resources and some 22 power suppliers; the creation of the California Consumer Power and Conservation Financing Authority; the bankruptcy of Pacific Gas and Electric Company and the financial difficulties of other regulated electrical utilities. It was widely stated in the press and elsewhere that the assumptions about the effect of restructuring on the electric power market - assumptions on which the original deregulation legislation and Rule 905 were founded - were largely incorrect. The Board determined that central assessment of these generation facilities by the Board would more appropriately reflect the assessment jurisdiction given to the Board under the Constitution, and more accurately reflect the value of generation facilities on a statewide basis in the competitive power market.

Therefore, on November 28, 2001, the Board amended Rule 905 and on May 14, 2002, the Office of Administrative Law approved the amendments to the rule. Under the amendments to Rule 905, certain facilities, currently locally assessed, became subject to state assessment on January 1, 2003. Those facilities include the 22 divested plants plus a currently unknown number of newly constructed post-deregulation plants.

Revised Property Tax Rule 905 provides that commencing with the 2003 assessment year, an electric generation facility shall be state assessed property only if:

- (1) the facility has a generating capacity of 50 megawatts or more; and
- (2) is owned or used by a company which is an electrical corporation as defined in subdivisions (a) and (b) of section 218 of the Public Utilities Code; or, the facility is owned or used by a company which is a state assessee for reasons other than its ownership of the electric generation facility or its ownership of pipelines, flumes, canals, ditches, or aqueducts lying within two or more counties.

Property Tax Rule 905 excludes from the definition of "electric generation facility" a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. §§796(17), (18) and 824a-3) and the regulations adopted for those sections under that act by the Federal Energy Regulatory Commission (18 C.F.R. 292.101-292.602).

Electrical Restructuring: Existing Facilities and New Facilities

As a result of the restructuring of the electric utility industry in California (AB 1890, Stats. 1996, Ch. 854), rate regulated public utilities sold many of their electrical generation facilities. Public utilities were required to sell certain generation facilities, and some additionally opted to sell other facilities voluntarily.

Twenty-two previously state assessed plants were sold between 1998-1999 and until January 1, 2003 were subject to local assessment. The following table lists the original purchasers and purchase price paid. On January 1, 2003, these facilities reverted to state assessment.

Seller – Buyer – Sales Price	Plants	County
PG&E to Duke Energy	Moss Landing	Monterey
\$501 Million for 3 Plants	Morro Bay	San Luis Obispo
	Oakland	Alameda
PG&E to Southern Energy¹	Pittsburg Power Plant	Contra Costa
\$801 Million for 3 Plants	Contra Costa	Contra Costa
	Potrero	San Francisco
PG&E to Calpine Corp.	The Geysers	Sonoma
\$213 Million for 2 Plants	The Geysers	Lake
Southern California Edison to AES	Alamitos	Los Angeles
\$781 Million for 3 Plants	Redondo Beach	Los Angeles
	Huntington Beach	Orange
Southern California Edison to Reliant	Ormand Beach	Ventura
\$280 for 5 Plants	Etiwanda	San Bernardino
	Cool Water	San Bernardino
	Mandalay	Ventura
	Ellwood	Santa Barbara
Southern California Edison to NRG/Destec²	El Segundo	Los Angeles
\$117.5 Million for 2 Plants	Long Beach	Los Angeles
Southern California Edison to Thermo-Ecotek	Highgrove	San Bernardino
\$9.5 Million for 2 Plants	San Bernardino	San Bernardino

¹ These plants are currently owned by Mirant.

² These plants are currently owned by Dynergy/NRG. Destec was purchased by Dynergy.

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<p>San Diego Gas & Electric to San Diego Unified Port District (Duke has a ten year lease)</p> <p>\$110 Million</p>	<p>South Bay Power Plant</p>	<p>San Diego</p>
<p>San Diego Gas & Electric to Dynergy/NRG</p> <p>\$356 Million</p>	<p>Encina Power Plant</p>	<p>San Diego</p>

Additionally, the restructuring and subsequent opening of electrical generation to competition has resulted in the planned development and construction of many new electrical generation facilities across the state.

COMMENTS:

1. **Sponsor and Purpose.** This bill is sponsored by the City of Redondo Beach. The purpose is to analyze the impact of state assessment of electrical generation facilities.
2. **April 22 Amendments.** The **April 22 amendments** delete the prior version of the bill and would instead authorize the Legislative Analyst to study the revenue consequences of state assessment of electrical generation plants. As introduced, this bill gave all local governments and districts the right to file a petition for reassessment seeking an increase in the value of a state-assessed electric generation facility. Thus, local governments could initiate assessment appeals. The **March 25 amendment** limited the bill to instead grant only a right to participate in an appeal commenced by the property owner. In addition, the amendment limited this right to cities and counties rather than any local government or district.
3. **AB 81 (Ch. 57, Stats. of 2002) statutorily transferred assessment responsibility for property tax purposes from the local county assessor to the Board.** The Board had amended a regulation, Property Tax Rule 905, which the Office of Administrative Law approved on May 14, 2002. The regulation also transferred assessment responsibility for certain locally assessed facilities to the Board on January 1, 2003.
4. **State assessment requires annual fair market assessments.** A key difference between state assessment and county assessment is that under county assessment, the valuation provisions of Article XIII A (Proposition 13) apply, including establishing a base year value, a limit of 2% on annual increases, and valuation on the lower of fair market value or adjusted base year value. These provisions do not apply to state assessed property, which is valued annually at fair market value in accordance with the holding in the case of *ITT World Communications, Inc. v. San Francisco* (1985) 37 Cal.3d. 859.
5. **Generation facilities owned by the public utilities are state assessed (i.e., hydroelectric plants and nuclear plants), but not pursuant to Section 721.5.** Electrical generation facilities owned by public utilities have been continuously subject to state assessment. Assembly Bill 81 did not effect these plants.

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COST ESTIMATE

This bill could result in insignificant costs (less than \$10,000) to research and comply with any information that the Legislative Analyst may request to complete the study.

REVENUE ESTIMATE

This bill has no direct revenue impact.

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