



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>06/21/05</b>	Bill No:	<b>SB 234</b>
Subject:	<b>Taxpayer Confidentiality</b>	Author:	<b>Runner</b>
Related Bills:	<b>SB 280 (Campbell) AB 1029 (J. Horton)</b>		

### BILL SUMMARY

This bill would make the following changes to the disclosure of information maintained by the Board of Equalization (BOE):

1. Allow for the public disclosure of documents distributed to BOE Members on tax and fee matters, with personal information, as defined, redacted;
2. Allow for the disclosure of lead and staff-recommended values on state assessees, private railroad cars, and electric generation facilities;
3. Prohibit consideration of tax or fee payer appeals in closed session;
4. Prohibit an officer or employee of the BOE or the Franchise Tax Board (FTB) from releasing personal information, as defined, to the public; and
5. Allow for the disclosure of returns and other information filed under the Timber Yield Tax Law to a member of the Timber Advisory Committee.

### Summary of Amendments

The amendments since the previous analysis added all the provisions except for the prohibition against the release of personal information related to FTB issues heard by the BOE.

### ANALYSIS

#### Background

**Confidentiality Provisions.** Various statutes make tax and fee payer information reported to the BOE confidential. For example, Section 7056 of the Revenue and Taxation Code, with certain exceptions, makes records submitted to the BOE in its administration of the Sales and Use Tax Law confidential. No similar confidentiality provision is applicable to records submitted to the BOE for FTB appeals.

**Open Meeting Requirements.** 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 BOE Members prior to BOE meetings are made

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available upon request. The Bagley-Keene Act requires that state bodies provide notice of its meetings to any person who requests such notice in writing. The notice shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed. The public is provided the opportunity to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item.

Closed sessions may not be held by any state body except as expressly authorized by the Bagley-Keene Open Meeting Act. Prior to holding any closed session, a state body is required to cite the authority for the closed session.

Since the enactment of AB 1752 (Ch. 156, Stats. 2002, Migden), the BOE is also required to distribute public writings, except those involving a named tax or fee payer, that pertain to a topic under consideration at a public meeting to all persons who request copies, as well as post that information on the Internet, and make the writings available for public inspection at the meeting, prior to the BOE taking final action on that item. As the bill was making its way through the legislature, the protection of tax or fee payer information was included in the bill when the BOE raised concerns about making available on the Internet the briefs prepared for FTB cases heard by the Members of the BOE, which are disclosable public records. These briefs may contain detailed personal and financial information about taxpayers submitted as evidence in support or opposition to the appeal.

**Sponsor and purpose.** BOE Member Bill Leonard is sponsoring this bill to provide greater protection of taxpayer information, while also allowing the public to know the issues involved in the BOE's decisions. He believes the release of information would greatly improve the openness and opaqueness of the BOE.

**The June 21, 2005 amendments** add the technical reference to Government Code Section 6276.16, and all the other provisions, except for the amendments to Revenue and Taxation Code Section 19545, which were already in the bill. **The May 31, 2005 amendments** deleted proposed Section 19571 of the Revenue and Taxation Code which would have allowed for the disclosure by an officer or employee of the BOE the personal or financial information of a taxpayer to the general public if that information is directly related to matters at issue before the BOE. **The May 17, 2005 amendments** add legislative intent language to declare that the bill's proposed limitations on the public's right of access to meetings of public bodies or the writings of public officials and agencies are within the meaning of Section 3 of Article I of the California Constitution (enacted by voters by Proposition 59 of 2004). **The May 5, 2005 amendments** add the specifics of what is not disclosable except under specific requirements.

**Related legislation.** SB 280 (Campbell) proposes to add more specific restrictions to the release of taxpayers' personal or financial information by enacting the Taxpayer Privacy Bill of Rights under the FTB's laws.

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AB 1029 (J. Horton) proposes, in part, to:

- Require a BOE Member to disclose an ex parte communication on any matter pending before the BOE for adjudication, as specified and defined.
- Specify that all relevant information on any matter set for an adjudicatory hearing before the BOE shall be provided to all parties to the matter and BOE Proceedings Division staff at least 14 days prior to the hearing.
- Specify that if any relevant information is offered or provided by the taxpayer that was not made available to all parties to the proceeding, the hearing shall be continued to a hearing date not less than 14 days after the information is made available to the parties, but allows the parties to the matter to agree to waive the continuance if they determine continuance is unnecessary for fair resolution of the matter.
- Require the BOE to make public and readily available on the Internet all BOE decisions and determinations and allow the BOE to sell copies of any decision or determination that are required to be published.

**Tax Appeal Matters**  
*Government Code Section 11126*

**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. Section 11126 sets forth the authority for members of a state body to meet in closed session, including, under subparagraph (f)(7) and (8) to hear confidential tax or fee payer appeals or data and administrative settlements.

Existing law permits the BOE to settle tax or fee disputes without recourse to litigation. This process is intended to avoid the costs and the uncertainty of future litigation for both the state and the taxpayer. Under the settlement process, the BOE can negotiate a settlement with a tax or fee payer, as reviewed by the Attorney General. At no time in the settlement process may the Members of the BOE participate, other than to approve or reject the proposed settlement, which must take place in closed session. However, for settlements involving a reduction of \$500 or more in tax or fee, a public record is required to be filed in the office of the executive directors showing 1) the names of the parties, 2) the amount involved, 3) the amount settled upon, 4) the reasons why the settlement is in the best interests of the state, and 5) the Attorney General's conclusion as to whether the settlement is reasonable.

**Proposed Law**

This bill would amend Government Code Section 11126 to restrict BOE closed session meetings regarding tax or fee payer matters to consideration of administrative settlements only. This bill would not affect the ability of the BOE to meet in closed session to discuss pending litigation or personnel matters.

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### Comment

**This amendment would codify current BOE practice.** Under current BOE practices, taxpayer appeals are not discussed in closed session. This provision simply codifies that practice to make clear to the public that the BOE will not be holding tax and fee payer appeals in closed session.

### Board Hearing Tax Documents and Materials *Government Code Section 15619.5*

#### Proposed Law

This bill would add Section 15619.5 to the Government Code to authorize the disclosure of documents distributed to all, or a majority of all, members of the BOE on tax or fee matters noticed for decision. Prior to disclosure, the social security number, telephone number, and residence address of an individual taxpayer would be deleted from the documents.

This bill would also allow at the time of notice for the disclosure of documents containing the lead and BOE staff-recommended property tax values, including penalties, on state assessed value settings, private railroad car values, and electric generator facilities, in addition to the documents on a petition for reassessment.

#### Comments

- 1. This measure would make some documents disclosable while other documents would be disclosable sooner.** The current public agenda notice discloses a taxpayer's name and the general category of tax or fee matter before the BOE. Except documents filed to appeal an action taken by the FTB, which may be made available prior to the hearing, no other document or information is provided prior to the BOE's decision in a tax or fee matter. Some documents, such as transcripts of hearings, state assessee values, and documents submitted to the BOE to decide petitions for property value reassessment are disclosable after the hearing. Documents submitted to the BOE for business tax or fee appeals, including BOE staff recommendations on adjudicatory or consent items and briefs filed by tax or fee payers or BOE staff, are not disclosable before or after a hearing. All these documents, except the hearing transcript, would become disclosable at the time of the public agenda notice, which is at least 10 days before the BOE meeting.
- 2. The documents would be made available but not posted on the Internet.** As previously stated, many documents that are distributed to BOE Members prior to BOE meetings are exempt from public disclosure because they contain named tax or fee payer information. While this bill would allow the public to obtain such documents before the BOE meeting, it would not require that the information be placed on the Internet.

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**FTB Taxpayer Confidentiality**  
*Revenue and Taxation Code Section 19542*  
*Government Code Section 6276.16*

**Current Law**

Under existing Section 19542 of the Revenue and Taxation Code, in general, it is a misdemeanor for the FTB or any member thereof, or any deputy, agent, clerk, or other officer or employee of the state (including its political subdivisions), or any former officer or employee or other individual, who in the course of his or her employment or duty has or had access to returns, reports, or documents required to be filed under this part, to disclose or make known in any manner information as to the amount of income or any particulars (including the business affairs of a corporation) set forth or disclosed therein.

Existing Section 19545 allows the disclosure of a return or return information in a judicial or administrative proceeding pertaining to tax administration under the following conditions:

- The taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability to any tax imposed under the income tax laws;
- The treatment of an item reflected on the return is directly related to the resolution of an issue in the proceeding; or
- The return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

The BOE is the body that hears appeals of actions of the FTB. Once the FTB or the taxpayer provides information to the BOE for an appeal, the information becomes a public record and must be disclosed in response to a request made pursuant to the California Public Records Act (commencing with Government Code Section 6250). Moreover, any decision made by the BOE in an appeal of an action of the FTB is a public record. These decisions are made publicly available to provide guidance to taxpayers and practitioners.

**Proposed Law**

This bill would amend Section 19545 of the Revenue and Taxation Code to specifically exclude from public disclosure personal information contained on returns or return information provided to the BOE unless that disclosure is specifically authorized or required by law. "Personal information" is defined as the social security number, telephone number, or residence address of an individual.

This bill would also amend Section 6276.16 of the Government Code, which contains an alphabetical listing of statutes that identify records or information not required to be disclosed pursuant to subdivision (k) of Section 6254, to add a reference to the information restriction.

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### Comment

**The BOE currently complies with the restrictions imposed by this bill.** Under current practice, the BOE redacts a taxpayer's social security number, telephone number, and residence address when disclosing FTB appeal documents to the public; therefore no compliance problems are anticipated.

### Timber Yield Tax Information

*Revenue and Taxation Code Sections 38402 and 38706*

#### Current Law

The Z'berg-Warren-Keene-Collier Forest Taxation Reform Act, AB 1258 (Ch. 176, Stats. 1976), changed the method of taxing timber in California by replacing the ad valorem tax on standing timber with a yield tax on felled timber. The timber yield tax is imposed on every timber owner who harvests timber or causes it to be harvested on or after April 1, 1977. The Act requires the BOE to appoint a Timber Advisory Committee (TAC) with which to consult prior to adopting administrative regulations governing the assessment of harvested timber and underlying lands. The TAC is composed of one representative of the BOE, one representative of the State Board of Forestry and Fire Protection, five assessors from the rate adjustment counties defined in Section 38105, and one member representing small-scale timber owners, and one member representing large-scale timber owners.

The Timber Yield Tax is an in lieu property tax paid by timber owners when they harvest trees or timber. The amount of tax is calculated according to the volume of timber harvested, the established value for the species harvested, and the tax rate, which is currently 2.9 percent. The tax is paid on a quarterly basis to the BOE, which administers the tax on behalf of local government.

Under current law, Section 38402 allows for the release of timber yield tax return information to the assessor of the county from which the timber is harvested. Section 38706 allows for the examination of any timber yield tax records by an assessor of any county containing timber. The law specifically forbids the assessor from making known any of the business affairs, operations, or other information pertaining to any timber owner.

#### Proposed Law

This bill would amend Sections 38402 and 38706 to also allow a member of the Timber Advisory Committee to have the same access to the records as a county assessor.

#### Comment

**Not all members of the TAC have the same access to BOE information.** Section 38706 was added in 1979 by Senate Bill 826 (Keene, Ch. 387) because assessors on the Timber Advisory Committee argued they had difficulty making informed recommendations to the BOE because they only had access to records in their own county, whereas the BOE regulations took effect statewide. This bill seeks to give the other members of the TAC the same access to information.

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**COST ESTIMATE**

This bill would result in some additional operating and personnel costs to the BOE in having to provide a greater number of records to the public. The price charged by the BOE for copies of public records is limited to the "direct costs of duplication," which does not recoup the actual cost of providing records to the public. (Government Code Section 6253.) The actual increased cost to the BOE cannot be determined without knowing how much requests for BOE records will increase as a result of more records being disclosable to the public.

**REVENUE ESTIMATE**

This bill would not impact the state's revenues.

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Analysis prepared by:	Kevin Beile	323-7169	06/21/05
Contact:	Margaret S. Shedd	322-2376	

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