



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

Date Amended:	05/01/01	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. (Government Code Section 11125.1)
2. Require that a contribution aggregating \$250 or more from a committee that has received a contribution aggregating \$250 or more within the preceding 12 months from a corporation that is a party, participant, or agent to any Board member be included among contributions subject to Kopp Act provisions. (Government Code Section 15626)
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. (Revenue and Taxation Code Sections 7081 and 21002)

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

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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.

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

1. **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.
2. **The implications of this bill could be very broad and result in unintended consequences.** For example, Franchise Tax Board briefs are disclosable public records. These briefs may contain detailed and often very personal information about taxpayers. 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.

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).

3. **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.
4. **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

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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.

ANALYSIS

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 Political Action Committees (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 has received a contribution aggregating \$250 or more within the preceding 12 months *from a corporation* that is a party, participant, or agent to any Board Member would also be subject to the Kopp Act contribution and disclosure provisions. For purposes of this provision, "committee" would have the same meaning as prescribed in Government Code Section 82013 and related regulations.

COMMENTS

1. **Amendments contained in this version of the bill.** The 05/01/01 amendments clarify that the proposed contribution disclosure requirements would only apply to contributions to a PAC by a *corporation* that is a party, participant, or agent. The author has attempted to make the provisions of this bill more manageable for Board

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staff and Board Members by narrowing the contributions subject to disclosure to only those contributions that corporations make to PACs.

2. **An October 29, 2000 newspaper article suggested that some companies' taxes were reduced as a result of Board 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. This bill would close an unintended loophole in the Kopp Act by making contributions from certain PACs, as specified, subject to the Kopp Act disclosure provisions.
3. **This bill would still create administrative difficulties for Board staff and Board Members.** Board Proceedings staff currently track, identify and timely disclose all contributions of \$250 or more made to Board Members, and determine if any contributors are parties, participants, or agents to any Board Members. By contrast, under current law, information about PAC's is not required to be reported to the Board.
4. **Current PAC requirements.** Current campaign finance disclosure law requires candidates and committees to make public their contributions and expenditures. Political parties, PACs, and major donors who help finance campaigns, plus slate mailer organizations that are paid to promote candidates and issues, are identified on the Secretary of State's web site (<http://www.ss.ca.gov/>). In 1997, the State Legislature enacted a new law requiring that the information be transmitted to the Secretary of State electronically and that it be posted on the Internet. However, only candidates and committees that raised or spent \$100,000 or more in connection with the March 7 Primary were required to file electronically. Some others, with fewer receipts and expenditures, filed voluntarily. The monetary threshold for mandatory electronic filing dropped to \$50,000 on July 1st for campaigns involved in the November 7, 2000 General Election.
5. **While it is not difficult to determine if a party, participant, or agent has contributed to a Board Member, it could be extremely difficult to determine if that party has contributed to a PAC that subsequently has contributed to a Board Member.** This would require extensive review of PAC contribution reports. However, the timeline for PACs to submit contribution disclosure statements often results in a lag between the Board hearing date and the submission of disclosure statements. For example, statements are generally filed at the end of each month following the end of each quarter. This year, the Board met twice in January, once in February and twice in March. Therefore, a contribution could have been made on January 1, yet the disclosure statement not available until April 30.

In addition, even when the disclosure statement is available, Board staff would still be required to review the often extensive reports to determine if any PAC contributions involved a corporation that is a party to a hearing before the Board. To address this situation, in addition to the already existing disclosure requirements, the author should consider amending the bill to require PACs and corporations to report whether any contributions have been made to Board Members, including a list of

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contributing corporations, as soon as the contribution is made. However, if the bill is amended as suggested, it would still require additional Board staffing and extremely burdensome record-keeping and tracking responsibilities.

- 6. 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).

ANALYSIS

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

- 1. The 05/01/01 amendments to the Taxpayers' Bill of Rights provisions in this bill are technical.**
- 2. 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.

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3. **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.
4. **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.
5. **The BOE recently acted to expedite business tax appeals.** Board staff are required to issue a decision and recommendation within 90 days after the submission of additional documents to the conference holder. BOE staff does not anticipate that the provisions in this bill would have a material impact on its procedures.

COST ESTIMATE

This bill would result in significant 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. These costs are estimated to be \$145,000 in 2001/02 and \$212,000 beginning in 2002/03 and annually thereafter.

REVENUE ESTIMATE

This bill would not impact the state’s revenues.

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