



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

DRAFT

Date Introduced:	01/03/11	Bill No:	<u>Assembly Bill 77</u>
Tax Program:	Administrative	Author:	Gorell
Sponsor:	Author	Code Sections:	GC 15627, 15700, et al. RTC 20.5
Related Bills:		Effective Date:	01/01/12 but operative 01/01/13

BILL SUMMARY

This bill would abolish the Franchise Tax Board (FTB) and transfer all of its duties and powers to the Board of Equalization (BOE), operative January 1, 2013. It would also transfer the tax administrative functions of the Employment Development Department (EDD) and the California Department of Insurance (CDI) to the BOE.

ANALYSIS

CURRENT LAW

Under existing law, the BOE administers, among other things, the following tax and fee programs: sales and use tax, Bradley-Burns uniform local sales and use tax, transactions and use tax, alcoholic beverage tax, cigarette and tobacco products tax, motor vehicle fuel tax, diesel fuel tax, interstate user tax, emergency telephone users surcharge, energy resources surcharge, insurance tax (in part), integrated waste management fee, natural gas surcharge, childhood lead poisoning prevention fee, oil spill response and prevention fee, underground storage tank maintenance fee, use fuel tax, hazardous substances tax, California tire fee, occupational lead poisoning prevention fee, marine invasive species fee, electronic waste recycling fee, timber yield tax and private railroad car tax. The BOE also assesses the property of public utilities and common carriers, and provides certain administrative and oversight functions with respect to the local property tax.

The BOE is comprised of four elected members, one from each equalization district, and the State Controller. The BOE itself is responsible for setting the values for state-assessed properties on the BOE roll and for hearing appeals of those values. It also hears appeals relating to all of the taxes and fees it administers, as well as the taxes administered by the FTB.

The FTB was created by statute and is comprised of the Controller, the Director of Finance, and the Chair of the BOE. It administers the personal income tax and the corporation tax. In addition, the FTB administers other non-income tax related programs, including the Homeowners and Renters Property Tax Assistance program, child support and other non-tax debt collection programs, Political Reform Audit, and the Non-admitted Insurance Tax program.

The FTB and the BOE adopt rules and regulations for the taxes that the respective agencies administer. In addition, the BOE prescribes rules and regulations to govern county assessors when assessing property and assessment appeals boards when equalizing property values.

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 BOE's formal position.

The EDD was also created by statute and is responsible for collecting and maintaining significant data regarding employment and wages. The Tax Branch of the EDD manages all administrative, education, customer service, and enforcement functions for the audit and collection of unemployment insurance, disability insurance, employment training tax, and personal income tax withholding.

The CDI regulates, investigates, and audits insurance business to ensure that companies remain solvent and meet their obligations to insurance policyholders. The BOE issues assessments and hears insurance tax appeals, and the Controller is responsible for collections and accounting for the insurance tax.

PROPOSED LAW

This bill would add Section 15627 to the Government Code to transfer all of the duties, powers, purposes, and responsibilities, and jurisdiction of the FTB and of the tax administrative functions of the EDD and CDI to the BOE. All statutes and laws prescribing such duties and powers of the FTB, including all rules and regulations, are to continue in force. Any references to the FTB used in any statute, law, rule, or regulation shall hereafter mean the BOE. This bill specifies that any court action in which the FTB, or the tax administration functions to which EDD or CDI is a party on or before January 1, 2013 shall continue in the name of the BOE.

This bill would repeal Part 10 (commencing with Section 15700) of Division 3 of Title 2 of the Government Code related to the establishment and certain duties of the FTB.

This measure would add Section 20.5 to the Revenue and Taxation Code to provide that any references to the FTB shall hereafter mean the BOE.

In addition, it would also provide the following:

- That the BOE executive officer, with the approval of the Members of the BOE, shall organize its new responsibilities in any manner as he or she deems necessary for the proper conduct of the BOE's consolidated revenue collection, administration and enforcement functions;
- That the civil service staff of the FTB, and those related to the tax administrative functions of EDD, and CDI shall be transferred to the BOE in accordance with existing law;
- That any contract, lease, or any other agreement in which the BOE or the FTB, EDD, or CDI is a party would not be voided and shall continue in full force and effect with the BOE assuming all rights, obligations, and duties of the FTB, EDD; and CDI;
- That the unencumbered balance of all money available for spending by the FTB, and EDD and CDI, with respect to the functions transferred to the BOE on and after January 1, 2013, shall be made available for the support and maintenance of the BOE; and,
- That all books, documents, records, and property of the FTB, and EDD and CDI, with respect to the functions transferred to the BOE, shall be transferred to the BOE.

The bill would require the BOE to submit a report to the Governor and the Legislature by June 30, 2012, on its plan and progress of consolidation. The report shall include the following information:

- A strategic plan to transfer the duties and responsibilities of the FTB and the tax administration duties of the EDD and CDI into the BOE, including the identification of

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 BOE's formal position.

critical issues and the consolidation of computer systems, telecommunications, and office space;

- Identification of those functions that are conducive to consolidation or centralization, including administration, document processing, remittance cashing, public service, collection, and physical equipment and facilities; and,
- Identification of those administrative functions that, because of statutory conflicts or inconsistent administrative processes of the FTB and the BOE, are more difficult to consolidate.

IN GENERAL

With respect to the consolidation of functions and processes, the BOE has taken the lead in working with the FTB and the EDD to identify specific, incremental processes to optimize capacities and achieve efficiencies.

A workgroup from these agencies has been formed to discuss those processes and functions that may be the most opportune for consolidation, taking into account all practical aspects and costs. Some of the areas under discussion include the tax return process, call centers, printing, mailing and the electronic capture of documents.

There are several other collaborative consolidation efforts already underway, including:

- The BOE, EDD, and FTB currently share an extensive amount of valuable data and have long-standing cooperative partnerships in this effort. To enhance our data sharing capabilities, the agencies have formed a joint agency **information sharing** team. The main goal of this team is to ensure that new technology projects continue to further our current data sharing abilities, while being consistent and compatible with the direction set by the State's Chief Information Officer and when it is deemed appropriate – given risks and resources – to pursue a more integrated approach for accessing data from the other agencies.
- The BOE, FTB, and EDD also have developed a “**Tri-Agency Collector Exam**” which consolidates the three agencies' entry level collector exam into a single exam. Candidates are now able to take one exam for all three agencies' entry level collector classifications.
- The three tax agencies have also **consolidated recruitment efforts** by having one recruitment table at the recruitment events. Although primarily for tax auditor and collector classifications since these classifications have similar duties and minimum qualifications, information about other classifications is also available.
- The BOE and the FTB work collaboratively to enhance collection of the **state's use tax**. The FTB has a line on its state income tax return to enable taxpayers to report their use tax on their state income tax return and has also incorporated instructions in its income tax instructional booklets to better educate taxpayers of their use tax reporting obligations.
- The three tax agencies have worked together to provide a more simplified approach for taxpayers requesting to satisfy their tax debts through **offers in compromise** by enabling taxpayers to complete one form for all three agencies.
- Finally, through a combined effort to streamline and improve taxpayer resources and educational programs, California's three tax agencies and the IRS created a [Tax Service Center website](#) with the goal of “one-stop” tax help.

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 BOE's formal position.

LEGISLATIVE HISTORY OF TAX AGENCY CONSOLIDATION

The following bills have been introduced over the years that proposed to merge the FTB into the BOE:

Bill	Session	Description
SB 1133 Runner	2009-10	Would have also transferred to the BOE the duties, powers, purposes, responsibilities and jurisdiction of the FTB and the tax administrative functions of EDD and CDI – in substantially the same manner as this measure. The bill was placed on the Senate Revenue and Taxation Committee suspense file.
SB 274 Dutton	2007-08	Similar to SB 1133 above. The bill was never heard in committee.
AB 1615 Klehs	2005-06	Similar to SB 1133 above, the provisions of the bill were amended out in the Assembly Revenue and Taxation Committee.
SB 216 Dutton	2005-06	Similar to SB 1133 above, the provisions of the bill were amended out in the Assembly Revenue and Taxation Committee.
AB 2000 Dutton	2003-04	Would have abolished the FTB and transferred all of its duties and powers to the BOE. AB 2000 was held in the Assembly Revenue and Taxation Committee.
ACA 13 Leonard	2001-02	Would have changed the name of the BOE to the California Tax Commission (CTC) and required the new Commission, in addition to performing the duties of the BOE, to administer and collect taxes on income as prescribed by law. ACA 13 was held in the Assembly Appropriations Committee.
AB 15 Klehs	1993-94	Would have abolished the FTB and transferred its powers and duties to the BOE. This bill was vetoed by Governor Wilson. In part, the veto message states, "...I support streamlining government and consolidating the Board of Equalization and the Franchise Tax Board. AB 15 is not the way to accomplish this purpose. The Administration sponsored legislation that would have created a Department of Revenue within the Administration. That approach would avoid the conflict of interest inherent in AB 15, in which the Board of Equalization serves as both administrator of the tax system, as well as the appellate body for taxpayer appeals."
AB 3338 McClintock	1991-92	Would have abolished the FTB and transferred its powers and duties to the BOE. This bill failed passage in the Assembly Revenue and Taxation Committee.
SB 1052 SCA 22 Alquist	1989-90	Would have abolished the FTB and transferred its powers and duties to the BOE. SCA 22 would have added the Director of Finance to the membership of the BOE. These measures were never heard in committee.

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 BOE's formal position.

Other bills have also been introduced that would have consolidated the FTB and the BOE into another entity:

Bill	Session	Description
ACA 14 DeVore	2005-06	Would have renamed the BOE as the CTC and would have expanded the membership to nine members. It would have also required the new CTC, in addition to performing the duties of the BOE, to assume the duties under the personal income tax and corporation tax laws and the administrative review of state tax matter determinations. This measure was held in the Assembly Appropriations Committee.
SCA 9 Ducheny	2005-06	Would have also renamed the BOE as the CTC and increased the membership to 9 voting members. The CTC would have, in addition to collecting and administering the BOE's current taxes and fees, collected and administered income taxes and any taxes withheld from wages, and conducted administrative review of state tax matter determinations. SCA 9 was never heard in committee.
ACA 22 Dutra	2003-04	Would have renamed the BOE as the California Tax Board, comprised of 5 voting members and would have transferred the income tax administrative responsibilities to the Board. ACA 22 was held in the Assembly Revenue and Taxation Committee.
AB 2794 Bowen et al.	1995-96	Would have abolished the FTB and, except as provided by the Constitution, the administrative authority of the BOE, and would have provided for the transfer of their respective powers and duties to the Department of Revenue (DOR), which this bill would have created. This bill would have also created a Board of Tax Appeals consisting of seven members appointed by the Governor to serve as an appellate body to hear all tax appeals. This bill failed passage in the Assembly Revenue and Taxation Committee.
SB 1727 SCA 29 Kopp	1996-97	Would have, among other things, done the following: (1) abolished the FTB and the BOE and transferred their powers and duties to the California State Tax Authority, which this bill would have created; and (2) created a Board of Tax Appeals consisting of seven members appointed by the Governor to serve as an appellate body to hear all tax appeals. Both bills were held in the Senate Appropriations Committee.
SB 87 SCA 5 Kopp	1993-94	Would have, among other things, done the following: (1) abolished the FTB and the BOE and transferred their powers and duties to the DOR, which the bill would have created; and (2) created a Board of Tax Appeals. SB 87 failed on the Senate floor. SCA 5 was placed on the Senate inactive file.

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 BOE's formal position.

Bill	Session	Description
SB 1829 Campbell	1993-94	Would have, among other things, consolidated the FTB and the BOE and transferred their powers and duties to the DOR, which the bill would have created. This bill would have also provided that the BOE would serve as the administrative appellate review of all administrative tax matter decisions made by the DOR. This bill failed passage in the Senate Appropriations Committee.
SB 2137 Campbell & Kopp	1993-94	Would have, among other things, consolidated the FTB and the BOE and transferred their powers and duties to the DOR, which the bill would have created. This bill would have also provided that the BOE would serve as the administrative appellate review of all administrative tax matter decisions made by the DOR. This bill failed passage in the Senate Appropriations Committee.
SB 23 Kopp	1991-92	Would have, among other things, done the following: (1) abolished the FTB and the BOE and transferred their powers and duties to the DOR which the bill would have created; and (2) created a Board of Tax Appeals. This bill failed to move out of the Senate.
SB 1695 Kopp	1991-92	Would have, among other things, done the following: (1) abolished the FTB and the BOE and transferred their powers and duties to the DOR, which the bill would have created; and (2) created a Board of Tax Appeals. SB 1695 was sent to interim study. The Assembly Revenue and Taxation Committee held an oversight hearing on February 24, 1992, which reviewed specific issues related to consolidating the FTB and the BOE into a DOR. The issues discussed included: administration, audit, collections, return processing, legal divisions/appeals process, facilities, and data processing. It was noted in the hearing that the state's budget crisis made consolidation less attractive at the time due to its costs and complexities.
SB 1395 Kopp & Ayala, et al.	1989-90	Would have, among other things, done the following: (1) abolished the FTB and the BOE and transferred their powers and duties to the DOR, which the bill would have created; and (2) created a Board of Tax Appeals. This bill failed passage in the Senate Appropriations Committee.

COMMENTS

- Sponsor and purpose.** This measure is sponsored by the author. The author's office notes that consolidating the BOE, FTB and the tax functions of the EDD and CDI would result in a more efficient, convenient tax agency providing more uniform tax policy and administration as well as administrative savings. The reorganization would place tax functions under a body that is elected by the voters every four years.
- LAO conducted a study regarding consolidation of certain functions of the BOE, FTB, and EDD.** Chapter 569, Statutes of 2003 (AB 986, Horton), directed the LAO to prepare a report that addresses issues related to the partial consolidation of FTB, BOE and EDD. The legislation mandated that the LAO report to the Legislature

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 BOE's formal position.

regarding the possible consolidation of payment and document processing of these three agencies. Specifically, based on information provided by the tax agencies, the LAO was required to determine if it would be beneficial to consolidate the management and control of these operations.

In its January 2005 report, the LAO concluded that consolidation of the tax agencies' payment and document processing activities could in the medium- to long-term generate some annual cost savings and interest earnings through elimination of duplicative functions and increased efficiencies. However, the report indicates that the state would have to incur significant net costs in the short term to achieve these savings. In addition, the report indicates that such benefits are likely to be less than benefits from increasing electronic processing. The LAO recommended that low priority be given to consolidation of payment and document processing functions in favor of steps to increase electronic processing.

3. **The California Performance Review (CPR) also made its recommendations to the Governor.** Governor Schwarzenegger, by executive order, created the CPR to conduct a focused examination of California state government and to formulate and recommend practical changes to government agencies, programs and operations in order to reduce total costs of government operations, increase productivity, improve services, and make government more responsive and accountable to the public.

As part of his process to decide which CPR recommendations to pursue, Governor Schwarzenegger formed the CPR Commission. The Commission was independent and bipartisan, consisting of leaders in the public, private, and non-profit sectors. In its November 2004 report, the Commission agreed with the recommendation that the tax administration functions, such as collection and monitoring, should be consolidated from the different tax collection agencies in order to streamline processes and enhance operations.

4. **Proponents of consolidation of the agencies have argued the following points on previous proposals:**

- **Consolidation would reduce administrative costs in the long-term.** It would reduce administrative costs, since it would result in the consolidation of administrative and staff services, including personnel and training. Also, it would avoid duplication of collection efforts, fiscal duties, and mailing costs. Data processing operations could be consolidated. Proponents state that consolidation of the data processing operations of the tax agencies could provide for improved information management and produce economies of scale.
- **Consolidation would provide uniform tax policy and administration.** It would assure Californians greater uniformity in the audit, compliance, and appeals processes and provide an opportunity to simplify and reduce regulations, and to reduce and standardize the number of taxpayer reports that need to be filed.
- **Consolidation would benefit taxpayers.** Consolidation could enhance taxpayers' ability to conduct business by: (1) reducing the confusion over which agency is responsible for a particular tax issue; and (2) reducing correspondence with, or travel to, state tax agencies. Also, consolidation can lead to coordinated taxpayer assistance programs that would provide taxpayers with comprehensive information about taxes in California.

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 BOE's formal position.

- **Audits could be consolidated.** Some proponents argue that if the tax administration were consolidated into one agency, all taxes could be audited at the same time.
 - **Elected officials tend to be more responsive than an appointed body.** Proponents have argued that a consolidated tax agency should be administered by an elected body because elected officials are more responsive to the people than appointed officials. Government Code Section 15623 requires BOE Members to investigate the administration, enforcement, and operation within their districts, of all laws in which the administration and enforcement is vested with the BOE. As such, it is the BOE Members' job to represent taxpayers and to make sure that BOE's tax programs are administered uniformly. With a representative tax administration, taxpayers can go directly to their BOE Member for help with tax matters.
5. **The following arguments have been made against similar previous proposals:**
- **There is no overwhelming reason to consolidate.** In an overall view of the arguments in favor of and against merging the taxing agencies, it appears there is no overwhelming reason to do so. The tax agencies are operating efficiently, and in today's environment, modern technology actually makes physical merging less critical. California has an outstanding record in the field of tax collection and administration. Since it is unclear whether the merge would result in significant improvements, it appears that it may not be warranted to incur the significant costs of merging or to risk any loss of revenue during the period of conversion.
 - **Whether economies of scale would be realized is questionable.** Opponents of similar proposals in the past have noted that the contentions of greater economy are largely illusory. Unless certain programs were curtailed, there would still be essentially the same staff requirements and space requirements. As pointed out by the LAO, enhancing the electronic processing of returns and payments should be given priority over merging.
6. **A strategic plan should contain levels of integration and time frames for consolidation.** This bill requires the BOE to submit a report to the Governor and the Legislature on its plan and progress of consolidation by June 30, 2012. The report is to include a strategic plan on consolidating all of the operations of the FTB into the BOE, as well as the tax administrative functions of EDD and CDI. The bill does not provide sufficient detail of how the agencies would consolidate. The bill should require that the plan identify specific goals for integrating operations, including levels of integration, and contain timeframes to reach these goals.

COST ESTIMATE

According to the LAO's January 2005 report, a potential long-term savings exists associated with the partial physical consolidation of the agencies' payment and document processing activities by reducing duplication, streamlining staffing, and making more efficient use of existing capital.

However, the LAO points out that these savings are likely to be achievable only through an up-front investment by the state in additional systems that allow the agencies' separate and distinct processes to function in a consolidated fashion. In addition, given that the agencies are at different levels of technological advancement, the LAO report

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 BOE's formal position.

notes that considerable additional investment may be necessary to avoid losing the technological edge that some agencies have achieved in their processing functions.

The amount of these savings could not be determined without an extensive, detailed study.

REVENUE ESTIMATE

This bill in and of itself would not affect the state's tax revenues. In general, the transfer of the tax collection and administration responsibilities of the FTB, EDD and CDI to the BOE would not appear to have any effect on the state's revenues. It is possible, however, that a decrease in revenue could be experienced during the period of conversion as a result of the requirement to spend staff time developing the procedures for the new agency.

Analysis prepared by:	Sheila Waters	916-445-6579	03/31/11
Contact:	Margaret S. Shedd	916-322-2376	
Is			0077asm010311.doc

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 BOE's formal position.