

[Assembly Bill 582](#) (Calderon)

Date: 04/21/15

Program: Administration

Sponsor: Author

Government Code Chapter 4 of Part 9 of Division 3 of Title 2 (commencing with Section 15660)

Effective: January 1, 2016

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Summary: Establishes the Professionals in Public Service (PIPS) Act of 2015 to create the Professionals in Public Service Program within the Board of Equalization (BOE). The BOE's executive director could appoint a maximum of five persons during any calendar year to voluntarily serve the BOE as a small business expert with duties as specified.

Summary of Amendments: Since the previous analysis, the bill was amended to, among other things, (1) require the BOE to adopt program implementing procedures by March 1, 2016, and begin accepting applications within 60 days thereafter, (2) allow nominations from public or private entities, and (3) extend the final annual report deadline to March 31, 2021.

Purpose: To help make BOE tax and fee program activities and practices more efficient and accessible to small businesses.

Fiscal Impact Summary: No direct revenue impact.

Existing Law: The BOE administers 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.

In fiscal year (FY) 2012-13, BOE-administered taxes and fees produced \$56 billion for California, an increase of 6.8% from \$52.5 billion in FY 2011-12. In addition, BOE administered programs provided approximately 35% of California's annual revenue and \$10.8 billion in essential funding for counties, cities, and special districts.

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

California Taxpayer Bill of Rights. The Harris-Katz California Taxpayers' Bill of Rights¹ was established to ensure that the rights, privacy, and property of taxpayers were adequately protected in the assessment and collection of sales and use taxes. In 1993,² the Taxpayers' Bill of Rights statutory authority was expanded to various BOE-administered special tax and fee programs. The legislation also created a Taxpayers' Rights Advocate to, among other things:

- Investigate and resolve taxpayer complaints and problems, including complaints regarding unsatisfactory treatment by BOE employees.

¹ Article 3 (commencing with Section 7080) of Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code.

² Senate Bill 1661 (Chapter 438, Statutes 1992, effective January 1, 1993)

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- Monitor BOE tax and fee programs for compliance with the Taxpayers' Bill of Rights and recommend new procedures or revisions to existing policy.
- Recommend changes in statutes, regulations, policies, and procedures to improve service to taxpayers.
- Work with BOE staff to ensure that taxpayer educational materials are clear and understandable.

In addition, the Taxpayer Bill of Rights requires that the BOE develop and maintain a taxpayer education and information program to include all of the following:

- A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities, and the most common areas of noncompliance encountered by participants in their business or industry.
- Participation in small business seminars and similar programs organized by federal, state, and local agencies.
- Revision of taxpayer educational materials currently produced by the BOE which explain the most common areas of taxpayer noncompliance in simplified terms.
- Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

Governor's Office of Business and Economic Development (GO-Biz). Existing law³ establishes GO-Biz within the Governor's office to serve as the lead state entity for economic strategy and the marketing of California on issues involving business development, private sector investment, and economic growth. Within GO-Biz, the Office of the Small Business Advocate distributes information about programs and services provided by the state that benefit small businesses, and how small businesses can participate in these programs and services. The Small Business Advocate also responds to issues regarding the actions of state agencies, state laws, and regulations adversely affecting small businesses.

Proposed Law: This bill enacts the Professionals in Public Service Act of 2015⁴ to establish the state professionals in public service program within the BOE to utilize private-sector executive expertise to help make BOE practices more streamlined and accessible to small businesses. Specifically, this bill:

- Defines the following terms:
 - "Board" means the BOE.
 - "Director" means the Executive Director⁵ of the BOE, or his or her designee.
 - "Professional in public service" means an individual appointed as a professional pursuant to the program.
 - "Program" means the professionals in public service program, as established by this bill.
- Requires the BOE to adopt procedures to implement the program by March 1, 2016, and begin accepting applications within 60 days after their adoption. Procedures shall include:

³ Chapter 1.6 (commencing with Section 12096) to Part 2 of Division 3 of Title 2 of the Government Code.

⁴ Adds and repeals Chapter 4 (commencing with Section 15660) of Part 9 of Division 3 of Title 2 of the Government Code.

⁵ The bill uses the term "Secretary." The term "secretary" does exist within the BOE in its key statutory provisions in the Government Code (15602-15626); it means the executive director. However, in the BOE's administrative manual, including the document "Powers Conferred on the Executive Director by Resolution," the Secretary of the Board is designated and titled as "Executive Director."

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- 1) Authorizes the director to appoint one to five appointees during the program's existence during any calendar year.
 - 2) Nominations for appointment may be submitted by any public or private entity.
 - 3) An appointment application may be submitted in writing on a BOE developed form, or through an online application process established by the BOE.
 - 4) A process for screening prospective appointees, including checking backgrounds and references.
 - 5) A standard memorandum of understanding (MOU) that stipulates the responsibilities of each party in undertaking an appointee under the program, including duties, goals, expected outcomes, administrative support, and office participation. The memorandum may function as a model for future professionals in public service programs.
 - 6) A reporting process that provides sufficient information for the director to report to the Legislature, as specified.
- Requires that any appointee meet one of the following qualifications:
 - Have demonstrated success in working with California small businesses and entrepreneurs.
 - Have successfully developed, invented, or created a product and brought the product to the marketplace.
 - Specifies that an appointee must not have a conflict of interest with the activities of the BOE, including having any existing business before the BOE.
 - Requires that every appointee enter into a MOU with the director before the effective date of an appointment. The MOU must specify the placement and clearly identify the duties, goals, expected outcomes, administrative support, and office participation. The MOU must set the benchmarks and metrics for evaluating the success of the placement.
 - Subject to specified confidentiality requirements, requires that an appointee have all of the following duties:
 - 1) Provide recommendations on how to streamline, eliminate, or modify inefficient or duplicative activities, processes, and programs of the BOE.
 - 2) Provide recommendations on methods to improve program efficiency or establish new initiatives that may be instituted to address the needs of small businesses and entrepreneurs.
 - 3) Assist the BOE in improving outreach and service to small business concerns and entrepreneurs, including:
 - Facilitate meeting and forums to educate small businesses and entrepreneurs on BOE programs or initiatives.
 - Facilitate in-service sessions with BOE employees on issues of concern to small businesses and entrepreneurs.
 - Provide technical assistance or mentorship to small businesses and entrepreneurs in accessing BOE programs.
 - Requires that an appointee report directly to the director. An appointee shall serve on a project-based, voluntary basis and be given a timeline for completion. At the discretion of the director, requires an appointee to have access to an office, computer, and other related support services and equipment in order to discharge his or her duties.
 - Requires the director to establish an informal working group of professionals in public service to discuss best practices, experiences, obstacles, opportunities, and recommendations.

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- Requires the last appointment be made no later than August 1, 2016, with a final service end date of December 31, 2017.
- Requires the director to annually submit to the Governor and the Assembly Committee on Jobs, Economic Development, and the Economy a report on the program. The report must include all of the following:
 - 1) Progress report on the activities of each professional in public service during the reporting period, based on the applicable memorandum of understanding.
 - 2) General summary on how the overall program is addressing the program goals, which are:
 - Making BOE-administered programs simpler, easier to access, more efficient, and more responsive to the needs and concerns of small businesses and entrepreneurs.
 - Providing for better outreach by BOE to the private sector.
 - Strengthening coordination and interaction between the BOE and the private sector on issues relevant to small businesses and entrepreneurs.
- Requires BOE to measure and report the impact of the appointee's activities for three years following their placement. A final annual report must be filed by March 31, 2021.
- Specifies that procedures adopted pursuant to the bill are exempt from the rulemaking provisions of the California Administrative Procedure Act.

If enacted, the bill takes effect on January 1, 2016, and remains in effect only until January 1, 2022, and as of that date are repealed.

Prior Legislation: Assemblymember Calderon introduced a similar bill in 2014. [AB 1675](#) would have established the Entrepreneur-in-Residence program within GO-Biz to provide private-sector expertise and assistance to help make government activities and practices streamlined and accessible to small business. The Director of GO-Biz could have appointed up to 10 entrepreneur-in-residence annually within state agencies, departments, and commissions. AB 1675 passed out of the Assembly, but was held in the Senate Appropriations Committee.

Commentary:

1. **The April 21, 2015 amendments** (1) clarify that the BOE adopt procedures to implement the program by March 1, 2016, and begin accepting applications within 60 days after their adoption, (2) clarify that nominations for appointment may be submitted by any public or private entity, (3) specify that appointment applications may be submitted in writing on a form developed by the BOE, or through an online application process, (4) require that an appointment be made no later than August 1, 2016, and the appointee's final date of service be December 31, 2017, (5) extend the deadline to file the final annual report to March 31, 2021, (6) extend the sunset date of the program by one year, until January 1, 2022, (6) provide additional legislative findings and declarations, and (7) make technical, nonsubstantive changes. **The March 26, 2015 amendments** (1) renamed the program as the Professionals in Public Service program, (2) required that any duties of a professional in public service comply with specified confidentiality requirements in law, and (3) added legislative findings and declarations.
2. **Effect of this bill.** The bill authorizes the BOE's director to annually appoint up to five professionals in public service positions during any calendar year (i.e., 2016 and 2017), to serve on a voluntary basis. The BOE is required to adopt procedures to implement the program by March 1, 2016, and to begin accepting applications within 60 days after their adoption.
3. **The BOE Members discussed this bill at the March 25, 2015 Legislative Committee meeting, but could not support it.** Specific issues expressed by the BOE Members include:

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- Is legislation needed to implement a professional in public service program? The BOE could internally explore a professional in public service program through the BOE's Customer Service & Administrative Efficiency Committee. This Committee's roles and responsibilities include considering issues to improve customer service and administrative efficiencies.
- Should the bill apply to state government in general? A number of state entities that currently provide oversight and investigate state government operations, such as the Little Hoover Commission and the California State Auditor, might benefit from such a program.
- The BOE is a tax administration and collection agency that deals with confidential taxpayer information. Concerns arise over appointees working in BOE offices with the secured data that BOE maintains.

- 4. BOE's confidential taxpayer information.** The bill authorizes, *at the discretion of BOE's Director*, the professional in public service to have access to an office, computer, and other related support services and equipment. The March 26, 2015 amendments require that the professional in public service duties comply with confidentiality requirements in law. Accordingly, a professional in public service professional will only have access to information that is currently available on BOE's public website (nonconfidential information).

In general, most tax and nontax program information received, maintained, or generated by the BOE, Employment Development Department (EDD), Franchise Tax Board (FTB), Department of Motor Vehicle (DMV), and the Internal Revenue Service (IRS) is confidential. Examples of confidential information include:

- Tax account information
- Taxpayer, feepayer, claimant, and employer information
- Employee personnel records
- Criteria used for initiating audit selection
- Methods BOE, EDD, FTB, DMV, and IRS use to safeguard their information, and information about how agencies' computer systems operate
- Information that is considered proprietary, a trade secret, or otherwise protected by law or contract

- 5. Administrative considerations.** The bill lacks implementation processes and requirements related to conflict of interest with BOE activities and the use of BOE resources that would need to be addressed before the bill becomes law. BOE staff is available to work with the author's office to resolve these and other concerns that may be identified.
- 6. Appointees cannot have a conflict of interest with the activities of the BOE.** The extent of the conflict is unclear. Would a corporate officer of a business that holds a seller's permit be eligible? Would corporate officers of a company with a history of not filing and paying their sales and use tax returns on time be disqualified? Does a corporation's audit liability appeal represent a conflict of interest for individuals? BOE staff will work with the author's office to identify circumstances that pose a conflict of interest, and disqualify an individual from participating in the program.
- 7. Other states.** Texas and Virginia have enacted similar, pilot programs referred to as the Entrepreneur-in-Residence Program (EIR). Texas' EIR program is administered by the Texas Governor's Office of Economic Development and Tourism. The Governor or the Governor's designee may appoint not more than 10 entrepreneurs-in-residence to state agencies during each fiscal year. An appointee is a full-time employee of the state agency to which they are appointed.

Virginia's EIR program is administered by the Virginia's Secretary of Commerce and Trade. The Secretary may appoint up to 10 entrepreneurs to serve as entrepreneurs-in-residence with state

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agencies. They serve without compensation but, at the discretion of the head of the agency for which they were appointed, may receive reasonable and necessary expenses incurred in the discharge of their duties as an entrepreneur-in-residence.

Administrative Costs: BOE will incur administrative costs to (1) accept and screen applications, (2) develop procedures to comply with the professional in public service program, and (3) prepare an annual report. Additionally, BOE will incur costs to provide participants with an office space, computer, and other services and equipment. A cost estimate is pending.

Revenue Impact: This bill would have no direct impact on the taxes and fees administered by the BOE.