



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>03/25/04</b>	Bill No:	<b>AB 2442</b>
Tax:	<b>Property</b>	Author:	<b>Harman</b>
Board Position:		Related Bills:	

## BILL SUMMARY

This bill would give cities and counties the right to participate in the assessment appeals process when a state assessed electric generation facility files a petition with the Board to lower the assessed value of its property.

### Summary of Amendments

The amendments to this bill give cities and counties the right to participate in an appeal proceeding brought by a state-assessed electric generation facility, rather than the right to initiate an appeal, as the bill would have allowed when introduced.

### Current Law

Each year the Board of Equalization (Board) determines the fair market value of every electric generation facility subject to state assessment. The Board notifies each state assessee of the value set by the Board by June 1. A state assessee may appeal that value by filing a “petition for reassessment” by July 20.

Revenue and Taxation Code Section 741 provides that the petition for reassessment must be in writing and must state the specific grounds upon which it is founded and that a correction or adjustment of the assessment is warranted.

Regulation 5041 requires that the Board staff submit an analysis of the petition, related documents and a staff recommendation for Board Member Action no later than 30 days prior to the date set for hearing or other action on the petition and a copy be sent to the petitioner. The petitioner may file a written response to the analysis no later than 15 days prior to the hearing.

Under current law petitions for reassessment may only be filed by the party to whom the property is assessed and only a petitioner may participate in the appeal proceedings. Most petitions request a reduction in the value set by the Board.

### Proposed Law

This bill would amend Section 721.5 of the Revenue and Taxation Code to provide that those cities and counties that receive property tax revenues from taxes paid by a state-assessed electric generation facility, as defined, have the ability to obtain information from the Board as well as to provide information to the Board if the facility files a petition for reassessment to appeal the value of a qualified electric generation facility.

Specifically, this bill would amend Section 721.5 of the Revenue and Taxation Code to require the Board to provide a county or city upon its request,

- A copy of a petition, and
- A copy of a Board response to the petition.

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In addition, prior to any Board hearing on the petition, a county or city could request a consultation on the assessed value of the facility. Further, at the hearing, the county or city could submit information regarding the value of the facility or the Board's response to the petition and the Board would be required to review and consider this information.

### In General

**State Assessee Property Valuation Process.** Each year, the Valuation Division of the Board's Property and Special Taxes Department prepares value indicators for state-assessed property as of the January 1 lien date in that year, and submits its value indicators and value recommendations to the Board. For unitary property, values are established by the Board at a public hearing the following May.

**Assessee Review and Comment.** Prior to the Board's annual valuation, a state assessee may review the staff's annual capitalization rate study and its work papers related to value indicators for *unitary* property.

The Board also provides a state assessee with the opportunity to make a presentation to the Board, either in person or in writing, regarding capitalization rates and other matters affecting the Board's valuation of its property. The Board holds public meetings in February and April for these purposes.

**Notification of Value.** After the Board establishes annual values for all state-assessed property, all state assessees are sent notices of assessment that also provide information on the procedure for appealing assessments.

Notices of assessment are mailed by June 1 for unitary property. A property's assessed value becomes final after July 20 of the same calendar year in which the notice is provided for unitary property, unless the assessee files a petition for reassessment.

After receiving the notice of assessment, a state assessee may obtain, by written request, a copy of the appropriate staff capitalization rate study and the final calculations of value indicators relevant to the property to which the notice pertains. If requested, this information must be provided to the assessee prior to the deadline for filing a petition for reassessment.

**Petitions for Reassessment.** For unitary property, a petition for reassessment may be filed no later than July 20. The petition for reassessment must be in writing and must state:

- The name of the property owner;
- The assessee's opinion of the property's value; and
- The precise elements of the Board's valuation being contested. (Appraisal reports, financial studies, and other materials relevant to value must be included and submitted with the petition for reassessment.)

If the assessee wants an oral hearing before the Board, the request must be included in the petition. Otherwise, the Board will consider the merits of the written petition and the Board staff's written recommendation and make its decision at a public meeting (on a nonappearance agenda).

The Board hears petitions for reassessment between the date a timely petition is received and December 31 of the same year. The law requires that the Board hear and decide all petitions no later than December 31.

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**Reassessment Hearings.** Pursuant to the Open Meetings Act provision for public comment, any member of the public, including representatives of local governments and districts, must be afforded an opportunity to present views relevant to the matter of a state assessee's petition for reassessment. As an elected state body, the Board is subject to the provisions of Government Code Section 11120 et seq., also known as the Bagley-Keene Open Meetings Act, which require that all aspects of the decision-making process by state legislative bodies composed of multiple members be conducted in public. The Act gives members of the public the right not only to attend meetings but also to address the presiding body on agenda items, unless those items were the subject of prior meeting of a committee composed exclusively of the members of the same body at which public comment was heard. Government Code Section 11125.7 (a) provides that "[e]xcept as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item.

### Related Legislation

**State Level.** Prior legislation has been introduced to allow local officials to participate as parties in state assessee appeal proceedings. The right to participate as a party is known as "standing."

- In 1997, AB 1027 (Caldera) would have given county assessors standing to participate in state assessee appeals. This bill failed passage on the Assembly Floor.
- In 1989, SB 437 (Kopp) would have allowed counties to appeal the assessment of properties valued by the Board. It also would have required the Board to keep a written, public record of the method of valuation used to value and assess each state-assessed property, and to explain any deviations from the value recommendations of staff.

**Local Level.** Additionally, legislation has been introduced to give interested parties a right to intervene at assessment appeals at the local level.

- In 1996, AB 2178 (Miller) was introduced to require that cities be notified when any property owner filed an assessment appeal to reduce their assessment. No action was ever taken on this bill.
- In 1995, AB 282 (Hauser) was introduced to give redevelopment agencies standing in assessment appeals hearings. This bill failed in the Assembly Revenue and Taxation Committee.

### Related Litigation

**Non-Governmental Third Parties.** The issue of whether a county has standing as a party at a hearing on a petition for reassessment of the value of a state assessee's property has not been addressed by the courts, but a comparable situation arose before a county assessment appeals board in *Stevens v. Fox Realty Corp.* (1972) 23 Cal.App.3d 199. In that case a property owner filed an application for appeal requesting

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that the local assessment appeals board increase the assessment of another person's property. The board considered the application as a request that the board exercise its inherent jurisdiction to increase the assessment and scheduled a preliminary hearing to determine whether there was probable cause for the board to conduct a full equalization hearing. At the preliminary hearing, the board allowed applicant's counsel, through the board, to question its own witness and to interpose objections to the questions of the counsel of the owner of the subject property. The board denied the applicant's request that it invoke its jurisdiction to hold an equalization hearing. The trial court granted the applicant's petition for a writ of mandamus finding that the applicant was a party to the preliminary hearing and that the board had improperly abridged the applicant's right to call, examine and cross-examine witnesses.

The court of appeal reversed the trial court, holding that neither the statutes nor the local assessment appeals board rules authorized the filing of an application to increase the assessment of another person, and that the board was not required by law to act on the application once filed. The court found that the board could, in the exercise of its jurisdiction, set a hearing for the purpose of the presentation of evidence relevant to increasing the assessment of the property. However, the court ruled that "the only 'parties' in a hearing before the board are the county assessor and the person who owns the property which is the subject of the hearing." The applicant was only a witness and, therefore, the board had discretion to control the manner in which the applicant's evidence was presented.

Similarly, *TRIM, Inc. v. County of Monterey* (1978) 86 Cal.App.3d 539, involved an organization claiming to represent members of a group of property tax taxpayers which brought a court action seeking injunctive relief and damages against the county and its assessor for underassessing some properties and, thereby, causing its members to pay a disproportionate share of the cost of county services. The county demurred to the complaint and argued that the organization could not state a cause of action under any set of facts because it had not exhausted its administrative remedy of the assessment appeal process. The court of appeal rejected the county's argument, finding that the Revenue and Taxation Code does not afford an administrative remedy to a taxpayer who seeks to increase the assessment of another taxpayer's property.

**Governmental Third Parties.** Additionally, in *Sacramento County v. Assessment Appeals Board No. 2* (1973) 32 Cal.App.3d 654 and *Sacramento County Fire Protection District v. Sacramento County Assessment Appeals Board* (1999) 75 Cal.App.4<sup>th</sup> 327, the court found that a county and a special district, respectively and appropriately lacked standing at the local appeals level.

#### **COMMENTS:**

1. **Sponsor and Purpose.** This bill is sponsored by the City of Redondo Beach. The purpose is to provide cities and counties with the ability to participate in the assessment appeal process when a state-assessed electric generation facility files a petition for reassessment to lower the assessed value of its property.
2. **March 25 Amendments.** 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 limits the bill to instead grant only a right to participate in an appeal commenced by the property owner. In

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addition, the amendment limits this right to cities and counties rather than any local government or district.

3. **Fairness concerns.** Opponents of this measure state that if third parties are given the opportunity to participate in a state assessee's appeal proceedings, their participation as an outside adversarial party could interfere with the state assessee's right to a fair hearing and a fair outcome.
4. **This bill would apply to a limited type of property.** This bill would apply to a limited type of property – electric generation facilities that are assessed by the state. This may give rise to claims that these provisions deny those assessees equal protection of the laws.
5. **This bill would appear to give counties and cities the right to review the Board's confidential data acquired from state assessees in order to establish an opinion of value.** The Board requires petitioners for reassessment to state the precise elements of the Board's valuation being contested. In addition, appraisal reports, financial studies, and other materials relevant to value and used by the petitioner to support its value must be submitted with the petition for reassessment. This bill does not specifically require cities and counties that obtain this information to uphold its confidentiality.
6. **The Board holds pre-valuation meetings that are open to the public in February and April.** The Board provides each state assessee with the opportunity to make a presentation to the Board, either in person or in writing, regarding capitalization rates and other matters affecting the Board's valuation of its property. Counties and cities may also attend and present their views at these meetings. Cities and counties could also participate in the pre-valuation public hearing process.
7. **Board hearings are subject to the Bagley-Keene Open Meetings Act which requires the Board to afford cities and counties an opportunity to address the Board.** The public comment provision of the Open Meetings Act requires that any member of the public be permitted to state its position before the Board. Cities and other interested parties were provided with the opportunity to address the Board at hearings on petitions for reassessments that resulted in assessed value reductions and gave rise to this measure.
8. **The Board, in its discretion, may allow local governments to submit evidence addressing issues relevant to the valuation of a state assessee's property.** Under existing law, a local government does not have a right to participate in an appeal proceeding but it may submit relevant valuation evidence to the Board under certain conditions if a state assessee has filed a petition. Property Tax Rule 5079(d) gives the Board discretion to allow the introduction of “any relevant evidence, including affidavits, declaration under penalty of perjury, and hearsay evidence, [which] may be presented if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.”
9. **This bill sets a precedent for third party intervention in an appeal proceeding.** Although this bill is limited to electric generation facilities assessed by the Board, once the precedent is set, continued expansion of the concept is likely. There are nearly 5,000 special districts, nearly 1,000 school districts, more than 400 redevelopment agencies, 478 cities and 58 counties that could seek legislation to obtain standing to participate in an appeal proceeding in order to increase property

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assessments to produce more tax revenue or maintain the existing assessment to preserve tax revenues. In addition, the bill may spur similar legislation to allow individuals to participate in appeals proceedings of locally-assessed property to seek an increase in the property assessment or maintain the current level of assessed or oppose a reduction of another person's assessment for improper reasons – i.e., feuding neighbors and competing businesses. One might expect such a challenge from those persons dismayed at the differences in assessed value of similar properties due to the value limitations imposed by Proposition 13's acquisition value based system.

**10. Chaos in the Tax System?** The California Court of Appeal, Third Appellate District has twice held that third party appeals by jurisdictions that receive property tax revenue could lead to chaos. In *Sacramento County v. Assessment Appeals Board* No. 2 (1973) 32 Cal.App.3d 654 and *Sacramento County Fire Protection District v. Sacramento County Assessment Appeals Board* (1999) 75 Cal.App.4<sup>th</sup> 327, the Court held that a county and a special district, respectively, lacked standing to challenge the value of a locally assessed property.

In, *Sacramento County Fire Protection District*, the court noted "As this court recognized in *County of Sacramento*, 32 Cal.App.3<sup>rd</sup> 654 "if any of the agencies for which the county collects taxes is an 'interested party' that may demand [mandamus] review of the [local] board of equalization proceedings-even if all other taxing agencies may be satisfied-and without any strict time limitations, the entire taxing process could be impeded or disrupted." (*Id.* at p. 673, fn. 6.)

**11. Opponents of this measure state that political pressure brought by local jurisdictions with an interest in increasing revenue should not be allowed to influence the Board's value determinations.**

**12. Other States.** Utah is one of a few states to enact statutes that provide counties with standing to participate in hearings on state assessee reassessment appeals. Under the statutes of that state, counties can (1) directly appeal the assessment of a centrally assessed taxpayer, even if the taxpayer does not appeal, and, (2) they can present their position, as an interested party, in a hearing to consider a taxpayer assessment appeal.

**13. Implementation Concerns.** Below is a list of the difficulties and uncertainties in practical implementation of this bill.

- **Confidentially.** It is unclear if the confidentially requirements of Section 833 extend to cities and counties. Additional amendments may be needed to ensure that cities and counties keep this information confidential. Would each city and county be able to share its information with other cities or counties that are similarly situated?
- **Documents.** This bill requires that a copy of the petition be sent to the city or county. Would this requirement also extend to attachments (appraisals, studies, comparables, etc)? These could be costly and time consuming to reproduce.
- **Workload Impact.** Dealing with a third party could significantly impact staff resources in meeting with affected cities and counties, responding to additional requests of information, and other related matters.

- **A tripartite hearing could be difficult to conduct.** Three parties could be presenting information and arguments. Would cities and counties have the right of cross examination? Or does this bill only allow them to present information at the hearings?
- **Board versus Board staff.** This bill does not distinguish between the "board" and "board staff." Some of its provisions would apply to Board staff while others would apply to the Board Members.
- **Information at the Hearing.** This bill allows cities and counties to provide information at the hearing. Relevant information should be provided prior to the hearing to both the Board staff and the petitioner. Allowing a city or county to introduce additional evidence at the hearing may place the petitioner at an unfair disadvantage by denying the petitioner an opportunity to prepare a response.

14. **Related Legislation.** Similar measures to grant standing at both the local level and the state level have failed - AB 1027 (1997), AB 2178 (1996), and AB 282 (1995).

**COST ESTIMATE**

Giving cities and counties standing to participate in the appeals before the Board would result in additional costs. There are currently 41 state assessed electric generating facilities that would be subject to this bill. A detailed cost estimate is pending.

**REVENUE ESTIMATE**

Any revenue loss or gain would be due to the Board making determinations upon appeal different from those currently made when the state assessee has filed the appeal. There is no measurable standard upon which to base an estimate of the outcome of the Board's decisions.

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