From: N.D. Fenton <nanidrew@comcast.net>
Sent: Tuesday, October 29, 2013 2:55 AM
To: Meeting Info; Bennion, Richard
Cc: BOE-Online Suggestions; nanidrew@comcast.net; Bennion, Richard; Smith, Rose
Subject: Public Comment BOE Item MI (oct 29-31, 2013) 7. Timber Yield Tax Rate

EMAILED TO *MeetingInfo@boe.ca.gov*, NO other email address provided for public comment. Please forward this to your board members and the Counsel.

TO: Honorable Jerome E. Horton, Chairman **Date:** October 11,2013 Honorable Michelle Steel, Vice Chair Honorable Betty T. Yee, First District Senator George Runner, Second District Honorable John Chiang, State Controller

SUBJECT **Subject: Delegation of Non-discretionary Administrative Rate-Setting Adjustments to Executive Director-Board Meeting, October 29-31, 2013 Chief Counsel Report-Item MI**

M. Other Chief Counsel Matters

M1. Delegation of Non-discretionary Administrative Rate-setting Adjustments to Executive Director + ... Mr. Ferris

Request for delegation to the Executive Director of certain statutorily mandated, non-discretionary rate-setting adjustments.

As listed on the AGENDA item M1, proposal that mentions tax number 7 (Timber yield Tax Rate) cannot be acted on without more information as to what the proposal is. As written, is assumed to have serious consequences to the landscapes and people of the State of California. Request that information be disclosed to the pubic before proceeding with any approval. The California Board of Equalization administers the Timber Yield Tax program, which sets the harvest value of timber and collects an in lieu tax when it is harvested. The revenue from this program is allocated to the counties where the timber was harvested.

Proposal wiritten by RANDY FERRIS, CHIEF COUNSEL. "Re **Delegation of Non-discretionary Administrative Rate-Setting Adjustments to Executive Director-Board Meeting, October 29-31, 2013 Chief Counsel Report-Item MI Recommendation** Staff recommends that the Board delegate to the Executive Director the authority to determine certain mandated, non-discretionary tax and fee *rate-setting adjustments*."

REASONS AND COMMENTS AND REQUEST TO REMOVE PROPOSED DELEGATION OFFER RE TIMBER YIELD TAX RATE.

1) The necessity is lacking, WHAT is the particular problem a program delegation will solve? "Streamlining" does not make necessity without explanation.
2) No purpose or legal authority is described in any detail whatsoever.
3) The chart referred to does not support the necessity, purpose, while lacks justification, information, what agency assists, etc. The Chart is claiming will give details related to each delegation request. For a such an IMPORTANT, MASSIVE, and CRITICAL program it is unbelievable what is proposed to be removed from public hearings . The delegation is unfounded and influenced by what industry or politics. It has the real possibilities to influence industries selection of timber and where to cut it from. The impacts have not been disclosed or analyzed. The proposal claims the " details related to each delegation request" (which isn't even a sentence long)– it says this: "Timber Yield Tax Rate Property Taxes; R&TC § 38202 ; December January 1; Research and Statistics. Property Taxes prepares PAN material."
4) The chart omits important information under Who develops / determines the rate and who prepares the documents? Answer given for Timber Yield Tax is "Research and Statistics. Property Taxes prepares PAN material" Comparing the only other PROPERTY TAXES section is for Private Railroad Car Tax Rate states "Research and Statistics with information

from county assessors." What is omitted is who develops the rate and by whose information is used to rely on . ANSWER: The information came (comes) from the California Department of Forestry and Fire Protection's Fire and Resource Assessment Program (FRAP) provides and summarizes annual timber harvest data files (include Value and Volume (MBF) statewide, and by county, county-based Bioregion, Timber Value Area (TVA), Species, and Species by TVA tables for the years 1984 through 2011)

5) INTERESTINGLY For 2011 to date, it is not clear on how or what information the BOE staff relies on to determine the value and volume and from what TVA the trees are logged from, nor the species either. How can the BOE staff know the species and volume without the CDF?

6) It appears as if the 2011 and 2012 harvest stats are very skewed and incorrect - who is the oversight and auditor of this information?

7) Additionally, The BOE has a Timber Advisory committee (made up of several county tax assessors, a large corporate representative and an a small business representative, lacks an individual citizen representation. This Timber Tax committee makes up the recommendations on TVA areas.

8) The California Constitution authorizes the legislature to provide a system of taxation or exemption of timber or forest trees, not BOE department staff.

9) The recommendation MISQUOTES the R&T Code it relies on. This is outstanding. Red is the text omitted by Mr. Ferris. The last sentence of the recommendation– it's not imposed unless the law specifically restricts [IS THE MISQUOTE] .... but is imposed unless it is expressly provided Specifically restricts vs. expressly provided are opposites. Your counsel states *"Revenue and Taxation Code section 7 underscores the nature of this delegation in directing*

that "Whenever a power is granted to or a duty imposed on, **any person or** ***the Board,*** **by any provision of this code,** ***it may be exercised or performed by any deputy or person authorized by*** **the person or** ***the Board*** **to whom the power is granted or on whom the duty is imposed** ***unless*** **it is expressly provided that the power or duty shall be exercised or performed only by the person or board to whom the power is granted or on whom the duty is imposed."** ***[ADDED AND NOT THERE: "unless the law specifically restricts the exercise of that particular power or duty. "]***

9) The INFLUENCE this action will have to the entire fate of California's valuable forest trees is unknown and not discussed. Our future landscapes will be left to un named BOE Department staff (likely strategically installed for this very proposal) " who develop and/or determine the legally-mandated, non-discretionary rate-setting adjustments " and is horrifying. International buyers are an influence to our trees, especially Coast Redwood, which are disappearing like you would not believe , is without acknowledgement. A taxing delegation may cause favors to international purchasers, and be without accountability.

10) The rate setting law section begins at 38202 THU 38204. (the charts omits all other R&T sections. The codes mention several times... after public hearing and in accordance with the APA as well as the board certifying to the Director of Finance and to the Legislature.... Nothing in this AGENDA is described as to the changes and possible results to our forests and trees that this new delegation will hold.

11) Disclosure of conflicts of interest is withheld, please discuss. Who or what made this on an obscure agenda, that is only discovered by accident.

12) How will the action effect I.R.S. (federal) laws?

13) It is a fact that harvests on private lands will continue to drive the overall domestic supply stream. Economics and REGULATORY policies (such as this proposal by BOE) will continue to drive the level of harvesting on private lands. There has been an astounding tree cutting spree EVERYWHERE. Major coast redwood logging is occurring in residential populated residential neighborhoods in Santa cruz unincorporated. We are sitting ducks for un-assessed fire catastrophy – while the BOE seems to be influencing the rate of harvest into our homes without offering explanation.

14) Harvesting redwood "burl" root systems are being excavated without BOE's acknowledgement, allowing this major black market enterprise to continue.

15) Finally, pursuant to Cal. Rev. & Tax. Code §432. Any rule or regulation required to be adopted pursuant to this article shall be in compliance with procedures set forth for adoption of rules under the Administrative Procedure Act. The

delegation of this program in this manner may be found to be an "underground" regulation by the Office of Administrative Law which will be prepared for submitting unless this proposal is removed.

Thank you for considering these important comments.
DREW FENTON
BOULDER CREEK CA

Cite as: Cal. Rev. & Tax. Code §7. Whenever a power is granted to, or a duty imposed on, any person or board by any provision of this code, it may be exercised or performed by any deputy or person authorized by the person or board to whom the power is granted or on whom the duty is imposed, unless it is expressly provided that the power or duty shall be exercised or performed only by the person or board to whom the power is granted or on whom the duty is imposed.