

**STATE BOARD OF EQUALIZATION  
GOVERNANCE POLICY**

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# STATE BOARD OF EQUALIZATION GOVERNANCE POLICY

## STATE BOARD OF EQUALIZATION

### GOVERNANCE POLICY

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# STATE BOARD OF EQUALIZATION GOVERNANCE POLICY

## I. PURPOSE

This Governance Policy is established to:

- A. Set forth the policies that govern the State Board of Equalization (the “Board”) consistent with its constitutional and statutory responsibilities.
- B. Guide the Board in managing the effectiveness and integrity of the Board's processes, including oversight, accountability, transparency, efficiency and decision-making.
- C. Identify and distinguish between the roles of the Board, Board Chair and Vice Chair, Board Members and Executive Director.

This Governance Policy applies to both Board Members and their staff.

## II. MISSION STATEMENT

The mission of the Board is to serve the public through fair, effective, and efficient tax administration [using open and transparent processes and communication](#). [Gov. Code Sec. 15651, Cal. Const. art. 1, sec. 3.](#)

## III. THE BOARD

Established in 1879 by a constitutional amendment, the Board was initially charged with responsibility for ensuring that county property tax assessment practices were equal and uniform throughout the state. Over the years, the legislature expanded the Board’s subject matter to include many taxes and fees. In 2017 and 2018, the legislature created two new tax administration and appeals agencies, reassigning some of the Board’s tax functions. As a result, the Board has rededicated itself to focusing on its historical responsibility of property tax oversight and its constitutional responsibilities.

As the nation's only elected tax commission, the Board’s five elected members serve concurrent four-year terms. Their popular election ensures that the Board's tax program administration remains directly accountable to the people. Four members are elected by district. The fifth member, the State Controller, is elected at large and serves in an ex officio capacity.

## IV. TAX PROGRAMS

The California Constitution and the Revenue and Taxation Code vests in the Board the administration of three tax programs; (1) Alcoholic Beverage Tax, (2) Tax on Insurers, and (3) Property Tax.

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The Revenue and Taxation Code vests the Board with the authority to hear appeals related to the constitutional tax programs: ~~The Board also hears various appeals:~~

- State Assessed Property Appeals
- Appeals of Denials of Organizational Clearance Certificates/Supplemental Clearance Certificates
- Tax on Insurers Appeals
- Alcoholic Beverage Tax Appeals
- Appeals relating to Section 11 Property (Lands owned by local governments that are outside their boundaries.)

In addition to administering these programs, the Board plays a critical role with regard to California property taxes. The Board acts in an oversight capacity to ensure compliance by County assessors with property tax laws, regulations, and assessment issues. To perform the oversight functions, the Board's Property Tax department conducts periodic compliance audits (surveys) of the 58 county assessors' programs, and develops property tax assessment policies and informational materials to guide county assessors and local assessment appeals boards.

## V. GOVERNANCE PRINCIPLES

The following governance principles will guide the conduct, decision-making and behavior of the Board and provide a framework for the development of policies and practices that will **drive support** the achievement of the Board's goals:

### A. Ethical Leaders

The Board Members and the Executive Director share values about what is important and work together with mutual respect in a constructive partnership. Together, the Board Members and the Executive Director set the tone at the top that permeates the organization. The Executive Team, which is selected and directed by the Executive Director, also embrace the same values of respect and partnership.

### B. Open and Accountable

The Board Members and Executive Director are accountable to the legislature and taxpayers for assessing and collecting the proper amount of taxes due. The Board Members and the Executive Director shall be appropriately open in the way key decisions are made and publicly disclosed.

## VI. CONFORMITY WITH STATE LAW AND AVOIDANCE OF CONFLICTS OF INTERESTS

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Board Members will, at all times, act in the best interest of the State of California and its taxpayers. As such, Board Members shall adhere to state laws, including the following:

## **A. Bagley-Keene Open Meeting Act**

(Government Code Section 11120 et seq.)

**NOTE: CHAIRMAN AND VICE CHAIR ARE CONTINUING TO WORK ON EDITS IN THIS AREA AND WILL BE PRESENTING THEIR SUGGESTED CHANGES AT A LATER TIME.**

## **B. Conflict of Interest**

It is the policy of the Board of Equalization (BOE) to be committed to service and accountable to the public. The public's confidence can be maintained only to the extent that the BOE's official activities and contacts with the public reflect the highest ethical and moral standards.

Board Members will not act where there may be a conflict of interest or appearance of a conflict of interest, unless legally required to do so. A conflict of interest is understood to be a situation where a relationship exists that could reasonably be expected to diminish independence of judgment in performance of official responsibilities as a Board Member.

Board Members will not seek nor accept any compensation or political contributions that would violate California law, including without limitation: the Quentin L. Kopp Conflict of Interest Act of 1990 (Government Code section 15626), the Political Reform Act of 1974 (Government Code sections 81000, et seq.), and the Code of Ethics (Government Code sections 8920 et seq.). Conflict of interest shall include receipt of compensation or gifts from private persons or firms for advice or other services relating to the taxation or assessment of property.

### **1. Conflicts of Interest (Political Reform Act of 1974)**

(Government Code section 87100 et seq.)

No Board Member shall make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which the Member knows or has reason to know he or she has a financial interest. (Government Code section 87100.)

Prior to participating in any proceeding before the Board, the Board Member will consider whether it is reasonably foreseeable that the governmental decision will have a financial effect on the Member's financial interests. If the personal financial effect is material and distinguishable from any effect that would apply to the public generally, the Board Member will refrain from making, participating in making, or in any way attempting to use their position to influence the outcome of the decision.<sup>1</sup>

### **2. Quentin L. Kopp Conflict of Interest Act of 1990**

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<sup>1</sup> Except if a Member's participation is legally required for Board Action (Government Code section 87101.)

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(Government Code section 15626)

Board Members may not participate in adjudicatory proceedings in which they have received a disqualifying contribution of \$250 or more.<sup>2</sup>

Prior to rendering any decision in any adjudicatory proceeding pending before the Board, each Member who knows or has reason to know that he or she received a contribution or contributions within the preceding 12 months in an aggregate amount of two hundred fifty dollars (\$250) or more from a party or his or her agent, or from any participant or his or her agent, shall disclose that fact on the record of the proceeding pursuant to Government Code section 15626.

No Board Member shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in any adjudicatory proceeding pending before the Board if the Member knows or has reason to know that he or she received a contribution or contributions in an aggregate amount of two hundred fifty dollars (\$250) or more within the preceding 12 months from a party or his or her agent, or from any participant or his or her agent, and if the Member knows or has reason to know that the participant has a financial interest in the decision, as that term is used in Article 1 (commencing with Government Code section 87100) of Chapter 7 of Title 9. However, a Member may participate in making the decision in any adjudicatory proceeding provided the contribution has been returned in the manner provided in Government Code section 15626 (d).

Violation of this provision by any Member of the Board shall constitute malfeasance in office. (Government Code section 15625.)

### **3. Incompatible Activities and Ethical Guidelines for Professional Conduct**

(Government Code sections 8920 and 19990)

Board Members shall comply with the Code of Ethics by not having any interest, financial or otherwise, direct or indirect, or engaging in any business or transaction or professional activity, or incurring any obligation of any nature, that is in substantial conflict with the proper discharge of his or her duties in the public interest and of his responsibilities as prescribed in the laws of this state. (Government Code section 8920.)

Board Members and staff shall not engage in any gainful profession, trade, business or occupation whatsoever for any person, firm or corporation, or be so engaged in their own behalf, which profession, trade, business or occupation is incompatible or involves a conflict of interest with their property tax duties as members and employees of the board. (Government Code section 19990.)

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<sup>2</sup> Except if a Member's participation is legally required for Board Action (Government Code section 15626(i)(5)).

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Board Members and staff will abide by the Board of Equalization's Incompatible Activities Policy and Ethical Guidelines for Professional Conduct.

## **C. Mass Mailing at Public Expense**

(Government Code Section 89001)

Pursuant to the Political Reform Act, Board Members will not mail newsletters and mass mailings at public expense (Government Code Section 89001). A mass mailing is defined as "over two hundred substantially similar pieces of mail" not including a "form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry" (Government Code Section 82041.5). The Fair Political Practices Commission (FPPC) Regulations, Title 2, Division 6, Sections 18901 and 18901.1 narrow this prohibition to those mailings featuring or including the name, office, photograph, or other reference to an elected official affiliated with the agency producing or sending the mailer. Additionally, the prohibition applies to mailings that are campaign related, sent by governmental agencies and paid for with public moneys. Pursuant to the pre-election mail policy adopted by the Board on November 17, 2016, Board Members are restricted from any mailing 60 days prior to a general or primary election.<sup>3</sup>

## **D. Behested Payments**

(Government Code Section 82015)

Board Members will not seek nor accept any gifts (as defined in the California Political Reform Act), or reimbursement for travel or any other activity, that are prohibited pursuant to the Political Reform Act of 1974 (Government Code Sections 81000 et seq.), the Board's Statement of Activities That Are Inconsistent, Incompatible, or in Conflict with the Duties of a Board Member and/or any other applicable Board policies.

The Political Reform Act of 1974 provides that behested payments are permissible, so long as they are not made for personal or campaign purposes. Board Members receiving behested payments totaling \$5,000 or more from a single source in a calendar year are required to report the behested payment on California Form 803 within 30 days of the payments.

## **E. Gift and Travel Restrictions and Limitations**

(Government Code Sections 86203, 86204, 89502, 89503, 89506)

The Political Reform Act imposes limits and other restrictions on gifts and the receipt of travel payments by Board Members and employees who are designated in the agency's Conflict of Interest Code (COI Code). Board Members and staff designated in the COI Code

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<sup>3</sup> November 17, 2015 Customer Service Committee Minutes, [Pre-Election Mail Policy](#)

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cannot accept a gift or gifts totaling more than \$10 in a calendar month from any individual who is registered as a lobbyist under state law.

Board Members are prohibited from receiving a gift or gifts totaling more than ~~\$470~~ (Effective January 1, 2017—December 31, 2018; \$500 (effective January 1, 2019-December 31, 2020) in a calendar year from any source.

Board Members are prohibited from receiving honoraria payments. An honorarium is a payment received for making a speech, publishing an article or attending any public or private conference, convention, meeting, social event, meal or similar gathering.

### **F. Statement of Economic Interest**

(Government Code Section 87200)

The Political Reform Act requires Board Members to make a full disclosure of all economic interests located within California. Investments, interests in real property, business positions held, and income (including loans, gifts, and travel payments) received during a covered period must be reported.

### **G. Use of State Resources**

(Government Code Section 8314)

Pursuant to Government Code Section 8314, it is unlawful for a Board Member to use or permit others to use state resources for a campaign activity, or personal or other purposes which are not authorized by law. A state resource means any property or asset owned by the state or any local agency, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and state-compensated time (Government Code Section 8314 subdivision (b)(3).) Staff time of Board employees, including those on Board Members staff is considered a state resource.

The use of state resources is appropriate and consistent with state law when it has a meaningful connection to the Board's areas of responsibility, and the use of that resources is not for a personal or campaign purpose.

Board Members are not free to spend public funds for any public purpose they chose. Appropriated funds may only be utilize in accordance with the Board's constitutional or legislative purpose. (*Stanson v. Mott* (1976) 17 Cal. 3d 206, 213).

### **H. Use of Public Funds to Support or Oppose a Ballot Measure.**

The Board and individual Board Members are subject to the prohibition against the use of public funds for any communications that advocate a particular result in an election on ballot measures, which the California courts have held is an interference with the free



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election of the people under Cal. Const. art. II, sec. 2. (*Vargas v. City of Salinas*, 46 Cal. 4th 1 2009) However, since the courts have authorized public agencies to provide accurate, factual and impartial information about a ballot measure within their subject matter jurisdiction, the Board collectively may do so in a manner, style, tone and specific timing that does not urge a particular vote.

## VII. ROLE AND POWERS OF THE BOARD

A. The Board is authorized to and/or shall do all of the following:

1. Prescribe rules for its own ~~government~~ governance and for the transaction of its business. Gov. Code Sec. 15606(a).
2. Hold meetings each month at times and places within the state as the Chair directs. At least one regular meeting shall be held in Sacramento each quarter. The board may hold special meetings at such times and places as the chairperson directs. At any meeting the board may transact any and all business and perform all duties imposed upon it and give and enter any and all orders and decrees within its jurisdiction. Gov. Code Sec. 15609.
3. Meet at least once annually with ~~the~~ county assessors to study or discuss property tax issues and promote uniformity of procedures throughout the State of California.
4. Keep a record of all its proceedings. (Gov. Code Sec. 15606 (b)).
5. Review, equalize, or adjust property tax assessment pursuant to Section 11 of Article XIII of the California Constitution and any duty, power, or responsibility conferred by statute on the board in connection with that review, equalization, or adjustment. Gov. Code Sec. 15600(b)(1).
6. Measure the county assessment levels and adjustment of secured local assessment rolls pursuant to Section 18 of Article XIII of the California Constitution and any duty, power, or responsibility conferred by statute on the board in connection with that measurement and adjustment. Gov. Code Sec. 15600(b)(2).
7. Assume responsibility ~~Provide~~ for the assessment of pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties and property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity pursuant to Section 19 of Article XIII of the California Constitution, as well as the equalization of that assessment and any duty, power, or

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responsibility conferred by statutes on the board in connection with that assessment. Gov. Code Sec. 15600(b)(3), RTC Sec. 721.

8. Assume responsibility ~~Provide~~ for the assessment of taxes on insurers pursuant to Section 28 of Article XIII of the California Constitution and any duty, power, or responsibility conferred by statute on the board in connection with that assessment and equalization. Gov. Code Sec. 15600(b)(4).
9. Assume responsibility ~~Provide~~ for the assessment and collection of excise taxes on the manufacture, importation, and sale of alcoholic beverages in this state pursuant to Section 22 of Article XX of the California Constitution and any duty, power, or responsibility conferred by statute on the board in connection with that assessment and collection. Gov. Code Sec. 15600(b)(5).
10. Assume responsibility ~~Provide~~ for the administration of the welfare exemption provided by Section 214 of the Revenue and Taxation Code and the veterans' organization exemption provided by Section 215.1 of the Revenue and Taxation Code, including issuing an organizational clearance certificate and reviewing assessors' administration of those exemptions as required pursuant to Sections 254.5 and 254.6 of the Revenue and Taxation Code. Gov. Code Sec. 15600 (b)(6).
11. Assume responsibility ~~Provide~~ for ~~the administration of~~ receiving a change in ownership statement required to be filed due to a change in control or a change in ownership of a corporation, partnership, limited liability company, or other legal entity ~~the Change in Ownership statement~~ pursuant to Sections 480.1 and 480.2, respectively, of the Revenue and Taxation Code. Gov. Code Sec. 15600(b)(7).
12. Assume responsibility ~~Provide~~ for the administration of Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Gov. Code, commonly known as the Tax-Rate Area System ~~pursuant to Government Code Section 54900~~. Gov. Code Sec. 15600(b)(8).
13. Prescribe rules and regulations to govern local boards of equalization when equalizing, and assessors when assessing, including uniform procedures for the consideration and adoption of written findings of fact by local boards of equalization as required by Section 1611.5 of the Revenue and Taxation Code. Gov. Code Sec. 15606(c).
14. Prescribe and enforce the use of all forms for the assessment of property for taxation, including forms to be used for the application for reduction in assessment. Gov. Code Sec. 15606(d).

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15. Prepare and issue instructions to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation. ~~‡ The Board~~ may adapt the instructions to varying local circumstances and to differences in the character and conditions of property subject to taxation ~~as in its when judged judgment is~~ necessary to attain this uniformity. Gov. Code Sec. 15606(e).
16. Issue rules, regulations, instructions, and forms relating to classifications of kinds of property and evaluation procedures including but not limited to subdivisions (c), (d) and (f) of Gov. Code Sec. 15606. Gov. Code Sec. 15606(f).
17. Prescribe rules and regulations to govern local boards of equalization when equalizing and assessors when assessing with respect to the assessment and equalization of possessory interests. Gov. Code Sec. 15606(g).
18. Bring an action in a court of competent jurisdiction to compel an assessor or any city or county tax official to comply with any provision of law, or any rule or regulation ~~of the adopted~~ in accordance with Gov. Code Sec. 15606, subdivision (c), ~~by the Board adopted~~ governing the assessment or taxation of property. The Attorney General shall represent the board in the action.
19. ~~Set,~~ Conduct and ~~decide~~ determine tax appeals related to its constitutional function including but not limited to: petitions for reassessment of unitary or nonunitary property and for correction of an allocated assessment with decisions of the board on such petitions completed on or before December 31 (RTC sections 742-749); petitions on a denial of a claim for an Organizational Clearance Certificate for the welfare exemption or a Supplemental Clearance Certificate (RTC sections 214, 254.6, 270); and Insurance tax appeals on the gross premium tax (RTC section 12221).
20. Conduct the hiring, evaluation, and termination of the Executive Director. Pursuant to Gov. Code Sec. 15604, the board may appoint its secretary/ED and prescribe and enforce his/her duties. The secretary shall hold office during the pleasure of the board and shall receive such compensation as the board prescribes. It may employ such expert and clerical assistants as it deems necessary in the performance of his/her powers and duties.
21. ~~Approve~~ Authorize the initiation or settlement of litigation involving material sums or having a substantial impact on the program operations of the Board. Bring an action in a court of competent jurisdiction to compel an assessor or any city or county tax official to comply with any provision of law governing the assessment or taxation of property. Gov. Code Sec. 15606(h)

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22. [Note: Purple edits delete this paragraph and move it to Section VIII A.] Conduct election of the Board Chair and Vice ~~Chair~~President in January on the last meeting day of the December meeting of each year. The term of the Chair and Vice Chair will start on January 1 of the following year and end on December 31<sup>st</sup>. A member may be elected to serve in the position of Chair or Vice Chair for multiple terms and/or consecutive terms. (What day in Jan?)
23. "Organization of the Board – Chair and Vice Chair Elections" is a mandatory agenda item for the December Board Meeting and this agenda item does not require the Chair's approval.
24. Report annually to the Governor, showing: (a) the assessed value of state-assessed and locally assessed real and personal property in each incorporated city or town; (b) Information concerning other taxes it administers; (c) further information and suggestions as it shall deem proper. Gov. Code Sec. 15616.

### B. Agency Staff.

Except for the Executive Director position, the Board does not have the authority to appoint, remove, discipline, assign, reassign, promote, demote, or issue orders to any employee of the agency, including, but not limited to, the career executive assignment positions and other non-civil service managers. The Executive Director is solely responsible for selecting persons for career executive assignment positions and other non-civil service managers for the Board.<sup>4</sup> Gov. Code Sec. 15600 (h). However, pursuant to Gov. Code Sec. 15604, the Board may instruct the Executive Director to introduce or provide information on expert assistants and employees, including those who are newly hired, promoted or reassigned and receive a description of their position qualifications and job duties, in order to learn how they assist in the performance of her job and conduct the people's business. Cal. Const., art. I, section 3; Gov. Code Sec. 6252.<sup>5</sup>

### C. Budget Change Proposals.

Neither the Board nor a Board Member can modify or approve budget change proposals for the agency. The Executive Director shall modify or approve all budget change proposals for the agency.<sup>6</sup> However, all conceptual and actual budget change proposals constituting public records may be discussed in open session before the Board, including all costs,

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<sup>4</sup> Government Code Section 15600(h)

<sup>5</sup> Notwithstanding the definition of "member of the public" in Section 6252, an elected member or officer of any state or local agency is entitled to access public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

<sup>6</sup> Government Code Section 15600((i)

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benefits, program enhancements, and other details, which the Members, BOE stakeholders and the public are entitled to know. Cal. Const. art. I, section 3; Gov. Code Section 6252.5

## D. **Legislative Analysis.**

Neither the Board nor a Board Member can interfere with or influence the process of the agency's legislative analyses, revenue analyses, or any other form of technical assistance requested by the Governor or the Legislature.<sup>7</sup> However, anything that constitutes a public record, including but not limited to legislative/revenue analysis and technical assistance may be distributed and discussed in open session before the Board, BOE stakeholders and the public; and the Board may vote to support, oppose or remain neutral on the language in any bill. Cal. Const., art. I, section 3; Gov. Code Section 6252.5.

- E. Neither the Board nor a Board Member can reduce expenditures or redirect funding or personnel resources away from direct auditing or collection activities without prior approval of the Department of Finance.<sup>8</sup>
- F. All Board Member procurements shall be processed through the Department of General Services.<sup>9</sup> All acquisition and procurement, including the leasing of office space, shall be processed by the Executive Director through the Department of General Services. The Department of General Services has the final decision making authority for all acquisition or procurements made by or on behalf of Board Members or Board Members' staff.<sup>10</sup>
- G. As the Board has the authority to prescribe rules for its own governance, the Board may implement public disciplinary action against a Board Member whose conduct fails to meet the standards outlined in or ~~violates in violation of~~ this Governance Policy, or whose conduct is otherwise inconsistent with Board policies. Discipline will be at the discretion of the Board, after considering the nature and number of violations, and may include, but need not be limited to, admonishment, censure, and/or the requirement of additional training. Any public discipline will be imposed in open session at a duly-noticed meeting of the Board, and only acted upon adoption of a motion by the Board.<sup>11</sup>

## VIII. **ROLE OF THE BOARD CHAIR AND VICE-CHAIR**

### A. **Rotation/Election of the Board Chair and Vice Chair.** (additional options)

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<sup>7</sup> Government Code Section 15600(j)

<sup>8</sup> Senate Bill 840 Chapter 29 (Budget Act of 2018), provision 1.

<sup>9</sup> Government Code section 15600(k).

<sup>10</sup> Senate Bill 840 Chapter 29 (Budget Act of 2018), provision 3.

<sup>11</sup> Government Code section 15606(a)

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- The Board Chair and Vice Chair shall serve a one-year term from January to December and each position will rotate on annual basis in order of equalization districts. (current)
- Conduct election of the Board Chair and Vice Chair in January of each year. (moved from Section VII)
- The Board shall conduct an open election of the Chair and Vice Chair every two (2) years. If there is a tie vote, then the Chair and Vice Chair positions will rotate to the next equalization districts (in numerical order) for one year until another election is conducted. (Chair's proposed option.)

## ~~A. Rotation of the Board Chair and Vice Chair~~

~~The Board Chair and Vice Chair shall serve a one-year term from January to December and each position will rotate on annual basis in order of equalization districts.<sup>12</sup> (What day in Jan?)~~

## **B. Role of the Board Chair**

The Chair approves Board meeting agendas and may add additional meetings to the Board's meeting calendar. Prior to the Board meeting and once the item has been noticed to the public, the Chair may remove from the calendar an oral hearing on an adjudicatory matter in which the parties themselves have requested that the matter be removed.

The Chair convenes and adjourns Board meetings, and calls agenda items. The Chair conducts hearings on agenda items, including taxpayers' appeals, and conducts the subsequent Board vote. During an oral hearing on a taxpayer's appeal, the Chair may grant parties additional time to complete their presentations and the Chair may limit the time for a presentation that has no other purpose than to delay the Board's proceedings.

The Chair provides leadership to the Board in terms of collegiality, civility and ethical conduct. The Chair limit meeting discussion content to those issues that, according to Board policy, are within the Board's responsibility. The Chair ensure timely, fair, orderly, thorough and efficient deliberations, including enforcement of Robert's Rules of Order.

The Chair serves as a member of the Franchise Tax Board along with the State Controller and the Director of Finance. Since the Franchise Tax Board was established by statute, the Chair may designate his or her Deputy to serve at meetings of the Franchise Tax Board.

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<sup>12</sup> Board Action on January 29, 2019.

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## C. Role of the Vice-Chair

In the absence or incapacity of the Chair, the Vice-Chair will have the authority delegated and established by Board policy and in general conformance with the authority of the Chair.

## IX. BOARD MEMBER ROLES, RESPONSIBILITIES AND CONDUCT

Each Board Member representing an equalization district must devote his or her entire time to the services of the state in performing the duties imposed upon the Board and its Members by the California Constitution and statutes.<sup>13</sup>

Each Board Member elected by a district will have only one office in Sacramento, and a staff consisting of two staff persons who are exempt from civil service pursuant to Section 4 of Article VII of the California Constitution and any other civil service positions approved by the Legislature through the budget.<sup>14</sup> Senate Bill 840, the Budget Bill Act of 2018, Chapter 29, provides for four civil service positions.

With the repeal of Government Code Section 15623, a Board Member can no longer investigate the administration, enforcement, and operation within the district from which the Board Members was elected.<sup>15</sup> ~~However, upon a motion approved by the Board in open session, Board Members may individually or collectively in order to be in compliance with this repeal, no individual Board Member is allowed to~~ inspect the work of any local officers whose duties relate to the assessment of property, as ~~authorized provided~~ by Government Code Sections 15612, 15611 and 15613 ~~without a motion approved by the Board in open session.~~

## A. Governing Style

The Board ~~and the Executive Director are is~~ responsible for creating and maintaining an atmosphere that encourages frank and collegial discussions both at the Board and as between the Board and management. The Board strives to achieve a governing style that emphasizes:

1. Strategic leadership.
2. Civility and courtesy, to both those with whom the Board Members interact and between Board Members.
3. Respect for diversity, recognizing the value of all input.

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<sup>13</sup> Government Code Section 15603

<sup>14</sup> Government Code Sections 15600(f) and (g)

<sup>15</sup> AB 102 - Taxpayer Transparency and Fairness Act of 2017 (Chapter 16, Statutes of 2017)

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4. Governance by consensus.
5. Ethical conduct of Board business to avoid even the appearance of impropriety.

## B. Board Member Competencies

~~In order to be more effective members of the Board,~~ Board Members are expected to develop an understanding of the following Governance Competencies:

### ~~Governance Competencies:~~

1. The role and responsibilities of Board Members;
2. The Board Governance Policy and other Board policies;
3. State laws regarding the Open Meeting Act, Public Records Act, conflicts of interest and other legal and ethical requirements;
4. The Board of Equalization's organizational structure and the roles of executive staff.
5. ~~The Open Meeting Act and the Public Records Act;~~
6. The role of the Board of Equalization as a state agency; and-
7. The proper conduct of Board Meetings, committee or other work/business meetings and appeals, in accordance with rules and decision-making processes adopted by the Board.

## C. Questions on Agenda Items

Individual Board Members should direct questions at meetings regarding specific agenda items to the Executive Director, or to any person designated on the agenda or introduced to speak at the meeting.

## D. Communications with Third Parties

Pursuant to Government Code Sections 15609.6 any contacts and communications between individual Board Members and parties with a proceeding pending before the Board shall be treated as "ex parte communications." These communications are restricted under Government Code Section 11430.10, which provides that while a proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to



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participate in the communication. A proceeding is pending from the issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.

An "adjudicatory proceeding" to which the ex parte prohibition applies is a proceeding that is an "evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision. (Gov. Code Sec. 11405.20). A decision is "an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person. (Gov. Code Sec. 11405.50). Thus, "adjudicatory proceedings" do not apply to quasi-legislative proceedings, or to quasi-legislative acts involving the adoption of rules of general application on the basis of broad public policy, nor acts involving the adoption of non-regulatory guidelines or publications.

## E. Participation in Operations, Staff Meetings and Activities

Individual Board Members ~~are~~ should not ~~to~~ become involved in operational management ~~and should nor~~ participate in routine staff meetings or other staff activities unless specifically requested by the Executive Director ~~or they are otherwise authorized to attend.~~ Gov. Code Secs. 15600(h)(1), 15610, 15651-15652.

## F. Communications with ED's Designated Staff and Assistance in Responding to Inquiries and Correspondence

Inquiries or correspondence addressed to a Board Member, which the Board Member wishes to direct to staff for a response or assistance in the preparation of a response, should be forwarded ~~directly~~ to the Executive Director.

[NOTE: RECOMMENDATION: We recommend that the Executive Director develop Communication Protocols for Board Members to reference in the Governance Policy, so that open and reliable lines of communication may be implemented between Board Members and the Executive Director together with her respective Deputy Directors, Chiefs and Taxpayer Rights Advocate, in order to address Member inquiries from BOE stakeholders and California taxpayers, "who are entitled to tax administration and appeals processes that are fair, transparent, consistent, equitable, and impartial." "Such a system is vital for both taxpayers and their businesses as well as the state's ability to pay for public services." AB 102, section 2(a), Gov. Code sec. 15610. We believe that the Communication Protocols should accurately reflect the language in both Gov. Code sections 15600(h) and 15610. Section 15610 plainly authorizes the Board Members to "confer" *with state officers or employees of this state*, and Section 15600(h) does not prohibit the Board Members from "conferring"; rather it prohibits Members from *appointing, removing, disciplining, assigning, reassigning, promoting, demoting or issuing orders to any employee*. We recommend that the Executive Director develop and propose Communication Protocol regarding the act of "conferring."

## ~~G. Civility and Courtesy~~

# STATE BOARD OF EQUALIZATION GOVERNANCE POLICY

~~Each Board Member should commit to conduct him/herself at all times with civility and courtesy, to both those with whom the Board interacts and to his/her colleagues.  
(Redundant: stated in Section IX, paragraph A.)~~

## H. Confidentiality

Board Members, ~~the Executive Director and her staff~~ will not reveal confidential matters and will not use confidential information for personal gain or for the benefit of outside interests. ~~Gov. Code Sec. 15619.~~

## H. Attendance at Meetings

Each Board Member or authorized deputy should attend every meeting of the Board, and every meeting of a committee of which s/he is a member. Periodic absences for illness or other non-avoidable personal and professional reasons are expected.

## I. Board Member Vacancy

If a Member leaves office before his or her term expires, the Member's Chief Deputy is authorized to discharge the constitutional and statutory duties of the office until a successor assumes office.<sup>16</sup>

## X. THE ROLE OF THE EXECUTIVE DIRECTOR

The Executive Director is appointed by the five-member Board. The Executive Director is responsible for implementing policies adopted by the Board and the day-to-day operations of the agency. Through a conferring power resolution, the Executive Director performs all acts and things enjoined by law or required by the Board. The Executive Director hold the office at the pleasure of the Board. If the Board is not satisfied with the performance of the Executive Director, the Board may discipline or replace him or her, but will not otherwise get involved in the ~~details~~ day-to-day operations.<sup>17</sup> ~~Consistent with the Resolution Conferring Powers, "all of the authority delegated to the Executive Director is to be exercised under the general direction of the Board and in accordance with policies enunciated by the Board," including this Governance Policy, and "such delegation shall not constitute the relinquishment of any power, jurisdiction or responsibility of the Board Members."~~

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<sup>16</sup> Government Code Section 1775 and Attorney General Opinion 96-1106, December 31, 1996

<sup>17</sup> Government Code Sections 15604; 15605; and [March 27, 2018 Conferring Power Resolution, Option B](#)



**ANTONIO VAZQUEZ**  
CHAIRMAN  
CALIFORNIA STATE BOARD OF EQUALIZATION

**MEMORANDUM**

**Date:** October 16, 2020

**To:** Ted Gaines, Board Member  
Malia M. Cohen, Board Member  
Betty T. Yee, State Controller

**From:** Antonio Vazquez, Board Chairman  
Mike Schaefer, Board Vice Chair

**Re:** **Fact Sheet: Rationale for Proposed Updates to the Board's Governance Policy.**

The Vice Chair and I submitted for your consideration proposed edits and updates to the Governance Policy focusing on three primary goals: (1) correct omitted language and legal authorities, (2) add clarifying information to specify what Members can and must do, in contrast to current language specifying what they cannot do; and (3) edit for functional best practices that in many instances have been put in place since the original Policy was adopted.

Our overarching purpose is for the Policy to serve as an authoritative guide for Board Members to quickly find clear answers to questions regarding their powers, duties, and limitations for which they are collectively and individually accountable under the state constitution and statutes. Following is a list of the reasons and rationales underlying each type of update proposed:

**SECTION II. MISSION STATEMENT.** (p. 3)

**Rationale.** Language added to reflect the unique open public processes the elected Members must follow by law. Cal. Const. Art. 1, sec. 3 (b) (1), "the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." Gov. Code §15610 (b), makes a specific declaration regarding the Board: "The Legislature finds and declares that greater disclosure and better understanding of tax laws and regulations will encourage increased tax compliance."

- The mission of the Board is to serve the public through fair, effective, and efficient tax administration *using open and transparent processes and communication.*

**SECTION IV. TAX PROGRAMS & SUBJECT MATTER JURISDICTION.** (p.5)

**Rationale.** Clarifies that the Board is vested with statutory authority to hear the various tax appeals.

- The Revenue and Taxation Code vests the Board with the authority to hear appeals related to the constitutional tax programs: ~~Board also hears various appeals:~~

**SECTION VI. CONFORMITY WITH STATE LAW AND AVOIDANCE OF CONFLICTS OF INTERESTS**

**Paragraph A. Bagley-Keene Open Meeting Act.** (Gov. Code §11120 et seq.) (p. 5)

*Note: The Chairman and Vice Chair are continuing to work on edits in this area and will be presenting their suggested changes later.*

**Rationale:** We found the Bagley Keene Act, Attorney General opinions, court cases, and Little Hoover Commission Reports interpreting its complexity and length.

In an effort to make correct and practical applications to enhance transparency for the public and functionality for the Board Members, we recommend that the Executive Director and the Chief Counsel work with the Vice Chair and another Member to develop operational “Bagley-Keene Protocols & Procedures” for Board Members to reference and incorporate in the Governance Policy. Protocols should address practices and procedures that have been questioned as unclear or confusing, such as, “subject matter jurisdiction,” an “item of business” whether or not on an agenda, serial meeting prohibitions and “the possibility of developing a quorum,” the “social gathering” exception, and all related matters.

The goal is to identify and describe operational protocols that are positive, functional, and useful for the current and future Boards. Members and their staff must know what is permissible, in addition to what is prohibited, in order to ensure that the intent of the Act to provide transparency is properly applied.

**Paragraph E. Gift and Travel Restrictions and Limitations.** (Gov. Code §§86203, 86204, 89502, 89503, 89506)

**Rationale:** Per the Chief Counsel, this is a statutorily driven update.

- Board Members are prohibited from receiving a gift or gifts totaling more than \$470 (Effective January 1, 2017 – December 31, 2018; \$500 effective January 1, 2019 – December 31, 2020) in a calendar year from any source.

**Paragraph H. Use of Public Funds to Support or Oppose a Ballot Measure.** (new, p. 8)

**Rationale:** This law was omitted from the original Policy and has been questioned by Members, as ballot measures relevant to the Board’s subject matter jurisdiction were entered on the state ballot this year. It states what is prohibited and what is authorized.

- **H. Use of Public Funds to Support or Oppose a Ballot Measure.**  
The Board and individual Board Members are subject to the prohibition against the use of public funds for any communications that advocate a particular result in an election on ballot measures, which the California courts have held is an interference with the free election of the people under Cal. Const. Art. II, §2. (Vargas v. City of Salinas, 46 Cal. 4<sup>th</sup> 1

2009) However, since the courts have authorized public agencies to provide accurate, factual and impartial information about a ballot measure within their subject matter jurisdiction, the Board collectively may do so in a manner, style, tone and specific timing that does not urge a particular vote.

## **SECTION VII. ROLE AND POWERS OF THE BOARD.** (pp. 8-10)

**Rationale:** The role, duties and powers of the Board are in numerous statutes, not only Gov. Code §15600, but also §§15606-15652. Some statutes state that the Board “shall” perform the duties; others state the Board has the “authority”/“power” to perform such acts. All statutes hold Members accountable.

**Paragraph A.** The Board is authorized to and/or shall do all of the following:

### **Four Rationales for updates to Items 1-22 under Paragraph A:**

- 1) The actual statutes and/or constitutional provisions are cited for each Item.
- 2) All specific wording from each respective statute is added to each Item, which was omitted in the original Policy. (Items 2, 5, 6, 7, 8, 9, 11, 12, 16, 18, 19, 20, 21.)
- 3) Replace the words “*Provide for*” (connoting delegation of responsibility) with the words “*Assume responsibility for*” (expressing direct accountability) in all paragraphs where currently found. (Items 6, 7, 8, 9, 10 and 11.) The Constitution and statutes hold Members directly responsible for every power granted and duty assigned, unless otherwise specifically stated. Failure of Members collectively or individually to perform a duty or properly exercise a power may cause them to be impeached or face a recall election. Gov. Code §3020 “Members of the State Board of Equalization are subject to impeachment;” Cal. Const. Art. II, §§13-19, Elections Code §11001 “Members of the State Board of Equalization may be recalled.” This is true even though the Board delegated duty or power to the ED or to another state agency. The words, “assume responsibility for” are also consistent with the Resolution Conferring Powers, stating that “*delegation shall not constitute the relinquishment of any power, jurisdiction or responsibility of the Board Members.*”
- 4) Relocate/move Item 22 “election of the Chair” to Section VIII, A.
- 5) Add new Item 24, describing the duty of the Board under Gov. Code §15616 to report annually to the Governor all state assessed property information, information on other taxes we administer, and further information and suggestions as we deem proper.

### **Paragraph B. Agency staff.**

Except for the Executive Director position, the Board does not have the authority to appoint, remove, discipline, assign, reassign, promote, demote, or issue orders to any employee of the agency, including, but not limited to, the career executive assignment positions and other non-civil service managers. The Executive Director is solely responsible for selecting persons for career executive assignment positions and other non-civil service managers for the Board. Gov. Code §15600(h).

- However, pursuant to Gov. Code §15604, the Board may instruct the Executive Director to introduce or provide information on expert assistants and employees, including those who are newly hired, promoted or reassigned, and receive a description of their position

qualifications and job duties, in order to learn how they assist in the performance of her job and conduct the people's business . Cal. Const. Art. I, § 3; Gov. Code §6252.5

**Rationale:** Add above statement to clarify what Members may request regarding employees and what is not prohibited by § 15600(h), for the following reasons:

- 1) Members are to evaluate the performance of the Executive Director pursuant to Gov. Code §15604 that specifically allows him/her to *employ such expert and clerical assistants as deemed necessary in the performance of his/her powers and duties*;
- 2) Members “*prescribe and enforce the duties assigned to the Executive Director*” under Gov. Code §15600(e)(3);
- 3) Board Members are accountable to the people for all acts or omissions of those with delegated responsibility under them while they are in office: Gov. Code §3020, are subject to impeachment; and Cal. Const. Art. II, §§13-19, Elections Code §11001, may be recalled.
- 4) Members are responsible for transparency under Cal. Const. Art. 1, sec. 3 (b)(1), “*The people have the right of access to information concerning the conduct of the people's business...* ”.
- 5) Members should be consistent with our Governance Principle in Section V, Paragraph B of this Policy “*Open and Accountable. The Board Members and Executive Director are accountable to the Legislature and taxpayers for assessing and collecting the proper amount of taxes due. The Board Members and the Executive Director shall be appropriately open in the way key decisions are made and publicly disclosed.*”

**Paragraph C. Budget Change Proposals.** (p.14)

Neither the Board nor a Board Member can modify or approve budget change proposals for the agency. The Executive Director shall modify or approve all budget change proposals for the agency.<sup>5</sup>

- *However, all conceptual and actual budget change proposals constituting public records may be discussed in open session before the Board, including all costs, benefits, program enhancements, and other details, which the Members, BOE stakeholders and the public are entitled to know. Cal. Const. Art. I, §3; Gov. Code §6252.5*

**Rationale:** Adding the above statement clarifies that the Board is authorized to receive all BCPs and public discussion is not prohibited by Gov. Code §15600(i), but only acts of modifying or approving BCPs. Consistent with the Public Records Act and BOE disclosure laws, any confidential information may be redacted. Cal. Const. Art. 1, sec. 3 (b)(1), “The people have the right of access to information concerning the conduct of the people's business...”. Gov. Code §6252.5, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person.” Governance Principle in Section V, Paragraph B of this Policy states “*Open and Accountable. The Board Members and Executive Director are accountable to the Legislature and taxpayers for assessing and collecting the proper amount of taxes due. The Board Members and the Executive Director shall be appropriately open in the way key decisions are made and publicly disclosed.*” Other reasons listed in the rationale above also apply here.

**Paragraph D. Legislative Analysis.**

Neither the Board nor a Board Member can interfere with or influence the process of the agency's legislative analyses, revenue analyses, or any other form of technical assistance requested by the

Governor or the Legislature. However, anything that constitutes a public record, including but not limited to legislative/revenue analyses and technical assistance may be distributed and discussed in open session before the Board, BOE stakeholders and the public; and the Board may vote to support, oppose or remain neutral on the language in any bill. Cal. Const. Art. I, §3; Gov. Code §6252.5.

**Rationale:** Adding the above statement clarifies that the Board is authorized to receive all legislative and revenue analyses and technical assistance provided to the Governor or Legislature, legislation and public discussion is not prohibited by Gov. Code §15600(j), but only acts of interference or influencing the process. Under Gov. Code Secs. 6250-6270 and BOE disclosure rules, confidential information may be redacted. Governance Principle in Section V, Paragraph B of this Policy on “Open and Accountable” and other reasons listed in the rationale above also apply here.

**SECTION IX. BOARD MEMBER ROLES, RESPONSIBILITIES AND CONDUCT.** (3rd paragraph, p. 15)

With the repeal of Gov. Code §15623, a Board Member can no longer investigate the administration, enforcement, and operation within the district from which the Board Member was elected. However, upon a motion approved by the Board in open session, Board Members may individually or collectively inspect the work of any local officers whose duties relate to the assessment of property and the collection of taxes as authorized ~~provided~~ by Gov. Code §§15612, 15611, and 15613.

**Rationale:** Language and statutes are added that authorize the Board to conduct inspections related to the assessment of property, which the Members voluntarily agree to exercise only upon a Board approved motion.

**Paragraph A. Governing Style.** (p.14)

The Board and the Executive Director are is responsible for creating and maintaining an atmosphere that encourages frank and collegial discussions at the BOE and between the Board and management.

**Rationale:** Since the Executive Director has all direct contact with agency managers and employees, she is jointly responsible with the Board Members for creating and maintaining an atmosphere encouraging collegial discussions between the Board and management.

**Paragraph B. Board Member Competencies.** (p.14)

**Rationale:** Make organizational changes, additions for accuracy, eliminate redundancy.

~~In order to be more effective Members of the Board,~~ *Board Members are expected to develop an understanding of the following Governance Competencies:*

- 1) The role and responsibilities of Board Members;
- 2) The Board Governance Policy and other Board policies;
- 3) *State laws regarding the Open Meeting Act, Public Records Act, conflicts of interest, and other legal and ethical requirements;*
- 4) The Board of Equalization’s organizational structure and the roles of executive staff;
- 5) ~~The Open Meeting Act and the Public Records Act;~~
- 6) The *operational* role of the Board of Equalization as a state agency; and
- 7) The proper conduct of Board Meetings, *appeals, and decision-making powers and processes* in accordance with rules adopted by the Board.

**Paragraph C. Questions on Agenda Items.** (p.15)

Individual Board Members should direct questions *at meetings* regarding specific agenda items to the Executive Director, or to any person designated on the agenda or introduced to speak at the meeting.

**Rationale:** Language added to clarify current practices at Board meetings for functionality and conformity with rules of order.

**Paragraph D. Communications with Third Parties.** (p.16)

Pursuant to Gov. Code §15609.5 any contacts and communications between individual Board Members and parties with an adjudicatory proceeding pending before the Board shall be treated as “ex parte communications.” These communications are restricted under Gov. Code §11430.10, which provides that while an adjudicatory proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication. A proceeding is pending from the issuance of the agency’s pleading, or from an application for an agency decision, whichever is earlier.

- An “adjudicatory proceeding” to which the ex parte prohibition applies is a proceeding that is an “evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision.” (Gov. Code, §11405.20.) A “decision” is “an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person. (Gov. Code, §11405.50.) Thus, “adjudicatory proceedings” do not apply to quasi-legislative proceedings, or to quasi-legislative acts involving adoption of rules of general application on the basis of broad public policy, nor acts involving the adoption of non-regulatory guidelines or publications.

**Rationale:** Summary of the law added to define an “*adjudicatory proceeding*,” so that Members know when third party (ex parte) communications are prohibited, and to define “*quasi-legislative proceedings or acts*” where third party communications are permissible.

**Paragraph E. Participation in Operations, Staff Meetings, and Activities.** (p.16)

Individual Board Members ~~are~~ should not become involved in operational management nor participate in any routine staff meetings or other staff *operations* activities, unless requested by the Executive Director or they are otherwise authorized to attend. Gov. Code §§15600(h)(1), 15610, 15651-15652.

**Rationale.** Language and statutes added to clarify the exception where Board Members are “authorized to participate” in a staff meeting (e.g., retirement reception) or an operational activity (e.g., a legislative committee hearing, interested parties meeting).



**Paragraph F. Communications with ED’s Designated Staff and Assistance in Responding to Inquiries and Correspondence.** (p.16)

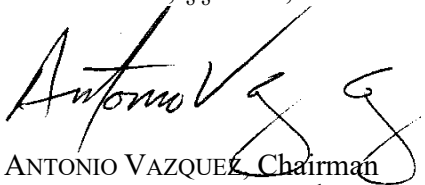
- Inquiries or correspondence addressed to a Board Member, which the Board Member wishes to direct to staff for a response or assistance in the preparation of a response, should be forwarded directly to the Executive Director.

**Recommendation Rationale:** We recommend that the Executive Director develop Communication Protocols for Board Members to reference in the Governance Policy, so that open and reliable lines of communication may be implemented between Members and the Executive Director with her respective Deputy Directors, Chiefs and Taxpayer Rights Advocate - to address Member inquiries from BOE stakeholders and taxpayers, “who are entitled to tax administration and appeals processes that are fair, transparent, consistent, equitable, and impartial.”

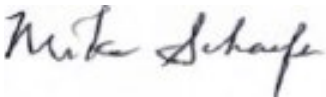
**SECTION X. THE ROLE OF THE EXECUTIVE DIRECTOR.** (page 16)

- Consistent with the Resolution Conferring Powers, “all of the authority delegated to the Executive Director is to be exercised under the general direction of the Board and in accordance with policies enunciated by the Board,” including this Governance Policy, and “such delegation shall not constitute the relinquishment of any power, jurisdiction or responsibility of the Board Members.”

**Rationale:** Pursuant to Gov. Code § 15600(e)(3), Board Members “prescribe and enforce the duties assigned to the Executive Director.” Members are accountable to the people for all acts or omissions of those with delegated responsibility under them while they are in office. Gov. Code §3020 and Cal. Const. Art. II, §§13-19, Elections Code §11001.



ANTONIO VAZQUEZ, Chairman  
Board of Equalization, 3<sup>rd</sup> District



Mike Schaefer, Vice Chair  
Board of Equalization, 4<sup>th</sup> District

- cc: Ms. Kari Hammond, Chief Deputy, Office of Chairman Antonio Vazquez  
Mr. Gary Gartner, Chief Deputy, Office of Vice Chair Mike Schaefer  
Mr. Matt Cox, Chief Deputy, Office of Member Ted Gaines  
Ms. Regina Evans, Chief Deputy, Office of Member Malia M. Cohen  
Ms. Yvette Stowers, Deputy State Controller  
Ms. Brenda Fleming, Executive Director  
Mr. Henry Nanjo, Chief Counsel