

Bill to Overhaul California BOE Racing Through Legislature

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By Paul Jones

A bill moving quickly through the California State Legislature would radically reform the troubled State Board of Equalization — the nation’s only elected tax commission — and shift its authority to adjudicate tax appeals to administrative law judges.

[S.B. 86](#) and its identical companion bill, A.B. 102, were unveiled late in the budget process on June 12 and were headed for floor votes in both chambers as of June 14. The legislation proposes a major overhaul of the BOE, which administers sales, gasoline, tobacco, alcohol, and other tax programs. It would strip most of the board's statutory authority, transferring its tax administration duties to a new California Department of Tax and Fee Administration and shifting its authority to hear and decide tax appeals to a new Office of Tax Appeals. Leadership for the new bodies would be appointed by the governor, with directors confirmed by the Senate.

The BOE’s role would be refocused on its core constitutional duties, including reviewing and equalizing property tax assessments and collecting alcohol excise taxes and taxes on insurers. It would also refocus on education outreach efforts.

The administration of Gov. Jerry Brown (D) and Democratic legislative leaders are advancing the BOE overhaul as part of the state’s fiscal 2018 budget package, with the intent to adopt legislation effective starting in July. The bills were designed in response to a scathing [March evaluation](#) by the Department of Finance that slammed the BOE for mismanagement and alleged that board members had improperly used state resources and interfered in the agency’s administrative functions.

Brown has suspended some of the board’s authority over contracting and personnel, called for a Department of Justice investigation, and [urged lawmakers to enact legislation](#) to address the problems identified by the report.

The legislation drew praise from longtime proponents of BOE reform. However, it garnered criticism from taxpayer and business advocacy groups, who slammed the minimal time given to review the proposed agency overhaul. They warned that the legislation would strip taxpayers of important leverage in the appellate process.

Former BOE Chair John Chiang (D), now state treasurer, said the reform was a necessary step. “The BOE has become so politicized that its members are regularly accused of interfering in tax assessments and audit activities,” Chiang said in a release. “The time has come for lasting change.”

Board member George Runner (R), however, said in a statement that the proposed changes “go far beyond issues identified in recent audits, nearly all of which have been addressed and corrected by the Board.”

"Changes of this magnitude should not be rushed through the budget process, bypassing the deliberative process," Runner said. "Instead they should go through the normal policymaking process to allow public input."

Hearing Debate

At the Assembly Budget Committee's June 13 hearing on S.B. 86, committee Chair Phil Ting (D) said the bill would create a more efficient appeals process for taxpayers.

"There will be three administrative law judge panels . . . in Los Angeles, Fresno, and Sacramento," Ting said. "The idea is to streamline the tax appeals process," which has a current minimum wait time of two and a half years to have an appeal heard. Danielle Kando-Kaiser of the California Tax Reform Association told lawmakers that "the separation of tax administration from the board is a necessary solution" to combat "an environment that allows for BOE members to meddle in administrative policy and personnel." The use of administrative law judges to handle appeals — rather than BOE members elected by constituent taxpayers — would also promote a more objective appeal process, Kando-Kaiser said.

Proponents of BOE reform have alleged that the board is motivated to side with taxpayers during appeals, and have pointed out that the Franchise Tax Board [is unable to appeal adverse rulings by the BOE](#) to court. Amy Costa, chief deputy director of the California Department of Finance, said during the hearing that California's tax appeal system "is really and truly an outlier" because most states have dedicated tax courts, independent tax appeal tribunals, or an appeals department that feeds into the court system.

But opponents of the bill, including taxpayer advocates, contended that the proposed reform is a policy matter that should be separated from the budget debate and given more time. Marty Dakessian of the California Alliance of Taxpayer Advocates said the ability to bring tax appeals before the BOE is a key protection for taxpayers in an otherwise bureaucracy-laden process.

"The Board of Equalization remains . . . the only stop in our entire tax controversy and litigation process that we have in California where elected officials are held to account," Dakessian said. "To take this away in the most sweeping reform to the Board of Equalization in its entire 133-year history, and to do it in the span of 72 hours, without any deliberation" is improper, he added.

Jim Gross with the California Society of Certified Public Accountants told lawmakers his organization is concerned that the bill would create a circumstance in which administrative law judges "will be working directly for the appeals body," creating a potential conflict of interest.

Groups Back Additional Reforms, Alternative Proposal

Ting denied the legislation was being rushed through at the end of the state's budget process. "We've had numerous [BOE] oversight hearings just in this last year" in light of the evaluation,

he said, adding that the issues have been fairly well documented.

Nonetheless, critics said the reform legislation, which is moving swiftly through the Legislature, would deny the public an opportunity to vet the proposal.

"It's an issue that should be studied carefully, and the state should take its time to do the job right," David Kline with the California Taxpayers Association told Tax Analysts, noting that the BOE brings in roughly one-third of the state's tax revenue.

Kline said the changes to the BOE propose a fundamental shift away from a system that is mindful of taxpayer interests. Regarding appeals, "we've seen example after example of times when the elected board members ask questions and take actions that appointed bureaucrats" wouldn't, he added.

Kline said Cal-Tax supports an alternative bill, A.B. 1210, the recent version of which includes requiring quarterly reporting by the BOE to lawmakers on the outcome of tax appeals, eliminating the authority of the board to hire and fire all but the executive director and chief counsel, and establishing a BOE Office of the Inspector General to keep an eye on the agency.

However, Lenny Goldberg of the California Tax Reform Association said a reform of the BOE has long been overdue. He argued that BOE members are beholden to taxpayers and are allowed to engage in ex parte communications that taint the appeals process.

"The whole system is so bad, and it has been for so long," Goldberg told Tax Analysts. "I'm really pleased that they've made real structural change" a priority in S.B. 86 and A.B. 102, he added.

But Goldberg said changes to the appeals process under the bills don't go far enough. As with the current system, the new proposal would allow taxpayers to appeal Office of Tax Appeals rulings to court, but would continue to deny that option to the FTB.

"No way you can give these . . . administrative law judges final say on the law," Goldberg said. He said concerns that the FTB could overpower taxpayers with limited means by automatically appealing every case could be addressed by prohibiting the FTB from seeking trial *de novo*, and also by requiring the attorney general to review proposed appeals before they could be submitted to court.

But in the interest of getting the current reform proposal through, Goldberg said his association is resigned to seeking changes in a cleanup bill. "We don't want to unravel" the effort, he said. "This deal needs to be done."