



*California State Board of Equalization,
Legislative and Research Division*

LEGISLATIVE BULLETIN



State Capitol Building (from the East) c.1945
Photo courtesy of California State Archives

SPECIAL TAXES AND FEES LEGISLATION 2011

SPECIAL TAXES AND FEES LEGISLATION
TABLE OF CONTENTS

CHAPTERED LEGISLATION ANALYSES	PAGE
<u>Assembly Bill 105 (Committee on Budget) Chapter 6</u> <i>Fuel Tax Swap Re-enactment</i>	<u>2</u>
<u>Assembly Bill 242 (Committee on Revenue & Taxation) Chapter 727</u> <i>Orders of Restitution</i>	<u>6</u>
<u>Assembly Bill 291 (Wieckowski) Chapter 569</u> <i>Underground Storage Tank Maintenance Fee Rate Extension</i>	<u>9</u>
<u>Assembly Bill 1112 (Huffman) Chapter 583</u> <i>Oil Spill Prevention and Administration Fee Increase</i>	<u>11</u>
<u>Assembly Bill 1307 (Skinner) Chapter 734</u> <i>Denial or Suspension of a Contractor's License</i> <i>New Employee Registry Data</i>	<u>13</u>
<u>Assembly Billx1 21 (Blumenfield) Chapter 11</u> <i>Insurance Tax – Medi-Cal Managed Care Plans</i>	<u>19</u>
<u>Assembly Billx1 29 (Blumenfield) Chapter 8</u> <i>Fire Prevention Fee</i>	<u>21</u>
<u>Senate Bill 617 (Calderon & Pavley) Chapter 496</u> <i>State Agency Regulations – Standardized Impact Analysis</i> <i>State Government – Financial Accountability</i>	<u>26</u>
TABLE OF SECTIONS AFFECTED	<u>37</u>

[Assembly Bill 105 \(Committee on Budget\) Chapter 6](#)
Fuel Tax Swap Re-enactment

Urgency measure, effective March 24, 2011, but certain provisions are operative July 1, 2010 or July 1, 2011. Among its provisions, repeals and adds Sections 7360, 7361.1, 7653.1, and 60050 to the Revenue and Taxation Code.

BILL SUMMARY

Among other things, this bill reenacts provisions related to the fuel tax swap of 2010, with adjustments related to diesel fuel, as follows:

- On July 1, 2011, in place of the additional 1.75% sales and use tax rate imposed by the 2010 fuel tax swap legislation on sales of diesel fuel, the bill instead imposes a rate of 1.87%. In subsequent years, the bill further changes this rate as follows:
 - On July 1, 2012, increase the rate to 2.17%.
 - On July 1, 2013, decrease the rate to 1.94%.
 - On July 1, 2014, and thereafter, reinstate the 1.75% rate.

Also on July 1, 2011, in place of the 2010 fuel tax swap's reduced excise tax rate on diesel fuel of 13.6 cents per gallon, this bill decreases that rate further to 13 cents per gallon.

Sponsor: Committee on Budget

LAW PRIOR TO AMENDMENT

In late March 2010, two "fuel tax swap" measures were enacted ([ABx8 6](#), Ch. 11, and [SB 70](#), Ch. 9) that made several changes to the imposition and rates of state taxes on transactions involving transfers of gasoline and diesel fuel. For gasoline, these changes became operative July 1, 2010, and for diesel fuel, the changes become operative on July 1, 2011. In short, in 2010, the "swap" reduced the sales and use tax imposed on sales of gasoline and replaced the lost revenues with an increase in the excise tax on gasoline, and, in 2011, reduced the excise tax rate on diesel fuel and replace the lost revenues with an increase in the sales and use tax rate imposed on diesel fuel sales.

This "swap" was meant to maintain the status quo on fuels that have either full or partial exemptions from the sales and use tax, such as sales of aviation gasoline and diesel fuel used in farming activities, or full or partial excise tax exemptions, such as diesel fuel used in farming operations, or by train operators or certain bus operators.

This fuel tax swap was intended to be revenue neutral, so that the state's tax revenues would not be increased or decreased, nor would the taxpayers' share of the tax burden be affected. To maintain revenue neutrality, the provisions of this "swap" require the BOE to each year adjust the excise tax rates – either upwards or downwards, beginning on July 1, 2011, for gasoline, and July 1, 2012, for diesel, so that the overall revenues derived from the imposition of state excise tax and sales and use tax on sales of gasoline and diesel fuel remain the same.

STATE BOARD OF EQUALIZATION

The specific changes enacted in the 2010 fuel tax swap legislation are as follows:

Gasoline	07/01/10	07/01/11 and thereafter
Sales and use tax*	6% decrease	5% decrease
Excise tax*	17.3 cent/gallon increase	To be determined by BOE ¹
Floor stock tax	17.3 cent/gallon**	

*Aviation gasoline is exempt from the excise tax increase and floor stock tax (sales of aviation gasoline continued to be completely exempt from state, local, and district sales and use tax).

**Each supplier, wholesaler, and retailer was required to file a return and pay a floor stock tax of 17.3 cents per gallon on 1,000 gallons or more of tax-paid gasoline in storage on July 1, 2010, by August 31, 2010, payable to the State Controller.

Diesel Fuel	07/01/11	07/01/12 and thereafter
Sales and use tax*	1.75% increase	1.75% increase
Excise tax	4.4 cent/gallon decrease	To be determined by BOE

*Those persons that currently qualify for the sales and use tax exemption for sales of diesel fuel used in farming activities are exempt from the increase. Also, those purchases by diesel fuel users currently exempt from the excise tax on diesel fuel are exempt from the sales and use tax rate increase if they furnish the seller with an exemption certificate completed in accordance with BOE guidelines. This includes train operators, exempt bus operators, and others.

AMENDMENT

This bill repeals and adds Sections 6051.8 and 6201.8 to the Sales and Use Tax Law to impose an additional 1.87 percent state sales and use tax (in place of the additional 1.75 percent imposed by the 2010 fuel tax swap provisions), operative July 1, 2011, on sales of diesel fuel, as defined in Section 60022 of the Diesel Fuel Tax Law. For subsequent years, the bill adjusts the rates as follows:

- On July 1, 2012, increase the rate to 2.17%.
- On July 1, 2013, decrease the rate to 1.94%.
- On July 1, 2014, and thereafter, reinstate the rate of 1.75%.

The bill repeals and adds Section 6357.3, 6357.7, and 6480.1 to the Sales and Use Tax Law and Sections 7360, 7361.1, and 7653.1 to the Motor Vehicle Fuel Tax Law as those provisions read under the 2010 fuel tax swap.

¹ The BOE is responsible for balancing revenue losses against the revenue gains. For gasoline, the BOE has already determined that an additional \$0.004 per gallon increase in the excise tax rate is necessary for the period July 1, 2011 through June 30, 2012, so that the excise tax revenues equal the amount of General Fund revenue losses attributable to the sales and use tax exemption. Therefore, the total excise tax rate imposed on gasoline on July 1, 2011, will be 35.7 cents per gallon. For diesel fuel, the BOE will adjust the excise tax rate, up or down, so that the revenue loss equals the amount of revenue gain from the sales and use rate increase on sales of diesel fuel. The law requires rate adjustments to be determined by March 1, and those adjusted rates would be effective during the state's next fiscal year, beginning July 1.

Also, the fuel tax swap provisions allow the BOE to adjust the sales tax prepayment rates on gasoline and diesel fuel if the established rate could result in prepayments that consistently exceed or are significantly lower than the retailer's sales tax liability.

In addition, this bill repeals and adds Section 60050 to the Diesel Fuel Tax Law to impose a reduced excise tax rate of 13 cents per gallon on diesel fuel (in place of the reduced rate of 13.6 cents imposed by the 2010 fuel tax swap provisions).

Lastly, this bill repeals Section 7102.1 (added by the third of the 2010 “fuel tax swap” bills, ABx8 9, Ch. 12, § 5) and adds the substance of this statute as subdivision (e) to Sections 6051.8 and 6201.8. These provisions require the BOE, with the concurrence of the Department of Finance, to estimate the revenues, less refunds, that are collected pursuant to each of these sections and to transfer these revenues each quarter to the Public Transportation Account in the State Transportation Fund.

As an urgency statute, the provisions of the bill became effective March 24, 2011, but certain provisions became operative on the specified dates.

BACKGROUND

Proposition 26, approved by voters in the November 2, 2010, statewide election, among other provisions, amended Section 3 of Article XIII A of the California Constitution. This section now specifies that any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature. The section now further specifies that any tax adopted after January 1, 2010, but prior to the effective date of this proposition, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of the proposition, unless the tax is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this provision.

The 2010 fuel tax swap provisions were enacted in March 2010 and were enacted with a majority vote of the Legislature.

COMMENTS

1. **Purpose.** This is a budget trailer bill intended to re-enact the 2010 Fuel Tax Swap so that the state is in compliance with the two-thirds vote requirement of last year’s Proposition 26.
2. **Issue.** Without legislation to reenact the fuel tax swap, Proposition 26 could be interpreted to mean that (1) the 17.3 cents per gallon additional excise tax imposed on gasoline under the 2010 fuel tax swap would no longer be in effect as of November 3, 2010, but the exemption for the state General Fund portion of the sales and use tax rate on sales of gasoline would remain, and (2) the 1.75% additional sales and use tax rate imposed on sales of diesel fuel under the 2010 fuel tax swap would no longer be in effect as of November 3, 2010, but the reduced excise tax rate of 13.6 cents per gallon would remain. If this were to occur, the state’s General Fund could be severely negatively impacted.
3. **The re-enactment of the fuel tax swap isn’t exactly the same for diesel fuel as the 2010 swap.** The fuel tax swap provisions enacted in 2010 would have imposed an additional sales and use tax rate of 1.75% on the sales of diesel fuel, beginning July 1, 2011. To offset the initial sales and use tax rate increase of 1.87% proposed in this bill, effective July 1, 2011, this bill lowers the diesel fuel excise tax rate to 13 cents (from 13.6 cents) per gallon, which takes effect at the same time. Additional changes in the sales and use tax rate on diesel fuel for fiscal years 2012-13 (2.17%), 2013-14

STATE BOARD OF EQUALIZATION

(1.94%), and 2014-15 and thereafter (1.75%) continue to be balanced by the annual adjustment, by the BOE, to the excise tax rate for diesel fuel, as specified.

4. **Exemption for purchases of diesel fuel for qualifying farming activities are not affected.** Section 6357.1 of the Sales and Use Tax Law currently contains an exemption from the state's current General Fund rate of 5 percent and the Fiscal Recovery Fund rate of 0.25 percent for sales and purchases of diesel fuel used in farming activities, as defined. As Section 6357.1 is written, sales of diesel fuel qualifying for the exemption under Section 6357.1 will *not* be subjected to this additional 1.87 percent sales and use tax, or the additional rates thereafter.
5. **Exemption for purchases of aviation gasoline are not affected.** Section 6357 of the Sales and Use Tax Law currently contains an exemption from the taxes imposed under the Sales and Use Tax Law for sales of motor vehicle fuel used to propel aircraft (other than aircraft jet fuel). Neither the reduced sales and use tax nor the increased excise tax on motor vehicle fuel applies to aviation gasoline.
6. **Related legislation.** The Senate Committee on Budget and Fiscal Review had a similar measure, [SB 81](#).

Assembly Bill 242 (Committee on Revenue & Taxation) Chapter 727

Orders of Restitution

Effective January 1, 2012. Amends Sections 8351 and 30474 of, and adds Sections 8407, 30483, and 60709 to, the Revenue and Taxation Code.

BILL SUMMARY

Among other things this bill contains Board of Equalization (BOE)-sponsored provisions to provide the BOE and the State Controller's Office with express authority to collect orders of restitution awarded to the BOE in criminal proceedings in the same manner as tax liabilities under the Motor Vehicle Fuel Tax, Cigarette and Tobacco Products Tax, and Diesel Fuel Tax Laws.

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Under current law, victims of crimes are entitled to restitution under Section 28 of Article 1 of the California Constitution and Penal Code Section 1202.4, which provide that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted. Courts are required to award an order of restitution from a convicted offender in every case that a crime victim suffers a loss, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. The law provides that an offender's inability to pay shall not be a compelling and extraordinary reason (Penal Code Section 1202.4, subdivisions (f) and (g)).

Under existing law, the BOE may refer cases for criminal prosecution to state courts against a person for certain offenses and the court may order restitution. The most common offenses referred by the BOE for criminal prosecution include the following:

- Tax evasion,
- Operating without a permit,
- Possession and sale of unstamped cigarettes,
- Unlicensed sales of cigarettes and tobacco products, and
- Grand theft.

The BOE may also obtain federal court orders of restitution for criminal charges referred to a federal court. The most common charges pursued in federal court include federal offenses such as:

- Wire fraud,
- Mail fraud, and
- Transportation and sale of contraband tobacco products.

Criminal restitution is a permanent order that does not expire and is not dischargeable through bankruptcy.

STATE BOARD OF EQUALIZATION

Under existing Penal Code Sections 1202.4, 1214, and 1214.2, enforcement of a criminal restitution order for tax, penalties, fines and investigative costs are enforceable as if the order were a civil judgment.

Orders of restitution issued in a federal criminal action for certain crimes are enforceable in the same manner as a civil judgment.

For the State (as a victim of the crime), a restitution order covers its economic loss from a person convicted of a crime. The State's economic loss in these cases is the amount of tax, including applicable penalties, interest, and costs of investigation or prosecution that the taxpayer failed to pay as a result of the crime for which the taxpayer is found guilty.

Under existing Cigarette and Tobacco Products Tax Law (Sections 30301 through 30358) and Diesel Fuel Tax Law (Sections 60401 through 60493.5), the BOE is authorized to use specified collection tools in the pursuit of delinquent liabilities, including tax, interest and penalties. With respect to the Motor Vehicle Fuel Tax Law, administrative and collection responsibilities are split between the BOE and the State Controller's Office (SCO), respectively. Under existing Motor Vehicle Fuel Tax Law (Sections 7851 through 7983), the SCO has the statutory responsibility for collection of amounts due and is authorized to use the same tools as is the BOE to collect delinquent liabilities. The collections methods for both the BOE and SCO include, but are not limited to, the ability to issue a levy, file a lien, and utilize an earnings withhold order.

However, since an order of restitution issued by a court is not a tax or a tax penalty, the BOE's and SCO's tax collection tools are unavailable for use in collecting restitution orders owed to the State. Instead, the agencies must file the order in the civil court and use civil enforcement methods to collect the money. When the BOE or SCO attempts to collect an order of restitution as a civil money judgment, the agencies must use the collection remedies available to any creditor under the Code of Civil Procedure, which are generally inefficient and cumbersome.

Currently, BOE's orders of restitution may be collected either (1) by referring the restitution order to the Franchise Tax Board (FTB) for collection under the Court-Ordered Debt (COD) program, or (2) as a civil money judgment. The California Department of Corrections and Rehabilitation (CDCR) refer restitution orders to FTB on our behalf. The CDCR assists with the collection of restitution from those offenders sentenced to state prison or on parole. When an offender is on parole, but restitution has not been paid in full, the CDCR refers the restitution to the FTB for collection under the COD program. Additionally, the BOE is not an authorized government entity under the COD program. Authorized government entities include (1) courts, (2) county probation and revenue collections departments, (3) county or city jails or juvenile halls, (4) the CDCR, and (5) the Victim Compensation and Government Claims Board. Only a small number of restitution orders awarded to the BOE are referred to the FTB for collection under the COD program. Restitution orders awarded to the BOE in federal cases do not meet the requirements for referral under the COD provisions.

When the BOE and SCO collect an order of restitution as a civil money judgment, both agencies must use the collection remedies available to any creditor under the Code of Civil Procedure. The statutory procedures for obtaining levies and liens can delay the collection of the order of restitution, and the BOE must rely on the availability of external resources to collect amounts owed as a civil money judgment. The BOE must also pay fees for services performed by outside sources such as levy and process server fees.

STATE BOARD OF EQUALIZATION

For example, in order for the BOE to file a state lien on an offender's real property, the BOE must convert the Order of Restitution to an Abstract of Judgment and have the Abstract of Judgment endorsed by the court clerk. Once the Abstract of Judgment is obtained, the BOE can then file the judgment with a County Recorder's office in any county where the offender owns real property. This establishes an automatic lien against an offender's current or future real property.

To enforce an Order of Restitution on an offender's income or personal assets, the BOE must obtain a Writ of Execution. Once a Writ of Execution is obtained, the BOE must deliver this document to a levying officer (County Sheriff or Marshal) with instructions identifying which property to levy. Payment of a fee is required. The Writ of Execution allows the BOE to levy the offender's bank accounts, business receipts, and personal property to satisfy any unpaid balance remaining on a restitution order. In general, depending on the nature of the assets involved (bank accounts, wages and vehicles), the civil collection process can take anywhere from 90 days to one year from the date of seizure to the date of the auction to complete.

Currently, restitution orders are not maintained on the BOE's two automated systems—the Integrated Revenue Information System (IRIS) and the Automated Compliance Management System (ACMS). Instead, restitution orders are monitored and collected separately from tax and fee liabilities.

AMENDMENT

This bill amends Sections 8351 (motor vehicle fuel tax) and 30474 (cigarette and tobacco products tax) of, and adds Sections 8407 (motor vehicle fuel tax), 30483 (cigarette and tobacco products tax), and 60709 (diesel fuel tax) to, the Revenue and Taxation Code, to provide both the BOE and SCO with express authority to collect and deposit an order of restitution, awarded to the State of California in criminal proceedings, in the same manner as tax liabilities.

BACKGROUND

During the 2010 Legislative session, the FTB sought and was granted similar authority for enhancing collections of restitution orders. Enactment of [Assembly Bill 1530](#) (Stats. 2010, Chapter 359, Skinner) allows FTB to collect restitution orders or any other amounts awarded to the FTB by a court of competent jurisdiction (federal or state court) in criminal proceedings in the same manner and with the same priority as tax liabilities. This bill passed the Assembly with a 78-0 vote and the Senate with a 30-2 vote.

COMMENT

Purpose. This change in law accomplishes the following:

- Streamlines and accelerates the BOE's collection process on orders of restitution received in criminal cases; and,
- Utilizes the efficient collection tools available to both the BOE and SCO for tax administration, thereby improving the collection process for orders of restitution awarded to the BOE in criminal proceedings.

[Assembly Bill 291 \(Wieckowski\) Chapter 569](#)

Underground Storage Tank Maintenance Fee Rate Extension

Effective January 1, 2012. Amends Section 25299.43 of the Health and Safety Code.

BILL SUMMARY

This bill extends the temporary underground storage tank maintenance fee rate increase of \$0.006 per gallon for an additional two years, from January 1, 2012 to January 1, 2014.

Sponsor: Assembly Member Wieckowski

LAW PRIOR TO AMENDMENT

Under current Section 25299.41 in Article 5 (commencing with Section 25299.40) of Chapter 6.75 of Division 20 of the Health and Safety Code (HSC), an owner of an underground storage tank is required to pay a storage fee of six mills (\$0.006) for each gallon of petroleum (including, but not limited to, gasoline and diesel fuel) placed in an underground storage tank which he or she owns. Section 25299.43 imposes an additional fee of eight mills (\$0.008), for a total underground storage fee of fourteen mills (\$0.014) per gallon of petroleum placed in the tank. This fee amount was temporarily increased in 2009 by an additional six mills (\$0.006) for each gallon of petroleum placed in an underground storage tank, on and after January 1, 2010, for a total of twenty mills (\$0.020) per gallon. This increase is effective until December 31, 2011, at which time the fee will revert back to the previous rate of fourteen mills (\$0.014) per gallon. The fees, which are reported and paid to the Board of Equalization (BOE), are deposited into the Underground Storage Tank Cleanup Fund and are earmarked for the cleanup of leaking tanks. The entire fee is due to sunset as of January 1, 2016.

AMENDMENT

This bill amends HSC Section 25299.43 to extend the temporary increase in the storage fee rate of an additional six mills (\$0.006), for a total of twenty mills (\$0.020), for each gallon of petroleum placed in an underground storage tank, until January 1, 2014, at which time the fee will revert back to the previous rate of fourteen mills (\$0.014).

The bill is effective January 1, 2012. This bill was double-joined to [AB 358](#) (Chapter 571) which deals with, among other things, the payment of claims by the State Water Resources Control Board.

BACKGROUND

The Underground Storage Tank Cleanup Fund was originally established in 1989 by SB 299 (Keene). Subsequent legislation affected fees, fund accounts, repeal dates, and various other provisions.

[AB 1906](#) (Stats. 2004, Ch. 774) was the last bill that increased the UST fee. The fee was increased by one mill (\$0.001) on January 1, 2005, and by another one mill (\$0.001) on January 1, 2006.

[SB 1161](#) (Stats. 2008, Ch. 616), among other things, extended the sunset date of the fee to January 1, 2016.

STATE BOARD OF EQUALIZATION

[AB 1188](#) (Stats. 2009, Ch. 649), among other things, temporarily increased the underground storage tank maintenance fee by an additional \$0.006 per gallon of petroleum stored, between January 1, 2010, and December 31, 2011.

COMMENTS

1. **Purpose.** This bill is intended to provide a source of funds for reimbursement of expenses related to the cleanup of leaking underground storage tanks.
2. **A temporary rate increase of the underground storage tank maintenance fee does not create administrative problems for the BOE.** As specified, the temporary rate increase will go into effect January 1, 2012 because AB 358 was also enacted and becomes effective on or before January 1, 2012.

HSC Section 25299.51 allows the State Water Resources Control Board to expend revenues to pay the administrative costs of the BOE.

[Assembly Bill 1112 \(Huffman\) Chapter 583](#)
Oil Spill Administration and Prevention Fee Increase

Effective January 1, 2012. Among its provisions amends Section 8670.40 of the Government Code.

BILL SUMMARY

Among other things, this bill increases temporarily, from January 1, 2012, to January 1, 2015, the current cap on the Oil Spill Prevention and Administration Fee from five cents (\$0.05) to six and one-half cents (\$0.065) per barrel of crude oil or petroleum product.

Sponsor: Pacific Environment

LAW PRIOR TO AMENDMENT

Under existing law, Government Code Section 8670.40 imposes an **oil spill prevention and administration fee**, currently set at a rate of five cents (\$0.05) per barrel, upon crude oil received at a marine terminal from within or outside the state, and upon petroleum products received at a marine terminal from outside the state. The fee is collected by the marine terminal operator from the owner of the crude oil or petroleum product based on each barrel that is received from a vessel operating in, through, or across the state's marine waters. Additionally, a pipeline operator pays the fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state through a pipeline operating across, under, or through the state's marine waters.

The fee amount is set annually by the Administrator, an appointee of the Governor in the Department of Fish and Game. The Administrator annually prepares a plan that projects revenue and expenses over three fiscal years and uses the projections to set the fee, not to exceed five cents (\$0.05) per barrel of crude oil or petroleum products, to meet the current and proposed state budget. The Administrator may allow for a surplus if revenues are expected to be exhausted or for possible contingencies.

The fee is paid to the BOE on a monthly basis and deposited into the Oil Spill Prevention and Administration Fund (Fund). The moneys in this fund are not used for responding to an oil spill but, rather, are used to fund oil spill prevention programs and various studies related to oil spills.

The BOE also collects an **oil spill response fee** as required by Government Code Section 8670.48. A uniform oil spill response fee is paid by specified marine terminal operators, pipeline operators, and refiners, in an amount not exceeding \$0.25 per barrel of petroleum product or crude oil. The BOE only collects the fee when the funds in the Oil Spill Response Trust Fund fall below the specified level.

AMENDMENT

This bill amends Government Code Section 8670.40 to temporarily increase the current cap on the Oil Spill Prevention and Administration Fee from five cents (\$0.05) to six and one-half cents (\$0.065) per barrel of crude oil or petroleum product, from January 1, 2012 to January 1, 2015. The cap then falls back to the current five cents per barrel, effective January 1, 2015.

This bill also specifies that the moneys deposited in the fund shall not be used to provide a loan to any other fund.

BACKGROUND

In 1990, Senate Bill 2040 (Chapter 1248, Keene) added, and Senate Bill 7 (Chapter 10, Keene) amended Section 8670.40 to impose the Oil Spill Prevention and Administration Fee. These bills also enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which added provisions to the Government Code (§ 8670.1 et seq.), the Public Resources Code (§ 8750 et seq.), and the Revenue & Taxation Code (§ 46001 et seq.). The Act covers all aspects of marine oil spill prevention, administration, and response in California.

Last year, the Legislature passed [Assembly Bill 234](#) (Huffman), which would have increased the maximum fee to six cents (\$0.06). Governor Schwarzenegger vetoed the bill, stating:

This bill requires the administrator of the Office of Spill Prevention and Response (OSPR) to develop regulations addressing "pre-booming" of vessels involved in the transfers of oil fuel and oil cargo. The bill also increases the per-barrel fee, paid by tankers, and the non-tank vessel fee, that is used to support OSPR's administrative functions and authorizes the Administrator to adjust the maximum per-barrel fee annually for inflation according to the Consumer Price Index.

This bill is unnecessary. Pursuant to the authority already provided under existing law, OSPR is currently in the process of evaluating the benefit of requiring "pre-booming" standards on fuel transfer operations where it is safe and effective to do so. Additionally, the magnitude of the fee increase proposed to fund OSPR's regulatory activities per this bill far exceeds what OSPR estimates it would cost to promulgate the "pre-booming" regulations this bill would require.

COMMENTS

1. **Purpose.** This bill is intended to adjust the Oil Spill Prevention Administration Fund (Fund) revenues to current inflation levels.
2. **A possible increase in the oil spill prevention and administration fee would not create administrative problems for the BOE.** The BOE currently administers and collects this fee. As previously explained, the Administrator sets the fee in accordance with an annual plan. The fee is currently set at the maximum rate of five cents (\$0.05) per barrel of crude or petroleum product. If the maximum fee rate should increase to six and one-half cents (\$0.065), and then subsequently decrease, the BOE will have no difficulty in administering the fee changes. The BOE worked with the author's office last year on [AB 234](#) (Huffman) to require that the Administrator provide the BOE with sufficient notice when the fee is set each year, with the new fee to be effective on the first day of the month beginning no fewer than 30 days following such notification, and that the new fee rate be rounded to no more than four decimal places. These suggestions, which have been incorporated into this bill, will ensure that the BOE can absorb costs related to possible rate changes.

Assembly Bill 1307 (Skinner) Chapter 734
Denial or Suspension of a Contractor's License
New Employee Registry Data

Effective January 1, 2012. Amends Section 7145.5 of the Business and Profession Code and amends Section 1088.5 of the Unemployment Insurance Code.

BILL SUMMARY

This Board of Equalization (BOE)-sponsored bill:

- Authorizes the BOE to request the Contractor's State License Board for a denial or suspension of a contractor's license for failure to resolve any outstanding BOE-related final tax or fee liabilities. (*Business and Professions Code Section 7145.5*)
- Allows the BOE to use the new employee registry information maintained by the Employment Development Department (EDD) for tax enforcement purposes. (*Unemployment Insurance Code Section 1088.5*)

Sponsor: Board of Equalization

IN GENERAL

This bill is sponsored by the BOE in order to provide additional incentives for taxpayers to pay their outstanding BOE-related tax and fee liabilities and to enhance the BOE's ability to collect those liabilities.

California's tax system is one based on the principal of voluntary compliance. Most taxpayers that report their tax and fee liabilities to the BOE are honest and generally comply with the tax laws. However, the BOE's number of taxpayers with overdue accounts receivables, as well as the overall balance, continues to increase - further complicating the state's budget woes. Within the last three-year period, the BOE's accounts receivable balances for unpaid *final* liabilities (liabilities that are due and not under appeal) have nearly doubled. As of the end of 2010, these outstanding liabilities totaled over \$1.5 billion.

Recent economic turmoil is one factor contributing to this increase. However, other reasons include the fact that some businesses purposefully fail to remit the tax, such as when a taxpayer diverts the sales tax reimbursement collected from a customer for his or her own purposes instead of remitting the tax to the State. Those businesses that fail to pay their tax liabilities have in many cases an unfair competitive advantage over taxpayers who comply with the law and pay their fair share.

In general, the tools the BOE has in current law to provide incentives for taxpayers to timely pay their tax and fee liabilities and to assist the BOE in collecting delinquent tax or fee liabilities include:

- The imposition of penalties and interest on the amount of the late tax or fee payment.
- The authority for the BOE to revoke a taxpayer's seller's permit for failure to pay outstanding sales and use tax liabilities.

STATE BOARD OF EQUALIZATION

- The opportunity for taxpayers to enter into affordable installment payment plans.
- The authority for the BOE to issue an Order to Withhold (OTW) to any third-person in possession of funds or properties belonging to the debtor, such as bank accounts, rental income, or accounts receivables, which, in turn, requires that third person to submit to the BOE all the debtor's cash or cash equivalents that would satisfy the OTW.
- The authority for the BOE to use Earnings Withholding Orders (EWO) to collect delinquent tax liabilities for which a state tax lien is in effect. An EWO is a continuing wage garnishment based on a percentage of a debtor's earnings, not to exceed 25 percent of disposable income. The EWO remains in effect until the total amount owing has been paid, or the order has been withdrawn.
- The authority for the BOE to issue a warrant to seize property and convert it to cash to satisfy a debt. Warrants are enforced by a marshal. "Till-tap" or "keeper" warrants are warrants served by the California Highway Patrol or the local sheriff that allow them to enter a tax debtor's business and take possession of personal property or collect the contents of the cash registers.
- In addition to the preceding, a statutory tax lien automatically arises by operation of law, which is a claim upon real and personal property for the satisfaction of a tax debt. The lien is in force for 10 years, unless the liability becomes satisfied or a Notice of State Tax Lien is recorded with a county recorder's office or the Secretary of State. The recording of the notice provides notice to all parties of the debt against real and personal property belonging to the tax debtor and located in the California county where recorded.

This bill provides additional tools that will assist the BOE in reducing its growing outstanding accounts receivable balances from taxpayers' failure to remit the taxes that are owed, and assist in reducing the unfair competitive advantage these tax debtors have over law-abiding taxpayers.

Denial or Suspension of a Contractor's License
Business and Professions Code Section 7145.5

LAW PRIOR TO AMENDMENT

Under Business and Professions Code (BPC) Section 24205, a taxpayer's alcoholic beverage license is automatically suspended if the taxpayer is at least three months delinquent in the payment of sales or use or alcoholic beverage taxes or penalties. The suspension remains in effect until those liabilities are paid.

Existing Vehicle Code Sections 11617 and 11721 allow the Department of Motor Vehicles to automatically cancel a dealer or lessor-retail license when the BOE has revoked or suspended the licensee's seller's permit. (Sales and Use Tax Law Section 6070 of the Revenue and Taxation Code authorizes the BOE to revoke or suspend a taxpayer's seller's permit whenever the taxpayer fails to comply with any provision of the Sales and Use Tax Law, including failing to pay sales or use taxes that are due.)

Existing BPC Section 7145.5 allows the Contractor's State License Board (CSLB) to refuse to issue, reinstate, reactivate, or renew or to suspend a contractor's license for the failure of a licensee to resolve any outstanding final liabilities, including taxes, penalties,

interest, and any fees assessed by the CSLB, the Franchise Tax Board (FTB), the EDD, or the Department of Industrial Relations (DIR). The BOE is not listed as one of the agencies to which Section 7145.5 applies.

Therefore, under current law, the CSLB is not authorized to suspend or deny a contractor's license for a licensee's failure to pay any BOE-related outstanding taxes, penalties, interest, or fees.

AMENDMENT

This bill amends BPC Section 7145.5 to authorize the CSLB to refuse to issue, reinstate, reactivate, or renew or to suspend a contractor's license for failure to resolve any outstanding BOE-related final tax or fee liabilities, provided the CSLB's registrar has mailed a preliminary notice to the licensee at least 60 days prior to the refusal or suspension that indicates that the license will be refused or suspended by a date certain.

BACKGROUND

Although a licensee's failure to pay the BOE's liabilities is not within the statutory authority provided under BPC Section 7145.5 that would allow the CSLB to suspend or deny a contractor's license, existing BPC Section 7071.17(b) and (e) does provide an alternative, albeit very cumbersome approach. Under this section, the registrar of the CSLB may suspend a contractor's license for any "unsatisfied final judgment that is substantially related to the construction activities of a licensee ... or to the qualifications, functions, or, duties of the license." In order to request a suspension under this provision, the CSLB would require the BOE to submit an abstract of judgment relating to the contractor's liability as a condition for the registrar to initiate the proceeding to suspend the license.

However, the procedure available under this provision would require that the BOE first file a request for judgment in a Superior Court, obtain the judgment, and then file an abstract of the judgment with CSLB – a cumbersome process. And, CSLB does not use this procedure on a routine basis. Therefore, CSLB staff has recommended that the BOE pursue legislation to amend BPC Section 7145.5 in a manner as this bill proposes to do.

The BOE currently has over 90,000 delinquent sales and use tax accounts. Of this amount, over 1,700 accounts represent outstanding final liabilities of construction contractors (750 of which are closed accounts, with nearly \$42 million in unpaid delinquencies, and 950 of which are active accounts, with nearly \$10 million in delinquencies). These amounts do not include accounts in bankruptcy, in installment payment agreements, or in the appeals process.

Since the enactment of legislation in 1990 (Ch. 1386, AB 2282, Eastin), the CSLB has been authorized to suspend or refuse to issue or renew a contractor's license upon notification of a contractor's failure to resolve all outstanding final liabilities imposed by the DIR, EDD, and FTB. The purpose of that bill was to establish joint enforcement action among the three agencies in order to enforce collection of taxes and compliance with the laws, and to create a level playing field for business competition.

In 1993, by Executive Order, the Joint Enforcement Strike Force (JESF) was established to combat the underground economy. The JESF is comprised of several agencies including the CSLB, DIR, EDD, FTB, and BOE. Reports indicate that the underground economy imposes burdens on businesses that comply with the law and properly pay tax obligations. Reports also indicate that while these agencies have authority to enforce

liens and warrants to collect outstanding liabilities, these collection tools are ineffective against taxpayers who primarily operate on a cash basis because current information on their assets or income is unavailable.

Similar to EDD and FTB, the BOE finds that some delinquent contractors do not respond to its usual enforcement actions. Suspension or denial of a contractor's license would be a last resort collection method. When the BOE is unable to convince a contractor to pay its outstanding liability in full or to enter into an installment payment agreement, and when no other collection tools are effective, then the BOE would consider requesting CSLB to deny or suspend a contractor's license.

This provision is a duplicate of a BOE-sponsored measure considered last year ([AB 2332](#) (Eng)). Although approved by the Legislature, Governor Schwarzenegger vetoed AB 2332, stating:

"Not resolving outstanding financial liabilities is a serious offense, but this bill is unnecessary. The BOE already has at its disposal a number of enforcement actions that it can take against contractors that are delinquent on tax payments. This bill proposes to shift some responsibility for tax collection from the BOE to a Board that is designed to protect the safety and well being of consumers."

COMMENT

This additional collection tool will only be used as a last resort effort to bring a contractor into compliance. Before the contractor's license is suspended or denied under this provision, the law would require that the CSLB's registrar provide a preliminary notice to the licensee of its intent to suspend or deny on a date certain at least 60 days prior to the date of the suspension or denial.

This bill is not intended to shift any responsibility for the BOE's tax collection efforts to the CSLB. Instead, it gives the BOE an additional collection tool that also serves as a strong incentive for delinquent contractors to resolve their outstanding liabilities. The use of this collection tool places the BOE on equal footing with FTB and EDD, and promotes joint enforcement action among the three tax collection agencies.

New Employee Registry Data
Unemployment Insurance Code Section 1088.5

LAW PRIOR TO AMENDMENT

Under existing law, Unemployment Insurance Code Section 1088.5 requires all employers to report information on newly hired or rehired employees who work in this state to the EDD within 20 days following the date the employee is hired. The information to be reported includes the employee's full name, address, social security number, and first date the employee worked. An employer is also required to report its business name and address, state employer identification number, and federal employer identification number. This EDD report is generally referred to as the "new employee registry."

Under Section 1088.5, the new employee registry information may only be used for programs administered by the EDD, FTB, public assistance programs, worker's compensation programs, and enforcement of child support obligations. Under current law, the BOE is *not* authorized to use the new employee registry.

AMENDMENT

This provision amends Unemployment Insurance Code Section 1088.5 to authorize the BOE to use information in the new employee registry for tax collection and enforcement purposes.

BACKGROUND

In 1996, the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) was signed into law. The primary purpose of PRWORA is to provide a strengthened child support enforcement program that locates non-custodial parents and enforces child support orders. One key provision of PRWORA related to child support orders is a requirement that all states have a program to report timely information about newly hired and rehired employees.

In 1997, pursuant to the federal PRWORA legislation, California enacted legislation (Ch. 606, AB 67, operative July 1, 1998) to establish a new employee registry. The purpose was to aid in the collection of debts of individuals who were able to avoid collection because the employer quarterly return information reported to EDD was received too late to be used as an effective collection information resource.

Also, because of the effectiveness of the new employee registry, in 2003, the FTB sponsored legislation to use the registry for its non-tax debt collection programs. [AB 1742](#) (Ch. 455, Stats. 2003, Committee on Revenue and Taxation) authorized the FTB to use the registry when pursuing non-tax debt collection such as vehicle registration dishonored check collection, delinquent fines imposed for labor law violations, and court-ordered debt collection.

In 2007, at the direction of the Legislature, the Legislative Analyst Office, in consultation with the Department of Finance, prepared a report on the challenges facing California's three tax agencies and the need to engage in information and data sharing to effectively and efficiently administer the overall tax system. This report, entitled *A Report on Tax Agency Information and Data Exchange*, focuses on how increased cooperation and information sharing among the tax agencies can serve to improve tax compliance and enforcement activities.

STATE BOARD OF EQUALIZATION

The report points out how compliance and enforcement issues have become of increasing concern to California due to a number of different trends and factors. For example, the growth of the Internet and other forms of remote sales has led to the noncompliance with the state's use tax. These factors, coupled with other features of today's economy such as new and different business ownership structures and the large cash economy, have led to increased concern about the tax gap. The report goes on to say that the collection, sharing, and accessibility of tax-related information among agencies are seen as primary methods for dealing with the tax gap.

In addition, the report describes how the state's tax agencies currently exchange data and information. However, despite the information sharing that already occurs, each of the tax agencies has identified additional information now collected, but not shared, that would be useful to the other agencies for tax compliance purposes.

COMMENT

This provision assists the BOE in locating missing taxpayers and possibly garnishing the wages of taxpayers that are delinquent in their payment of BOE-administered taxes or fees. Currently, the BOE uses the EDD's online wage and employment information which is based on quarterly employment returns filed by employers. Even though this information is available to the BOE shortly after the end of each quarter, this information is relatively old when compared to the new employee registry information (four to six months more current). According to the FTB, the new employee registry has been a valuable enforcement resource in allowing that agency to identify delinquent taxpayers and begin collection action shortly after those taxpayers have started a new job. The BOE believes this information could be valuable for its collection efforts as well.

Assembly Billx1 21 (Blumenfield) Chapter 11
Insurance Tax – Medi-Cal Managed Care Plans

Effective September 16, 2011. Amends Sections 12009, 12201, 12204, 12207, 12242, 12251, 12253, 12254, 12257, 12258, 12260, 12301, 12302, 12303, 12304, 12305, 12307, 12412, 12413, 12421, 12422, 12423, 12427, 12428, 12429, 12431, 12433, 12434, 12491, 12493, 12494, 12601, 12602, 12631, 12632, 12636, 12636.5, 12679, 12681, 12801, 12951, 12977, 12983, and 12984 of, and adds Section 12243 to, the Revenue and Taxation Code.

BILL SUMMARY

Among other things, this bill extends the insurance gross premiums tax on Medi-Cal managed care plans, from July 1, 2011 to July 1, 2012.

Sponsor: Assembly Member Blumenfield

LAW PRIOR TO AMENDMENT

Section 12201 of the Revenue and Taxation Code imposes an annual tax on every Medi-Cal managed care plan doing business in this state at a rate of 2.35 percent, until July 1, 2011. The revenues derived from the imposition of the tax on Medi-Cal managed care plans are continuously appropriated to the State Department of Health Care Services (DHCS) for purposes of the Medi-Cal program in an amount equal to the difference between 100 percent and the applicable federal medical assistance percentage, with the balance appropriated to the Managed Risk Medical Insurance Board for purposes of the Healthy Families Program.

The basis of the tax for a Medi-Cal managed care plan is the “total operating revenues,” which is defined to mean all amounts received by a Medi-Cal managed care plan in premium or capitation payments for the coverage or provision of all health care services, including, but not limited to, Medi-Cal services. Total operating revenues do not include amounts received by a Medi-Cal managed care plan pursuant to a subcontract with a Medi-Cal managed care plan to provide health care services to Medi-Cal beneficiaries.

Section 12009 defines a “Medi-Cal managed care plan” to mean any individual, organization, or entity, other than an insurer or a dental managed care plan, that enters into a contract with the DHCS, as described.

The “in lieu of” provision that currently exempts insurers from all other state and local taxes and licenses (with certain specified exceptions) does not apply to a Medi-Cal managed care plan. Accordingly, Medi-Cal managed care plans continue to be subject to other state, county, and municipal taxes and licenses, as applicable.

AMENDMENT

This bill extends the imposition of the gross premiums tax on every Medi-Cal managed care plan in this state, from July 1, 2011, to July 1, 2012.

This bill became effective September 16, 2011, but operative only if specified events relating to the Healthy Families Program (HFP) and the Managed Risk Medical Insurance Board do not occur, and, if operative, exempts Medi-Cal managed care plans from the

STATE BOARD OF EQUALIZATION

gross premiums tax if those specified events do occur. Furthermore, the act would become inoperative if any of its provisions are amended or repealed.

IN GENERAL

Medi-Cal is California's Medicaid program. The [DHCS's website](#) describes Medi-Cal as a public health insurance program which provides needed health care services for low-income individuals including families with children, seniors, persons with disabilities, foster care, pregnant women, and low income people with specific diseases such as tuberculosis, breast cancer, or HIV/AIDS. Medi-Cal is financed equally by the State and federal government.

As of February 2011, 58 percent of the Medi-Cal beneficiaries were served by managed care plans, which have networks of providers, including doctors, pharmacies, and health education programs.

BACKGROUND

In 2009, [AB 1422](#) (Ch. 157, Bass) subjected Medi-Cal managed care plans to the insurance gross premiums tax at a rate of 2.35 percent of their total operating revenues, until December 31, 2010. In 2010, [SB 853](#) (Ch. 717, Committee on Health) extended the gross premiums tax on Medi-Cal managed care plans to July 1, 2011.

COMMENTS

1. **Purpose.** This bill contains the necessary statutory changes to achieve savings assumed in the 2011 Budget Act for the Managed Risk Medical Insurance Board.
2. **The BOE staff does not foresee any administrative problems with this bill.** The insurance tax is administered by three state agencies, the BOE, the Department of Insurance (DOI), and the Controller. The Controller acts as a collector of the tax. The DOI is primarily responsible for licensing and regulating insurers under the Insurance Code. This includes assessing the amount of tax each insurer is required to pay and conducting audits. The BOE is responsible for issuing the assessments determined by DOI and for deciding the validity of any petition for redetermination.

Extending the imposition of the gross premiums tax on Medi-Cal managed care plans would not change the roles or responsibilities of the BOE.

3. **Related Bills.** This bill contains provisions identical to [SBx1 9](#) (Committee on Budget).

Assembly Billx1 29 (Blumenfield) Chapter 8

Fire Prevention Fee

Effective July 8, 2011. Adds Chapter 1.5 (commencing with Section 4210) to Part 2 of Division 4 of the Public Resources Code.

BILL SUMMARY

Among its provisions, this budget trailer bill, in order to fund fire prevention activities, requires the State Board of Equalization (BOE) to assess and collect a fire prevention fee charged on each structure on a parcel that is within a state responsibility area (SRA). The bill requires the State Board of Forestry and Fire Protection (Fire Board), on or before September 1, 2011, to adopt emergency regulations to establish a fire prevention fee in an amount not to exceed \$150 on each structure subject to the fee. The Department of Forestry and Fire Protection (CalFire) is required to provide the BOE information needed for the assessments.

Sponsor: Assembly Member Blumenfield

LAW PRIOR TO AMENDMENT

Under existing law, Public Resources Code (PRC) Section 4125 requires the Fire Board to classify all lands within the state, without regard to any classification of lands made by or for any federal agency or purpose, for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state.

PRC Section 4102 defines "state responsibility areas" to mean areas of the state in which the financial responsibility for preventing and suppressing fires has been determined by the Fire Board to be primarily the responsibility of the state.

Under existing PRC provisions, CalFire has the primary responsibility for preventing and suppressing fires in areas that the Fire Board has determined are SRA's.

AMENDMENT

This bill adds Chapter 1.5 (commencing with Section 4210) to Part 2 of Division 4 of the Public Resources Code to, among other things, require the Fire Board on or before September 1, 2011, to adopt emergency regulations to establish a fire prevention fee in an amount not to exceed \$150 on each structure on a parcel that is within a SRA.

The fire fee is adjusted annually by the Fire Board, beginning July 1, 2013, to reflect the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as described.

Collection and Administration. Commencing with the 2011-12 fiscal year, the BOE is required to annually assess and collect the fire prevention fee in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the BOE. It was

added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, as well as providing the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

Within 30 days of the effective date of the bill, and by each January 1 thereafter, CalFire is required to transmit to the BOE the appropriate name and address of each person liable for the fee and the amount of the fee to be assessed. In addition, CalFire is also required to provide to the BOE a contact telephone number for the Fire Board to be printed on the assessment to respond to fee-payer questions about the fee.

The annual fire prevention fee is due and payable to the BOE 30 days from the date of assessment. If a timely petition for redetermination has not been filed within the 30-day period, then the amount determined to be due becomes final at the end of the 30-day period. However, if a petition for redetermination is filed within the 30-day period, then all legal actions to collect the fee must be held pending a decision by CalFire.

The BOE won't handle any appeal or claim for refund based on a determination by CalFire that a person is required to pay the fee or regarding the amount of that fee. Those will be handled by CalFire. If CalFire determines that a person is entitled to a refund, then that person is required to make a claim for refund to the BOE.

Additionally, if it is determined by a reviewing court that a person is entitled to a refund of all or part of the fire prevention fee, then that person would file a refund claim with the BOE.

In reviewing a petition for redetermination, if CalFire determines that the fire prevention fee is due and if the fee is not paid when due and payable, then, notwithstanding the 10 percent penalty for failure to timely pay provided under the Fee Collections Procedure Law, this bill imposes a penalty of 20 percent of the fee due for each 30-day period in which the fee remains unpaid.

Beginning with the 2012-13 fiscal year, if in any given fiscal year there are sufficient funds in the State Responsibility Area Fire Prevention Fund to finance specified costs related to fire prevention activities for that fiscal year, then the fire prevention fee may not be collected that fiscal year.

State Responsibility Area Fire Prevention Fund (Fund). After deducting moneys necessary for the payment of refunds and reimbursement for expenses incurred in the collection of the fee, the BOE is required to deposit the fire protection fees collected into the Fund, which this bill creates in the State Treasury. Moneys in the Fund will be available to CalFire for fire prevention activities, as specified, in SRAs, that benefit the owners of structures within the SRA.

This bill also requires that the fee revenues be used to cover any startup costs incurred over a two-year period.

Definitions. This bill defines the term "structure" to mean "a building used or intended to be used for human habitation." A building includes, but is not limited to, a mobilehome or manufactured home. The Fire Board is required to exclude from this definition building

types that require no structural fire protection services beyond those provided to otherwise unimproved lands.

This bill defines a "state responsibility area" to mean state responsibility area as defined in Section 4102 of the PRC, which means areas of the state in which the financial responsibility of preventing and suppressing fires has been determined by CalFire to be primarily the responsibility of the state.

The bill's provisions became July 8, 2011.

BACKGROUND

In 2003-04, the Legislature enacted [SB 1049](#) (Committee on Budget, Chapter 741) that imposed an annual SRA fire protection benefit fee on each parcel of land located, in whole or in part, within SRAs. The fee was to be collected by counties and used to fund fire prevention and suppression services by CalFire. However, the fee was repealed by [SB 1112](#) (Committee on Budget, Chapter 219, Stats. 2004) before any fees were collected.

During the 2007-08 Budget process, the Legislative Analyst Office (LAO) recommended reenacting a fire protection fee in SRAs. In its report titled: "California Department of Forestry and Fire Protection: State's Wildland Firefighting Costs Continue to Escalate," the LAO commented that it is appropriate for the beneficiaries of state fire protection to contribute to the cost of such protection. According to the LAO, because CalFire's fire protection provides both public benefits (the protection of watersheds, for example) and private benefits (the protection of timber lands and houses in SRAs) it is appropriate that private beneficiaries contribute to the state's cost of doing so. The LAO recommended the enactment of legislation to reinstate fire protection fees on private property owners in SRAs so that the beneficiaries of SRAs pay a portion of their costs.

In 2008, [SB 1617](#) (Kehoe), which was very similar to this bill, would have imposed an annual \$50 fee on residential structures located within SRAs. The bill would have required the BOE to assess and collect the \$50 fee. The bill also contained provisions prohibiting the BOE from collecting the fee in any year in which there was sufficient fees to finance specified fire prevention grants and other activities. This bill died on the Assembly inactive file.

In 2009, [ABx3 41](#) (Evans), a budget trailer bill, would have required CalFire to adopt emergency regulations to establish a fee to cover the costs of providing fire protection services associated with structures in an SRA, based on the fire hazard severity zone in which a structure is located. The bill would have required the BOE to assess and collect a fire protection fee charged on each structure on a parcel that is subject to property taxes with a SRA. This bill was withdrawn from enrollment and held in the Legislature.

COMMENTS

1. **Purpose.** The purpose of this bill is to enact various provisions necessary for the implementation of the 2011-12 budget. The fire fee would fund fire and emergency response efforts in SRAs.
2. **The BOE would need a specific appropriation for administrative start up costs.** This bill is effective immediately and proposes a new fee to be collected annually by the BOE commencing with the 2011-12 fiscal year. The BOE would receive initial billing information from CalFire sometime after the rate is set by the Fire Board in

September 2011. As such, the BOE would incur administrative costs beginning with the 2011-12 fiscal year in order to develop computer programs, create the notice of determination (the SRA assessments), and hire appropriate staff. To cover these administrative startup costs, the BOE would need a direct appropriation that would not have already been identified in the BOE's 2011-12 budget.

3. **When would the BOE receive the information from CalFire?** As provided in the bill, Section 4212 requires the Fire Board to adopt emergency regulations to establish the initial fee, not to exceed \$150 per structure on a parcel within an SRA, by September 1, 2011. However, subdivision (c) of Section 4213 also specifies that, within 30 days of the effective date of this chapter and each January 1 thereafter, CalFire would transmit to the BOE the name and address of each person who is liable for the fee, the amount of the fee to be assessed, and a contact phone number for the Fire Board. The bill is effective immediately upon chaptering, therefore, it seems CalFire would be required to provide the fee amount to the BOE prior to the Fire Board actually adopting regulations and setting the initial fee amount. As this is an unlikely scenario, we will assume that the BOE will receive the information from CalFire shortly after the fee amount is established by the Fire Board.

Due to the contradictory language regarding the timing of establishing the fee amount and providing feepayer information to the BOE, it is unclear when the BOE would actually receive all of the information necessary to issue assessments. With the number of assessments estimated at about one million, the BOE would be unable to issue the assessments at one time and therefore would need to stagger the issuance of the assessments over a ten-month period. The later BOE gets the information from CalFire, the higher the likelihood that the assessments would not be issued in the same fiscal year.

4. **The Fire Board would adopt emergency regulations to establish a fire prevention fee.** The Fire Board is provided a cap on the fee amount per structure subject to the fee, which may allow the Fire Board to adopt either a single flat rate fee or a fee based on criteria related to fire prevention. Depending on the simplicity or complexity of the fee structure, the BOE's administrative costs may be affected. Costs could be due to the information related to the owner of the structure, the type of structure, the number of structures on a parcel, the amount of the fee, and other factors related to fire prevention. Although CalFire would only be required to provide the appropriate name and address of each person who is liable for the fee and the amount of the fee to be assessed, it may be necessary to include additional information to the feepayers regarding how the fee amount owed was determined.
5. **Additional administrative concerns.** The BOE staff has administrative concerns regarding the fire prevention fee that include the following:
- As provided, commencing with the 2012-13 fiscal year, if in any given fiscal year there are sufficient amounts in the Fund to finance specified fire prevention activities, then the fee may not be collected for that fiscal year. The bill does not specify what department or agency would determine if there are or are not sufficient amounts to cover the specified costs. The BOE believes that this function would be appropriate for the LAO or Department of Finance, but not the BOE and that a timely notice should be required to be sent to the BOE. The BOE also believes this provision should be interpreted to mean that fire prevention

STATE BOARD OF EQUALIZATION

assessments would not be issued for the fiscal year affected and should not be interpreted as a stay of collection for amounts assessed for other fiscal years. If the Legislature intended otherwise, this should be clarified.

- Each petition for redetermination, or appeal, shall be sent to the Fire Board, CalFire, and BOE. During the time that a timely appeal is pending, the BOE shall stay all collection action until CalFire makes a final determination of the appeal. As there is no stipulated timeframe for a final determination to be made, the BOE would need to periodically follow up with CalFire regarding the resolution of appeals. Additionally, after CalFire makes a final determination, the BOE would issue a notice to the feepayer which would include language regarding the 20-percent penalty that would be assessed for each 30-day period in which the fee remains unpaid. The 20-percent penalty for the appealed cases would be imposed in place of the one-time 10 percent penalty imposed under the Fee Collection Procedures Law. It appears that the 10 percent penalty would apply to those assessments that are not appealed but remain unpaid after the fee has become due and payable (30 days after assessment).
6. **Legal challenges to any new fee program might be made on the grounds that the fee is a tax.** Proposition 26 passed by the voters in the 2010 General Election expanded the definition of a tax and a tax increase. The Legislative Analyst Office provided an [analysis of Prop. 26](#). Although this bill has been keyed by the Legislative Counsel as a majority vote bill, opponents of this bill might question whether the fee imposed is in legal effect a “tax” required to be enacted by a two-thirds vote of the Legislature.
7. **Related legislation.** The Senate Committee on Budget and Fiscal Review has proposed a similar measure, [SBx1 17](#).

Senate Bill 617 (Calderon & Pavley) Chapter 496

*State Agency Regulations – Standardized Impact Analysis
State Government – Financial Accountability*

Effective January 1, 2012, but certain provisions operative November 1, 2013. Amends Sections 11346.2, 11346.3, 11346.5, 11346.9, 11347.3, 11349.1, 13401, 13402, 13403, 13404, 13405, 13406, and 13407 of, and adds Sections 11342.548, 11346.36, and 11349.1.5 to, the Government Code.

BILL SUMMARY

This bill:

1. Requires state agencies to prepare a standardized regulatory impact analysis, as specified, with regard to the adoption, amendment, or repeal of a major regulation, as defined, that is proposed on or after November 1, 2013. Require that the agency submit the analysis to the Department of Finance (DOF) for review and comments, as specified, which must be included with the notice of proposed action. (Government Code [GC] Section 11346.3, et al.)
2. Requires the DOF, in consultation with the Office of Administrative Law and other state agencies, to adopt regulations for conducting the standardized regulatory impact analyses, as specified, to be utilized by state agencies when promulgating major regulations. (GC Section 11346.36.)
3. Revises certain provisions of the Administrative Procedures Act with respect to state agencies proposing to adopt, amend, or repeal regulations. (GC Section 11346.2, et al.)
4. Requires state agencies to conduct effective, independent, and ongoing monitoring of their internal accounting and administrative controls. Require the Department of Finance to establish, and modify as necessary, a framework of recommended practices to guide state agencies in conducting active ongoing monitoring or processes for internal accounting and administrative controls. (GC Section 13401, et al.)

Sponsor: Senators Calderon and Pavley

LAW PRIOR TO AMENDMENT

Current law establishes detailed procedural requirements in the Administrative Procedure Act (APA) (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code) that must be followed by state agencies when they propose to adopt, amend, or repeal regulations.

The need for regulatory action is identified in a number of ways. Under current law, interested persons may identify the need for regulatory action by filing a petition with a state agency for the adoption, amendment, or repeal of a regulation. When a petition is filed, a state agency must acknowledge its receipt in writing and, within 30 days, either schedule the petition for a public hearing or issue a detailed written decision indicating why the petition was denied on its merits and submit the decision to the Office of

Administrative Law (OAL) for publication in the California Regulatory Notice Register. If an interested person disagrees with the reasons why an agency denied its petition, the interested person may also file a petition for reconsideration, which must be acknowledged and responded to in the same manner as the original petition.

Current law also allows state agencies to internally identify the need for regulatory action and gives state agencies that are considering adopting, amending, or repealing a regulation the discretion to informally consult with interested persons before considering whether to initiate the formal APA process for adopting, amending, or repealing a regulation. Current law only requires state agencies to consult with interested persons prior to initiating the formal APA process when a regulation involves complex proposals or numerous proposals.

If a state agency decides to begin the formal APA process to adopt, amend, or repeal a regulation, the APA provides for the public to actively participate in the agency's rulemaking. The APA requires a state agency to notify by mail every person who has filed a request for notice and also a representative number of businesses affected regarding the commencement of each regulatory action. The APA also requires a state agency to publish the same written notice in the California Regulatory Notice Register and to post the notice on its Website.

The written notice must:

- State the time, place, and nature of the regulatory action;
- Identify the state agency's authority for initiating the proposed regulatory action and refer to the specific provision of law being implemented, interpreted, or made specific by the proposed regulatory action;
- Contain an informative digest drafted in plain English describing existing law, the proposed regulatory action, the effect of the proposed regulatory action, and the broad objectives of the regulatory action;
- Contain a determination as to whether the proposed regulatory action imposes a mandate on local agencies or school districts and an estimate of the cost or savings to any state agency, the cost to any local agency or school district, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state anticipated to result from the proposed regulatory action;
- Contain a determination and statement regarding whether the proposed regulatory action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with out-of-state businesses;
- Contain a description of all the cost impacts, known to the agency, that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action;
- Contain a statement regarding the results of the state agency's assessment of the proposed regulatory action's potential for adverse economic impact on California business enterprises and individuals, and its potential to impose unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements;

STATE BOARD OF EQUALIZATION

- Contain a determination and statement as to whether the proposed regulatory action will have a significant effect on housing costs;
- Include a statement that the state agency may not adopt the proposed regulatory action unless it finds that no reasonable alternative considered by the agency or that was identified and brought to the agency's attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action;
- Include the contact information for two agency representatives to whom inquiries concerning the proposed regulatory action may be directed;
- State the date by which written comments must be received to present statements, arguments, or contentions in writing relating to the proposed regulatory action in order for them to be considered by the state agency before it adopts the proposed regulatory action;
- State that the state agency has prepared the text of the proposed regulatory action and an initial statement of reasons regarding the proposed regulatory action, which are available to the public;
- State that if a public hearing is not scheduled, a public hearing will be scheduled if requested no later than 15 days prior to the close of the written comment period;
- State that if the state agency makes sufficiently related changes to the proposed regulatory action, the full text of the changes will be available for public comment for at least 15 days prior to the adoption of the proposed regulatory action; and
- Explain how the public can obtain a copy of the final statement of reasons and provide the address for the state agency's Website.

In order to further assist the public, the APA requires state agencies to prepare an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. The initial statement of reasons is required to: (1) provide the state agency's specific purpose for the proposed regulatory action and the agency's rationale for determining that the proposed regulatory action is reasonably necessary to carryout such purpose; (2) identify each technical, theoretical, and empirical study, report, or similar document, if any, the state agency is relying upon in initiating the proposed regulatory action; and (3) a description of any reasonable alternatives that would lessen any adverse impact on small business and the state agency's reasons for rejecting those reasonable alternatives. However, state agencies are not required, in the initial statement of reasons, to artificially construct alternatives, describe unreasonable alternatives, or justify why the agency has not described alternatives.

If a state agency adopts a proposed regulatory action after considering all of the written comments submitted during the comment period and conducting a public hearing, then the state agency must prepare a final statement of reasons and an updated informative digest. The final statement of reasons must contain: (A) an update of all the information contained in the initial statement of reasons; (B) a determination as to whether the adopted regulatory action imposes a mandate on local agencies or school districts and, if so, whether the mandated costs are reimbursable; (C) a summary of each public comment objecting to or recommending a change to the proposed regulatory action and an explanation of the changes to the proposed regulatory action made in response to such comments or the state agency's reasons for not making any changes; and (D) a

determination with supporting information that no alternative considered by the agency would be more effective or would be as effective and less burdensome to affected private persons than the adopted action. The updated informative digest must provide an update to the information set forth in the informative digest included in the original notice. Then, the state agency must submit the entire rulemaking file to the OAL.

The OAL is charged with the orderly review of adopted regulations in order to reduce the number of administrative regulations and improve the quality of those regulations that are adopted. In its review, the OAL determines if the regulations comply with all six of the substantive standards prescribed by law, which are: necessity, authority, clarity, consistency, reference, and nonduplication.

Existing law, the Financial Integrity and State Manager's Accountability Act (FISMA) of 1983, stipulates that state agency and department heads are responsible for establishing and maintaining systems of internal controls within their organization. Under the FISMA, organization management is responsible for documenting the system, communicating the system requirements to employees, assuring that the system is functioning as designed and modifying the system as changes in conditions warrant. Chapter 69, Statutes 2006 (effective July 12, 2006) amended FISMA to require that heads of state agencies conduct an internal review and prepare a report on the adequacy of the system(s) of internal control on a biennial basis.

AMENDMENT

This bill revises certain provisions of the APA and requires state agencies to prepare a standardized regulatory impact analysis, as specified, with respect to the adoption, amendment, or repeal of a major regulation, as defined, that is proposed on or after November 1, 2013. Specifically, this bill:

- 1) Defines "major regulation" to mean any proposed adoption, amendment, or repeal of a regulation that will have an economic impact on California business enterprises and individuals in an amount exceeding \$50 million, as estimated by the state agency.
- 2) Requires state agencies proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, to prepare a standardized regulatory impact assessment as prescribed by the DOF, addressing all of the following:
 - The creation or elimination of jobs within the state.
 - The creation of new businesses or the elimination of existing businesses within the state.
 - The competitive advantages or disadvantages for businesses currently doing business within the state.
 - The increase or decrease of investment in the state.
 - The incentives for innovation in products, materials, or processes.
 - Monetization, to the extent practicable, of the benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.
- 3) Requires a state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, to submit the standardized regulatory impact assessment

to the DOF upon completion. The DOF shall comment, within 30 days of receiving such assessment, on the extent to which the assessment adheres to the regulations adopted by the DOF, as specified.

- 4) Requires, prior to November 1, 2013, the DOF, in consultation with the OAL and other state agencies, to adopt regulations for conducting the standardized regulatory impact assessment. The regulations, at a minimum, shall assist the agencies in specifying the methodologies for the following:
 - Assessing and determining the benefits and costs of the proposed regulation, expressed in monetary terms to the extent feasible and appropriate. Assessing the value of nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, the increase in openness and transparency of business and government and other nonmonetary benefits consistent with the statutory policy or other provisions of law.
 - Comparing proposed regulatory alternatives with an established baseline so agencies can make analytical decisions for the adoption, amendment, or repeal of regulations necessary to determine that the proposed action is the most effective, or equally effective and less burdensome, alternative in carrying out the purpose for which the action is proposed, or the most cost-effective alternative to the economy and to affected private persons that would be equally effective in implementing the statutory policy or provision of law.
 - Determining the impact of a regulatory proposal on the state economy, businesses, and the public welfare.
 - Assessing the effects of a regulatory proposal on the General Fund and special funds of the state and affected local government agencies attributable to the proposed regulation.
 - Determining the cost of enforcement and compliance to the agency and to affected business enterprises and individuals.
 - Making the estimation if a regulation is to be deemed a major regulation.
- 5) Requires state agencies to provide the DOF and the OAL ready access to their records and full information and reasonable assistance in any matter requested for purposes of developing the regulations required by this bill.
- 6) Requires the OAL, on or before November 1, 2015, to submit to the Senate and Assembly Committees on Governmental Organization a report describing the extent to which submitted standardized regulatory impact analyses for proposed major regulations adhere to the regulations adopted by the DOF. The report shall include a discussion of agency adherence to the specified regulations as well as a comparison between various state agencies on the question of adherence. In addition to this report, the OAL may notify the Legislature of noncompliance by a state agency with the specified regulations.
- 7) Defines “noncompliance” to mean that the agency failed to complete the economic impact assessment or standardized regulatory impact analysis, or failed to include the assessment or analysis in the file of the rulemaking proceeding, as specified.

- 8) Requires state agencies, when submitting an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation, to include the following additional information:
- The problem the agency intends to address.
 - Enumerate the benefits or goals provided in the authorizing statute. The benefits may include, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things.
 - For a major regulation proposed on or after November 1, 2013, the standardized regulatory impact analysis (The applicable provision, subdivision (b)(2) of GC section 11346.2, references a date of January 1, 2013, which is a drafting error. According to the author's office, this drafting error will be fixed with clean-up legislation in 2012.)
- 9) Specifies that reasonable alternatives included in the initial statement of reasons shall include alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.
- 10) Requires state agencies proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, to prepare an economic impact analysis, as specified, that includes the benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.
- 11) Specifies that analyses conducted pursuant to this bill are intended to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner.
- 12) Specifies that regulatory impact analyses shall inform the agencies and the public of the economic consequences of regulatory choices, not reassess statutory policy.
- 13) Provides that the baseline for the regulatory analysis shall be the most cost-effective set of regulatory measures that will effectively implement the statutory policy or other provisions of law.
- 14) Requires the notice of proposed adoption, amendment or repeal of a regulation submitted by the state agency to OAL to also include:
- A policy statement overview of the benefits anticipated by the proposed adoption, amendment, or repeal of a regulation, including, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things.
 - An evaluation of whether a proposed regulation is inconsistent or incompatible with existing state regulations.

STATE BOARD OF EQUALIZATION

- A statement of the results of the economic impact assessment or the standardized regulatory impact analysis.
 - A statement that the state agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified would be more cost-effective to affected private person and equally effective in implementing the statutory policy. For a major regulation proposed on or after November 1, 2013, the statement shall be based upon the standardized regulatory impact analysis of the proposed regulation, as specified.
- 15) Requires state agencies when submitting to the OAL a final statement of reasons, to also include the following:
- A determination with supporting information that no alternative considered by the agency would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. For a major regulation proposed on or after November 1, 2013, the determination shall be based upon the standardized regulatory impact analysis, and upon the statement of benefits, as specified.
 - An explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses including the standardized regulatory impact analysis for a major regulation, as well as the benefits of the proposed regulation.
- 16) Deletes certain provisions in GC Code Section 11346.3, which provide that “It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of a proposed adoption, amendment, or repeal of a regulation.” (This would change the purpose of Section 11346.3 and require state agencies to perform economic impact assessments as part of the requirements for the valid adoption of a regulatory action.)
- 17) Provides that state agency heads are responsible for the establishment and maintenance of effective, independent, and objective ongoing monitoring of the internal accounting and administrative controls within their agencies.
- 18) Requires state agency heads to implement systems and processes to ensure the independence and objectivity of the monitoring of internal accounting and administrative control as an ongoing activity, as specified.
- 19) Requires the DOF, in consultation with the State Auditor and the Controller, to establish, and modify as necessary, a framework of recommended practices to guide state agencies in conducting active ongoing monitoring of processes for internal accounting and administrative controls.

This bill becomes operative January 1, 2012, but certain provisions become operative November 1, 2013.

BACKGROUND

Informal Rulemaking Process. The BOE is always looking for ways to improve its current regulations and trying to identify areas that may need more or less regulation. Therefore, the BOE values the public's opinion of its regulations and the BOE's Website has a dedicated page that the public can use to [submit informal suggestions](#) for regulatory and other changes, in addition to accepting formal rulemaking petitions authorized under the APA. Furthermore, the BOE posts the name of the BOE's [Regulations Coordinator](#) on its website, and invites the public to contact the BOE Regulations Coordinator with questions about any of the Board's existing regulations, pending regulatory actions, or the rulemaking process. The Board also encourages its staff to suggest ways to improve the BOE's current regulations and to identify areas that may need more or less regulation; and the BOE has established a Business Taxes Committee, a Property Tax Committee, a Customer Service and Administrative Efficiency Committee, and a Legislative Committee to formally identify and address the need for potential regulations or the need to repeal existing regulations and work with interested parties, when necessary.

Once BOE staff identifies a regulatory issue, staff prepares an issue paper for the BOE Members, which describes the regulatory issue and makes recommendations for addressing the issue through the adoption, amendment, or repeal of a regulation, or other alternative actions. Staff then submits the issue paper to the BOE Members for discussion during a public BOE meeting or committee meeting.

The BOE Members may respond to the issue paper by agreeing that regulatory action is necessary and authorizing BOE staff to either begin the formal rulemaking process or work with industry representatives, taxpayer groups, public officials, and other interested parties to draft regulatory language to be brought back to the BOE Members at a later date. The BOE Members may also direct staff to begin drafting specific regulatory language or assign work on a potential regulation to a specific BOE committee or the BOE's Legal Department depending upon its nature. Or, the BOE Members may simply disagree with the issue paper's conclusion that regulatory action is needed and direct staff to cease work. However, in most cases, the BOE Members assign a regulatory project to the BOE's Business Taxes Committee or Property Tax Committee and the assigned committee conducts one or more interested parties meeting with the public. When the committee is satisfied that all the issues have been addressed and the draft regulation is ready for BOE Member consideration, the committee recommends that the BOE Members authorize staff to publish the notice of action for a public hearing on the proposed regulatory action. The publication of the notice of action begins the formal rulemaking process set forth in the APA.

Formal Rulemaking Process. Approximately 60 days before the public hearing date, BOE sends to the OAL a copy of the *Notice of Action for the proposed regulatory action*. The notice includes the date, time, and place of the hearing (and all of the other information listed above), and explains how to contact the BOE's Regulations Coordinator to obtain the text of the proposed regulatory action.

At least 45 days before the public hearing, OAL publishes the notice in the *California Regulation Notice Register*, and invites the public to review and comment on the proposed regulatory action (comments may be made in writing before the BOE hearing date or in person at the hearing). At the same time, BOE sends the Notice of Action to

interested taxpayers, public officials, industry groups, and other interested parties who have requested notice and invites them to review and comment on the proposed regulatory action. The Notice of Action is also posted on the BOE's Website and made available by e-mail.

Comments received from interested parties are circulated to the BOE Members and BOE staff.

The BOE Members then hold the scheduled public hearing in accordance with both the APA and the Bagley-Keene Open Meeting Act. (The BOE always schedules and conducts a public hearing.) At the hearing, responsible BOE staff members respond to oral and written comments, and recommend whether or not the BOE Members should adopt the proposed regulatory action as originally proposed or whether the BOE Members should approve potential changes to the original proposed text of the regulatory action to address public comments.

If the BOE Members are satisfied with the text of the proposed regulatory action with or without nonsubstantial or solely grammatical changes, the BOE Members may formally vote to adopt the text with or without the changes, and direct staff to complete the rulemaking file and submit it to OAL for review and approval. If the BOE Members are not satisfied with the proposed text, they may direct staff to make further sufficiently related changes to the text, and make the changed text available for public comment for another 15 days. Subsequently, the BOE Members may adopt the text of the proposed regulatory action with the sufficiently related changes after considering any comments received during the additional 15-day comment period and direct staff to complete the rulemaking file and submit it to OAL for review and approval. And again, if the BOE Members are not satisfied with the proposed text, they may also direct staff to terminate the rulemaking project and/or start a new and different project.

Generally, the BOE submits its rulemaking files to the OAL within three weeks of BOE adoption; however, the OAL has 30 business days to review the rulemaking file.

COMMENTS

1. **Purpose.** To provide a more thorough review of future regulations. According to Senator Calderon, this bill "will require agencies to review regulations with an estimated cost of more than \$50 million and mandates that the least burdensome, most cost-efficient method of implementation be adopted to lessen the burden on affected businesses."
2. **BOE is currently very pro-active in seeking the input from interested parties.** The BOE does not believe that it has any regulations that are burdensome to businesses in California. The BOE already works closely with all interested parties who wish to participate in its rulemaking activities, to ensure that it does not inadvertently adopt burdensome regulations.

The BOE actively seeks public input regarding its rulemaking activities and invites the public, not just taxpayers, to recommend proposed changes to BOE regulations in real-time via the BOE's website. The BOE also accepts formal rulemaking petitions and works with interested parties (industry representatives, taxpayer groups, public officials, and so forth) during the BOE's informal and formal rulemaking processes to draft effective regulations that address specific regulatory needs and are not broader than necessary.

3. **This bill will make it more difficult to adopt, amend, or repeal a regulation.** This bill adds to the APAs rulemaking requirements, and thereby delays necessary rulemaking, creates additional grounds for challenging the validity of state regulations, and potentially forces state agencies to incur additional costs. The bill converts the economic impact provisions in GC Section 11346.3 into mandatory requirements and adds the requirement that state agencies prepare economic impact analysis to those provisions, and thereby imposes additional work and related costs on state agencies and render regulations invalid whenever state agencies do not comply with section 11346.3 in adopting, amending, or repealing a regulation.
4. **How many “major regulations” has BOE adopted, amended, or repealed to the OAL?** The BOE maintains on its website rulemaking files for regulations it adopts, amends, or repeals for the years 2009, 2010, and 2011. The BOE’s Disclosure Office maintains Rulemaking files for periods prior to 2009. In the time provided to prepare an analysis on this bill, staff reviewed the rulemaking files for the years 2009, 2010, and 2011, and did not find a “major regulation” adopted, amended, or repealed by the BOE.
5. **Related legislation.** Similar bills were introduced this session that would have made changes to the Administrative Procedures Act. None of these measures passed out of their house of origin.
 - [SB 366](#) (Calderon and Pavley) would require each state agency to identify any regulations that are duplicative, overlapping, inconsistent, or out of date, and adopt, amend, or repeal regulations to reconcile or eliminate any duplication, overlap, inconsistency, or out of date provisions. The bill requires state agencies to complete the specified actions within 180 days of the effective date of the bill.
 - [SB 396](#) (Huff) would require each state agency to review each regulation adopted prior to January 1, 2011, and report to the Legislature on the regulations. The bill would also require, beginning January 2018, and at least every five years thereafter, require each agency to review each regulation that has been in effect for at least 20 years and submit a report to the Legislature on its findings associated with the review.
 - [SB 400](#) (Dutton) would require that an economic impact assessment on a proposed regulation include additional criteria, and that agencies submit economic assessments for certain regulations to OAL for it to determine whether the assessment is based upon sound economic knowledge, methods, and practices. The bill would also require the OAL to reject a regulation that is not based on sound economic knowledge, methods, and practices.
 - [SB 401](#) (Fuller) would specify that every regulation proposed by an agency after January 1, 2012, include a provision repealing the regulation in five years. This bill would prohibit the OAL from approving a proposed regulation unless it contains repeal provisions.
 - [SB 591](#) (Gaines) would require, beginning July 1, 2012, each state agency to determine how many regulations it imposes and, beginning December 31, 2013, reduce the total number of regulations it has identified by 33 percent. The bill would also require, until December 31, 2021, that any new regulation proposed by an agency also eliminate another regulation.

STATE BOARD OF EQUALIZATION

- [SB 688](#) (Wright) would require an economic impact statement for a proposed regulation to include a detailed estimate of the total actual costs of compliance for affected businesses and individuals. This bill would also require the adopting agency to notify specified committees of the Legislature if the estimated total costs of compliance exceed \$10 million, and that the regulation effective date is postponed in that event.
- [AB 530](#) (Smyth) would require state agencies submitting regulation packages to identify all documents, including technical, theoretical, and empirical studies upon which the agency relied for rejecting each reasonable alternative to the proposed regulation. The bill would prohibit an agency from rejecting a reasonable alternative unless the statement of reasons includes at least one of these documents. The bill would also repeal a provision that authorizes the agency to avoid having to artificially construct alternatives, describe unreasonable alternatives, or justify why it did not describe alternatives.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
Revenue & Taxation Code				
<i>Motor Vehicle Fuel Tax Law</i>				
§7360	Repeal Add	AB 105	Ch. 6	Levy of tax
§7361.1	Repeal Add	AB 105	Ch. 6	Floor stock tax
§7653.1	Repeal Add	AB 105	Ch. 6	Return; floor stock tax
§8351	Amend	AB 242	Ch. 727	Deposit of fund
§8407	Add	AB 242	Ch. 727	Restitution order collection
<i>Insurance Tax Law</i>				
§12009	Amend	ABx1 21	Ch. 11	“Medi-Cal managed care plan” defined
§12201	Amend	ABx1 21	Ch. 11	Annual tax
§12204	Amend	ABx1 21	Ch. 11	In lieu of other taxes; exceptions
§12207	Amend	ABx1 21	Ch. 11	Disallowed credits
§12242	Amend	ABx1 21	Ch. 11	Repeal date
§12243	Add	ABx1 21	Ch. 11	Medi-Cal managed care plan revenue
§12251	Amend	ABx1 21	Ch. 11	Prepayments
§12253	Amend	ABx1 21	Ch. 11	Remittance of prepayment
§12254	Amend	ABx1 21	Ch. 11	Amount of prepayment
§12257	Amend	ABx1 21	Ch. 11	Amount of prepayment
§12258	Amend	ABx1 21	Ch. 11	Overpayment
§12260	Amend	ABx1 21	Ch. 11	Penalty and interest
§12301	Amend	ABx1 21	Ch. 11	Relief from prepayments
§12302	Amend	ABx1 21	Ch. 11	Insurance tax return in duplicate
§12303	Amend	ABx1 21	Ch. 11	Return to be signed; oath or declaration

STATE BOARD OF EQUALIZATION

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
Revenue & Taxation Code				
<i>Insurance Tax Law continued</i>				
§12304	Amend	ABx1 21	Ch. 11	Blank forms furnished
§12305	Amend	ABx1 21	Ch. 11	Remittance of tax
§12307	Amend	ABx1 21	Ch. 11	Interest on extension
§12412	Amend	ABx1 21	Ch. 11	Initial assessment of tax
§12413	Amend	ABx1 21	Ch. 11	Notice of initial assessment
§12421	Amend	ABx1 21	Ch. 11	Determination of correct amount of tax
§12422	Amend	ABx1 21	Ch. 11	Proposed deficiency assessment
§12423	Amend	ABx1 21	Ch. 11	Estimate where no return filed
§12427	Amend	ABx1 21	Ch. 11	Notice of deficiency assessment
§12428	Amend	ABx1 21	Ch. 11	Petition for redetermination
§12429	Amend	ABx1 21	Ch. 11	Oral hearing
§12431	Amend	ABx1 21	Ch. 11	Finality date
§12433	Amend	ABx1 21	Ch. 11	Waiver of limitation
§12434	Amend	ABx1 21	Ch. 11	Service of notice
§12491	Amend	ABx1 21	Ch. 11	Lien of tax
§12493	Amend	ABx1 21	Ch. 11	Lien has effect of execution
§12494	Amend	ABx1 21	Ch. 11	Removal of lien
§12601	Amend	ABx1 21	Ch. 11	Payment to Controller
§12602	Amend	ABx1 21	Ch. 11	Electronic funds transfer
§12631	Amend	ABx1 21	Ch. 11	Interest and penalty
§12632	Amend	ABx1 21	Ch. 11	Deficiency assessment; interest and penalty
§12636	Amend	ABx1 21	Ch. 11	Excusable delay
§12636.5	Amend	ABx1 21	Ch. 11	Application of payment to delinquent tax liabilities

STATE BOARD OF EQUALIZATION

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
Revenue & Taxation Code				
<i>Insurance Tax Law continued</i>				
§12679	Amend	ABx1 21	Ch. 11	Service of summons
§12681	Amend	ABx1 21	Ch. 11	Controller's certificate prima facie evidence
§12801	Amend	ABx1 21	Ch. 11	Controller's annual report of delinquent insurers
§12951	Amend	ABx1 21	Ch. 11	Cancellation of assessment
§12977	Amend	ABx1 21	Ch. 11	Credits and refunds
§12983	Amend	ABx1 21	Ch. 11	Interest; insurers
§12984	Amend	ABx1 21	Ch. 11	Disallowance of interest
Cigarette and Tobacco Products Tax Law				
§30474	Amend	AB 242	Ch. 727	Penalty; unstamped cigarettes
§30483	Add	AB 242	Ch. 727	Restitution order collection
Diesel Fuel Tax Law				
§60050	Add Repeal	AB 105	Ch. 6	Levy of tax
§60709	Add	AB 242	Ch. 727	Restitution order collection
Government Code				
Oil Spill Response, Prevention, and Administration Fees Law				
§8670.40	Amend	AB 1112	Ch. 583	Oil spill prevention and administration fee
Health and Safety Code				
Petroleum Underground Storage Tank Cleanup				
§25299.43	Amend	AB 291	Ch. 569	Additional fee

STATE BOARD OF EQUALIZATION

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
Public Resources Code				
<i>Fire Prevention Fee Law</i>				
Chapter 1.5 (commencing with §4210) to Part 2 of Division 4	Add	ABx1 29	Ch. 8	Fire prevention fee
Business and Professions Code				
§7145.5	Amend	AB 1307	Ch. 734	Denial or suspension of a contractor's license
Government Code				
§11342.548	Add	SB 617	Ch. 496	Definition: "Major regulation"
§11346.2	Amend	SB 617	Ch. 496	Availability to public of copy of proposed regulation; Initial statement of reasons for proposed action
§11346.3	Amend	SB 617	Ch. 496	Assessment of potential for adverse economic impact on businesses and individuals
§11346.5	Amend	SB 617	Ch. 496	Contents of notice of proposed adoption, amendment, or repeal of regulation
§11346.9	Amend	SB 617	Ch. 496	Final statements of reasons for proposing adoption or amendment of regulation; Informative digest
§11346.36	Add	SB 617	Ch. 496	Notice of proposed action
§11347.3	Amend	SB 617	Ch. 496	File of rulemaking; Contents and availability of file
§11349.1	Amend	SB 617	Ch. 496	Review of regulations; Regulations to govern review process; Return to adopting agency
§11349.1.5	Add	SB 617	Ch. 496	Standardized regulatory impact analyses
§13401	Amend	SB 617	Ch. 496	Legislative findings; Declarations
§13402	Amend	SB 617	Ch. 496	Responsibilities of agency heads for establishment of internal accounting systems
§13403	Amend	SB 617	Ch. 496	Elements of internal accounting and administrative control systems

STATE BOARD OF EQUALIZATION

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
Government Code continued				
§13404	Amend	SB 617	Ch. 496	Definitions
§13405	Amend	SB 617	Ch. 496	Reports and Evaluations
§13406	Amend	SB 617	Ch. 496	Provision of false or misleading information in connection with evaluations and reports; Investigations
§13407	Amend	SB 617	Ch. 496	Use of existing resources
Unemployment Insurance Code				
§1088.5	Amend	AB 1307	Ch. 734	Use of new employee registry data