

Amend Revenue and Taxation Code Sections 41031 and 41032 of the Emergency Telephone Users Surcharge Law to remove the requirement for the Board of Equalization (BOE) to publish in its meeting minutes the emergency telephone users surcharge rate set by the California Technology Agency (CTA).

Source: Special Taxes and Fees Division

Existing Law

Under existing law, Part 20 (commencing with Section 41001) of Division 2 of the Revenue and Taxation Code, known as the Emergency Telephone Users (911) Surcharge Act, imposes a surcharge on amounts paid by every person in the state for intrastate telephone communication service in this state and Voice over Internet Protocol (VoIP) service that provides access to the "911" emergency system by utilizing the digits 9-1-1 by any service user in this state.

Section 41030 of the 911 Surcharge Act requires the CTA to annually determine, on or before October 1, a surcharge rate that is in an amount that CTA estimates will produce sufficient revenue to fund the current fiscal year's 911 program costs. The surcharge rate in any year may not exceed three-quarters of one percent or be less than one-half of one percent. Section 41031 requires the CTA to notify the BOE of the new rate each year, which must be fixed by the BOE to be effective with respect to charges made for intrastate telephone communication services and VoIP service on or after January 1 of the next succeeding calendar year. Section 41032 requires that, immediately upon notification and fixing of the surcharge rate, the BOE shall publish in its minutes each year, no later than November 15, the new rate and notify by mail every service supplier registered with it of the new rate.

The BOE determines and sets rates for many of the tax and fee programs it administers, such as the tobacco products tax rate, diesel interstate users tax rate, hazardous substances program fees, and the occupational lead poisoning prevention fee. These rates are calculated by BOE staff based on prescribed methodologies and are annually approved by the Members of the BOE at a monthly BOE Meeting. Except for the 911 surcharge rate, all other tax and fee rates calculated by other state agencies are not approved by the Members of the BOE. These include the covered electronic waste recycling fee, the childhood lead poisoning prevention fee, and the natural gas surcharge, and, like the 911 surcharge rate, the BOE has no statutory authority to revise them. Requiring the BOE to fix the 911 surcharge rate and publish the new rate in its minutes implies that the BOE has discretion in establishing the rate and that the Board as a body must consent to the rate set by CTA.

Furthermore, the ministerial function to fix and publish the new rate in the minutes no later than November 15 each year places a degree of urgency upon both the CTA and the BOE. Although the Members of the BOE are required to meet monthly, the dates on which they meet each month change each year. In addition, as an elected state body, the BOE is subject to the Bagley-Keene Opening Meeting Act (commencing with Government Code Section 11120), which requires the BOE to issue a Public Agenda Notice at least 10 days prior to each BOE meeting. The 10-day advance notification period, coupled with the November 15 deadline to publish the new rate in the BOE

minutes, has made compliance with this requirement impracticable and unworkable. This has become increasingly apparent, when the state's budget is delayed, because this delay directly impacts CTA's ability to develop the estimate of revenues needed to determine the new rate. Depending on the meeting schedule and the timeline for advance publication of the agenda, CTA could be required to provide BOE with the new rate well in advance of the October 1 deadline by which that agency is required to provide the rate in statute.

Background. In 1980, AB 3022 (Chapter 1035) amended the 911 Surcharge Act to transfer the responsibility for determining the surcharge rate from the BOE to the Department of General Services (DGS). In 2009, the duties, functions, employees, property, and related funding were transferred from the DGS to the Office of the State Chief Information Officer, which was subsequently renamed the CTA.

Comments. In addition to publishing the new rate in its minutes, the BOE notifies suppliers of the new rate by mail, which is currently required by law. If this proposal is successfully signed into law, the actual notification will continue as it does today, by direct mail, but will, as the BOE as a whole does, transition to electronic mail (e-mail) at some point in the future. Lastly, the BOE will continue, to post the new rate on its website.

The 2011 surcharge rate can be found at <http://www.boe.ca.gov/pdf/boe863.pdf>.

This Proposal

This proposal would amend Sections 41031 and 41032 of the 911 Surcharge Act to delete the requirement that the BOE fix and publish in its minutes the annual surcharge rate. Section 41032 would also be amended to require the BOE to notify service suppliers of the new rate no later than November 15 each year by means then available to it, including, but not limited to mail, electronic mail, and Web site postings. This proposal is intended to parallel other tax and fee programs with respect to the BOE's role in rate setting. The proposal would also streamline the annual surcharge rate determination process, allowing for more timely and efficient notification to service suppliers of the new rate while removing the demand for the CTA to determine and provide to the BOE the new rate much earlier than required by statute.

Section 41031 of the Revenue and Taxation Code is amended to read:

41031. No later than October 1 each year, ~~the California Technology Agency shall make its determination of the surcharge rate each year no later than October 1 and shall notify the board of the new rate, which shall be fixed by the board to be effective with respect to charges made for intrastate telephone communication services and VoIP service on or after January 1 of the next succeeding calendar year.~~

Section 41032 of the Revenue and Taxation Code is amended to read:

41032. Immediately upon notification by the California Technology Agency ~~and fixing the surcharge rate~~, the board shall each year no later than November 15 ~~publish in its minutes the new rate, and it shall notify by mail every service supplier registered with it of the new rate~~ by means then available to it, including, but not limited to mail, electronic mail, and Web site postings.