STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**08/17/10**	Bill No:	**AB 1215**
Tax:	**Administration**	Author:	**De La Torre**
Related Bills:	**AB 2008 (Arambula)** **SBx8 29 (Steinberg)**		

BILL SUMMARY

This bill exempts from furloughs employees of the Board of Equalization (BOE) and Franchise Tax Board (FTB).

SUMMARY OF AMENDMENTS

Since the previous analysis, this bill has been amended to delete the provision that would have also exempted from furloughs employees in positions funded at least 95 percent by sources other than the General Fund.

ANALYSIS

CURRENT LAW

Existing Government Code sections establish the general policy of a state employee workweek of 40 hours. Chapter 10.3 (commencing with Section 3512) of Division 4 contains the provisions related to State Employer-Employee Relations.

PROPOSED LAW

Among other things, this bill adds Section 19852.4 to the Government Code to specifically exempt employees of the BOE and FTB from furloughs implemented by any state agency, board, or commission. The section also prohibits a state agency, board, or commission from directly or indirectly implementing or assisting in implementing a furlough on those same agencies.

The measure further states that the new section shall not be construed as legal authorization for imposition of furloughs on employees through an Executive Order.

"Employee" is defined as a civil service employee of the State of California.

BACKGROUND

On December 19, 2008, Governor Schwarzenegger issued Executive Order S-16-08 to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source, for the period February 1, 2009 through June 30, 2010. The order was issued based on "an emergency pursuant to Government Code Section 3516.5…" The BOE Members, however, declined to participate, arguing that as constitutional officers, they were not required to follow the direct edicts of the Governor and would instead make other budget cuts to do their part to deal with the fiscal emergency.

On July 1, 2009, since the state's revenues continued to fall below expectations, a third furlough day was ordered by the Governor through Executive Order S-13-09. Again, the BOE declined to participate.

Since the BOE, along with other independently elected constitutional officers, declined to participate in the furloughs, the Governor sued to force the Controller to withhold 14% of the pay of constitutional office employees. A Sacramento Superior Court judge agreed the Governor had such authority. However, the furloughs have been stayed while the Third Appellate District Court hears the Controller's appeal.

While the BOE has not directly participated in the furloughs, the agency did take an equivalent budget cut ($41 million). In order to do this, BOE had to implement several cost savings measures, including:

- A hard hiring freeze effective Aug. 1, 2009, which left many positions vacant, of which 250-300 are tied to revenue generating functions.
- A voluntary leave program, whereby over 1,300 BOE employees voluntarily reduced their pay 5-10% (while continuing to work full time) in order to avoid the layoff of staff. These employees receive 1-2 days leave credits that they can use at a future time, or they may also cash out the credits when they separate or retire.
- Reducing operational expenditures, such as travel and equipment purchases, to only mission-critical items.

On March 24, 2010, the Governor vetoed SBx8 29 (Steinberg) which would have also exempted from furloughs employees of the BOE, among others. In his veto message, the Governor wrote:

> It is necessary to apply furloughs across the board, with limited exemptions as needed to protect public health and safety, to effectively manage the workforce, and to avoid inequities and morale problems for state employees. Further, this bill as written would be difficult, if not impossible to implement. Many positions are funded through multiple funding sources and as such it is not always possible to determine if they are funded at least 95 percent by sources other than the General Fund.

On July 28, 2010, Governor Schwarzenegger issued yet another executive order, Executive Order S-12-10, to implement a three day per month furlough of certain represented state employees and supervisors. However, the order specifically exempted 8 state agencies, including the BOE and FTB, and certain Bargaining Units who have reached tentative agreements on Memoranda of Understanding. The furloughs were to commence beginning August 1, 2010 and end when a 2010-11 fiscal year budget is in place that meets certain conditions to pay for critical and essential services. At the time of this analysis, the furloughs were put on hold by an Alameda Superior Court judge.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author. This measure is intended to, among other things, end furloughs which "extend to those departments that generate new revenue. These furloughs are actually exacerbating the General Fund deficit they were intended to help reduce."
2. **Amendments.** The **August 17, 2010 amendments** deleted proposed Government Code Section 19852.3 which exempted from furloughs employees in positions funded at least 95 percent by sources other than the General Fund. The **July 15, 2010** amendments added the BOE and FTB furlough exemption language.

3. **Impact on revenues due to funding reduction to the BOE.** While BOE staff has not been furloughed, approximately $41 million in funding, equivalent to three furlough days, was eliminated from BOE's budget. The current year revenue loss associated with this budget reduction is approximately $264 million, of which $156 million is General Fund (GF).

4. **Accounts receivable balance is on the rise.** Tax liabilities are one of the first bills to go unpaid during a time of financial hardship. The BOE's outstanding retail sales tax owed and considered collectible has jumped 38% since 2007. As of December 31, 2009, that amount was $1.26 billion.

   As for the special taxes administered by the BOE, the increase in accounts receivable has been 20%, with $280 million outstanding as of December 31, 2009. Overall, the BOE is owed $1.54 billion, an increase of $540 million from two years ago.

   The growth in accounts receivable is not completely tied to voluntary nonpayment. Vacant collector positions at the BOE have resulted in lost opportunities to collect money before a statute of limitation expires, or collection activity begins on a closed business, or liens and bankruptcy claims can be filed timely. A 14% reduction in staffing can only result in fewer collections. Such was the rationale for the request for restored funding to the BOE's collection programs.

5. **This bill applies specifically to civil service employees.** The provisions of this bill do not appear to apply to Career Executive Assignment positions, or to exempt or excluded positions.

6. **Related Legislation.** In addition to the previously mentioned SBx8 29 (Steinberg) which was vetoed by the Governor, AB 2008 (Arambula) has very similar language to this measure but only contains a furlough exemption for employees of the BOE and FTB.

COST ESTIMATE

The cost associated with this measure is the restoration of the funding deleted from the BOE's budget. The BOE requested approximately $13.456 million ($9.9 million GF) effective July 1, 2010. This will allow BOE to fill revenue positions as a priority to stem the loss of revenue.

REVENUE ESTIMATE

We estimate that the $41.5 million cut in the BOE's 2009-10 budget (500 vacant positions due to hard freeze and loss of retired annuitants and student assistants) resulted in uncollected tax revenues of approximately $264 million ($156 million GF). Restoring those cuts, as proposed in the Governor's 2010-11 budget, and precluding further budget reductions will allow BOE to effectively collect an estimated annual revenue of $88.0 million ($52 million GF) which would be lost/delayed.

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