

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE MAY 31, 2005

AMENDED IN SENATE MAY 17, 2005

AMENDED IN SENATE MAY 5, 2005

AMENDED IN SENATE APRIL 20, 2005

SENATE BILL

No. 234

Introduced by Senator Runner

February 15, 2005

An act to amend ~~Section 19545~~ Sections 6276.16 and 11126 of, and to add Section 15619.5 to, the Government Code, and to amend Sections 19545, 38402, and 38706 of the Revenue and Taxation Code, relating to ~~taxation~~ tax returns.

LEGISLATIVE COUNSEL'S DIGEST

SB 234, as amended, Runner. Taxpayer information: income tax return: disclosure.

The Personal Income Tax Law and the Corporation Tax Law impose taxes on, or measured by, income. Existing law allows a tax return or return information filed under those laws to be disclosed in a judicial or administrative proceeding pertaining to tax administration under certain circumstances.

This bill would prohibit the disclosure of the taxpayer's personal information, as defined, to the general public unless the disclosure is specifically authorized or required by law. *The bill would authorize disclosure of a taxpayer's personal information in specified proceedings, would designate personal information regarding certain appeals to the State Board of Equalization as protected from disclosure under the California Public Records Act, and would permit*

the State Board of Equalization to hold closed sessions and refuse to disclose actions taken and documents executed in connection with administrative settlements authorized pursuant to specified provisions of state tax law. This bill includes legislative findings that any limitations on the public's right to access that would be made by this bill serve a compelling state interest.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that Section
2 2 5 of this act, which amends Section 19545 of the Revenue and
3 Taxation Code, imposes limitations on the public's right of
4 access to the meetings of public bodies or the writings of public
5 officials and agencies within the meaning of Section 3 of Article
6 I of the California Constitution. Pursuant to that constitutional
7 provision, the Legislature makes the following finding to
8 demonstrate the interest protected by this limitation and the need
9 for protecting that interest:

10 Taxpayers submit sensitive personal information, including
11 social security numbers, telephone numbers, and personal
12 residence addresses in tax returns. Protecting the privacy of
13 taxpayers' personal information from public disclosure serves a
14 compelling state interest and is a necessary function of the state.

15 *SEC. 2. Section 6276.16 of the Government Code is amended*
16 *to read:*

17 6276.16. Educational psychologist-patient, privileged
18 communication, Section 1010.5, Evidence Code.

19 Electronic and appliance repair dealer, service contractor,
20 financial data in applications, subdivision (x), Section 6254,
21 Government Code.

22 Electronic data processing, data security and confidentiality,
23 Sections 11771 and 11772, Government Code.

24 Emergency Medical Services Fund, patient named, Section
25 1797.98c, Health and Safety Code.

26 Eminent domain proceedings, use of state tax returns, Section
27 1263.520, Code of Civil Procedure.

28 Employee personnel file, confidential preemployment
29 information, Section 1198.5, Labor Code.

1 Employment agency, confidentiality of customer list, Section
2 16607, Business and Professions Code.

3 Employment application, nondisclosure of arrest record or
4 certain convictions, Sections 432.7 and 432.8, Labor Code.

5 Employment Development Department, furnishing materials,
6 Section 307, Unemployment Insurance Code.

7 Equal wage rate violation, confidentiality of complaint, Section
8 1197.5, Labor Code.

9 Equalization, State Board of, prohibition against divulging
10 information, Section 15619, Government Code.

11 *Equalization, State Board of, limitation on disclosure of*
12 *personal information regarding appeals from actions of the*
13 *Franchise Tax Board, Section 19545, Revenue and Taxation*
14 *Code.*

15 Escrow Agents' Fidelity Corporation, confidentiality of
16 examination and investigation reports, Section 17336, Financial
17 Code.

18 Escrow agents' confidentiality of reports on violations, Section
19 17414, Financial Code.

20 Escrow agents' confidentiality of state summary criminal
21 history information, Section 17414.1, Financial Code.

22 Estate tax, confidential records and information, Sections
23 14251 and 14252, Revenue and Taxation Code.

24 Excessive rates or complaints, reports, Section 1857.9,
25 Insurance Code.

26 Executive Department, closed sessions and the record of topics
27 discussed, Sections 11126 and 11126.1, Government Code.

28 Executive Department, investigations and hearings,
29 confidential nature of information acquired, Section 11183,
30 Government Code.

31 *SEC. 3. Section 11126 of the Government Code, as added by*
32 *Section 2 of Chapter 1113 of the Statutes of 2002, is amended to*
33 *read:*

34 11126. (a) (1) Nothing in this article shall be construed to
35 prevent a state body from holding closed sessions during a
36 regular or special meeting to consider the appointment,
37 employment, evaluation of performance, or dismissal of a public
38 employee or to hear complaints or charges brought against that
39 employee by another person or employee unless the employee
40 requests a public hearing.

1 (2) As a condition to holding a closed session on the
2 complaints or charges to consider disciplinary action or to
3 consider dismissal, the employee shall be given written notice of
4 his or her right to have a public hearing, rather than a closed
5 session, and that notice shall be delivered to the employee
6 personally or by mail at least 24 hours before the time for
7 holding a regular or special meeting. If notice is not given, any
8 disciplinary or other action taken against any employee at the
9 closed session shall be null and void.

10 (3) The state body also may exclude from any public or closed
11 session, during the examination of a witness, any or all other
12 witnesses in the matter being investigated by the state body.

13 (4) Following the public hearing or closed session, the body
14 may deliberate on the decision to be reached in a closed session.

15 (b) For the purposes of this section, “employee” does not
16 include any person who is elected to, or appointed to a public
17 office by, any state body. However, officers of the California
18 State University who receive compensation for their services,
19 other than per diem and ordinary and necessary expenses, shall,
20 when engaged in that capacity, be considered employees.
21 Furthermore, for purposes of this section, the term employee
22 includes a person exempt from civil service pursuant to
23 subdivision (e) of Section 4 of Article VII of the California
24 Constitution.

25 (c) Nothing in this article shall be construed to do any of the
26 following:

27 (1) Prevent state bodies that administer the licensing of
28 persons engaging in businesses or professions from holding
29 closed sessions to prepare, approve, grade, or administer
30 examinations.

31 (2) Prevent an advisory body of a state body that administers
32 the licensing of persons engaged in businesses or professions
33 from conducting a closed session to discuss matters that the
34 advisory body has found would constitute an unwarranted
35 invasion of the privacy of an individual licensee or applicant if
36 discussed in an open meeting, provided the advisory body does
37 not include a quorum of the members of the state body it advises.
38 Those matters may include review of an applicant’s
39 qualifications for licensure and an inquiry specifically related to
40 the state body’s enforcement program concerning an individual

1 licensee or applicant where the inquiry occurs prior to the filing
2 of a civil, criminal, or administrative disciplinary action against
3 the licensee or applicant by the state body.

4 (3) Prohibit a state body from holding a closed session to
5 deliberate on a decision to be reached in a proceeding required to
6 be conducted pursuant to Chapter 5 (commencing with Section
7 11500) or similar provisions of law.

8 (4) Grant a right to enter any correctional institution or the
9 grounds of a correctional institution where that right is not
10 otherwise granted by law, nor shall anything in this article be
11 construed to prevent a state body from holding a closed session
12 when considering and acting upon the determination of a term,
13 parole, or release of any individual or other disposition of an
14 individual case, or if public disclosure of the subjects under
15 discussion or consideration is expressly prohibited by statute.

16 (5) Prevent any closed session to consider the conferring of
17 honorary degrees, or gifts, donations, and bequests that the donor
18 or proposed donor has requested in writing to be kept
19 confidential.

20 (6) Prevent the Alcoholic Beverage Control Appeals Board
21 from holding a closed session for the purpose of holding a
22 deliberative conference as provided in Section 11125.

23 (7) (A) Prevent a state body from holding closed sessions
24 with its negotiator prior to the purchase, sale, exchange, or lease
25 of real property by or for the state body to give instructions to its
26 negotiator regarding the price and terms of payment for the
27 purchase, sale, exchange, or lease.

28 (B) However, prior to the closed session, the state body shall
29 hold an open and public session in which it identifies the real
30 property or real properties that the negotiations may concern and
31 the person or persons with whom its negotiator may negotiate.

32 (C) For purposes of this paragraph, the negotiator may be a
33 member of the state body.

34 (D) For purposes of this paragraph, “lease” includes renewal
35 or renegotiation of a lease.

36 (E) Nothing in this paragraph shall preclude a state body from
37 holding a closed session for discussions regarding eminent
38 domain proceedings pursuant to subdivision (e).

39 (8) Prevent the California Postsecondary Education
40 Commission from holding closed sessions to consider matters

1 pertaining to the appointment or termination of the Director of
2 the California Postsecondary Education Commission.

3 (9) Prevent the Council for Private Postsecondary and
4 Vocational Education from holding closed sessions to consider
5 matters pertaining to the appointment or termination of the
6 Executive Director of the Council for Private Postsecondary and
7 Vocational Education.

8 (10) Prevent the Franchise Tax Board from holding closed
9 sessions for the purpose of discussion of confidential tax returns
10 or information the public disclosure of which is prohibited by
11 law, or from considering matters pertaining to the appointment or
12 removal of the Executive Officer of the Franchise Tax Board.

13 (11) Require the Franchise Tax Board to notice or disclose any
14 confidential tax information considered in closed sessions, or
15 documents executed in connection therewith, the public
16 disclosure of which is prohibited pursuant to Article 2
17 (commencing with Section 19542) of Chapter 7 of Part 10.2 of
18 the Revenue and Taxation Code.

19 (12) Prevent the Board of Corrections from holding closed
20 sessions when considering reports of crime conditions under
21 Section 6027 of the Penal Code.

22 (13) Prevent the State Air Resources Board from holding
23 closed sessions when considering the proprietary specifications
24 and performance data of manufacturers.

25 (14) Prevent the State Board of Education or the
26 Superintendent of Public Instruction, or any committee advising
27 the board or the superintendent, from holding closed sessions on
28 those portions of its review of assessment instruments pursuant to
29 Chapter 5 (commencing with Section 60600) of, or pursuant to
30 Chapter 8 (commencing with Section 60850) of, Part 33 of the
31 Education Code during which actual test content is reviewed and
32 discussed. The purpose of this provision is to maintain the
33 confidentiality of the assessments under review.

34 (15) Prevent the California Integrated Waste Management
35 Board or its auxiliary committees from holding closed sessions
36 for the purpose of discussing confidential tax returns, discussing
37 trade secrets or confidential or proprietary information in its
38 possession, or discussing other data, the public disclosure of
39 which is prohibited by law.

1 (16) Prevent a state body that invests retirement, pension, or
2 endowment funds from holding closed sessions when considering
3 investment decisions. For purposes of consideration of
4 shareholder voting on corporate stocks held by the state body,
5 closed sessions for the purposes of voting may be held only with
6 respect to election of corporate directors, election of independent
7 auditors, and other financial issues that could have a material
8 effect on the net income of the corporation. For the purpose of
9 real property investment decisions that may be considered in a
10 closed session pursuant to this paragraph, a state body shall also
11 be exempt from the provisions of paragraph (7) relating to the
12 identification of real properties prior to the closed session.

13 (17) Prevent a state body, or boards, commissions,
14 administrative officers, or other representatives that may properly
15 be designated by law or by a state body, from holding closed
16 sessions with its representatives in discharging its responsibilities
17 under Chapter 10 (commencing with Section 3500), Chapter 10.3
18 (commencing with Section 3512), Chapter 10.5 (commencing
19 with Section 3525), or Chapter 10.7 (commencing of Section
20 3540) of Division 4 of Title 1 as the sessions relate to salaries,
21 salary schedules, or compensation paid in the form of fringe
22 benefits. For the purposes enumerated in the preceding sentence,
23 a state body may also meet with a state conciliator who has
24 intervened in the proceedings.

25 (d) (1) Notwithstanding any other provision of law, any
26 meeting of the Public Utilities Commission at which the rates of
27 entities under the commission's jurisdiction are changed shall be
28 open and public.

29 (2) Nothing in this article shall be construed to prevent the
30 Public Utilities Commission from holding closed sessions to
31 deliberate on the institution of proceedings, or disciplinary
32 actions against any person or entity under the jurisdiction of the
33 commission.

34 (e) (1) Nothing in this article shall be construed to prevent a
35 state body, based on the advice of its legal counsel, from holding
36 a closed session to confer with, or receive advice from, its legal
37 counsel regarding pending litigation when discussion in open
38 session concerning those matters would prejudice the position of
39 the state body in the litigation.

1 (2) For purposes of this article, all expressions of the
2 lawyer-client privilege other than those provided in this
3 subdivision are hereby abrogated. This subdivision is the
4 exclusive expression of the lawyer-client privilege for purposes
5 of conducting closed session meetings pursuant to this article.
6 For purposes of this subdivision, litigation shall be considered
7 pending when any of the following circumstances exist:

8 (A) An adjudicatory proceeding before a court, an
9 administrative body exercising its adjudicatory authority, a
10 hearing officer, or an arbitrator, to which the state body is a
11 party, has been initiated formally.

12 (B) (i) A point has been reached where, in the opinion of the
13 state body on the advice of its legal counsel, based on existing
14 facts and circumstances, there is a significant exposure to
15 litigation against the state body.

16 (ii) Based on existing facts and circumstances, the state body
17 is meeting only to decide whether a closed session is authorized
18 pursuant to clause (i).

19 (C) (i) Based on existing facts and circumstances, the state
20 body has decided to initiate or is deciding whether to initiate
21 litigation.

22 (ii) The legal counsel of the state body shall prepare and
23 submit to it a memorandum stating the specific reasons and legal
24 authority for the closed session. If the closed session is pursuant
25 to paragraph (1), the memorandum shall include the title of the
26 litigation. If the closed session is pursuant to subparagraph (A) or
27 (B), the memorandum shall include the existing facts and
28 circumstances on which it is based. The legal counsel shall
29 submit the memorandum to the state body prior to the closed
30 session, if feasible, and in any case no later than one week after
31 the closed session. The memorandum shall be exempt from
32 disclosure pursuant to Section 6254.25.

33 (iii) For purposes of this subdivision, “litigation” includes any
34 adjudicatory proceeding, including eminent domain, before a
35 court, administrative body exercising its adjudicatory authority,
36 hearing officer, or arbitrator.

37 (iv) Disclosure of a memorandum required under this
38 subdivision shall not be deemed as a waiver of the lawyer-client
39 privilege, as provided for under Article 3 (commencing with
40 Section 950) of Chapter 4 of Division 8 of the Evidence Code.

1 (f) In addition to subdivisions (a), (b), and (c), nothing in this
2 article shall be construed to do any of the following:

3 (1) Prevent a state body operating under a joint powers
4 agreement for insurance pooling from holding a closed session to
5 discuss a claim for the payment of tort liability or public liability
6 losses incurred by the state body or any member agency under
7 the joint powers agreement.

8 (2) Prevent the examining committee established by the State
9 Board of Forestry and Fire Protection, pursuant to Section 763 of
10 the Public Resources Code, from conducting a closed session to
11 consider disciplinary action against an individual professional
12 forester prior to the filing of an accusation against the forester
13 pursuant to Section 11503.

14 (3) Prevent an administrative committee established by the
15 California Board of Accountancy pursuant to Section 5020 of the
16 Business and Professions Code from conducting a closed session
17 to consider disciplinary action against an individual accountant
18 prior to the filing of an accusation against the accountant
19 pursuant to Section 11503. Nothing in this article shall be
20 construed to prevent an examining committee established by the
21 California Board of Accountancy pursuant to Section 5023 of the
22 Business and Professions Code from conducting a closed hearing
23 to interview an individual applicant or accountant regarding the
24 applicant's qualifications.

25 (4) Prevent a state body, as defined in subdivision (b) of
26 Section 11121, from conducting a closed session to consider any
27 matter that properly could be considered in closed session by the
28 state body whose authority it exercises.

29 (5) Prevent a state body, as defined in subdivision (d) of
30 Section 11121, from conducting a closed session to consider any
31 matter that properly could be considered in a closed session by
32 the body defined as a state body pursuant to subdivision (a) or (b)
33 of Section 11121.

34 (6) Prevent a state body, as defined in subdivision (c) of
35 Section 11121, from conducting a closed session to consider any
36 matter that properly could be considered in a closed session by
37 the state body it advises.

38 (7) Prevent the State Board of Equalization from holding
39 closed sessions for either of the following:

1 (A) When considering matters pertaining to the appointment
 2 or removal of the Executive Secretary of the State Board of
 3 Equalization.

4 (B) For the purpose of ~~hearing confidential taxpayer appeals~~
 5 ~~or data, the public disclosure of which is prohibited by law~~
 6 *considering administrative settlements authorized by Sections*
 7 *7093.5, 9271, 30459.1, 32471, 40211, 41171, 43522, 45867,*
 8 *46622, 50156.11, 55332, and 60636 of the Revenue and Taxation*
 9 *Code.*

10 (8) Require the State Board of Equalization to disclose any
 11 action taken in closed session or documents executed in
 12 connection with ~~that action, the public disclosure of which is~~
 13 ~~prohibited by law pursuant to Sections 15619 and 15641 of this~~
 14 ~~code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455,~~
 15 ~~38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609~~
 16 *administrative settlements authorized by Sections 7093.5, 9271,*
 17 *30459.1, 32471, 40211, 41171, 43522, 45867, 46622, 50156.11,*
 18 *55332, and 60636 of the Revenue and Taxation Code.*

19 (9) Prevent the California Earthquake Prediction Evaluation
 20 Council, or other body appointed to advise the Director of the
 21 Office of Emergency Services or the Governor concerning
 22 matters relating to volcanic or earthquake predictions, from
 23 holding closed sessions when considering the evaluation of
 24 possible predictions.

25 (g) This article does not prevent either of the following:

26 (1) The Teachers' Retirement Board or the Board of
 27 Administration of the Public Employees' Retirement System
 28 from holding closed sessions when considering matters
 29 pertaining to the recruitment, appointment, employment, or
 30 removal of the chief executive officer or when considering
 31 matters pertaining to the recruitment or removal of the Chief
 32 Investment Officer of the State Teachers' Retirement System or
 33 the Public Employees' Retirement System.

34 (2) The Commission on Teacher Credentialing from holding
 35 closed sessions when considering matters relating to the
 36 recruitment, appointment, or removal of its executive director.

37 (h) This section shall become operative on January 1, 2006.

38 *SEC. 4. Section 15619.5 is added to the Government Code, to*
 39 *read:*

1 15619.5. (a) Notwithstanding Section 15619 and Sections
2 7056, 9255, 30455, 38705, 43651, 45982, 46751, 50159, 55381,
3 and 60609 of the Revenue and Taxation Code, documents
4 distributed to all, or a majority of all, members of the board on
5 tax or fee matters noticed for decision pursuant to Section 11125
6 shall be disclosable public records. Prior to disclosure of those
7 documents, personal information shall be deleted. For purposes
8 of this section, “personal information” means the social security
9 number, telephone number, or residential address of an
10 individual.

11 (b) Notwithstanding Sections 833 and 11655 of the Revenue
12 and Taxation Code, a document containing the lead and
13 staff-recommended values, including penalties, presented to the
14 board for decision pursuant to Section 19 of Article XIII of the
15 California Constitution and Section 721.5 of the Revenue and
16 Taxation Code shall be a disclosable public record.

17 (c) Notwithstanding Section 833 of the Revenue and Taxation
18 Code, documents distributed to all, or a majority of all, members
19 of the board pursuant to Article 3 (commencing with Section
20 741) of Chapter 4 of Part 2 of Division 1 of the Revenue and
21 Taxation Code shall be disclosable public records when the
22 petition for reassessment is noticed for decision pursuant to
23 Section 11125.

24 ~~SEC. 2.—~~

25 SEC. 5. Section 19545 of the Revenue and Taxation Code is
26 amended to read:

27 19545. (a) A return or return information may be disclosed in
28 a judicial or administrative proceeding pertaining to tax
29 administration, if any of the following apply:

30 (1) The taxpayer is a party to the proceeding, or the
31 proceeding arose out of, or in connection with, determining the
32 taxpayer’s civil or criminal liability, or the collection of the
33 taxpayer’s civil liability with respect to any tax imposed under
34 this part.

35 (2) The treatment of an item reflected on the return is directly
36 related to the resolution of an issue in the proceeding.

37 (3) The return or return information directly relates to a
38 transactional relationship between a person who is a party to the
39 proceeding and the taxpayer which directly affects the resolution
40 of an issue in the proceeding.

1 (b) (1) Personal information disclosed to the State Board of
2 Equalization in accordance with subdivision (a) may not be
3 disclosed to the public unless that disclosure is specifically
4 authorized or required by law.

5 (2) For purposes of this subdivision, “personal information”
6 means the social security number, telephone number, or ~~personal~~
7 ~~residence~~ residential address of an individual.

8 *SEC. 6. Section 38402 of the Revenue and Taxation Code is*
9 *amended to read:*

10 38402. (a) On or before the last day of the month following
11 each calendar quarter, a return for the preceding quarterly period
12 shall be filed with the board in such form as the board may
13 prescribe. The return shall include the following information with
14 respect to timber harvested by the timber owner in the preceding
15 calendar quarter: the volume harvested and the number of
16 Christmas trees cut; the quarter the timber was harvested and the
17 quarter the Christmas trees were cut; the date or dates the timber
18 was scaled; the species; and any other information deemed
19 necessary by the board for the administration of this part. ~~At~~

20 (b) *At the assessor’s request, the board shall provide copies of*
21 *these returns to the assessor of the county from which the timber*
22 *was harvested.*

23 (c) *At the request of a member of the Timber Advisory*
24 *Committee, the board shall provide copies of the requested*
25 *returns to that member.*

26 *SEC. 7. Section 38706 of the Revenue and Taxation Code is*
27 *amended to read:*

28 38706. (a) Upon written request of the assessor of any
29 county containing timber, the board shall permit the assessor, or
30 any duly authorized deputy or employee of such assessor, to
31 examine any records pertaining to the county of such assessor
32 which are maintained by the board under this part. ~~It~~

33 (b) *Upon written request of any member of the Timber*
34 *Advisory Committee, the board shall permit that member to*
35 *examine any records maintained by the board pursuant to this*
36 *part.*

37 (c) *It is unlawful for the assessor, members of the Timber*
38 *Advisory Committee, or any other person examining records*
39 *pursuant to this section to make known in any manner whatever*
40 *the business affairs, operations or any other information*

1 pertaining to any timber owner or any other person required to
2 report to the board or pay a tax pursuant to this part, or the
3 amount or source of income, profits, loans, expenditures, or any
4 particular thereof, set forth or disclosed in any return, except that
5 any appraisal data, including “market data” as defined in Section
6 408, may be disclosed to any other assessor. Any assessor who
7 unlawfully discloses information of any timber owner or any
8 other person required to report to the board or pay a tax pursuant
9 to this part shall forfeit one thousand dollars (\$1,000) to the
10 county, to be recovered on his official bond in an action brought
11 in the name of the people by the Attorney General, when directed
12 to do so by the board.

O