Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Bowen	Analyst:	Kristina E. North	Bill Number:	SB 1736
Related Bills:	See Prior Analysis	Telephone:	845-6978	Amended Date:	April 1, 2004
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Voluntary Contributions/Allow Any Qualified Organization, As Specified To Be Listed In The FTB Tax Information Booklet To Receive Funds/Voluntary Income Tax Contributions Fund

__X__ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced February 20, 2004.

_____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

__X__ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 20, 2004.

__X__ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO __________________________.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED FEBRUARY 20, 2004, STILL APPLIES.

__X__ OTHER - See comments below.

SUMMARY

This bill would create a new process to allow taxpayers to make voluntary contribution designations on the personal income tax return.

SUMMARY OF AMENDMENTS

The April 1, 2004, amendments made substantive changes to the new process for voluntary contribution designations on the tax return that this bill would create. The amendments also generally reinstated the 11 funds that were on the 2004 tax return. The April 1, 2004, amendments resolved all of the technical considerations and several of the implementation considerations discussed in the department's previous analysis.

Except for the "This Bill," "Implementation Considerations," the new "Technical Considerations," and "Fiscal Impact" discussions below, the department's analysis of the bill as introduced February 20, 2004, still applies.

POSITION

Pending.

Board Position:			Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Jana Howard for Brian Putler	4/9/04
____ N	____ OUA	__X__ PENDING		

THIS BILL

Changes to this section of the analysis as a result of the April 1, 2004, amendments are included below in italics.

This bill would repeal and add separate Articles for each of the 11 existing voluntary contribution funds. A separate fund or account would be created in the State Treasury for each of the 11 contribution funds to receive and disburse taxpayer contributions. The contribution designation funds generally would be similar to the funds under current law except for the following:

- *None of the funds would be required to meet the $250,000 minimum contribution amount,*
- *The funds would be listed in the information tax booklet rather than on the return,*
- *The funds could continue to be listed after their repeal date if they qualify under Section 18703 of this bill, except for The California Seniors Special Fund, which has no repeal date and would remain listed in the tax information booklet without having to meet the new process criteria.*

The funds that would be added to the tax information booklet are:

- *The State Children's Trust Fund*
- *The California Fund for Senior Citizens*
- *The Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund*
- *The California Alzheimer's Disease and Related Disorders Research Fund*
- *The California Seniors Special Fund*
- *The California Breast Cancer Research Fund*
- *The California Firefighters' Memorial Fund*
- *The California Peace Officer Memorial Foundation Fund*
- *The Asthma and Lung Disease Research Fund*
- *The California Missions Foundation Fund*
- *The Emergency Food Assistance Program Fund*

This bill would create a new process to allow individual taxpayers to make voluntary contribution designations on their personal income tax return.

This bill would establish the Voluntary Income Tax Contributions Fund that would receive all contributions made by taxpayers to individual organizations listed in a booklet accompanying tax return information, *except for the voluntary contribution funds discussed above*. Taxpayers would be allowed to designate their own funds (not tax liability) for contribution to a qualified organization on their tax returns in full dollar amounts of $1 or more. Each signatory on a joint return may make the contributions individually. The designations for any taxable year must be made on the initial return for the taxable year and, once made, are irrevocable.

This bill would specify that if payments and credits reported on the return do not exceed the taxpayer's liability, then the taxpayer's return would be treated as if no designation has been made. If no designee were specified, a designated contribution amount would be transferred to the General Fund. If a taxpayer designates a contribution to more than one qualified organization and the amount available for designation is not sufficient to satisfy the total amount designated, the contribution amount would be allocated among the designees on a pro rata basis.

This bill would require Franchise Tax Board (FTB) to revise the personal income tax return to include *six blank spaces for taxpayers to designate contributions to the qualified organizations.*

The new process in this bill would require the Controller to transfer money as earmarked by FTB from taxpayer contribution designations from the Personal Income Tax Fund to the Voluntary Income Tax Contributions Fund. Upon appropriation by the Legislature, the money would be allocated to FTB and the Controller for reimbursement of administrative costs and to each organization receiving funds as earmarked by FTB.

To qualify to receive voluntary contributions, an organization would be required to:

- Have received $1,000,000 in contributions and revenues in the prior taxable year,
- Qualify as a charitable organization under the Internal Revenue Code (IRC) and the Revenue and Taxation Code,
- Provide services to Californians,
- Use voluntary taxpayer contributions to augment existing process or to provide new funding to related activities. Funds may not be used to meet the organization's administrative expenses,
- Have no more than 50% of its annual revenue from voluntary taxpayer contributions established by this bill, and
- Qualify to receive tax-deductible charitable contributions under the IRC.

This bill would require organizations to submit an initial application to FTB no later than *April* 1 of *each* year. The application must contain the organization's name, the address of the principal place of business of the entity, and the name of the person, officer, or employee to whom the designated contributions would be remitted. If the name or person changes, the organization would be required to notify FTB. The organization also would be required to submit the names and personal addresses of the principals of the organization and the person who is a principal in the solicitation activities for the entity, as well as a financial report.

FTB could require the organization to file documents or information as needed to determine the use of funds.

FTB would be required to establish a *one-time, nonrefundable* fee to cover its cost to certify an organization for placement in the information booklet that must be paid by each organization that applies for placement in the information booklet.

This bill would require FTB to develop regulations to implement and administer the voluntary contribution designation process. Those regulations must include criteria to ensure the policies of an organization qualified to receive contributions are consistent with the policies and programs of the state.

This bill would require that each voluntary contribution fund or account created by this bill be included in the tax booklet through the taxable year immediately preceding the repeal date of the article. Any funds or accounts created by this bill would remain effective until December 31 of the repeal year for transfer or disbursement of any contributions in accordance with the provisions of the article prior to its repeal.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified. New implementation concerns identified as a result of the April 1, 2004, amendments are provided in italics.

- Currently, ten bills introducing new voluntary contribution funds are in the legislative process. If any or all of these bills were enacted, these new voluntary contribution funds would appear on the 2004 personal income tax returns because this bill would eliminate only existing voluntary contributions.

- *Since all of the existing voluntary contributions would be removed from the return if this bill were enacted, all of the proposed contribution designation funds could appear on the 2004 personal income tax returns, if enacted, in addition to the six blank spaces this bill would require. This would result in 16 spaces being required on the income tax return, which would likely create a three-page return.*

- The repeal dates for each of the 11 voluntary contribution funds under separate articles would be invalid if the organization qualified for contribution designation as specified in Section 18703. Thus, the organization would then qualify and be governed under both Article 1 (where Section 18703 is currently included) and the organization's separate article, which could cause uncertainties. Additionally, since the repeal date would be invalid, the separate fund created in the Treasury would continue to exist rather than roll over into the Voluntary Contribution Designation Fund. The author may wish to consider an alternative transition rule. For example, an organization currently listed under a separate article and that qualifies under Section 18703 would be governed by Article 1 alone. Thus, the separate article would be repealed on its repeal date. Language could be added to specify that any undisbursed monies in the account would be rolled over into the Voluntary Contribution Designation Fund for disbursement.

- Depending upon the number of qualifying organizations, this bill could significantly increase the size of the tax information booklet. For example, currently over 95,000 charitable organizations exist that could potentially qualify for designation on the return. The author may wish to consider setting a limit on the maximum number of qualifying organizations that may be allowed.

- FTB's area of expertise does not include certifying organizations for non-tax related criteria for a non-tax related purpose (i.e., the bill's requirement that a fund " provide services to Californians" and its policies "are consistent with the policies and programs of the state"). The author may wish to assign the certification process to an agency that has such expertise. In the alternative, the author may wish to create a commission similar to the Oregon Charitable Checkoff Commission (See "Other States" for more information) as, according to the author's office, this bill is based on current Oregon law.

- When establishing new procedures, California lawmakers frequently establish the procedures for a limited time to allow the Legislature to evaluate the effectiveness and impact of the efforts. The author may wish to establish similar standards to ensure the viability of the contribution designation process proposed in this bill. Periodic review would allow the opportunity to review the effectiveness of the statutory process.

TECHNICAL CONSIDERATIONS

The April 1, 2004, amendments added a general requirement for voluntary contribution funds that is duplicative of a previously stated requirement regarding a contribution designation being allocated on a pro rata basis. Also, the structure of the general provisions regarding the contribution designations would be more effective if the no designee specified requirement was included with the general provisions regarding the contribution designations. The attached Amendments 1 and 7 would resolve these concerns.

Two words appear missing from one of the qualifying requirements. The attached Amendment 2 would resolve this concern.

This bill inadvertently requires an initial application to be submitted each year. The attached Amendment 3 would resolve this concern.

It appears with the change to an annual process rather than a biennial process, some of the two-year language inadvertently remained the same, which could result in disputes between the department and the organizations that wish to qualify to receive contributions. The attached Amendments 4, 5, and 6 would resolve this concern.

One of the organizational requirement dates was not changed from "July 1 of each even-numbered year" to "April 1 of each year." The attached Amendment 5 would resolve this concern.

Two different "Article 7s" were inadvertently created. The attached Amendments 8 and 9 would resolve this concern.

FISCAL IMPACT

With FTB's increased role in the governance of voluntary contribution funds, the number of differing methods by which contribution designations could be made, and the potential addition of the ten proposed voluntary contribution funds, a significant impact to FTB's resources could result.

However, due to the implementation concerns above, the department's costs to administer this bill cannot be determined at this time. Costs are anticipated to be moderate to significant, over $100,000.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1736
Amended April 1, 2004

AMENDMENT 1

On page 2, line 32, after "(e)", insert:

In the event that no designee is specified, the contribution shall, after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of contributions made under this article, be transferred to the General Fund.

(f)

AMENDMENT 2

On page 3, line 25, after "taxable" insert:

year, and

AMENDMENT 3

On page 4, line 14, strikeout "of" and on line 15, strikeout "each year"

AMENDMENT 4

On page 5, strikeout lines 2 through 4 and insert:

annually, upon request of the Franchise Tax Board, as of the close of each fiscal year of the organization that ended during the 12-month period prior to April 1 of each year.

AMENDMENT 5

On page 5, strikeout line 9 and insert:

Board no later than April 1 of each year thereafter.

AMENDMENT 6

On page 5, strikeout lines 20 and 21 and insert:

upon request of the Franchise Tax Board, as of the close of each fiscal year of the organization that ended during the 12-month period prior to

AMENDMENT 7

On page 6, strikeout lines 36 through 39, and on page 7, strikeout lines 1 through 10.

AMENDMENT 8

On page 7, line 15, strikeout “11, inclusive” and insert:

12, inclusive

AMENDMENT 9

On page 19, line 31, strikeout “7” and insert:

8

NOTE TO LEG CO: PLEASE RENUMBER SUBSEQUENT ARTICLES.