

ANALYSIS OF AMENDED BILL

Author: Lieber Analyst: Deborah Barrett Bill Number: AB 385
 Related Bills: See Legislative History Telephone: 845-4301 Amended Date: 03-30-2005
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT:	Franchise Tax Board To Develop Delinquent Fee Schedule/Report to State Auditor On Status Of Collection Activity On Debts Referred By Department Of Industrial Relations
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SUMMARY

This bill requires Franchise Tax Board (FTB) to work with the Department of Industrial Relations (DIR) to create a delinquent fee schedule for penalties that are unpaid by employers. This bill also requires FTB to provide to the State Auditor periodic status reports on the DIR delinquencies referred to FTB for collection.

SUMMARY OF AMENDMENTS

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to (1) assist DIR in the development of criteria to assess a late payment fee on delinquencies due from employers, and (2) provide additional oversight for the DIR collection program by providing the State Auditor with status reports of FTB's collection of DIR debts.

EFFECTIVE/OPERATIVE DATE

This bill would become effective on January 1, 2006, and would be operative as of that date.

POSITION

Pending.

ANALYSIS

STATE LAW

DIR is responsible for (1) administering labor standards and health and safety laws, and (2) issuing citations and obtaining judgments for violations of these laws. Under SB 1490 (Johnston, Stats. 1994, Ch. 1117) and SB 996 (Lockyer, Stats. 1995, Ch. 33), FTB and DIR entered into partnership agreements for DIR to refer delinquent DIR and Labor Commission collection cases to FTB for collection. DIR is authorized to adopt rules and regulations to provide for a fee to cover actual collection costs but does not currently do so on cases referred to FTB for collection.

Board Position: <input type="checkbox"/> S <input type="checkbox"/> NA <input type="checkbox"/> NP <input type="checkbox"/> SA <input type="checkbox"/> O <input type="checkbox"/> NAR <input type="checkbox"/> N <input type="checkbox"/> OUA <input checked="" type="checkbox"/> PENDING	Department Director Date Gerald H. Goldberg 4/14/05
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Current state law authorizes FTB to assess a fee to recover its costs for the actions required when a taxpayer fails to:

- 1) Pay the amount of tax, penalty, additions to tax, interest, or other liabilities imposed and that are delinquent, i.e., collection cost recovery fee, or
- 2) File a tax return after notice and demand for a return is issued, i.e., filing enforcement cost recovery fee.

A collection cost recovery fee is assessed for the unpaid liabilities; a filing enforcement cost recovery fee is assessed for not filing a return after notice and demand, or in some instances, both fees can be applicable on an account. The amount of the fee assessed reflects FTB's actual costs and is approved by the Legislature in the annual Budget Act.

THIS BILL

This bill would require FTB, in consultation with DIR, to create a delinquent fee schedule for the purpose of imposing a late payment fee on an employer that is delinquent in paying penalties that are authorized to be referred to FTB for collection.

In addition, this bill would require FTB, in conjunction with DIR, to report to the State Auditor, on a quarterly basis beginning with the calendar year 2006 and semi-annually each calendar year thereafter, the following information on the delinquent collection cases referred to FTB by DIR:

- The number, total amount, and age of outstanding delinquencies,
- The number and total amount of delinquencies satisfied since the last report,
- The number and total amount of delinquencies that are determined to be uncollectable,
- The number and the total amount of new delinquencies transferred to FTB since the last report, and
- Any other information requested by the State Auditor.

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.

The bill appears to contemplate the imposition of a late payment fee for DIR delinquencies without regard to whether those delinquencies are referred to FTB for collection. As a result, it appears more appropriate for DIR rather than FTB to be the agency authorized to impose the late payment fee and to determine its amount.

The bill would not clearly provide legal authority to FTB or DIR to actually assess a delinquent payment fee. Consequently, it is unclear whether the author intends for FTB or DIR to impose fees on the employers who fail to pay the penalties assessed under the Labor Code timely. Which department the author intends to impose the fee will determine which code the fees will be assessed under and will impact the delinquent fee schedule strategy developed. Clarification is needed to ensure the bill can be implemented as intended by the author.

The criteria that the author intends to be considered for developing the delinquent payment fee are unclear. Penalties imposed by FTB pursuant to its tax collection duties are set by the Legislature as a matter of statute. FTB currently has no authority to impose penalties arising from its duties where it acts as a third party to collect non-tax debts.

This bill would require FTB to, in addition to the specific information to be reported, provide any other information requested by the State Auditor. This phrase is vague and depending on the information requested, may be prohibited under current disclosure laws. Without further specification, FTB is unable to determine whether the other information intended under this phrase is even available or would also require additional resources to extract from the database maintained for DIR collection cases.

This bill would require FTB to include in the report to the State Auditor the number of months delinquencies are outstanding. A more accurate reflection of FTB's collection efforts would be to report the number of months outstanding since an account was referred to FTB for collection.

This bill will require the reports to the State Auditor to begin in the calendar year of 2006. The current report formats are completed on a fiscal year basis. Changing the report requirement to accommodate the existing processes will help to control the implementation costs associated with this bill and discussed under "Fiscal Impact" below.

TECHNICAL CONSIDERATIONS

The use of the term "fee" in this bill is inconsistent with the application of the term within the Revenue and Taxation Code. Fees are generally a charge for a service, such as a collection or filing enforcement fee that is based on the actual costs of the program. Penalties, however, are generally imposed as a consequence for a particular action or inaction. The "fee" developed under this bill would be imposed when an employer fails to pay a penalty already imposed, which is an inaction. To make the language consistent with the usage within the code, the author may want to consider changing the term fee to penalty.

LEGISLATIVE HISTORY

SB 1490 (Johnston, Stats. 1994, Ch. 1117) authorized the DIR to transfer the collection of delinquent DIR judgments to FTB.

SB 996 (Lockyer, Stats. 1995, Ch. 33) authorized DIR to transfer collection of delinquent worker compensation employer assessment judgments to FTB.

AB 1312 (Assembly Committee on Labor & Employment, 2005/2006) would require DIR to report to the Legislature amounts that have been referred to the FTB for collection and the results of the collection efforts. This bill was introduced on February 22, 2005, and has not yet been heard in a policy committee.

PROGRAM BACKGROUND

DIR refers delinquent cases consisting of fees, wages, penalties, costs, and interest to FTB for collection. Since FTB has statutory authority to collect these debts as if they were tax debts, FTB has more efficient enforcement tools to utilize than are available to DIR. However, DIR's limited resources force the collection process for DIR delinquencies to be completed manually, which minimizes FTB's ability to use the available tools.

FTB is reimbursed for the cost of collection, including court costs and reasonable attorney fees. Depending on workflow limitations of both departments, DIR and FTB routinely exchange referrals of new cases and returns of uncollected cases. Upon request, FTB provides case information and records of expenditures on cost of collection for reimbursement to DIR.

The State Auditor conducted an audit in 2003 to review the effectiveness of FTB's collection program for DIR delinquent debts. The audit determined that FTB was able to collect on only 20% of the cases referred and took a significant amount of time to process the cases, thus reducing the effectiveness of FTB's collection efforts.

The State Auditor recommended that DIR monitor the amount of time FTB takes to process cases and discuss any concerns with FTB. The State Auditor also recommended that if additional resources are not authorized to automate processing of cases, DIR should adopt rules and regulations it is already authorized to issue and charge a collection fee to employers that delay paying the claims in order to fund the changes needed to improve FTB's collection efforts

FISCAL IMPACT

The reporting requirements that are added by this bill would require staff and programming resources to implement. Reporting functionality in the current program does not include all of the data fields required by this bill. Additional resources would be needed to reprogram the database and to update current records with additional details.

In addition, there is an existing backlog of paper cases referred for collection that need to be processed into the database to provide a complete report on the universe of cases referred for collection. Additional fields of information would need to be documented, not only for the backlogged cases, but also for the existing cases within the database. To accomplish this task, additional staffing resources not currently funded under this program would be needed. Specific cost estimates will be developed as this bill moves through the legislative process.

ECONOMIC IMPACT

This bill would not significantly impact state income tax revenue.

LEGISLATIVE STAFF CONTACT

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