

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Leno Analyst: Nicole Kwon Bill Number: AB 2879

Related Bills: See Legislative History Telephone: 845-7800 Introduced Date: February 22, 2008

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT:	Labor And Workforce Development Agency In Consultation With FTB And The Economic And Employment Enforcement Coalition Shall Develop And Implement Standards That Would Trigger Recommendation For Audit Or Investigation
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SUMMARY

This bill would require the Franchise Tax Board (FTB) to consult in the development of criteria to prompt referrals between state tax agencies and the Labor and Workforce Development Agency for audit or investigation.

This bill would also include provisions of the Labor Code affecting the Department of Industrial Relations; however, those provisions do not apply to FTB and are not addressed in this analysis.

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to generate additional revenue for the state by identifying appropriate tax audit targets based on past labor law violations and to provide additional disincentives for corporations to violate state labor laws.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2009, and operative as of that date.

POSITION

Pending.

ANALYSIS

STATE LAW

In 1993, under Executive Order W-66-93, the Joint Enforcement Strike Force on the Underground Economy (JESF) was established to combat the underground economy by pooling resources and sharing data among the state agencies charged with enforcing licensing, labor, and tax laws. In 1995 the Executive Order was codified under the California Unemployment Insurance Code. Member agencies of this strike force include the Employment Development Department, Department of Industrial Relations, Department of Consumer Affairs, FTB, Board of Equalization, Department of Justice, and Department of Insurance.

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

Selvi Stanislaus

4/29/08

Existing state law prohibits the disclosure of any taxpayer or tax return information, except to other state agencies for tax administration purposes, and other agencies for purposes identified by statute. Any FTB employee or member responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony.

THIS BILL

This bill would require FTB to consult with the Labor and Workforce Development Agency (LWDA) and JESF to develop and implement a set of standards that would trigger a recommendation for an audit by appropriate state tax authorities of employers that violate statutes relating to employee wages, hours, and working conditions by July 1, 2009. The standards would include the severity and number of violations committed by the employer.

LEGISLATIVE HISTORY

AB 875 (Koretz, 2005/2006) was similar to this bill, requiring FTB to assist in the development of criteria to prompt referrals between state tax agencies and LWDA for audit or investigation. AB 875 was vetoed by the Governor (See Appendix A for the complete veto message).

AB 1027 (Horton, Stats. 2005, Ch. 428) requires FTB to inform various state agencies including JESF when criminal charges are filed or an individual is arraigned for engaging in business or acts in the capacity of a contractor. AB 1027 was an additional attempt to maximize the effectiveness of state agency enforcement through the sharing of information.

SB 573 (Alarcon, 2003/2004) and AB 2942 (Koretz, 2001/2002) contained similar language as this bill; however, only the Labor Commissioner would have been required to develop a set of standards for referral to state tax agencies when an employer met the standards. SB 573 was held in the Senate Appropriations Committee and AB 2942 was held in the Assembly Labor and Industrial Relations Committee.

PROGRAM BACKGROUND

JESF focuses on implementing joint enforcement projects among member agencies. The goals of JESF are listed below:

- Protect workers by ensuring that they receive all benefits to which they are entitled by law relating to wages and hours, health and safety, and income replacement,
- Eliminate unfair business competition,
- Protect the consumer by ensuring that all businesses are properly licensed and that they adhere to the state's consumer protection regulation,
- Reduce the burden on law-abiding citizens by ensuring that all businesses and individuals comply with the state's licensing, regulatory, and tax laws, and
- Increase voluntary compliance with the state tax laws to maximize the state general and special fund revenue.

The JESF efforts provide additional general fund and special fund revenues through subsequent collection activities, insure that workers receive the benefits they are entitled to by law, and provide a deterrent to employers who may consider moving into the underground economy.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York do not have laws similar to the provisions of this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

The revenue impact of this bill is dependent on whether the information provided to FTB would be new information not currently available via other sources.

To the extent FTB receives new information, there would likely be an unknown increase in revenue. If this program produces information already available to FTB but in a timelier fashion, there could be an unknown acceleration of revenue, that would otherwise be collected under current law.

LEGISLATIVE STAFF CONTACT

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APPENDIX A

To the Members of the California State Assembly:

I am returning Assembly Bill No. 875 without my signature.

This bill calls for the development of an unnecessary set of standards. The Labor and Workforce Development Agency already has the authority to coordinate enforcement efforts related to the underground economy. Additionally, this bill is duplicative of efforts currently underway by the Economic and Employment Enforcement Coalition, an inter-agency task force focused on enforcement activities. This year's budget includes \$6.5 million and 62 personnel years for coordinated enforcement of the underground economy by these entities.

The state funds spent developing the standards called for in this bill would be better spent actually enforcing existing laws.

Sincerely,

Arnold Schwarzenegger