Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Torrico	Analyst:	Janet Jennings	Bill Number:	AB 2014
Related Bills:	See Prior Analysis	Telephone:	845-3495	Amended Date:	May 18, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Energy Efficient Homes Credit

____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended __________.

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

____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended __________.

_X_ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO __________.

_X_ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 8, 2010, STILL APPLIES.

_X_ OTHER – See comments below.

SUMMARY

This bill would provide a tax credit for energy efficient home improvements.

SUMMARY OF AMENDMENTS

The May 18, 2010, amendments did the following:

- Resolved some of the department's implementation considerations and policy concerns by defining principal residence,
- Clarified how and by whom the energy audit would be conducted,
- Specified a time limit between when the energy audit is completed and when the improvements must be made, and
- Added a sunset date and carry-over period.

This bill would correct the reference to the Global Warming Solutions Act, and declares this is a pilot program.

Board Position:			Asst. Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Patrice Gau-Johnson	05/25/10
____ N	____ OUA	_X_ PENDING		

As a result of the amendments, the “This Bill,” “Implementation Considerations,” “Economic Impact,” and “Policy Concerns” discussions have been revised. Except for these discussions, the department’s analysis of the bill as amended April 18, 2010, still applies.

PURPOSE OF THE BILL

According to the legislative findings in the bill, the purpose is to evaluate the effectiveness of the credit contained in this bill in order to promote energy efficient homes.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2010, and before January 1, 2014, subject to credit availability.

POSITION

Pending.

ANALYSIS

<u>THIS BILL</u>

For taxable years beginning on or after January 1, 2010, and before January 1, 2014, this bill would provide a tax credit in an amount up to $1,500 per qualified taxpayer for qualified costs paid or incurred during each taxable year the credit is allowed.

This bill states the following:

- The energy audit must comply with the regulations in Phase II of the California Home Energy Ratings System Program established by the State Energy Resources Conservation and Development Commission, and
- The energy audit must be conducted by a California Home Energy Rating System Professional certified by the State Energy Resources Conservation and Development Commission.

This bill would define the following:

- ”Qualified costs” means the amount paid or incurred by a qualified taxpayer, during the taxable year in which the credit is claimed for the repair, rehabilitation, or improvement of a qualified principal residence recommended by the energy audit, even if the repair, rehabilitation, or improvement is not completed during the taxable year in which the credit is claimed;
- "Qualified principal residence" means a principal residence as defined in Section 121 of the Internal Revenue Code located in Alameda, Contra Costa, San Mateo, or Santa Clara County; and
- “Qualified taxpayer” means a taxpayer who is a resident of Alameda, Contra Costa, San Mateo, or Santa Clara County.

The bill requires the repairs, rehabilitations, and improvements be made within three years of the completion of the home energy audit.

Multiple qualified owners of a qualified residence would each be allowed an amount equal to 50 percent of the credit. The bill provides that any unused credit can be used in the next and succeeding eight taxable years, if necessary, until exhausted.

The credit would be claimed on a timely filed original return filed before the cut-off date established by the Franchise Tax Board (FTB). The cut-off date for a taxable year will be on the last day of the calendar quarter within which the FTB estimates it will have received timely filed original returns for the taxable year claiming credits in the cumulative amount of $250,000. The determination by the FTB with respect to the cut-off date for a taxable year, and whether a return has been timely filed, may not be reviewed in any administrative or judicial proceeding. Any disallowance of a credit claimed due to FTB’s determination, including application of the limitation specified, is treated as a mathematical error and any tax resulting from such disallowance may be assessed in the same manner as applicable to mathematical errors. This bill, if enacted, would be repealed by its own terms on December 1, 2014, unless a later enacted statute deletes or extends that date.

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.

This bill would allow a credit of up to $1,500, for each taxable year, as specified. If it is the author’s intent to limit the total credit available to a taxpayer within the four tax years the credit is available for a total of $1,500, the bill needs to be amended.

The bill as amended May 19, 2010, no longer limits the credit to the lesser of 50 percent of qualified costs or $1500. If this not the author’s intent, the bill needs to be amended.

The bill as amended May 19, 2010, provides that multiple owners are allowed 50 percent of the credit regardless of how many owners are on title. If it is the author's intent to limit the credit to the percentage of ownership, the bill needs to be amended.

This bill does not include the cost of the energy audit as a qualified cost for calculating the tax credit. If this is not the author's intent, the bill needs to be amended.

TECHNICAL CONSIDERATIONS

The department has identified the following technical concerns. The following amendments are suggested:

- Clarify the term "qualified principal residence."

  On page 4, line 5, strike out "as defined in" and insert:

  within the meaning of

- Define the period for qualified improvements to be completed after the energy audit is obtained.

  On page 4, line 19, strikeout "of" and insert:

  after

FISCAL IMPACT

This bill would require revising tax forms. As a result, this bill would impact the department's printing, processing, and storage costs for tax returns. The additional costs have not been determined at this time. As the bill continues to move through the legislative process and implementation considerations are resolved, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

This bill would result in the following revenue losses:

Estimated Revenue Impact of AB 2014 Operative for Taxable Years Beginning On or After January 1, 2010 Enactment Assumed by September 30, 2010 ($ in Millions)		
2010-11	2011-12	2012-13
-$12	-$12	-$12

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

POLICY CONCERNS

Public utilities often offer grant programs to encourage people to install and use energy conservation measures or energy efficient appliances. The bill does not require the cost of the device or the credit amount to be reduced by the amount of any financial incentive or grant received.

This bill contains provisions that would target certain incentives to residents of specified California counties, while denying the same incentive to nonresidents. The U.S. Supreme Court in *Lunding Et Ux*. v. New York Appeals Tribunal et al. (1998) 118 S. Ct. 766, found that New York's denial of an alimony deduction to nonresident taxpayers, while allowing such a deduction to resident taxpayers, was discriminatory and thus unconstitutional. Thus, targeted tax incentives such as the Energy Efficient Homes Credit in this bill that are conditioned on residency in California may be subject to constitutional challenge.

LEGISLATIVE STAFF CONTACT

Legislative Analyst	Revenue Manager	Asst. Legislative Director
Janet Jennings	Monica Trefz	Patrice Gau-Johnson
(916) 845-3495	(916) 845-4002	(916) 845-5521
janet.jennings@ftb.ca.gov	monica.trefz@ftb.ca.gov	patrice.gau-johnson @ftb.ca.gov