

# BILL ANALYSIS

Analyst: Janet Jennings  
Work Phone: 845-3495

Department, Board, Or Commission	Author	Bill Number
<b>Franchise Tax Board</b>	<b>Monning</b>	<b>AB 2770</b>

## SUBJECT

Labor Commissioner Or Designee From Labor And Workforce Development Agency In Consultation With FTB And Economic And Employer Enforcement Coalition Develop And Implement Standards That Would Trigger Recommendation For Audit Or Investigation

## SUMMARY

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

## PURPOSE OF BILL

The legislative findings indicate that the purpose of this bill is to generate additional revenue for the state by identifying appropriate tax audits or investigations based on labor law violations and to provide additional disincentives for employers to violate state labor laws.

## EFFECTIVE/OPERATIVE DATE

If enacted by September 30, 2010, this bill would be effective on January 1, 2011, and operative as of that date.

## 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 (EDD), Department of Industrial Relations, Department of Consumer Affairs, FTB, Board of Equalization (BOE), Department of Justice, and Department of Insurance.

In mid-2005, the Governor established and the Legislature agreed to fund the Economic and Employment Enforcement Coalition (EEEC). The EEEEC is a targeted joint effort by Federal and State agencies that includes two of the three state taxing agencies, the EDD and the BOE. The EEEEC's specific mission is attacking California's underground economy.<sup>1</sup>

<sup>1</sup>Source: [http://www.labor.ca.gov/pdf/EEEC\\_Final\\_Report\\_2009.pdf](http://www.labor.ca.gov/pdf/EEEC_Final_Report_2009.pdf)

Brian Putler, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Geoff Way for Selvi Stanislaus	Date 08/31/10
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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 the FTB to consult with the Employment Development Department, the Department of Justice, the Department of Insurance, the Labor and Workforce Development Agency (LWDA), and industry representatives to develop and implement a set of criteria by July 1, 2011, that, if met by an employer, would trigger a recommendation for an audit or investigation by appropriate state tax authorities to determine if an employer has violated statutes relating to employee wages, hours, and working conditions.

The EDD would take the following actions with respect to an employer when the criteria are met:

- Notify the appropriate state tax authorities,
- Provide the appropriate state tax authorities with the name of the employer and all relevant and necessary information regarding the violations, and
- Make a recommendation to the appropriate state tax authorities that the employer be audited or investigated.

### **LEGISLATIVE HISTORY**

AB 2879 (Leno, 2007/2008) was similar to this bill, and would have required the FTB to assist in the development of criteria to prompt referrals from the LWDA or EEEC to the state tax agencies for audit or investigation. AB 2879 failed to pass out of the Senate Appropriations Committee.

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

AB 1027 (Horton, Stats. 2005, Ch. 428) requires the 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 language similar to 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; AB 2942 was held in the Assembly Labor and Industrial Relations Committee.

## **FISCAL IMPACT**

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

## **ECONOMIC IMPACT**

This bill makes administrative changes to the Labor Code relating to the underground economy. Any potential revenue generated by this bill would depend on whether the information provided to the FTB is classified as new information, unavailable through current sources used by the FTB.

To the extent that FTB receives information it would not have received absent this program, there would be a potential increase in revenue.

## **Appointments**

None.

## **Support/Opposition**

According to the Senate Committee analysis the following are listed as in support or opposition:

Support: Spa & Pool Industry Council

Opposition: The Department of Finance is opposed for fiscal reasons.

## **VOTES**

Assembly Floor – Ayes: 58, Noes: 17

Senate Floor – Ayes: 24, Noes: 3

Concurrence – Ayes: 59, Noes: 12

## **LEGISLATIVE STAFF CONTACT**

Janet Jennings

Franchise Tax Board

(916) 845-3495

[janet.jennings@ftb.ca.gov](mailto:janet.jennings@ftb.ca.gov)

Patrice Gau-Johnson

Franchise Tax Board

(916) 845-5521

[patrice.gau-johnson@ftb.ca.gov](mailto:patrice.gau-johnson@ftb.ca.gov)

## Appendix A

BILL NUMBER: AB 875  
VETOED DATE: 09/29/2005

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