

BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Evans/Monning	AB 94

SUBJECT

Natural Heritage Preservation Tax Credit

SUMMARY

This bill would do the following:

- Reactivate the Natural Heritage Preservation Tax Credit Act within the Public Resources Code (PRC) and reestablish the related tax credits within the Revenue and Taxation Code (R&TC), and
- Allow the Wildlife Conservation Board (WCB) to award the Natural Heritage Preservation (NHP) tax credit without monetary limit, as specified.

PURPOSE OF BILL

According to the author's office, the purpose of this bill is to save state and local agencies' funds when they acquire property from donors who are awarded the NHP tax credit.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2010, and would apply to qualified contributions made on or after January 1, 2010, and before July 1, 2015.

ANALYSIS

STATE LAW

Under the PRC, the Natural Heritage Preservation Tax Credit Act of 2000 was established to encourage donations of land to the state, local governments, and designated nonprofit organizations. The donated property must be approved for acceptance by the WCB, which notifies Franchise Tax Board (FTB) of the amount of tax credit awarded for each donation.

Under the PRC, the WCB had the authority to award no more than a total of \$100 million in NHP tax credits beginning with fiscal year 2000-01. The WCB's authority to award credits sunset by its own terms on June 30, 2008.

Under the R&TC, a taxpayer is allowed an income tax credit of up to 55 percent of the donated property's fair market value for donations made on or after January 1, 2000, and before July 1, 2008. Any unused credit may be carried over for eight years. The FTB is required to report the amount of NHP credit claimed by tax year to the WCB.

Brian Putler, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Selvi Stanislaus	Date 9/10/09
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Within 60 days of notification from FTB, the WCB is required to reimburse the Natural Heritage Preservation Tax Credit Reimbursement Account within the state's General Fund (GF) for the amount of the NHP tax credits claimed on income tax returns. The WCB is authorized to use bond funds to reimburse the GF.

Under current state law, Corporation Tax Law allows the assignment of certain credits to taxpayers that are members of a combined reporting group and adds the following provisions:

- Provides that an "eligible credit" may be assigned by a taxpayer to an "eligible assignee."
 - "Eligible credit" means any credit earned by a taxpayer in a taxable year beginning on or after July 1, 2008, or any credit earned in any taxable year beginning before July 1, 2008, which is eligible to be carried forward to the taxpayer's first taxable year beginning on or after July 1, 2008.
 - "Eligible assignee" means any "affiliated corporation" that is a member of a combined reporting group at certain specified times.
 - "Affiliated corporation" means a corporation that is a member of a combined reporting group.
- Provides that the election to assign any credit is irrevocable once made and is required to be made on the taxpayer's original return for the taxable year in which the assignment is made.

THIS BILL

This bill would reinstate the NHP tax credit for qualified donations of real property or perpetual interests in real property made in taxable years beginning on or after January 1, 2010¹, and before July 1, 2015, and would remove the limit on the total NHP tax credit amount the WCB could award.

The award of the NHP tax credit would be contingent on the GF being reimbursed by the WCB for lost revenue resulting from the award of NHP tax credits.

LEGISLATIVE HISTORY

AB 1452 (Committee on Budget, Stats. 2008, Ch. 763) allows a corporate taxpayer that is a member of a combined reporting group to make a one time, irrevocable assignment of business tax credits to taxpayers within that group. Assigned credits must have been earned during a taxable year beginning on or after July 1, 2008, or eligible for carryover to the taxpayer's first taxable year beginning on or after July 1, 2008. Assigned credits can only be applied to reduce a tax liability in taxable years beginning on or after January 1, 2010.

¹ Qualifying donations could occur during taxable year 2009 for taxpayers with a fiscal year that ends on or after January 1 and before July 1.

AB 2930 (Laird, 2007/08) would have eliminated the sunset date of the NHP, removed the \$100 million limit on the total credit the NHP could award, and required local governments to transfer funds to the WCB prior to receiving final approval for acceptance of a qualified donation. AB 2930 was held in the Senate Appropriations Committee.

SB 1100 (Sen. Budget Committee, Stats. 2004, Ch. 226) extended the period in which the NHP tax credits may be awarded and claimed from fiscal year 2004-05 to 2007-08.

AB 2722 (Laird, Stats. 2004, Ch. 715) allowed the WCB to use bond funds to reimburse the GF for lost revenue resulting from the award of the NHP tax credits.

SB 1647 (O'Connell, Stats. 2000, Ch. 113) established the Natural Heritage Preservation Tax Credit Act of 2000.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. With the exception of *New York*, none of these states have a credit comparable to the credit allowed by this bill.

New York's credit for conservation easement donations is limited to 25 percent of the property taxes associated with the land. The credit for any year may not exceed \$5,000 and may not reduce the fixed dollar minimum tax or the tax on the minimum taxable income base. Any unused credit may be refunded or applied as a payment against the following year's tax due. The conservation easement must be filed with the *New York* State Department of Environmental Conservation to claim the credit.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impact under the Personal Income Tax and Corporation Tax laws:

Estimated Revenue Impact of AB 94 Effective For Tax Years Beginning On Or After January 1, 2010 Enactment Assumed After June 30, 2009 (\$ in Millions)			
	2010-11	2011-12	2012-13
Applied Tax Credits	-\$7	-\$7	-\$7
Local Gov't payments	+\$3	+\$3	+\$3
WCB transfers	+\$4	+\$4	+\$4
Impact to General Fund	\$0	\$0	\$0

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact of this bill would depend on the fair market value of land donated for tax credits and the amount of credits that could be applied to reduce tax liabilities.

The WCB reports that \$48.6 million in tax credits were allocated before the credit sunset on June 30, 2008. Actual credits applied on tax returns totaled \$25.8 million for the period of 2001-02 through 2007-08, an average of approximately \$4 million annually.

This bill would allow local governments to bring completed applications to the WCB for approval of the credit. It is anticipated that this change would result in more credits being awarded, approximately \$7 million annually. This bill would be effective for tax years beginning on or after January 1, 2010, for donations made on or after January 1, 2010, and before July 1, 2015.

Tax credits applied in 2010 would be reported on tax returns filed in 2011. FTB would not be able to request a fund transfer to cover these credits until after the return is filed. At the earliest, the transfers would be made in April 2011 (in the 2010-11 fiscal year), or October 2011 (in the 2011-12 fiscal year). Therefore, there would be no impact in the 2009-10 fiscal year for credits generated in 2010.

FTB must report to the WCB the tax year for which the NHP tax credit was applied by the taxpayer. Transfers from the WCB fund, based on actual credit usage, would amount to \$4 million in 2010-11 and in 2011-12 on an accrued basis.

Payments by local governments are made "up front," in the same fiscal year as the credit is reported. It is estimated that these payments would be approximately \$3 million each in 2010-11 and 2011-12.

Appointments

None.

Support/Opposition

According to the September 1, 2009, Senate Floor analysis of AB 94 as amended September 1, 2009, the following support and opposition were identified.

Support:

Agricultural-Natural Resources Trust of Contra Costa County;
Alameda County Resource Conservation District; American Farmland Trust;
American Land Conservancy; Audubon California;
Butte County Resource Conservation District;
California Association of Recreation and Park Districts; California Cattle Women's Association;
California Cattlemen's Association; California Council for Environmental and Economic Balance;
California Council of Land Trusts; California League of Conservation voters;
California Outdoor Heritage Alliance; California Rangeland Trust;
California State Parks Foundation; California Special Districts Association;
Central Valley Land Trust Council; Central Valley Program Director Trust for Public Land;
Chevron; Colusa County resource Conservation District; Defenders of Wildlife;
Land Trust for Santa Barbara County; Middle Mountain Foundation;
Natural Resource Defense Council; Nevada County Resource Conservation District;
Planning and Conservation League; Rocky Mountain Elk Foundation;
Sacramento Valley Conservancy; San Benito Cattlemen's Association; Sempervirens Fund;
Sierra Club California; Sierra Foothills Audubon Society; Southern California Edison;
Sustainable Conservation; The Nature Conservancy; The Trust for Public Land;
The Xerces Society for Invertebrate Conservation

Opposition: None received

VOTES

Assembly Floor – Ayes: 70, Noes: 7

Senate Floor – Ayes: 24, Noes: 12

Concurrence – Ayes: 67, Noes: 9

LEGISLATIVE STAFF CONTACT

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