

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Fuentes Analyst: Dawn Hadid Bill Number: AB 1092  
Related Bills: See Legislative History Telephone: 845-3391 Amended Date: August 14, 2012  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** California Opportunity & Prosperity Act/FTB Provide Legislature Report Regarding Tax Receipts Collected From Undocumented Immigrants Participating In Reporting Program

### SUMMARY

This bill would require the Franchise Tax Board (FTB) to send a report to the Legislature documenting tax receipts collected from undocumented immigrants. This bill would also make changes impacting the Department of Justice (DOJ); these changes do not affect the FTB and are not discussed in this analysis.

### RECOMMENDATION

No position.

### Summary of Amendments

The August 14, 2012, amendments removed all of the bill's provisions, which related to high speed rail, and replaced them with the provisions discussed in this analysis. This is the department's first analysis of the bill. This analysis only addresses the provisions of this bill that impact the department's programs and operations.

### REASON FOR THE BILL

The reason for the bill is to encourage certain immigrants to pay state income tax and potentially allow those who do to gain relief from federal enforcement efforts.

### EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective and operative immediately upon enactment.

#### Board Position:

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\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
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#### Executive Officer

#### Date

Selvi Stanislaus

8/24/12

## **ANALYSIS**

### **FEDERAL**

Under federal law, the Immigration and Nationality Act (INA), serves as the body of immigration law in the United States Code, Title 8. The INA qualifies whether a person is an alien, the rights, duties and obligations associated with being an alien in the United States, length of stay, and what aliens can become legal citizens.

On June 15, 2012, the President provided direction on immigration to the Department of Homeland Security. Under the directive, individuals who demonstrate that they meet specified criteria will be eligible for an exercise of discretion, specifically deferred action with respect to deportation, on a case by case basis.

Only those individuals who can prove through verifiable documentation that they meet these criteria will be eligible for deferred action. Individuals will not be eligible if they are not currently in the United States and cannot prove that they have been physically present in the United States for a period of not less than five years immediately preceding today's date. Deferred action requests are decided on a case-by-case basis.

### **STATE LAW**

Current law, California Penal Code 834b, requires law enforcement agencies to attempt to verify the legal status, notify the proper authorities, and notify the person in question of their need to either obtain legal status or leave the United States barring any judicial proceedings. The California Constitution has not addressed undocumented immigrants.

### **THIS BILL**

This bill would create the California Opportunity and Prosperity Act. Specifically, this bill would require the FTB to issue a report to the Legislature annually beginning on or before December 31, 2014 through 2018, consisting of the identification number and tax receipts collected in the previous year from "qualified persons" who participate in a voluntary reporting program with the DOJ.

The bill would require the FTB to destroy all records relating to the program that contain any identifying information of applicants or participants on January 1, 2019, or as soon as practicable thereafter, except those needed for purposes of conducting an audit, or appeal, or for verifying a claim for refund. Additionally, the information collected would be prohibited from any use or disclosure with the exception of conducting an audit, or processing a claim for refund, or appeal.

The bill would require the DOJ to administer the program and send the name and identification number of accepted "qualified persons" to the FTB beginning on or before December 31, 2013 through 2017.

“Qualified person” would be defined as a person that meets all of the following criteria:

- Is ineligible to receive a social security number,
- Has filed a state income tax return with a valid taxpayer identification number for the most recent taxable year that a return was required,
- Is not employed by a public entity,
- Declares that he is able to speak and understand English, or is enrolled, or applied to enroll in English-as-a-second-language class,
- Has not been convicted of a felony,
- Is not a member or suspected member of a terrorist organization,
- Is not a public charge,
- Declares that he has been a resident of California since January 1, 2008, and
- Consents to a background check and disclosure to confirm eligibility for program and to provide information to the FTB.

The article created by this bill would become inoperative on January 1, 2020.

### IMPLEMENTATION CONSIDERATIONS

This bill would require the FTB to prepare a report detailing the “tax receipts” received from participants registered with the DOJ. It is unclear what “tax receipts” the department would use to prepare the report. The absence of a definition to clarify the term could complicate the administration of this measure.

This bill would require the FTB to destroy documents related to participants registered with the DOJ, unless the documents are necessary to conduct an audit or appeal or to process any taxpayer claim for refund. The language fails to address whether the information could be maintained for purposes of collection. To avoid possible conflicts between the department and taxpayers, it is recommended the bill be amended to address utilization of the participant information for purposes of tax collection.

This bill would limit the reporting period for which the FTB would provide information about tax receipts to those collected during the immediately preceding taxable year. Limiting the report to the taxable year and not specifically to the tax receipts associated with a taxable year could result in an inaccurate report of true tax receipts. The author may wish to amend the bill to require the tax receipts related to the preceding taxable year be included in the report in order to get an accurate representation.

### **LEGISLATIVE HISTORY**

ACA 27 (Fuentes, 2011/2012) this measure would require the FTB to send a report to the Legislature documenting tax receipts collected from undocumented immigrants. This measure would also make changes impacting the DOJ.

SB 3 (Greene, Stats. 1993, Ch. 31) allows an employer or an agent of an employer to provide a wage statement or a similar document to any undocumented worker or former undocumented worker for the purpose of establishing eligibility for legalization without retribution to the employer or agent.

## **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.

*Florida* recently passed a law in May 2012, requiring the police to make "a reasonable effort" to determine immigration status of people they arrest and jail.

*Illinois* passed "The Dream Act" signed into law in 2011 that allows undocumented immigrant students access to privately funded college tuition assistance.

Current *Massachusetts* law disallows illegal immigrants from qualifying for resident-tuition rates, requires contractors to confirm the legality of workers, and requires priority for public housing assistance to be given to legal residents.

*Michigan* legislation regarding immigrants and their treatment has failed to pass.

*Minnesota* state law stipulates immigration status is investigated only when a crime is committed.

*New York* ceased participation recently in "Secure Communities" a federal program that shared fingerprints taken from suspects with Immigration and Customs Enforcement.

## **FISCAL IMPACT**

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

## **ECONOMIC IMPACT**

This bill would not impact the state's income tax revenue.

## **SUPPORT/OPPOSITION**

Support: None on file.

Opposition: None on file.

## **ARGUMENTS**

Proponents: This bill encourages “qualified persons” to self comply and pay their fair-share of state income taxes.

Opponents: This bill would protect undocumented immigrants and encourage further undocumented migration to California.

## **LEGISLATIVE STAFF CONTACT**

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