ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author:	Alejo, Knight, & Runner	Analyst:	Jahna Carlson	Bill Number:	AB 484
Related Bills:	See Legislative History	Telephone:	845-5683	Amended Dates:	February 15, 2012, April 9, 2012, & May 1, 2012
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Enterprise Zones/ Continuation of Eligibility For EZ Benefits For Expiring EZ

SUMMARY

This bill would provide for continuation of eligibility for Enterprise Zone (EZ) benefits beyond an EZ's expiration date to taxpayers located in an expiring EZ.

RECOMMENDATION

No position.

Summary of Amendments

The February 15, 2012, amendments removed the bill's existing provisions relating to land use and replaced them with the provisions discussed in this analysis.

The April 9, 2012, amendments added coauthors and made technical, non-substantive changes to the bill.

The May 1, 2012, amendment added a requirement that the Franchise Tax Board (FTB) be notified of an extension of EZ benefits under the terms of this bill.

This is the department's first analysis of the bill.

Summary of Suggested Amendments

Amendment 1 would maintain consistency of terminology with existing law by deleting references to an EZ's jurisdiction.

REASON FOR THE BILL

It appears that the reason for the bill is to establish a method for an expiring EZ to establish extended eligibility for EZ benefits beyond the zone's expiration date when the Department of Housing and Community Development (DHCD) has yet to issue a request for applications for EZ designation.

Board Position:			Department Director	Date
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EFFECTIVE/OPERATIVE DATE

If enacted on or before September 30, 2012, this bill would become effective January 1, 2013, and would apply to EZ designations expiring on or after that date.

ANALYSIS

FEDERAL/STATE LAW

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Existing federal law provides special tax incentives for empowerment zones and enterprise communities to provide economic revitalization of distressed urban and rural areas.

Under the Government Code, existing state law allows the governing body of a city or county to apply for designation as an EZ. Using specified criteria, the DHCD designates EZs from the applications received from the governing bodies. EZs are designated for 15 years (except EZs meeting certain criteria may be extended to 20 years), and the DHCD is authorized to designate 42 EZs under current law (40 are currently designated).[1] When an EZ expires, the DHCD is authorized, but not required, to request applications for EZ designation (open application period).

Under current law, an expiring EZ that applies for a new EZ designation during an open application period that receives a conditional designation letter from the DHCD may continue to offer, all EZ benefits until the DHCD makes a final designation or declines to redesignate the EZ. This conditional designation process provides taxpayers doing business within the EZ, continuity of eligibility for the various EZ benefits, including the EZ income tax incentives. Historically, the DHCD has established open application periods prior to the expiration date of an existing EZ.

THIS BILL

This bill would amend the Government Code to allow eligibility for EZ benefits, including income tax benefits, to continue beyond an EZ’s scheduled expiration date if the EZ, before its expiration date, provides a letter to the DHCD stating the EZ’s intent to reapply for EZ designation in circumstances where the DHCD has not issued a request for applications for new EZ designation and the number of conditionally designated EZs is below the maximum number allowed. The DHCD would be required to notify the FTB of the extension of the availability of EZ benefits.

The extension would be in effect until the DHCD completes any regulatory or administrative review, issues a request for proposal, and issues conditional designation letters to the maximum number of EZs allowed.

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[1] The Antelope Valley EZ expired on January 31, 2012 and the Watsonville EZ expired on April 30, 2012.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this concern and other concerns that may be identified.

The bill is silent on the timing of the DHCD notification to the FTB that EZ benefits had been extended. Additionally, the bill is silent on how and when taxpayers and the FTB would be notified of the subsequent termination of the extended eligibility period.

Lack of awareness could result in taxpayers improperly reporting, or failing to report, EZ income tax benefits, and may result in disputes between taxpayers and the department. To reduce taxpayer confusion and ease administration, the author may wish to amend this bill to clarify the notification process.

If this bill were amended to resolve the implementation consideration, implementing this bill would be accomplished during the normal annual update.

TECHNICAL CONSIDERATIONS

The wording of the extension of benefits that this bill would allow is inconsistent with existing law. If it is the author's intention that the extension of benefits that this bill would allow would operate similarly to existing law, it is suggested that subdivision (d) be amended to delete references to an EZ's jurisdiction. An amendment is provided.

LEGISLATIVE HISTORY

AB 231 (Perez & Alejo, et al., 2011/2012) would, among other things, have limited the size of a proposed EZ if the boundaries of a census block group or groups within the proposed EZ would overlap the boundaries of a previously designated EZ. AB 231 failed to pass out of the Assembly Committee on Jobs, Economic Development, and the Economy.

AB 1278 (Hill, 2011/2012) would have limited the Geographically Targeted Economic Development Area (G-TEDA) hiring credit available to taxpayers that relocate from within the state to a G-TEDA during a taxable year beginning on or after January 1, 2011. AB 231 would have applied a similar limitation to a taxpayer that relocated within the state to a G-TEDA. AB 1278 failed to pass out of the Assembly Committee on Jobs, Economic Development, and the Economy.

AB 1411 (Perez & Alejo, et al., 2011/2012) would have, among other things, limited the size of a proposed EZ when the proposed EZ's boundaries would overlap the boundaries of a previously designated EZ. AB 1411 failed to pass out of the Senate Appropriations Committee.

ABX1 11 (Perez & Alejo, et al., 2011/2012) would have modified the definition of a Targeted Employment Area (TEA) and the process for obtaining and retaining the TEA designation and would have modified the EZ hiring credit. The provisions of ABX1 11 are similar to provisions included in AB 231. ABX1 11 died at the desk upon adjournment of the First Extraordinary Session of 2011.

SB 301 (DeSaulnier, 2011/2012) would have placed a size limit on proposed EZs in certain circumstances. SB 301 failed to pass out of the Assembly Committee on Jobs, Economic Development, and the Economy.

PROGRAM BACKGROUND

In recent years the EZ program has been the subject of several reform efforts.

In 2009 the Assembly Committee on Jobs, Economic Development, and the Economy (JEDE) initiated a series of hearings and town hall meetings to identify the program's successes and areas in need of improvement. During the course of this review, JEDE held three public hearings, met with a variety of stakeholder groups, and produced an expanded white paper that details the structure and activities of the G-TEDA program in California, as well as in other states. In addition to the authors of the USC and PPIC reports, hearing testimony was provided by economic development practitioners, researchers, nonprofits, local governments, labor, and business leaders.

As a result of on-going discussions regarding EZ program reform, the DHCD has exercised its authority to delay accepting applications for designation as an EZ until further notice.[2] See Attachment 1.

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 allows several incentive provisions to encourage businesses in the revitalization of enterprise zones. The Florida Enterprise Zone Act and various tax incentive provisions are set to expire on December 31, 2015.

Illinois has 95 enterprise zones, *Massachusetts* has an Economic Development Incentive Program*, Michigan* has in excess of 150 geographic areas designated as Renaissance Zones, and *Minnesota* has 5 zone-based tax incentive programs.

New York's Empire Zone program sunset as of June 30, 2010. Businesses certified in the program prior to the sunset date remain in the program, and continue to be eligible for all the Empire Zone benefits, for the rest of their benefit period as long as they remain in compliance with the law and Empire Zone regulations.

FISCAL IMPACT

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

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[2] DHCD Memorandum titled "Update on Status of Enterprise Zone Program Administration" dated October 10, 2011. http://www.hcd.ca.gov/fa/ahif/EZ_Administration.pdf

ECONOMIC IMPACT

Revenue Estimate

This bill would apply to EZs that expire on or after January 1, 2013. The first EZ with an expiration date after January 1, 2013, is scheduled to expire in tax year 2020. As a result, this bill has no revenue impact within the three-year estimating timeframe.

SUPPORT/OPPOSITION[3]

Support: None identified to date.

Opposition: None identified to date.

ARGUMENTS

Proponents: Supporters could argue that this bill would stimulate job creation by extending the availability of EZ benefits beyond a zone's expiration date to businesses that have the ability to employ new workers and expand their current workforce.

Opponents: Some could argue that with the state's current fiscal crisis, extending the availability of EZ benefits beyond the zone's expiration date should be avoided.

LEGISLATIVE STAFF CONTACT

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[3] As reported on the Legislative Counsel's website at < http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_484&sess=CUR&house=B&author=alejo>[as of May 22, 2012].

ATTACHMENT 1
AB 484 AS AMENDED FEBRUARY 15, 2012

STATE OF CALIFORNIA -BUSINESS, TRANSPORTATION, AND HOUSING AGENCY EDMUND G. BROWN JR., Governor

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October 10, 2011

MEMORANDUM FOR: All Enterprise Zones and Interested Parties

FROM: Cathy E. Creswell
Cathy E. Creswell, Acting Director
Department of Housing and Community Development

SUBJECT: **Update on Status of Enterprise Zone Program Administration**

This memorandum provides an update and guidance on how the Department of Housing and Community Development (HCD) will administer the Enterprise Zone (EZ) Program.

HCD suspended work on a number of pending EZ designations while Program changes were under consideration in the Governor's budget proposals. The current Budget did not modify the EZ Program.

Given the critical need to stimulate California's economy, while at the same time recognizing the State's fiscal challenges, HCD will immediately institute policies for the EZ Program operation as outlined in this memorandum.

HCD will also solicit input to identify options to strengthen the effectiveness of the EZ Program, improve linkages to other economic development activities, and identify further improvements and reforms. HCD will seek input on the following topics:

- Further use of HCD's discretion to rein in costs and further encourage job growth from the EZ Program.
- Utilizing HCD's rulemaking authority to achieve many of the cost-saving goals articulated in the Governor's 2011 May Revise.
- Potential legislative proposals to reform the EZ Program, including consideration of reforms proposed in current legislative efforts.

Summary of Immediate Actions by HCD:

1. HCD will not issue an RFP for new EZ designations until further notice.

   Until further notice, HCD will not issue applications for new EZ designations. Up to 42 EZs are allowed by statute, and two existing EZs will expire in 2012. HCD will use its authorized discretion to not open up applications for new EZs until the Program is sufficiently reformed to strengthen its effectiveness to incentivize job creation.

   Current EZs will continue for the pendency of their 15-year terms absent changes in applicable law.

2. HCD will proceed with final designations.

   HCD will immediately proceed with all pending applications in accordance with applicable legal requirements. The following conditional EZs need to complete the designate process to begin or continue operations. Each of the following EZs will be provided 180-days to satisfy all outstanding conditions and execute MOUs. There will be no extensions past the 180 days.

   - Anaheim (City of Anaheim)
   - Harbor Gateway Communities cities of Los Angeles and Huntington Park, and County of Los Angeles)
   - Pittsburg (City of Pittsburg and County of Contra Costa)
   - Sacramento (cities of Sacramento, West Sacramento, Rancho Cordova, and County of Sacramento)
   - San Diego (cities of San Diego, Chula Vista, and National City)
   - San Francisco (City and County of San Francisco)
   - Santa Clarita Valley (City of Santa Clarita and County of Los Angeles)
   - Sequoia Valley (cities of Dinuba, Exeter, Farmersville, Lindsay, Porterville, Tulare, Visalia, Woodlake, and County of Tulare)

3. HCD will reopen applications for EZ expansions consistent with its State mandate.

   HCD is required by statute and regulation to process applications for expansion of currently designated EZs.

   Pending applications for expansion will be processed immediately. Future applications will be processed according to the relevant statutes and regulations.

4. <u>HCD will convene stakeholders to examine additional reforms to the EZ Program, with the intent to initiate rulemaking within three months</u>.

   HCD will convene stakeholders to examine what changes should be made to the EZ Program to increase transparency, accountability, cost effectiveness, and effectively stimulate job growth.

   HCD will seek input on policies that should be issued or changed with respect to HCD's administration of the EZ Program. Stakeholders will be asked to provide input on potential amendments to the Program through HCD's rulemaking authority that achieve some of the policy reforms proposed in the Governor's May Revise, as well as reforms proposed through current legislative efforts.

   The stakeholder process will also seek recommendations on other legislative changes to the Program that the Administration may seek to institute.

   Stakeholder meetings will be noticed within the coming weeks.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 484
AS AMENDED MAY 1, 2012

AMENDMENT 1

On page 3, delete lines 9 through 11, inclusive, and insert:

(d) Notwithstanding any other law, if the expiring enterprise zone has sent a letter to the department expressing the intent to reapply for a new