

## ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Fuentes Analyst: Dawn Hadid Bill Number: ACA 27  
Related Bills: See Legislative History Telephone: 845-3391 Introduced Date: May 10, 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 measure would require the Franchise Tax Board (FTB) to send a report to the Legislature documenting tax receipts collected from undocumented immigrants. This measure 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.

### REASON FOR THE BILL

The reason for the measure 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

The next general election in which this constitutional amendment could be included would be November 6, 2012, and would be effective immediately upon approval of a majority of those who vote on the ballot measure. The provisions of the constitutional amendment concerning tax returns would become operative with respect to tax returns filed for the 2013 taxable year.

### ANALYSIS

#### FEDERAL LAW

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.

Board Position:

\_\_\_\_\_ S      \_\_\_\_\_ NA        X   NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
\_\_\_\_\_ N      \_\_\_\_\_ OUA

Executive Officer

Date

Selvi Stanislaus

08/15/12

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

Under the California Constitution, the voters of the State have the authority to approve or reject any amendments to the State Constitution. Private citizens or groups can initiate amendments or the Legislature may place an amendment on the ballot if the proposal passes each House by a two-thirds vote. The Legislature proposes amendments to the California Constitution by passing a Senate Constitutional Amendment (SCA) or an Assembly Constitutional Amendment (ACA). Neither an SCA nor an ACA require the approval of the Governor. After the Legislature approves an SCA or ACA by two-thirds vote in the Senate and the Assembly, it is assigned a proposition number and placed on a statewide ballot for the voters to approve or reject the proposed change. Any amendment to the Constitution proposed by the Legislature and adopted by a majority vote of the people takes effect the day after its adoption.

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 MEASURE

This measure would create the California Opportunity and Prosperity Act. Specifically, this measure 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 measure 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 measure 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 measure would become inoperative on January 1, 2020.

### IMPLEMENTATION CONSIDERATIONS

This measure would require the FTB to prepare a report detailing the “tax receipts” received from participants registered with the DOF. 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 measure 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 measure be amended to address utilization of the participant information for purposes of tax collection.

This measure 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**

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.

The *Florida* Constitution stipulates an alien ineligible for citizenship may be regulated or prohibited by law to own, inherit, or possess real property. Recently a law was passed in May 2012 requiring the police to make "a reasonable effort" to determine immigration status of people they arrest and jail.

The *Illinois* Constitution has no reference regarding immigrants or resident aliens. However, "The Dream Act" signed into law in 2011 allows undocumented immigrant students access to privately funded college tuition assistance.

The *Massachusetts* Constitution has no reference regarding immigrants or resident aliens. 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.

The *Michigan* Constitution stipulates resident aliens have the same property rights as citizens of the state. Recent legislation regarding immigrants and their treatment has failed to pass.

The *Minnesota* Constitution stipulates aliens are prohibited from voting. Currently, immigration status is investigated only when a crime is committed.

The *New York* Constitution stipulates the alien inhabitant will not affect district lines or civil service appointments. *New York* ceased participation recently in "Secure Communities" a federal program that shared fingerprints taken from suspects with Immigration and Customs Enforcement.

## **FISCAL IMPACT**

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved, but anticipate the costs to be minor.

## **ECONOMIC IMPACT**

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

## **SUPPORT/OPPOSITION**

Support: Alianza Hondureña de Los Angeles (ALAS), ANAHUAK Youth Sports Association, Asociación de Veteranos Militares de El Salvador (ASVEM), Casa Nicaragua, Central American Resource Center (CARECEN-LA), Comité de Festejos Centroamericanos (COFECA), El Centro Cultural de Mexico, El Corredor Comunitario Salvadoreño, El Rescate (Legal Center), Hermandad Mexicana, Hondureños Unidos de Los Angeles (HULA), Instituto de Educación Popular del Sur de California (IDEPSCA), Labor Council for Latin American Advancement, Latino and Latina Roundtable of San Gabriel and Pomona Valley, Latino Voters League (LVL), National Alliance of Latin American & Caribbean Communities (NALACC), National Central American Roundtable, Promotores Comunitarios del Desierto, Pueblo y Salud, Inc., Southwest Voter Registration Education Project (SVREP), Teatro Urbano, Unión de Guatemaltecos Emigrantes (UGE) and William C. Velásquez Institute (WCVI).<sup>i</sup>

Opposition: None identified to date.

## **ARGUMENTS**

Proponents: Those in favor of this measure might argue the measure encourages “qualified persons” as defined to self comply and pay their fair-share of state income taxes.

Opponents: Those opposed to this measure might argue that it would protect undocumented immigrants and encourage further undocumented migration to California.

## **LEGISLATIVE STAFF CONTACT**

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<sup>i</sup> As provided by the Assembly member Felipe Fuentes office received on June 22, 2012 updated as of June 22, 2012.