

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Steinberg, et al Analyst: Dawn Hadid Bill Number: SB 901

Related Bills: See Legislative History Telephone: 845-3391 Amended Date: August 22, 2012 and August 29, 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 annual reports 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 detail in this analysis.

RECOMMENDATION

No position.

Summary of Amendments

The August 22, 2012, amendments removed all of the bill's provisions related to air pollution, and replaced them with the provisions discussed in this analysis.

The August 29, 2012, amendments removed some "qualified person" requirements, clarified the period of tax receipt collection, changed the start date of FTB and DOJ reporting, and made non-substantive technical changes. The amendments also added provisions that would set requirements for the DOJ and applicants to the program.

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

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

The provisions of this bill that would require the FTB to submit a report to the Legislature would be effective as of January 1, 2013, and specifically operative with respect to reports due starting December 31, 2015. The provisions would cease to be operative as of January 1, 2019.

Board Position:

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Executive Officer

Date

Selvi Stanislaus

8/31/12

ANALYSIS

FEDERAL LAW

Under federal law, the Immigration and Nationality Act (INA) is the immigration law of the United States and is codified in Title 8 of the United States Code. The INA prescribes rules for determining whether a person is an alien, as well as 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 beginning on or before December 31, 2015, and annually thereafter through January 1, 2019, consisting of the identification number and tax receipts collected with respect to 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, as well as a specific legislative finding as to the reasons such information must be exempt from normal disclosure rules under the California Constitution and Revenue and Taxation Code.

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, 2014 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 under California law,
- Is not a public charge,
- Declares that he has been a resident of California since January 1, 2008, and
- Consents to a fingerprint 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 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 bill.

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.

LEGISLATIVE HISTORY

AB 1092 & ACA 27 (Fuentes, 2011/2012) were similar to this bill and would have required the FTB to send a report to the Legislature documenting tax receipts collected from undocumented immigrants.

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: Central American Resource Center (CARECEN), Pueblo Y Salud, Inc., ANAHUAK Youth Sports Association, Comite de Festejos Centroamericanos, Latino and Latina Roundtable of San Gabriel and Pomona Valley, Pomona Speaks\Habla Community Coalition, Puerto el Triunfo, Inc., Southwest Voter Registration Education Project, William C. Velasquez Institute, Over 50 elected officials and representatives of community organizations¹

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.

¹ As provided on Assembly Committee on Judiciary Analysis of SB 901 as amended: August 22, 2012(as of 08/28/12)

LEGISLATIVE STAFF CONTACT

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