

**Franchise Tax Board**

**ANALYSIS OF ORIGINAL BILL**

Author: Knights Analyst: Michelle Chan Bill Number: SB 413  
 Related Bills: See Legislative History Telephone: 845-6805 Introduced Date: February 20, 2013  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Science, Technology, Engineering or Mathematics (STEM) Teacher Credit

**SUMMARY**

This bill would create a personal income tax credit for qualifying science, technology, engineering, or mathematics (STEM) teachers.

**RECOMMENDATION**

No position.

**REASON FOR THE BILL**

The reason for this bill is to encourage individuals to become STEM teachers, reinvigorate interest in STEM subjects, and to strive for global competitive advantage.

**EFFECTIVE/OPERATIVE DATE**

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2013, and before January 1, 2018.

**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.

Current federal law allows eligible educators to deduct up to \$250 of the cost to purchase books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom. This deduction applies to taxable years beginning on or after January 1, 2002, and before January 1, 2014. California does not conform to this deduction.

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There is currently no federal or state credit comparable to the credit this bill would create.

### THIS BILL

This bill would allow a tax credit to an individual that is an eligible STEM teacher who teaches one or more STEM courses in any grade K-12, inclusive, during an academic year that ends in the taxable year. The amount of the credit would be \$1,000 per taxable year or \$1,500 per taxable year for an eligible STEM teacher who teaches at a high-needs school.

“Eligible STEM teacher” would be defined as a person who received his or her baccalaureate degree (degree) in a STEM field who teaches full time in an elementary or secondary school.

“Full time” would be defined as a minimum of 35 hours per week worked.

“High-needs school” would be defined as a school that received funds from Subchapter I (commencing with Section 6301) of Chapter 70 of Title 20 of the United States Code, or its successor.<sup>1</sup>

This bill would allow any unused credit to be carried over until exhausted.

The credit would be repealed by its own terms as of December 1, 2018.

### IMPLEMENTATION CONSIDERATIONS

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

In order to be eligible for the credit, an individual would have to meet a number of qualifications that the department lacks the data to confirm, including, for example, holding a degree in a STEM field, and teaching full-time in an elementary or secondary school. Also, the credit amount would be dependent on whether an eligible STEM teacher teaches at a high-needs school. Typically, credits involving areas for which the department lacks programmatic expertise are certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. Additionally, the certification could be provided by the taxpayer upon the department’s request.

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<sup>1</sup> Subchapter I is titled, “Improving The Academic Achievement Of The Disadvantaged.” Title I of the Elementary and Secondary Education Act of 1965, comprising this subchapter, was originally enacted as part of [Pub. L. 89–10](#), Apr. 11, 1965, [79 Stat. 27](#), amended, and subsequently revised, restated, and amended by other public laws. Title I is often shown as having been added by [Pub. L. 107–110](#), title I, § 101, Jan. 8, 2002, [115 Stat. 1439](#), without reference to earlier amendments because of the extensive revision of the title’s provisions by [Pub. L. 107–110](#). Title I of the No Child Left Behind Act (NCLB) is the largest federally funded program for elementary and secondary schools. Its purpose is to provide federal funds to schools with high concentrations of children living in poverty that are not achieving well academically. NCLB strengthens Title I accountability by requiring States to implement statewide accountability systems covering all public schools and students. It also requires States to develop annual assessments for grades three through eight and once in high school that are aligned with State standards and to use achievement on these assessments as the measure of district and school accountability. The system is meant to ensure that districts and schools make adequate yearly progress (AYP) toward having all children proficient in reading and mathematics by the 2013-2014 school year.

As defined, a school would only need to receive the specified federal funding once to become a “high-needs school” and, from that point forward, would qualify their eligible STEM teachers for the \$1,500 credit amount. If the author intends to link the timing of the school’s receipt of the specified federal funding and the individual’s employment as an eligible STEM teacher in order for the \$1,500 credit to apply for the associated taxable year, this bill should be amended.

This bill uses the undefined phrase, “elementary or secondary school” which could be interpreted to include home-schooling situations, and charter, private, and public schools. If consistent with the author’s intent, the author may wish to use the language that defined “qualifying educational institution” for purposes of the expired Teacher’s Retention Credit.<sup>2</sup>

The bill uses the undefined phrase, “science, technology, engineering, or mathematics” and the acronym “STEM” which could be more broadly interpreted than the author intends. For example would a degree in video game design be considered a technology degree? Lack of clarity could result in disputes between taxpayers and the department. The author may wish to amend this bill to more clearly define the courses and degree programs the credit seeks to target.

It is unclear what activities would be included in “teaching” for purposes of evaluating whether an individual had met the full time requirement of a minimum of 35 hours per week worked. For example, in addition to classroom teaching time, including both STEM and non-STEM subjects, would class preparation and professional development time be included? For clarity and to avoid disputes between individuals and the department, the author may wish to amend this bill.

Because this bill requires that an individual’s degree must be in a STEM field, individuals that are credentialed in and teach STEM subjects that hold a degree in a non-STEM field would be ineligible for the credit. If this is contrary to the author’s intent, this bill should be amended.

## **LEGISLATIVE HISTORY**

AB 2088 (Bonilla, 2011/2012) contained provisions substantially similar to this bill. AB 2088 failed passage out of the Assembly Revenue and Taxation Committee.

AB 1071 (Fuentes, 2011/2012) would have created an income tax credit for the purchase of qualified school supplies by a credentialed teacher. AB 1071 failed passage out of the Assembly Revenue and Taxation Committee.

SB 87 (Senate Budget Committee, Chapter 180, Statutes of 2007) repealed the provision authorizing the Teacher Retention Credit, that was allowed to credentialed teachers in specified amounts depending on the number of service years as a credentialed teacher in a qualifying educational institution.

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<sup>2</sup> R&TC section 17052.2 (Stats. 2000, Ch. 75), as amended by: AB 1080 (Stats. 2000, Ch. 603), AB 2065 (Stats. 2002, Ch. 488), SB 600 (Stats. 2003, Ch. 62), SB 1100 (Stats. 2004, Ch. 226), AB 1809 (Stats. 2006, Ch. 49), and as repealed by SB 87 (Stats. 2007, Ch. 180).

## OTHER STATES' INFORMATION

Review of *Illinois, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable tax credits. These states were reviewed because of the similarities between California income tax laws and their tax laws.

*Florida* only has a corporation income tax therefore this personal income tax credit is not applicable.

## FISCAL IMPACT

Until the implementation concerns have been resolved, department staff is unable to determine the costs to administer this bill.

## ECONOMIC IMPACT

### Revenue Estimate

Estimated Revenue Impact of SB 413 As Introduced February 20, 2013 For Taxable Years Beginning On or After January 1, 2013 Assumed Enactment After June 30, 2013 (\$ in Millions)		
2013-14	2014-15	2016-17
– \$75	– \$55	– \$55

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

## SUPPORT/OPPOSITION<sup>3</sup>

Support: None identified.

Opposition: None identified.

## ARGUMENTS

Proponents: Some could argue that a tax credit could expand the pool of highly qualified individuals seeking positions as elementary and secondary school STEM teachers.

Opponents: Some could argue that with the state's fragile fiscal situation, additional tax expenditures should be avoided.

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<sup>3</sup> As reported on the Legislative Counsel's website at [http://www.leginfo.ca.gov/cgi-bin/postquery?bill\\_number=sb\\_413&sess=CUR&house=B&author=knight](http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_413&sess=CUR&house=B&author=knight) [as of April 11, 2013].

## **POLICY CONCERNS**

This bill would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover period limitation because experience shows credits typically are exhausted within eight years of being earned.

As written, this bill would allow existing STEM teachers to qualify for the credit. If this bill is intended to provide an incentive for individuals to become STEM teachers, the inclusion of an initial employment date as a STEM teacher or a prospective operative date may be appropriate.

This bill would allow a tax credit to an eligible STEM teacher that teaches courses within California as well as outside of California. Historically, tax credits have been designed to provide incentives for taxpayers to perform various actions or activities within the state that they may not otherwise undertake. But if the bill were to be amended to restrict this credit to courses taught at schools in California, this could raise constitutional concerns under the Commerce Clause of the United States Constitution because it could appear to favor in-state businesses. On August 28, 2012, (*Cutler v. Franchise Tax Board*), the Court of Appeal issued a unanimous opinion holding that California's Qualified Small Business Statute is unconstitutional. Specifically, the Court of Appeal held that the California-heavy requirements of this investment incentive statute facially discriminates against interstate commerce, and therefore violates the federal dormant commerce clause. While no court decision has yet invalidated, as a general matter, state income tax credits that provide an incentive for in-state activity, i.e., property placed in service in the state, employees employed in the state, etc., targeted tax credits that are conditioned on location in California may be subject to constitutional challenge.

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