

# ANALYSIS OF ORIGINAL BILL

Author: Mendoza Analyst: Davi Milam Bill Number: SB 1381  
 See Legislative  
 Related Bills: History Telephone: 845-2551 Introduced Date: February 19, 2016  
 Attorney: Bruce Langston Sponsor \_\_\_\_\_

<b>SUBJECT:</b>	Teacher Credit/ Legislative Intent to Allow Refundable Credit in Lieu of Carryover of Excess
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## SUMMARY

This bill would, under the Personal Income Tax Law, allow certain teachers a tax credit.

This analysis only addresses the provisions of the bill that would impact the department's programs and operations.

## RECOMMENDATION

No position.

## REASON FOR THE BILL

The reason for the bill is to address the teacher shortage by providing an incentive that will both promote teacher retention and encourage others to join the teaching profession.

## 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, 2017.

## 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.

Neither federal nor state law currently allows a credit similar to the one that would be created by this bill. However, federal law allows an eligible educator who teaches kindergarten through grade 12 an above-the-line deduction up to \$250 (\$500 if married filing jointly and both spouses are educators) for unreimbursed qualified educational expenses.

Under Revenue and Taxation Code section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit's effectiveness.

Board Position:	Executive Officer	Date
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## **THIS BILL**

For each taxable year beginning on or after January 1, 2017, this bill would allow a qualified taxpayer a credit in an amount equal to \$5,000.

This bill would define the following phrases:

- “Full time” means a minimum of 35 hours per week worked.
- “Qualified taxpayer” means a full-time teacher credentialed pursuant to the California Code of Regulations,<sup>1</sup> if he or she serves as the teacher of record for a classroom for at least one school day during the taxable year in which the credit is claimed.
  - “Qualified taxpayer” would exclude a teacher who solely possesses a 30-day substitute teaching permit, as defined.<sup>2</sup>

In addition, this credit would have an unlimited carryover period.

This bill also would express legislative intent to enact legislation providing that any excess credit, in lieu of the carry forward, may be refunded to the taxpayer, upon appropriation by the Legislature.

Revenue and Taxation Code section 41 would not apply to the credit proposed by this bill.

## **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation considerations for purposes of high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

The credit would be allowed to a qualified taxpayer who, at a minimum, “serves as the teacher of record for at least one school day during the taxable year,” which appears to be inconsistent with the bill’s definition of “full time.” The use of inconsistent definitions could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

The phrase “qualified taxpayer” is defined by referencing sections in the California Code of Regulations that pertain to “permits” rather than teacher “credentials.” If this is inconsistent with the author’s intent, the bill should be amended.

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<sup>1</sup> Sections 80021 to 80025, inclusive, of Chapter 1 of Division 8 of Title 5 of the California Code of Regulations,

<sup>2</sup> Section 80025 of Chapter 1 of Division 8 of Title 5 of the California Code of Regulations.

This bill lacks administrative details necessary to administer the bill's provisions. For example, it is unclear how the department would verify eligibility for the credit at the time a return is filed because the bill fails to require the taxpayer, or a department or certifying agency to provide to the Franchise Tax Board (FTB) documentation that the taxpayer is a "qualified taxpayer," for the taxable year.

Although this bill would express legislative intent to enact legislation that would allow the refund of the excess credit, in lieu of the carry forward, the bill fails to provide the statutory authority that would allow the FTB to issue refunds. Additionally, it is unclear whether the author intends for the refund provision to be operative only if authorized in the annual Budget Act.

## **LEGISLATIVE HISTORY**

SB 87 (Senate Budget Committee, Chapter 180, Statutes of 2007) repealed the Teacher Retention Tax Credit for taxable years beginning on or after January 1, 2007.

AB 1809 (Assembly Budget Committee, Chapter 49, Statutes of 2006) suspended the Teacher Retention Tax Credit for the 2006 taxable year.

AB 2879 (Jackson, Chapter 75, Statutes of 2000) enacted the Teacher Retention Tax Credit.

## **PROGRAM BACKGROUND – Teacher Retention Credit**

For tax years 2000 through 2007, state law allowed a California teacher a nonrefundable credit, up to \$1,500, on wages received for services as a teacher. Eligible teachers completed California Form 3505 Teacher Retention Credit that was required to be filed to claim the credit. The credit was available for tax years 2000, 2001, and 2003, and was suspended for 2002 and 2004 through 2006, inclusive, for budgetary reasons. The credit was repealed in 2007.

## **OTHER STATES' INFORMATION**

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws do not provide a credit comparable to the credit that would be allowed by this bill. The laws of these states were selected due to their similarities to California's economy, business entity types, and tax laws.

## **FISCAL IMPACT**

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

## ECONOMIC IMPACT

### Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 1381 As Introduced February 19, 2016 Assumed Enactment After June 30, 2016 (\$ in Millions)		
2016-17	2017-18	2018-19
- \$400	- \$800	- \$950

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

### Revenue Discussion

Data from the California Department of Education indicates that there are approximately 300,000 full-time credentialed teachers in California. Assuming all 300,000 teachers qualify for the \$5,000 credit, approximately \$1.5 billion in credit would be generated annually. The amount of credit that each taxpayer could use would be limited by the taxpayer's current year tax liability. The estimate assumes that 45 percent, or \$675 million, of credits would be used in the year generated and the remainder would be carried forward until such time that the taxpayer ceases to generate a credit in excess of their tax liability.

The tax-year estimates are converted to fiscal year estimates and then rounded to arrive at the amounts shown in the above table.

## SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

## ARGUMENTS

Proponents: Some may say that this bill would reduce the California teacher shortage by providing a crucial financial incentive to California's teachers.

Opponents: Some may argue that the financial incentive this bill would allow would be overly broad and could be an expensive and inefficient way to address California's teacher shortage.

## POLICY CONCERNS

Generally, credits are limited as a percentage of amounts paid or incurred. This bill would allow a credit that lacks an economic outlay requirement, which is unprecedented.

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.

Although this bill would require the taxpayer to have a California teaching credential, it fails to restrict the credit to teachers who are employed within California (and are thus themselves subject to California tax on their earnings).

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