

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Hayden Analyst: Roger Lackey Bill Number: SB 1710

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: August 7, 2000

Attorney: Patrick Kusiak Sponsor:

SUBJECT: The 2000 Public Subsidies, Public Benefits Act/Taxpayers Request to FTB Bus. Tax Expenditure Info & FTB Collect & Report to Legislature

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended June 8, 2000.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO no position.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 8, 2000, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would create the 2000 Public Subsidies, Public Benefits Act. It would require certain legislative entities to review the economic and employment impact of state business tax expenditures and all other public subsidies no later than December 31, 2005.

Further, it would require taxpayers to provide the Franchise Tax Board (FTB) specific information regarding the taxpayer's "business tax expenditures" (as defined).

This analysis will address the bill only to the extent it impacts the department.

SUMMARY OF AMENDMENT

The August 7, 2000, amendments deleted the entire bill except the legislative intent language and added new language that provides for the same basic intent as the prior versions of the bill with minor modifications.

The proposed amendments would define a number of terms including "business tax expenditure" and "state business agencies." The FTB is included under the definition of "state business agencies."

The August 7, 2000, amendments would provide that the "state business agencies," upon request, must assist the Legislative Analyst in review of the business tax expenditures and public subsidies. The amendments would continue to require the FTB to report to the Legislative Analyst the number of full-time employees reported to the department by the taxpayer.

The amendments also would specify that certain expenditures must be reviewed first, namely the Manufacturers' Investment Credit, the Research Credit, the preferential tax rate for Subchapter S corporations, and the tax incentives for economic development areas.

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The proposed amendments do not resolve the concerns addressed in the department's analysis of the bill, as amended June 8, 2000. Those concerns have been included below as well as an additional concern resulting from the amendments.

Except for the discussion above, the department's analysis of SB 1710 as amended June 8, 2000, still applies.

Implementation Considerations

This bill would provide that the Legislative Analyst's Office (LAO), in consultation with the chairs of the finance committees and with the assistance of state business agencies, review and evaluate each business tax expenditure related to employment and economic impact. However, the information required to be reported by the taxpayer to the FTB (number of full-time employees) would not be sufficient to provide the LAO the necessary information to review each business tax expenditure. If it is intended that tax return information be used to review business tax expenditures, the time required for the department to compile statistics may make the review by the LAO and the Legislature of each identified existing "business tax expenditure" and all other unspecified "business tax expenditures" by December 31, 2005, difficult, if not impossible, to accomplish.

The definition of "business tax expenditure" under the bill, as amended, includes "credits, deductions, exemptions, exclusions, special tax rates, and other preferences claimed with respect to income earned or taxes owed by a taxpayer in the course of a trade or business." State tax law contains a number of distinctions between types of taxpayers. For example, the minimum franchise tax for certain corporations involved in gold or quicksilver mining is \$25, rather than \$800. Limited liability companies are required to pay an \$800 annual tax and a fee, while limited liability partnerships pay only an \$800 annual tax. S corporations are not subject to the alternative minimum tax and pay a lower franchise tax rate than other corporations. Individuals are taxed at graduated rates ranging from 1% to 9.3%. Many organizations, such as churches and nonprofit charities, are exempt from taxation, except in limited cases when nonprofit organizations have unrelated business taxable income. Certain income, such as interest on federal obligations and state obligations, is exempt from income tax. Taxpayers engaged in a trade or business are allowed to deduct ordinary and necessary business expenses. It is unclear whether these and the numerous other aspects of the tax treatment of businesses would be considered "business tax expenditures" under the bill.

The bill requires taxpayers claiming any business tax expenditure to report to the FTB the total number of full-time equivalent employees in the state on December 1. Without clarity concerning the meaning of "business tax expenditure," implementation of the reporting requirement will be problematic. It is also unclear whether the department would be expected to verify the accuracy of a taxpayer's reporting of the number of full-time employees and, if so, how. The Employee Development Department would have much better records regarding the number of full-time employees. In addition, while taxpayers would be required to report specific information to FTB, the bill provides no penalty if taxpayers fail to comply with the reporting requirements.

The department, along with the other state business agencies, would be required to provide information to LAO on taxpayers that claim business tax expenditures regarding any final citation or assessment that resulted in a decision adverse to a taxpayer for violating state laws governing minimum wage and overtime, child labor, occupational safety and health, or certain amounts collected under the Unemployment Insurance Code. The department does not have access to any of this information.

BOARD POSITION

No Position.

At its July 5, 2000, meeting, the Franchise Tax Board agreed to take no position on this bill.