

# SUMMARY ANALYSIS OF AMENDED BILL

Author: Chang & Chavez Analyst: Diane Deatherage Bill Number: AB 1450  
 Related Bills: See Prior Analysis Telephone: 845-4783 Amended Date: April 13, 2015  
 Attorney: Bruce Langston Sponsor \_\_\_\_\_

<b>SUBJECT:</b>	Penalty for Failure-to-File after Notice and Demand or Failure-to-Furnish Information after Notice and Demand / Change from 25% to up to 10%
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## SUMMARY

This bill would modify the penalty for failure-to-file after notice and demand or failure-to-furnish information after notice and demand, hereinafter collectively referred to as the “demand penalty,” under the Administration Franchise and Income Tax Law.

## RECOMMENDATION

No position.

## SUMMARY OF AMENDMENTS

The April 13, 2015, amendments added a coauthor and modified the demand penalty provision.

Except for the "This Bill" section, the remainder of the department’s analysis of the bill as introduced February 27, 2015, still applies. The “Implementation Considerations,” “Fiscal Impact,” and “Economic Impact” sections are restated for convenience.

## THIS BILL

This bill would authorize the Franchise Tax Board (FTB) to impose a variable rate demand penalty of up to 10 percent (versus current law’s 25 percent). When determining the amount of the penalty to impose, the FTB would be required to consider whether the taxpayer has made a good faith effort to comply with the information request or notice and demand, including determining whether some or all of the tax determined pursuant to Revenue and Tax Code section 19087<sup>1</sup> or any deficiency tax assessed has been paid.

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<sup>1</sup> Under R&TC section 19087, if any taxpayer fails to file a return, the FTB may make an estimate of the net income, from any available information, and may propose to assess the amount of tax, interest, and penalties due.

Board Position:				Legislative Director	Date
_____ S	_____ NA	_____ X	_____ NP	Gail Hall	04/22/15
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## 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.

This bill would apply to failures and refusals to respond that occur on or after January 1, 2016. If the author intends for the bill to apply to notices issued on or after January 1, 2016, regardless of the timing of the failure to respond, this bill should be amended.

The discretion to impose a penalty rate that ranges from zero to 10 percent may result in inconsistent application of the penalty and could lead to increased appeal and litigation costs. The author may wish to amend the language to apply a fixed percentage based on defined circumstances for consistency and equity.

This bill would require the implementation of a resource intensive, manual determination of the penalty percentage rate for every failure or refusal to respond penalty that is assessed. Additionally, the department's accounting and collection systems would require significant modification to allow for such manipulation.

## FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved, but anticipates the costs to be significant. As the bill moves through the legislative process and implementation concerns are resolved, 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 AB 1450 As Introduced February 27, 2015 Assumed Enactment After June 30, 2015 (\$ in Millions)		
2015-16	2016-17	2017-18
- \$7.5	- \$20	- \$28

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

## Revenue Discussion

This estimate is based on current demand penalties assessed and collected by the FTB. In 2012, approximately \$270 million in demand penalties were assessed. This value is grown<sup>2</sup> by projected growth in tax returns of 1.5 percent to a total of \$286 million in 2016. It is estimated \$36 million of the total demand penalty assessments in 2016 would be paid upon notification and \$250 million would proceed to collection. After abatement and withdrawals of approximately \$62 million, it is assumed 50 percent of the demand penalties would be collected within the first three years of assessment.

The result of reducing the penalty rate from 25 percent to “up to 10 percent” for demand penalties, expected to be collected in 2016, would result in a net revenue loss of approximately \$13 million. This revenue loss is the result of both the reduction in penalty rate and taxpayer compliance as a result of the demand penalty reduction. The tax year estimates are converted to fiscal year estimates, and then rounded to arrive at the estimates shown in the table above.

## SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

## LEGISLATIVE STAFF CONTACT

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<sup>2</sup> Indexed using Department of Finance forecasts.