

SUMMARY ANALYSIS OF AMENDED BILL

Author: Chang, et al. Analyst: Diane Deatherage Bill Number: AB 756
 Related Bills: None Telephone: 845-4783 Amended Date: April 13, 2015
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	BOE, FTB & EDD May Waive Fines or Penalties Assessed for Violations of Small Businesses
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SUMMARY

Under the Revenue and Taxation Code, this bill would authorize the State Board of Equalization, the Franchise Tax Board (FTB), and the Employment Development Department to waive fines and penalties for small businesses.

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

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 13, 2015, amendments added coauthors and modified the provision to authorize specified state agencies to waive fines and penalties for small businesses, instead making the provision a mandatory requirement.

Except for the "This Bill" and "Economic Impact" sections, the remainder of the department’s analysis of the bill as amended on March 26, 2015, still applies. The following implementation and technical considerations still apply and are restated below for convenience.

THIS BILL

This bill would authorize, with respect to the laws administered by the FTB that impose a tax or fee, the FTB to waive any fine or penalty for violations of those laws assessed against a small business within its first 120 days of operation if the violation does not create a threat to health or safety, does not violate any provision of the Labor Code, and was not done intentionally.

The bill would define "small business" as a business with 100 or fewer employees.

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.

Board Position:	Legislative Director	Date
_____ S _____ NA _____ X _____ NP	Gail Hall	4/20/15
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This bill uses phrases that are undefined, i.e., "within its first 120 days of operation," "does not create a threat to health and public safety," and "not done intentionally." The absence of definitions to clarify these phrases could lead to disputes with taxpayers and would complicate the administration of this provision.

The department lacks the expertise to determine whether the violation would violate any provisions of the labor code. Absent clarification the department may assume that all income tax penalties would be eligible for waiver.

The definition of "small business" is broadly defined. For example, when would the determination of the number of employees be made? As of the date a penalty was assessed? For the entire 120 day period? The lack of clarity may lead to disputes between taxpayers and the department and would complicate the administration of this provision.

It is unclear how the FTB could determine whether a taxpayer is a small business and is otherwise eligible for waiver of penalties. The bill should be amended to include language requiring the taxpayer to provide a written request to the FTB for a waiver of the penalties assessed that meet the requirements.

TECHNICAL CONSIDERATIONS

On page 2, line 6, a comma should be inserted following the word "laws" to clarify the meaning of the sentence.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended April 13, 2015, would not impact state income or franchise tax revenue because the department is already authorized to waive penalties and fees if there is reasonable cause.

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

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

LEGISLATIVE STAFF CONTACT

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