

## BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
<b>Franchise Tax Board</b>	<b>Committee on Budget</b>	<b>AB 111</b>

**SUBJECT:** Criminal Background Checks/Voluntary Contribution Funds Minimum Contribution Threshold

### SUMMARY

Among other things, this bill would do the following:

**Provision 1:** Require a state entity, or its designee, to conduct criminal background checks on employees, contractors, or vendors that would have access to federal tax information (FTI).

**Provision 2:** Reduce the minimum contribution amount requirement for voluntary contribution funds for the 2017 calendar year.

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

### EFFECTIVE/OPERATIVE DATE

As a bill providing for appropriations related to the Budget Bill and identified as a bill related to the budget in the Budget Bill, these provisions would be effective immediately upon enactment.

### ECONOMIC IMPACT – SUMMARY REVENUE TABLE

	2017-18	2018-19	2019-20
<b>PROVISION 1:</b> Criminal Background Check on Employees, Contractors, or Vendors That Would Have Access to FTI	n/a	n/a	n/a
<b>PROVISION 2:</b> Reduce the Minimum Contribution Amount Requirement for 2017 Calendar Year	n/a	-\$110,000	-\$110,000
TOTAL	n/a	-\$110,000	-\$110,000

**PROVISION 1: Require a state entity, or its designee, to conduct criminal background checks on employees, contractors, or vendors that would have access to FTI.****REASON FOR THE PROVISION**

The reason for this provision is to comply with federal law in order to continue to receive FTI.

**FEDERAL/STATE LAW**

Current federal law<sup>1</sup> provides that returns and tax information are confidential and may not be disclosed to federal or state agencies or employees except for authorized purposes. Agencies allowed access to federal return information include certain federal and state agencies, such as the Franchise Tax Board (FTB). A federal return is defined as any tax return, information return, declaration of estimated tax, or claim for refund under the Internal Revenue Code (IRC). Any FTB employee or member responsible for the improper disclosure of federal tax information is committing a felony and is subject to criminal prosecution.

Current state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. California law permits the FTB to release individual tax return information to specific state agencies. Agencies must have a specific reason for requesting the information, including investigating items of income disclosed on any return or report, verifying eligibility for public assistance, locating absent parents to collect child support, or locating abducted children. For some agencies, only limited information may be released, such as the taxpayer's social security number and address.

**PROGRAM BACKGROUND**

The current information sharing agreement (the "Agreement") between the FTB and the Internal Revenue Service (IRS) provides that all information obtained under the Agreement must be safeguarded in accordance with the Basic Agreement, as well as the safeguard requirements of IRC Section 6103(p)(4), as described in IRS Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies. IRS Publication 1075 directs that agencies must initiate a background investigation for all employees, vendors, and contractors prior to permitting access to FTI. State agencies, including the FTB, must ensure a reinvestigation is conducted within 10 years from the date of the previous background investigation for each employee, vendor, and contractor requiring access to FTI.

**THIS PROVISION**

This provision would require a state entity or its designee, including the FTB, to conduct criminal background checks on those that may acquire access to FTI, in order to comply with applicable federal requirements.

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<sup>1</sup> IRC section 6103.

For purposes of obtaining information as to the existence and nature of a record of state or federal level convictions and state or federal level arrests for which the Department of Justice (DOJ) establishes that the applicant was released on bail or on his or her own recognizance pending trial a state entity or its designee would be required to:

- Submit to the DOJ fingerprint images and any other related information required by the DOJ of an employee, prospective employee, contractor, agent, volunteer, vendor, subcontractor, or employee of a contractor of the state entity or its designee whose duties or responsibilities include having access to FTI received by the state entity or its designee.
- Meet and confer with impacted state collective bargaining units regarding the impact of this section on terms and conditions of employment. Any violation of this meet-and-confer requirement would be a matter within the exclusive jurisdiction of the Public Employment Relations Board subject to the provisions of Chapter 10.3 (commencing with Section 3512) of the Government Code.

This provision would specify that any services contract or interagency agreement entered into, renewed, or amended on or after July 1, 2017, that includes access to FTI, must include a provision requiring the agency or contractor to agree to criminal background checks of its employees, contractors, agents, volunteers, vendors, or subcontractors who will have access to FTI as part of their services contract or interagency agreement with the state entity or its designee.

The DOJ would be required to forward to the Federal Bureau of Investigations (FBI) requests for federal level criminal offender information received from a state entity or its designee, review the information provided by the FBI, and compile and disseminate a response to the requesting state entity.

This provision would require a state entity or its designee to request state and federal subsequent arrest notification from the Department of Justice, as provided under Section 11105.2 of the Penal Code, and require the DOJ to respond to such requests.

The DOJ would be allowed to charge a fee sufficient to cover the costs to process requests required by this provision.

This provision would define:

- “federal tax information” as return and return information as defined in Section 6103(b) of the IRC, relating to definitions, that is received either from the IRS or from secondary sources, or through an IRS-approved exchange agreement, and that is subject to the requirements set forth in Section 6103(p)(4) of the IRC, relating to safeguards.
- “state entity” as an agency or officer of the state that is subject to the requirements set forth in Section 6103(p)(4) of the IRC, relating to safeguards.
- “designee” as defined in subdivision (b) of Section 17202 of the Family Code.

**LEGISLATIVE HISTORY**

None.

**OTHER STATES' INFORMATION**

Because this provision would allow for background checks in accordance with federal requirements, a review of other states' tax information would not be relevant.

**FISCAL IMPACT**

Since the department is currently in compliance with this provision, it would not impact the department's costs.

**ECONOMIC IMPACT**

This provision would not impact the state's income tax revenue.

**APPOINTMENTS**

None.

**PROVISION 2: Reduce the Minimum Contribution Amount for Voluntary Contributions****REASON FOR THIS PROVISION**

The reason for this provision is to preserve voluntary contribution funds that are at risk of being repealed and allow them to continue to provide funding for critical resources to various charitable causes to benefit the public.

**FEDERAL/STATE LAW**

Current federal tax law provides taxpayers a check off option to direct \$3 of their tax liability to the Presidential Election Campaign Fund.

Current state tax law allows taxpayers to make contributions of their own monies (not tax liability) on their tax returns to any of the 19 voluntary contribution funds listed on the 2016 state personal income tax return (return). Each fund provides for the reimbursement of the FTB's and the Controller's actual costs to administer the fund.

Taxpayers contributing to the funds are specifically allowed to deduct those contributions on their return for the year in which the contribution is made. These contributions may satisfy the requirements under federal law for a charitable contribution deduction.

Generally funds remain on the return until they are either repealed or fail to meet their minimum contribution amount:

The FTB is required to make the following two determinations for each fund by September 1 of each calendar year:

1. The minimum contribution amount required for the fund to remain on the return for the following calendar year, and
2. Whether estimated contributions to the fund will be less than the minimum contribution amount for that calendar year.

If the FTB estimates that contributions to a fund will fail to meet or exceed the minimum contribution amount for a calendar year, that fund is repealed effective January 1 of that calendar year.

### **THIS PROVISION**

This provision would, for any voluntary contribution fund that has a minimum contribution requirement for the 2017 calendar year, reduce that requirement to zero. The minimum contribution amount required to be received during the 2018 calendar year for a fund to continue to appear on the tax return for the 2018 taxable year would be equal to the minimum contribution applicable for the 2017 calendar year.

This provision would be inapplicable to a voluntary contribution fund that is otherwise subject to repeal without regard to satisfying a minimum contribution amount requirement.

### **LEGISLATIVE HISTORY**

Research of California legislation found no legislation similar to this provision.

### **PROGRAM BACKGROUND**

As a result of a tax software vendor programming change, there was a significant decline in voluntary contributions on the 2016 tax returns. As such, based on the amounts received to date, it is expected that most of the funds will fail to meet the required minimum contribution amount needed to be retained on the 2017 individual income tax return.

### **OTHER STATES' INFORMATION**

*Illinois, Massachusetts, Michigan, Minnesota, and New York* allow for taxpayer contribution designations on the personal income tax returns.

None of these states have provisions comparable to the one proposed by this bill.

**FISCAL IMPACT**

This provision would not significantly impact the department's costs.

**ECONOMIC IMPACT****Revenue Estimate**

This provision would result in the following revenue losses:

Estimated Revenue Impact of AB 111 PROVISION NO. 2: Reduce the Minimum Contribution Amount Requirement for 2017 Calendar Year		
2017-18	2018-19	2019-20
n/a	- \$110,000	- \$110,000

**Revenue Discussion**

This provision would reduce the minimum contribution amount for all voluntary contributions to zero dollars (\$0) for the 2017 calendar year. The department estimates that absent this bill, approximately 10 funds would be removed from the voluntary contribution list for the 2018 calendar year.

The continuation of these funds would result in contributions being made in 2018 when the 2017 return is filed. Subsequently, the deduction for such contributions would be claimed on the 2018 return filed by April 15, 2019; therefore, the revenue impact would not occur until fiscal year 2018-19.

Approximately 56 percent of taxpayers who contribute to voluntary contribution funds itemize their deductions. It is estimated the average tax rate for these taxpayers is six percent. The estimated revenue loss associated with the continuation of these funds would be approximately \$110,000 annually.

**APPOINTMENTS**

None.

**VOTES**

	Date	Yes	No
Concurrence	06/15/17	61	16
Senate Floor	06/15/17	30	7
Assembly Floor	05/18/17	45	25

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