

[Assembly Bill 111](#) (Committee on Budget)

Michele Pielsticker (Chief) 916.322.2376

Program: Administration

Stephanie Cochran (Analyst) 916.322.7281

Government Code Section 1044 and Penal Code Section 11105

Effective immediately, but provisions operative July 1, 2017.

This analysis only addresses the provisions that impact the Board of Equalization (BOE).

Summary: Among other things, this budget trailer bill requires state agencies to run criminal background checks on an employee, prospective employee, contractor, agent, volunteer, vendor, or subcontractor, or employee of a contractor whose duties include having access to federal tax information (FTI).

Purpose: To conform to federal requirements for access to FTI.

Fiscal Impact Summary: No revenue impact.

Existing Law: Penal Code Section 11105 requires the Department of Justice (DOJ) to maintain state summary criminal history information, including the identification and criminal history of any person, as well as the name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person. Requests for federal level criminal history information received by the DOJ from state entities are forwarded to the Federal Bureau of Investigation (FBI). This section also specifies to whom and how the state summary criminal information may be released and for what purposes it may be used.

Federal Law: USC Title 26, Internal Revenue Code 6103(p)(4) requires external agencies and other authorized recipients of FTI to establish procedures to ensure the adequate protection of the FTI they receive. The Internal Revenue Service (IRS) is authorized to terminate FTI disclosers if any external agencies and other authorized recipients misuse FTI or their safeguards are inadequate to protect confidentiality. External agencies and other authorized recipients must provide safeguards which the Secretary of Treasury determines to be necessary or appropriate to protect confidentiality of FTI as a condition of receiving it. This federal statute and IRS Publication 1075 as of September 30, 2016 require state agencies with access to FTI to establish a personnel security program that ensures a background investigation is completed at the appropriate level for any individual who will have access to FTI. The program must include:

- A written policy requiring that employees, contractors, and subcontractors with access to FTI to complete and pass a background investigation. The policy must identify the process, steps, timeframe and favorability standards that the agency has adopted.
- A written background investigation policy with result criterion for each required element which defines what would result in preventing or removing an employee, or contractor's access to FTI.
- A background investigation for all employees and contractors prior to permitting access to FTI.
- A reinvestigation conducted within 10 years from the date of the previous background investigation for each employee and contractor requiring access to FTI.
- A written background investigations policy and procedures as well as a sample of completed employee and contractor background investigations available for inspection upon request.

Background investigations for any individual granted access to FTI must include, at minimum:

- FBI fingerprinting
- Check of local law enforcement agencies where the subject has lived worked, and/or attended school within the last 5 years, and if applicable, of the appropriate agency for any identified arrests
- Employment eligibility verification

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Proposed Law: Among other things, this budget trailer bill adds **Government Code Section 1044** and amends **Penal Code Section 1105** to ensure state entity compliance with applicable federal requirements for FTI access.

Proposed Government Code Section 1044 requires state entities or their designees 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 (employee) or its designee whose duties or responsibilities include having access to FTI received by the state entity or its designee.

The fingerprint images and any other related information of an employee shall be furnished to the DOJ for the purpose 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 DOJ establishes that the applicant was released on bail or on his or her own recognizance pending trial.

The state must 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 shall be a matter within the exclusive jurisdiction of the Public Employment Relations Board subject to the provisions of Government Code Chapter 10.3 (commencing with Section 3512).

A state entity shall require that any services contract or interagency agreement entered into, renewed, or amended on or after July 1, 2017, that includes access to FTI shall 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.

The DOJ shall forward to the FBI requests for federal level criminal offender record information received. The DOJ shall review the information returned by the FBI and compile and disseminate a response to the requesting state entity.

This bill defines the following terms:

- “Federal tax information” means return and return information, as defined in Internal Revenue Code Section 6103(b), 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 Internal Revenue Code Section 6103(p)(4), relating to safeguards.
- “State entity” means an agency or officer of the state that is subject to the requirements set forth in Internal Revenue Code Section 6103(p)(4), relating to safeguards.
- “Designee” is defined in Family Code Section 17202 (b).

Penal Code Section 11105 is amended to expand access to state summary criminal history information for a state entity, or its designee, that receives FTI. A state entity or its designee that is authorized to receive state summary criminal history information also may transmit fingerprint images and related information to the DOJ to be transmitted to the FBI so that the state entity may obtain federal level criminal offender record information. This information shall be used only for the purposes set forth in Government Code Section 1044.

This bill would declare that is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

In General: FTI includes any taxpayer information provided by the IRS. This includes, but is not limited to, information provided on federal income tax returns, quarterly federal tax returns, and annual federal unemployment tax returns. All data contained in the returns, such as ownership information, personal and business addresses, and revenue and expense information, is considered FTI. Copied or transcribed FTI information remains classified as FTI and is treated as such.

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FTI is an essential tool utilized by both BOE audit and compliance staff. The BOE obtains FTI from multiple sources, including the IRS and Franchise Tax Board. BOE follows the IRS standards for safeguarding FTI information and may be audited to ensure the standards are met. The BOE maintains an IRS tracking database, processes FTI in a double sealed envelope marked "Confidential," secures hard-copy documents in a separate, locked cabinet when not being examined by staff, has one central department to log and destroy all hard copy FTI, and ensures staff only request FTI for a specific business need and recording who, when, and why it was requested. If BOE fails to meet the IRS standards for safeguarding FTI, BOE could lose access to FTI.

Audit and compliance staff use FTI differently. BOE auditors request income tax returns to support estimated sales when taxpayer records have been lost or destroyed. Auditors may also compare gross receipts on income tax returns with taxpayer recorded gross receipts to ensure no reporting errors. Income tax returns also are used on smaller accounts to verify mark up costs and use tax reporting.

BOE tax collectors use income tax returns and forms to uncover assets, sources of income, and banking information to assist in collection actions. Collectors request FTI employment documentation to discover where the taxpayer may be working. Collectors may also review the supplemental income and loss statement on the income tax returns to uncover other taxpayer properties on which to place a lien to protect the state's interest.

Commentary:

1. **Effect of the bill.** Among other things, this bill requires state agencies that receive FTI to submit fingerprint images and conduct background checks through the DOJ on any employee, prospective employee, contractor, agent, volunteer, vendor, subcontractor, or employee of a contractor whose duties include having access to FTI.
2. **Expanding criminal history checks will aid in protecting confidential information.** BOE's is taking steps to conform to the recent revision of IRS Publication 1075. Including revising the policy to conduct background criminal history checks on all new contractors. Currently, BOE employees who handle money and negotiable instruments are subject to post-employment criminal history checks. Expanding BOE's employment, vendor, and contractor selection criteria to include ongoing background criminal history checks will help safeguard both FTI and taxpayers' confidential information housed within BOE.

Costs: BOE will incur costs to conduct background checks and fingerprint current and prospective employees, contractors, agents, volunteers, vendors, subcontractors, or contractor's employees with access to FTI. Each background check request submitted to DOJ costs BOE \$49, not including BOE's efforts to process, review, and adjudicate any unfavorable results. Currently, BOE has 4,802 positions, and approximately 1,508 to 1,809 have undergone a criminal background check within the last 10 years. Therefore, if all BOE employees are determined to have access to FTI and each position is filled, 2,993 to 3,294 employees would require a new background investigation.

Revenue: No revenue impact.