



Senate

General Assembly

File No. 592

February Session, 2010

Substitute Senate Bill No. 1

Senate, April 19, 2010

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE PRESERVATION AND CREATION OF JOBS IN CONNECTICUT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 12-284b of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective from*
3 *passage and applicable to taxable years commencing on or after January 1,*
4 *2010*):

5 (b) (1) Each limited liability company, limited liability partnership,
6 limited partnership and S corporation shall be liable for the tax
7 imposed by this section for each taxable year or portion thereof that
8 such company, partnership or corporation is an affected business
9 entity. Each affected business entity shall annually, on or before the
10 fifteenth day of the fourth month following the close of its taxable year,
11 pay to the Commissioner of Revenue Services a tax in the amount of
12 two hundred fifty dollars.

13 (2) (A) For the taxable year commencing on January 1, 2010, and
14 prior to December 31, 2010, the provisions of this section shall not
15 apply to any affected business entity that (i) reports net income on the
16 return required pursuant to section 12-726 of fifty thousand dollars or
17 less, and (ii) employed at least one full-time employee in this state for
18 not less than eight consecutive months during the taxable year
19 commencing January 1, 2010, and prior to December 31, 2010;

20 (B) For the taxable year commencing on January 1, 2011, and prior
21 to December 31, 2011, the provisions of this section shall not apply to
22 any affected business entity that (i) reports income on the return
23 required pursuant to section 12-726 of fifty thousand dollars or less,
24 and (ii) employed at least one full-time employee in this state for not
25 less than eight consecutive months during the taxable year
26 commencing January 1, 2011, and prior to December 31, 2011; and

27 (C) For purposes of this subdivision, "full-time employee" means an
28 employee or member or partner who works at least thirty-five hours or
29 more per week.

30 Sec. 2. (NEW) *(Effective from passage and applicable to taxable years*
31 *commencing on or after January 1, 2010)* (a) For purposes of this section:

32 (1) "TARP bonus" means an aggregate disqualified bonus of one
33 million dollars or more received from covered TARP recipients, where
34 such bonus represents a payment received in the taxable year
35 commencing January 1, 2010, and prior to December 31, 2010, or
36 January 1, 2011, and prior to December 31, 2011, or award for work
37 performed during the taxable year commencing January 1, 2010, and
38 prior to December 31, 2010, or January 1, 2011, and prior to December
39 31, 2011. "TARP bonus" includes, but is not limited to, cash, loans,
40 payments received in a medium other than cash, or arrangements for
41 future payments.

42 (2) "Covered TARP recipient" means (A) any entity that, on or after
43 October 3, 2008, received funds directly from the federal Troubled
44 Assets Relief Program established pursuant to P.L. 110-343, (B) any

45 entity that is a member of the same affiliated group, as defined in
46 Section 1504 of the Internal Revenue Code of 1986, or any subsequent
47 corresponding internal revenue code of the United States, as amended
48 from time to time, as an entity, association or corporation described in
49 subparagraph (A) of this subdivision, and (C) any partnership, if more
50 than fifty per cent of the capital or profits interests of such partnership
51 are owned, directly or indirectly, by one or more entities, associations
52 or corporations described in subparagraph (A) or (B) of this
53 subdivision.

54 (3) "Disqualified bonus" means any retention payment, incentive
55 payment or other bonus paid by a covered TARP recipient that is in
56 addition to any amount payable to a taxpayer for services performed
57 by such taxpayer at a regular hourly, daily, weekly, monthly or similar
58 periodic rate. "Disqualified bonus" does not include commissions,
59 welfare or fringe benefits or expense reimbursements.

60 (4) "TARP" means the federal Troubled Assets Relief Program
61 established under P.L. 110-343.

62 (5) "Taxpayer" means any person, trust or estate subject to the tax
63 imposed by chapter 229 of the general statutes.

64 (b) Notwithstanding the provisions of section 12-700 of the general
65 statutes, for taxable years commencing on January 1, 2010, and January
66 1, 2011, a taxpayer who receives a TARP bonus shall pay a tax on such
67 bonus at a rate of eight and ninety-seven-hundredths per cent. Such
68 TARP bonus shall not be subject to the provisions of section 12-700 of
69 the general statutes, but any income received by such taxpayer in
70 addition to such TARP bonus shall continue to be subject to the
71 provisions of section 12-700 of the general statutes.

72 (c) The provisions of this section shall not apply to a taxpayer who
73 irrevocably waives his or her right to the full amount of a TARP bonus
74 or returns the full amount of such bonus to the covered TARP recipient
75 prior to December thirty-first of the applicable taxable year, provided
76 the taxpayer receives no benefit from the covered TARP recipient in

77 connection with the waiver or return of such bonus.

78 (d) Any reimbursement to a taxpayer by a covered TARP recipient
79 of the tax imposed by this section shall be treated as a disqualified
80 bonus to the taxpayer liable for such tax.

81 (e) The provisions of this section shall apply to any bonus received
82 by a taxpayer from a covered TARP recipient, regardless of whether
83 such covered TARP recipient has repaid in full or in part to the federal
84 government any funds received pursuant to the Troubled Assets Relief
85 Program.

86 (f) Any covered TARP recipient that pays or awards a TARP bonus
87 of one million dollars or more during the taxable years commencing
88 January 1, 2010, and January 1, 2011, shall comply with the provisions
89 of sections 12-705 and 12-706 of the general statutes, as applicable.

90 Sec. 3. Subdivision (8) of subsection (a) of section 12-701 of the 2010
91 supplement to the general statutes is repealed and the following is
92 substituted in lieu thereof (*Effective from passage and applicable to taxable*
93 *years commencing on or after January 1, 2010*):

94 (8) "Connecticut taxable income of a resident" means the
95 Connecticut adjusted gross income of a natural person with respect to
96 any taxable year reduced by (A) the amount of the exemption
97 provided in section 12-702, and (B) for applicable taxable years, the
98 amount of any TARP bonus, as defined in section 2 of this act.

99 Sec. 4. (NEW) (*Effective July 1, 2010*) (a) As used in this section,
100 "small business" means a business employing fewer than fifty people.

101 (b) The Department of Economic and Community Development
102 shall establish a small business assistance program to provide direct
103 loans and loan guarantees to small businesses.

104 (c) As part of the small business assistance program, the department
105 may: (1) (A) Guarantee, make an advance commitment to guarantee or
106 cause to be guaranteed loans to small businesses, or (B) in the case that

107 loans are not made available in the private market in connection with
108 such guarantees, make or cause to be made direct loans to any
109 qualified business; (2) make or cause to be made, direct loans to any
110 small business; and (3) enter into participation agreements with other
111 state or federal agencies, provided such agreements shall be limited to
112 loans and loan guarantees that meet the requirements of the program
113 established pursuant to this section.

114 (d) There is established an account to be known as the "small
115 business assistance account" which shall be a separate, nonlapsing
116 account within the General Fund. The account shall contain any
117 moneys required by law to be deposited in the account. Moneys in the
118 account shall be expended by the Department of Economic and
119 Community Development for the purposes of providing the loans and
120 loan guarantees in the small business assistance program.

121 Sec. 5. (*Effective July 1, 2010*) (a) For the purposes described in
122 subsection (b) of this section, the State Bond Commission shall have
123 the power, from time to time, to authorize the issuance of bonds of the
124 state in one or more series and in principal amounts not exceeding in
125 the aggregate twenty million dollars.

126 (b) The proceeds of the sale of said bonds, to the extent of the
127 amount stated in subsection (a) of this section, shall be deposited into
128 the small business assistance account established pursuant to section 4
129 of this act, to be used by the Department of Economic and Community
130 Development for the purposes of the small business assistance
131 program.

132 (c) All provisions of section 3-20 of the general statutes, or the
133 exercise of any right or power granted thereby, which are not
134 inconsistent with the provisions of this section are hereby adopted and
135 shall apply to all bonds authorized by the State Bond Commission
136 pursuant to this section, and temporary notes in anticipation of the
137 money to be derived from the sale of any such bonds so authorized
138 may be issued in accordance with said section 3-20 and from time to
139 time renewed. Such bonds shall mature at such time or times not

140 exceeding twenty years from their respective dates as may be provided
 141 in or pursuant to the resolution or resolutions of the State Bond
 142 Commission authorizing such bonds. None of said bonds shall be
 143 authorized except upon a finding by the State Bond Commission that
 144 there has been filed with it a request for such authorization which is
 145 signed by or on behalf of the Secretary of the Office of Policy and
 146 Management and states such terms and conditions as said commission,
 147 in its discretion, may require. Said bonds issued pursuant to this
 148 section shall be general obligations of the state and the full faith and
 149 credit of the state of Connecticut are pledged for the payment of the
 150 principal of and interest on said bonds as the same become due, and
 151 accordingly and as part of the contract of the state with the holders of
 152 said bonds, appropriation of all amounts necessary for punctual
 153 payment of such principal and interest is hereby made, and the State
 154 Treasurer shall pay such principal and interest as the same become
 155 due.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to taxable years commencing on or after January 1, 2010</i>	12-284b(b)
Sec. 2	<i>from passage and applicable to taxable years commencing on or after January 1, 2010</i>	New section
Sec. 3	<i>from passage and applicable to taxable years commencing on or after January 1, 2010</i>	12-701(a)(8)
Sec. 4	<i>July 1, 2010</i>	New section
Sec. 5	<i>July 1, 2010</i>	New section

Statement of Legislative Commissioners:

In sections 1 and 2, references to December 31 were added to ensure accuracy of reference to the applicable taxable year.

FIN *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Department of Revenue Services	GF - Revenue Loss	12.0 million	12.0 million
Department of Revenue Services	GF - Revenue Gain	2.8-4.7 million	2.8-4.7 million
Department of Revenue Services	GF - Cost	Significant	None
Department of Economic & Community Development	GF - Cost	252,218	259,784
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	67,241	172,782
Treasurer, Debt Serv.	GF - Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill provides for an exemption of the business entity tax for two years in certain circumstances, imposes a tax on bonuses awarded to employees of certain companies, and establishes a small business loan program. This results in a net General Fund revenue loss of between \$7.3 million and \$9.2 million in FY 11 and FY 12, a significant cost to the Department of Revenue Services (DRS) in FY 11, a cost of \$319,459 in FY 11 and \$432,566 in FY 12 (including fringe benefits) to the Department of Economic and Community Development (DECD), and an estimated \$30.5 million in future debt service costs.

Section 1 exempts certain businesses from the annual \$250 business

¹ The estimated non-pension fringe benefit rate as a percentage of payroll is 26.66% which includes health insurance, social security, Medicare, life insurance, and unemployment compensation. Fringe benefit costs for new positions do not include pension costs as new positions will not impact the state's pension contribution until FY 12 after the next scheduled actuarial valuation.

entity tax for the 2010 and 2011 tax years. This results in a General Fund revenue loss of approximately \$12.0 million per year in FY 11 and FY 12. Based on net income data reported by partnerships and pass-through entities,² it is estimated that approximately 48,000 entities will qualify for the exemption.

Sections 2 and 3 impose a higher personal income tax rate on certain bonuses paid to employees of companies receiving Troubled Asset Relief Plan (TARP) assistance. This results in a General Fund revenue gain of between \$2.8 million and \$4.7 million per year in FY 11 and FY 12.

Based on actual 2009 wage and employee data from the Department of Labor (DOL) and information gathered by the New York State Attorney General, it is estimated that fewer than 100 employees in Connecticut will receive qualifying bonuses in excess of \$1.0 million, which would be subject to the higher income tax rate.

The revenue gain is dependent upon the extent to which: 1) the data on the distribution of bonuses contained in the New York report is substantially different than in Connecticut; 2) actual individual bonus payments are significantly greater than \$3.0 million; 3) companies alter their current bonus payment plans; and 4) actions are taken to minimize the potential increase in tax liability.

Sections 1-3 also result in a significant³ one-time cost to DRS associated with modifying the business entity tax and income tax forms to capture business income, TARP information, and bonus information, as well as necessary modifications to the taxpayer service center (TSC).

Section 4 authorizes DECD to establish a direct loan and loan guarantee program for businesses with fewer than 50 employees. It is

² The business entity tax return does not contain income data and as such personal income tax data was utilized as a proxy.

³ The Office of Fiscal Analysis defines "significant" as any amount in excess of \$100,000 for the purposes of fiscal notes.

anticipated that a significant number of businesses would be eligible. Assuming 100 businesses apply, DECD would incur costs of \$252,218 in FY 11 to hire three Economic Development Agents (with a salary of \$65,177 each) and one Accounts Examiner (with a salary of \$56,685). Fringe benefit costs would be \$67,241 in FY 11 and \$172,782 in FY 12.

Section 5 authorizes \$20.0 million in General Obligation (GO) bonds in FY 11 for the Small Business Assistance Program. The total General Fund debt service cost for principal and interest payments to issue this amount over 20 years assuming a 5.0% interest rate is \$30.5 million. The first year that the state will experience costs associated with the bonds depends on when they are allocated through the State Bond Commission and when the funds are expended.

The Out Years

The revenue impact identified above is limited to FY 11 and FY 12 only. The debt service cost identified above would continue into the future for the term of issuance of the bonds; the cost to the DECD would continue into the future subject to inflation.

*Sources: Department of Labor
New York State Attorney General, No Rhyme or Reason, Appendix A
United States Census Bureau 2006 County Business Statistics*

OLR Bill Analysis**sSB 1*****AN ACT CONCERNING THE PRESERVATION AND CREATION OF JOBS IN CONNECTICUT.*****SUMMARY:**

This bill:

1. exempts certain businesses with annual net incomes of \$50,000 or less from the \$250 business entity tax for two years;
2. imposes an 8.97% tax in lieu of regular state income tax on certain bonuses of \$1 million or more paid or awarded to Connecticut taxpayers by companies that received direct funding from the federal Troubled Asset Relief Program (TARP) or certain of their affiliates; and
3. establishes a program to provide loans and loan guarantees to companies with fewer than 50 employees and authorizes up to \$20 million in state general obligation bonding to fund it.

EFFECTIVE DATE: The business entity tax exemption and the TARP tax take effect on passage and apply to tax years starting on or after January 1, 2010. The small business assistance program and bond authorization are effective July 1, 2010.

§ 1 – BUSINESS ENTITY TAX EXEMPTION

The bill exempts certain businesses from the annual \$250 business entity tax for the 2010 and 2011 tax years. The exemption applies to any business that, for the applicable tax year, (1) reports \$50,000 or less in net income on its annual informational income return filed with the Department of Revenue Services (DRS) (see BACKGROUND) and (2) employs at least one full-time person in Connecticut for at least eight

consecutive months during the year. For purposes of the exemption, a “full-time employee” is an employee or member of, or partner in, the business who works at least 35 hours per week.

The business entity tax applies to foreign or domestic S corporations, limited liability companies, limited liability partnerships, and limited partnerships that must file annual reports with the secretary of the state.

§§ 2 & 3 – TARP BONUS TAX

The bill imposes an 8.97% tax on any bonus totaling \$1 million or more paid or awarded to a Connecticut taxpayer during the 2010 and 2011 tax years by a “TARP recipient.” Under the bill, a TARP recipient is (1) any entity that received funds directly from the TARP on or after October 3, 2008; (2) an entity that, for federal tax purposes, is considered part of the same affiliated group as an entity that received TARP funds (see BACKGROUND); or (3) a partnership that is more than 50% owned, directly or indirectly, by one or more of the foregoing entities.

The 8.97% tax on a covered TARP bonus applies in lieu of the 6.5% state income tax otherwise due on Connecticut taxable income over \$1 million. Unlike the graduated income tax rates applicable to other taxable income, the flat 8.97% rate applies to the entire covered bonus and is in addition to state income tax due on a taxpayer’s other taxable income, if any. Regular state income tax rates and provisions apply to other taxable income.

The TARP bonus tax covers retention or incentive payments or other bonuses over and above a taxpayer’s regular periodic pay rate that are either (1) paid in the 2010 or 2011 tax years or (2) paid in the future for work performed during those years. Covered bonuses can be in the form of cash and noncash payments, loans, and arrangements for future payments. In addition, if a TARP recipient reimburses a taxpayer for the bonus tax, the reimbursement is considered part of the bonus and is also subject to the bonus tax.

The bonus tax does not apply (1) to commissions, welfare or fringe benefits, or expense reimbursements or (2) when a taxpayer, without receiving any other benefit from the TARP recipient in return, irrevocably waives his or her right to the full amount of the bonus payment or returns it before December 31 of the applicable tax year.

The tax applies regardless of whether the TARP recipient has repaid the federal government any or all funds it received from the TARP.

Under the bill, TARP recipients that pay or award TARP bonuses of \$1 million or more during the 2010 or 2011 tax years must comply with applicable state income tax withholding requirements on those payments.

§§ 4 & 5 – SMALL BUSINESS ASSISTANCE PROGRAM

The bill requires the Department of Economic and Community Development (DECD) to establish a program to provide direct loans and loan guarantees to businesses with fewer than 50 employees. It authorizes up to \$20 million in state general obligation bonds to fund the program and establishes a separate, nonlapsing small business assistance account in the General Fund to provide the loans and loan guarantees.

As part of the program, the bill allows DECD to:

1. guarantee or promise in advance to guarantee loans or cause the loans to be guaranteed;
2. make direct loans or cause them to be made, if such loans are not available in the private market; and
3. participate in agreements with other state or federal agencies to provide loans or loan guarantees that meet the bill's requirements.

BACKGROUND

Informational Return for Pass-Through Businesses

By law, each pass-through business that has income derived from or

connected to Connecticut sources must file an annual return containing information about its finances, including its income, and its resident and nonresident partners or members. The requirement applies to S corporations; general, limited, and limited liability partnerships; limited liability companies treated as partnerships under federal tax laws; and trusts and estates (CGS § 12-726).

Affiliated Group

For purposes of identifying TARP recipients, the bill incorporates by reference the federal definition of an “affiliated group.” Under federal tax law, an “affiliated group” is a group of corporations or corporate chains connected to the same parent corporation in which (1) one or more of the corporations included in the group directly owns at least 80% of the voting power and 80% of the total value of the common stock of each of the other included corporations and (2) their common parent directly owns at least 80% of the voting power and 80% of the total value of the common stock of at least one of the included corporations (IRC § 1504).

Related Bill

SB 450, Fill 266, favorably reported by the Commerce Committee, contains the same TARP tax, small business loan program, and bond authorization as this bill.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 31 Nay 17 (04/01/2010)