

Date of Hearing: April 19, 2016

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Eduardo Garcia, Chair

AB 2901 (Committee on Jobs, Economic Development, and the Economy) – As Amended April 12, 2016

**SUBJECT:** California Competes Tax Credit Committee

**SUMMARY:** Expands the reporting requirements of the California Competes tax Credit Program, which is administered through the Governor's Office of Business and Economic Development, to include the following information:

- 1) The primary location of the facility(s) for which the taxpayer is applying for credits. The primary location shall be listed by city or, in the case of unincorporated areas, by county;
- 2) Information that identifies each tax credit award that was given a priority for being located in a high unemployment or poverty area, as specified; and
- 3) Information that identifies each tax credit award that is being counted toward the requirement that each fiscal year, 25% of the aggregate amount of credits allocated are required to be reserved for small business, as defined.

**EXISTING LAW:** establishes the California Competes Tax Credit for the purpose of awarding individually negotiated tax credits to businesses that operate in California. Key statutory program requirements include:

- 1) **Allocation Years:** 2013-2014 through and including 2017-18.
- 2) **Tax Years:** January 1, 2014, and before January 1, 2025.
- 3) **Total Tax Credit Awards:** \$780 million for 5 years of credits - \$30 million (2013–14); \$150 million (2014–15); \$200 million (2015-16, 2016-17, 2017-18).
- 4) **Value of the Individual Credit:** Each credit award is individually negotiated with GO-Biz staff and approved by the California Competes Tax Credit Committee. Awards are based on the committed dollars of investment and net new jobs, as compared to the dollar amount of tax credits requested. No taxpayer may receive more than 20% of the total annual allocation.
- 5) **Program Priority:** Applications from taxpayers whose project or business is located or proposed to be located in an area of high unemployment or high poverty are required to be treated as a priority. *This is the only statutory priority under the California Competes Tax Credit.* High poverty areas are those that are at or above the federal poverty rate at the time of the tax credit award. High unemployment areas are those that are at or above the state unemployment rate at the time of the tax credit award.
- 6) **Carryforward:** Six years from the initial application of the credit, as specified in the written agreement.
- 7) **Competitive Award Criteria:** The California Competes Tax Credit is a competitively awarded credit based on the following criteria:

- a) The number of anticipated California jobs created or retained;
  - b) The compensation paid or proposed to be paid to its employees, including wages and fringe benefits;
  - c) The amount of investment in this state by the taxpayer;
  - d) The extent of unemployment or poverty in the area in which the taxpayer's project or business is proposed or located;
  - e) The incentives available to the taxpayer in this state, including incentives from the state, local government, and other entities;
  - f) The incentives available to the taxpayer in other states;
  - g) The duration of the proposed project and the duration the taxpayer commits to remain in this state;
  - h) The overall economic impact in this state of the taxpayer's project or business;
  - i) The strategic importance of the taxpayer's project or business to the state, region, or locality;
  - j) The opportunity for future growth and expansion in this state by the taxpayer's business; and
  - k) The extent to which the anticipated benefit to the state exceeds the projected benefit to the taxpayer from the tax credit.
- 8) **Written Agreements:** Each award is documented through a written agreement between GO-Biz and the taxpayer. Enforcement of the individual commitments is the responsibility of the Franchise Tax Board (FTB), which is directed to review the books and records of every non-small business taxpayer who receives a credit. FTB has the authority to review the books and records of small business taxpayers, but is not mandated.
- 9) **Small Business Mandate:** At least 25% of the tax credits are required to be awarded to small businesses on an annual basis. A small business is defined as having net revenues of less than \$2 million in the prior tax year. The FTB is responsible for providing GO-Biz with the information as to whether a taxpayer qualifies as a "small business." Since inception, GO-Biz has awarded 24.4% of the tax credits to small businesses. Relative to the number of taxpayers receiving credits, 33.7% were small businesses.
- 10) **General Fund Protection:** Although statute generally sets a specific schedule for awarding the credits, GO-Biz works in partnership with the state's tax entities to ensure the financial impact on the General Fund does not exceed \$750 million in the current and next fiscal year, including all incentives awarded through the California Competes Tax Credit, the Sales and Use Tax Exclusion, and the New Hire Credit.

The Franchise Tax Board is required to annually provide a report to the Joint Legislative Budget Committee that identifies the actual total dollar amount of the credits claimed under the California Competes Tax Credit.

**FISCAL EFFECT:** Unknown

**POLICY ISSUE FRAME:**

In March 2015, the Assembly Committee on Jobs, Economic Development, and the Economy held the first in a series of program reviews of GO-Biz programs. A second hearing is planned in the future to hear about the California Competes Tax Credit program. The content of this bill was developed as part of the JEDE Committee's research for that hearing. This measure codifies the reporting of key elements of the tax credit program, including the identification of business or project location, credits awarded to small businesses, and credit awards that received priority consideration.

Each of these new reporting requirements represents a key element of the tax credit program and are essential to providing appropriate oversight and program transparency. These elements include information to identify: areas that are not currently being served; whether the requirements of the small business set aside are being met; and which areas of the state are benefiting from the priority application requirements for high unemployment and high poverty. The analysis includes further background on the California Competes Tax Credit Program.

**COMMENTS:**

1. **Background on Creation of the Program:** The California Competes Tax Credit was established in 2013. It was part of a package of bills that eliminated the California Enterprise Zones Program and its related tax credits, including the New Hire Credit and the Sales and Use Tax Credit, among others. The approximately \$750 million in tax incentives associated with those defunct programs was redirected to the California Competes Tax Credit, a more limited New Hire Credit, and a broader Sales and Use Tax-based incentive.

Since inception, \$303 million tax credits have been awarded to businesses who committed to investing \$10 billion in California and adding 51,721 of net new jobs.

2. **Reporting Requirements in Statute:** Existing law requires GO-Biz to post information on its internet website relating to each tax credit award, including the taxpayers name, estimated amount of each taxpayer's investment, estimated number of jobs created or retained, the amount of the credit allocated to the taxpayer, and the amount of the any recaptured credit.
3. **Number of Businesses Served:** Below are charts displaying information on the tax credit wards, including numbers of small businesses and non-small businesses who received credits, applied for credits, average credit award, and median credit award.

As of November 2015	Number of Awardees	Number of Jobs Committed	Amount of Investment Committed	Credit Awarded
Non-Small Businesses	212	36,038	\$8,967,133,574	\$168,119,650
Small Businesses	118	6,314	\$1,320,513,677	\$54,699,031
<b>Total Businesses</b>	330	42,352	\$10,287,647,251	\$222,818,681

Data Source: GO-Biz

Fiscal Year (FY)	Total Credits Available	Total Credit Requests	Number of Non-Small Business Applications	Number of Small Business Applications	Number of Non-Small Businesses Awarded	Number Small Businesses Awarded
FY 13-14: Application Period 1	\$30,000,000	\$561,454,983	262	134	18	11
FY 14-15: Application Period 1	\$45,000,000	\$329,333,538	228	58	31	25
FY 14-15: Application Period 2	\$75,000,000	\$289,800,949	177	76	66	27
FY 14-15: Application Period 3	\$30,000,000	\$320,181,186	187	80	38	25
FY 15-16: Application Period 1	\$75,000,000	\$268,876,560	205	136	59	30

Data Source: GO-Biz

As of November 2015	Average Credit Award	Median Credit Award
Non-Small Businesses	\$793,017	\$329,167
Small Businesses	\$463,551	\$106,667
Total Businesses	\$675,208	\$226,667

Data Source: GO-Biz

- 4) **Summary of Related Reports:** Below is a list of reports related to the California Competes Tax Credit Program.
- a) ***California Competes Tax Credit Program Report (December 2014):*** This mandated report was prepared by GO-Biz in response to supplemental budget reporting language. The report chronicles the establishment of the program, adoption of regulations, outreach activities, and a summary of the application process. Between the commencement of the program and December 2014, GO-Biz held 29 application workshops throughout the state, including four online webinars. Between the spring of 2014 and October 31, 2014, GO-Biz expended 2,653 hours of California Competes staff and used 2,822 hours of time redirected by other GO-Biz staff. In the first \$45 million round, GO-Biz received 286 applications for a total of \$330 million in tax credits. At the time of the report, first round awards had not been finalized. Two additional allocation rounds are anticipated in the 2015-16 fiscal year for a total of \$106.1 million in tax credits. *Document is not available online.*
  - b) ***California Competes Credit Report (March 2016):*** This mandated report was prepared by the Franchise Tax Board (FTB) to disclose the total annual amount of credits claimed under the California Competes Tax Credit in the most recent fiscal years. For the 2014 tax year, filed in 2015, FTB reports that \$3.6 million in credits were claimed on 79 returns. FTB also notes that these numbers do not reflect all fiscal year returns, as some have not been filed at the time of the report. FTB, however, notes that it defers to GO-Biz and the Department of Finance for actual

estimated revenues loss. According to data provided by GO-Biz, there have been \$10.5 million in allocated tax credit agreements covering the 2014 tax year. *Document is not available online.*

- 5) **Public Reporting:** Statute requires GO-Biz to post information on its internet website relating to each tax credit award, including the taxpayers name, estimated amount of each taxpayer's investment, estimated number of jobs created or retained, the amount of the credit allocated to the taxpayer, and the amount of any recaptured credit. When meeting this statutory requirement, GO-Biz has chosen to also include the city and industry sector. AB 2901 codifies the practice of reporting on the general geographic location of a credit award.
- 6) **Poverty Alleviation:** The only statutory priority for the California Competes Tax Credit Programs is for applications which come from taxpayers with projects or businesses located in areas of high unemployment or poverty. GO-Biz defines high poverty as the taxpayer location being in an area with an income level at or above the federal poverty rate or at or above the state unemployment rate. GO-Biz does not currently report on these projects. Given the significance of the priority, it is important the public and the Legislature have access to this information. AB 2901 requires reporting on this priority.
- 7) **Small Businesses Applications:** According to information provided by GO-Biz, 118 of the 330 businesses assisted have been awarded to small businesses, \$54,699,031 in credits to small businesses and \$168,119,650 to non-small businesses. The tax credit program has a 25% annual small business mandate. Since inception, GO-Biz is only slightly off the 25% mandate, with awards to small businesses totaling 24.5%. Recognizing the difficulty many small businesses have in applying for and utilizing tax credits, it is also important to consider the number of small business taxpayers which received credits. In this case, GO-Biz awarded 35.7% of the credits to businesses that met the revenue limits to be considered a small business (\$2 million in revenues in the prior tax year).

Currently GO-Biz reports on small businesses through their individual committee meeting agendas. Small business reporting is currently not mandated. AB 2901 codifies posting this information on the GO-Biz website. A question arose as to whether it was appropriate to have the public know general revenue information about businesses. JEDE is in discussions about how to disclose this information without necessarily disadvantaging these businesses in future business relationships.

## REGISTERED SUPPORT / OPPOSITION:

### Support

None Received

### Opposition

None Received

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