

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2388

Introduced by Assembly Member Beall

February 24, 2012

~~An act to amend Section 23609 of the Revenue and Taxation Code, relating to taxation.~~ *An act to amend Section 35159 of the Public Resources Code, relating to the Santa Clara County Open-Space Authority.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2388, as amended, Beall. ~~Corporation Tax Law: credit: research.~~ *Santa Clara County Open-Space Authority: authorization to contract.*

The Santa Clara County Open-Space Authority Act establishes procedures for the creation of the Santa Clara County Open-Space Authority, and prescribes the functions and duties of the authority with regard to the management of lands and facilities under the jurisdiction of the authority. The act authorizes the authority to contract with any person or public agency for any services, supplies, equipment, or materials, or for the construction or completion of any building, structure, or improvement. The act requires that a contract for any services, supplies, equipment, or materials, with the exception of certain legal appraisal services, that exceeds \$10,000 be contracted for and let to the lowest responsible bidder, but authorizes the governing board of the authority, if 2 or more bids are the same and the lowest, to accept the one it chooses. The act permits contracts of \$50,000 or less to be let by informal bidding procedures, but requires contracts of more than \$50,000 to be let by formal bidding procedures.

This bill would instead require that a contract for any supplies, equipment, or materials, that exceeds \$25,000 be contracted for and let to the lowest responsible bidder but would authorize the governing board of the authority, if 2 more bids are the same and lowest, to accept the one it chooses. The bill would further permit contracts of \$75,000 or less to be let by informal bidding procedures, but would require that contracts of more than \$75,000 be let by formal bidding procedures. The bill would specify that those requirements do not apply to contracts for services, including, but not limited to, planning, consulting, legal, or appraisal services, or to contracts for services authorized to be procured pursuant to specified provisions with private architects, engineering, land surveying, and construction project management firms.

(2) The bill would declare that, due to the unique circumstances applicable only to the Santa Clara County Open-Space Authority that the bill is intended to address, a general statute within the meaning of specified provisions of the Constitution cannot be made applicable and a special statute is necessary.

~~The Corporation Tax Law allows a credit against tax for amounts paid or incurred in increasing research activities in accordance with federal law, as modified.~~

~~This bill would make a technical, nonsubstantive change to these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 35159 of the Public Resources Code is
- 2 amended to read:
- 3 35159. (a) The authority may contract with any person or
- 4 public agency for any services, supplies, equipment, or materials,
- 5 or for the construction or completion of any building, structure,
- 6 or improvement.
- 7 ~~(b) When a contract for any services, supplies, equipment, or~~
- 8 ~~materials, except for legal or appraisal services, or except for those~~
- 9 ~~services authorized to be procured under Chapter 10 (commencing~~
- 10 ~~with Section 4525) of Division 5 of Title 1 of the Government~~
- 11 ~~Code exceeds ten thousand dollars (\$10,000), it shall be contracted~~
- 12 ~~for and let to the lowest responsible bidder. If two or more bids~~

1 ~~are the same and the lowest, the governing board may accept the~~
2 ~~one it chooses. Contracts of fifty thousand dollars (\$50,000) or~~
3 ~~less may be let by informal bidding procedure, but contracts of~~
4 ~~more than fifty thousand dollars (\$50,000) shall be let by formal~~
5 ~~bidding procedures.~~

6 *(b) (1) Notwithstanding any other laws, a contract for any*
7 *supplies, equipment, or materials, that exceeds twenty-five*
8 *thousand dollars (\$25,000) shall be contracted for and let to the*
9 *lowest responsible bidder. If two or more bids are the same and*
10 *the lowest, the governing board may accept the one it chooses. A*
11 *contract of seventy-five thousand dollars (\$75,000) or less may*
12 *be let by informal bidding procedures, but a contract of more than*
13 *seventy-five thousand dollars (\$75,000) shall be let by formal*
14 *bidding procedures.*

15 *(2) This section does not apply to contracts for services,*
16 *including, but not limited to, planning, consulting, legal or*
17 *appraisal services, or to contracts for services authorized to be*
18 *procured pursuant to Chapter 10 (commencing with Section 4525)*
19 *of Division 5 of Title 1 of the Government Code.*

20 (c) The notice inviting bids shall set a date for the opening of
21 bids. The first publication or posting of the notice shall be at least
22 10 days before the date of opening the bids. ~~Notice~~ *For purposes*
23 *of contracts requiring formal bidding, notice* shall be published
24 at least twice, at least five days apart, in a newspaper of general
25 circulation in the authority, or if there is none, it shall be posted
26 in at least three public places in the authority. The notice shall
27 distinctly state the nature of the contract.

28 (d) The governing board may reject any bids. If the governing
29 board rejects all bids, it may either readvertise or adopt a resolution,
30 by four-fifths vote, declaring that the contract can be performed
31 more economically by the employees of the authority or obtained
32 at a lower price on the open market. Upon adoption of the
33 resolution, the governing board may undertake the project without
34 further complying with subdivisions (b) and (c).

35 (e) If bids are not received, the governing board may undertake
36 the project without further complying with subdivisions (b) to (d),
37 inclusive.

38 (f) In the case of an emergency, the governing board may adopt
39 a resolution by a two-thirds vote of all the members of the
40 governing board declaring that the public interest and necessity

1 demand immediate expenditure of public money to safeguard life,
 2 health, or property. The governing board may expend any sum
 3 required in the emergency without submitting the expenditure to
 4 bid.

5 For the purpose of this subdivision, “emergency” means a
 6 sudden, unexpected occurrence, involving a clear and imminent
 7 danger, demanding immediate action to prevent or mitigate loss
 8 of, or damage to, life, health, property, or essential public services.
 9 Emergency includes a fire, flood, earthquake, or other soil or
 10 geologic movements, as well as a riot, accident, or sabotage.

11 *SEC. 2. The Legislature finds and declares that, because of*
 12 *the unique circumstances applicable only to the Santa Clara*
 13 *County Open-Space Authority, a statute of general applicability*
 14 *cannot be enacted within the meaning of subdivision (b) of Section*
 15 *16 of Article IV of the California Constitution, therefore, this*
 16 *special statute is necessary.*

17 ~~SECTION 1. Section 23609 of the Revenue and Taxation Code~~
 18 ~~is amended to read:~~

19 ~~23609. For each taxable year beginning on or after January 1,~~
 20 ~~1987, there shall be allowed as a credit against the “tax” (as defined~~
 21 ~~by Section 23036) an amount determined in accordance with~~
 22 ~~Section 41 of the Internal Revenue Code, except as follows:~~

23 ~~(a) For each taxable year beginning before January 1, 1997,~~
 24 ~~both of the following modifications shall apply:~~

25 ~~(1) The reference to “20 percent” in Section 41(a)(1) of the~~
 26 ~~Internal Revenue Code is modified to read “8 percent.”~~

27 ~~(2) The reference to “20 percent” in Section 41(a)(2) of the~~
 28 ~~Internal Revenue Code is modified to read “12 percent.”~~

29 ~~(b) (1) For each taxable year beginning on or after January 1,~~
 30 ~~1997, and before January 1, 1999, both of the following~~
 31 ~~modifications shall apply:~~

32 ~~(A) The reference to “20 percent” in Section 41(a)(1) of the~~
 33 ~~Internal Revenue Code is modified to read “11 percent.”~~

34 ~~(B) The reference to “20 percent” in Section 41(a)(2) of the~~
 35 ~~Internal Revenue Code is modified to read “24 percent.”~~

36 ~~(2) For each taxable year beginning on or after January 1, 1999,~~
 37 ~~and before January 1, 2000, both of the following shall apply:~~

38 ~~(A) The reference to “20 percent” in Section 41(a)(1) of the~~
 39 ~~Internal Revenue Code is modified to read “12 percent.”~~

1 ~~(B) The reference to “20 percent” in Section 41(a)(2) of the~~
2 ~~Internal Revenue Code is modified to read “24 percent.”~~
3 ~~(3) For each taxable year beginning on or after January 1, 2000,~~
4 ~~both of the following shall apply:~~
5 ~~(A) The reference to “20 percent” in Section 41(a)(1) of the~~
6 ~~Internal Revenue Code is modified to read “15 percent.”~~
7 ~~(B) The reference to “20 percent” in Section 41(a)(2) of the~~
8 ~~Internal Revenue Code is modified to read “24 percent.”~~
9 ~~(e) (1) With respect to any expense paid or incurred after the~~
10 ~~operative date of Section 6378, Section 41(b)(1) of the Internal~~
11 ~~Revenue Code is modified to exclude from the definition of~~
12 ~~“qualified research expense” any amount paid or incurred for~~
13 ~~tangible personal property that is eligible for the exemption from~~
14 ~~sales or use tax provided by Section 6378.~~
15 ~~(2) “Qualified research” and “basic research” shall include only~~
16 ~~research that is conducted in California.~~
17 ~~(d) The provisions of Section 41(e)(7)(A) of the Internal~~
18 ~~Revenue Code, shall be modified so that “basic research,” for~~
19 ~~purposes of this section, includes any basic or applied research~~
20 ~~including scientific inquiry or original investigation for the~~
21 ~~advancement of scientific or engineering knowledge or the~~
22 ~~improved effectiveness of commercial products, except that the~~
23 ~~term does not include any of the following:~~
24 ~~(1) Basic research conducted outside California.~~
25 ~~(2) Basic research in the social sciences, arts, or humanities.~~
26 ~~(3) Basic research for the purpose of improving a commercial~~
27 ~~product if the improvements relate to style, taste, cosmetic, or~~
28 ~~seasonal design factors.~~
29 ~~(4) Any expenditure paid or incurred for the purpose of~~
30 ~~ascertaining the existence, location, extent, or quality of any deposit~~
31 ~~of ore or other mineral (including oil and gas).~~
32 ~~(e) (1) In the case of a taxpayer engaged in any~~
33 ~~biopharmaceutical research activities that are described in codes~~
34 ~~2833 to 2836, inclusive, or any research activities that are described~~
35 ~~in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard~~
36 ~~Industrial Classification (SIC) Manual published by the United~~
37 ~~States Office of Management and Budget, 1987 edition, or any~~
38 ~~other biotechnology research and development activities, the~~
39 ~~provisions of Section 41(e)(6) of the Internal Revenue Code shall~~
40 ~~be modified to include both of the following:~~

1 ~~(A) A qualified organization as described in Section~~
2 ~~170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an~~
3 ~~institution of higher education as described in Section 3304(f) of~~
4 ~~the Internal Revenue Code.~~

5 ~~(B) A charitable research hospital owned by an organization~~
6 ~~that is described in Section 501(e)(3) of the Internal Revenue Code,~~
7 ~~is exempt from taxation under Section 501(a) of the Internal~~
8 ~~Revenue Code, is not a private foundation, is designated a~~
9 ~~“specialized laboratory cancer center,” and has received Clinical~~
10 ~~Cancer Research Center status from the National Cancer Institute.~~

11 ~~(2) For purposes of this subdivision:~~

12 ~~(A) “Biopharmaceutical research activities” means those~~
13 ~~activities that use organisms or materials derived from organisms,~~
14 ~~and their cellular, subcellular, or molecular components, in order~~
15 ~~to provide pharmaceutical products for human or animal~~
16 ~~therapeutics and diagnostics. Biopharmaceutical activities make~~
17 ~~use of living organisms to make commercial products, as opposed~~
18 ~~to pharmaceutical activities that make use of chemical compounds~~
19 ~~to produce commercial products.~~

20 ~~(B) “Other biotechnology research and development activities”~~
21 ~~means research and development activities consisting of the~~
22 ~~application of recombinant DNA technology to produce~~
23 ~~commercial products, as well as research and development~~
24 ~~activities regarding pharmaceutical delivery systems designed to~~
25 ~~provide a measure of control over the rate, duration, and site of~~
26 ~~pharmaceutical delivery.~~

27 ~~(f) In the case where the credit allowed by this section exceeds~~
28 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~
29 ~~the following year, and succeeding years if necessary, until the~~
30 ~~credit has been exhausted.~~

31 ~~(g) For each taxable year beginning on or after January 1, 1998,~~
32 ~~the reference to “Section 501(a)” in Section 41(b)(3)(C) of the~~
33 ~~Internal Revenue Code, relating to contract research expenses, is~~
34 ~~modified to read “this part or Part 10 (commencing with Section~~
35 ~~17001).”~~

36 ~~(h) (1) For each taxable year beginning on or after January 1,~~
37 ~~2000:~~

38 ~~(A) The reference to “3 percent” in Section 41(c)(4)(A)(i) of~~
39 ~~the Internal Revenue Code is modified to read “one and forty-nine~~
40 ~~hundredths of one percent.”~~

1 ~~(B) The reference to “4 percent” in Section 41(c)(4)(A)(ii) of~~
2 ~~the Internal Revenue Code is modified to read “one and~~
3 ~~ninety-eight hundredths of one percent.”~~

4 ~~(C) The reference to “5 percent” in Section 41(c)(4)(A)(iii) of~~
5 ~~the Internal Revenue Code is modified to read “two and forty-eight~~
6 ~~hundredths of one percent.”~~

7 ~~(2) Section 41(c)(4)(B) shall not apply and in lieu thereof an~~
8 ~~election under Section 41(c)(4)(A) of the Internal Revenue Code~~
9 ~~may be made for any taxable year of the taxpayer beginning on or~~
10 ~~after January 1, 1998. That election shall apply to the taxable year~~
11 ~~for which made and all succeeding taxable years unless revoked~~
12 ~~with the consent of the Franchise Tax Board.~~

13 ~~(3) Section 41(c)(7) of the Internal Revenue Code, relating to~~
14 ~~gross receipts, is modified to take into account only those gross~~
15 ~~receipts from the sale of property held primarily for sale to~~
16 ~~customers in the ordinary course of the taxpayer’s trade or business~~
17 ~~that is delivered or shipped to a purchaser within this state,~~
18 ~~regardless of f.o.b. point or any other condition of the sale.~~

19 ~~(4) Section 41(c)(5) of the Internal Revenue Code, relating to~~
20 ~~election of the alternative simplified credit, shall not apply.~~

21 ~~(i) Section 41(h) of the Internal Revenue Code, relating to~~
22 ~~termination, shall not apply.~~

23 ~~(j) Section 41(g) of the Internal Revenue Code, relating to~~
24 ~~special rule for passthrough of credit, is modified by each of the~~
25 ~~following:~~

26 ~~(1) The last sentence shall not apply.~~

27 ~~(2) If the amount determined under Section 41(a) of the Internal~~
28 ~~Revenue Code for any taxable year exceeds the limitation of~~
29 ~~Section 41(g) of the Internal Revenue Code, that amount may be~~
30 ~~carried over to other taxable years under the rules of subdivision~~
31 ~~(f), except that the limitation of Section 41(g) of the Internal~~
32 ~~Revenue Code shall be taken into account in each subsequent~~
33 ~~taxable year.~~

34 ~~(k) Section 41(a)(3) of the Internal Revenue Code shall not~~
35 ~~apply.~~

36 ~~(l) Section 41(b)(3)(D) of the Internal Revenue Code, relating~~
37 ~~to amounts paid to eligible small businesses, universities, and~~
38 ~~federal laboratories, shall not apply.~~

1 ~~(m) Section 41(f)(6) of the Internal Revenue Code, relating to~~
2 ~~energy research consortium, shall not apply.~~

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