

Introduced by Senator Wright
(Principal coauthor: Assembly Member Bradford)

February 18, 2011

An act to add and repeal Sections 17057.6, 17057.7, 23670, and 23671 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 830, as introduced, Wright. Income taxes: credit: trade infrastructure investment: import-export cargo.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, subject to a subsequent act authorizing a total amount of credit, authorize 2 credits against those taxes for each taxable year beginning on or after January 1, 2011, and before January 1, 2021, with the first credit in an amount not to exceed 50% of the total capital costs of a project relating to port or harbor activity, as provided, and the 2nd credit in an amount not to exceed the product of \$5 and the number of tons of additional qualified cargo, as provided. This bill would require the Legislative Analyst to evaluate the effectiveness of this tax credit, as provided. This bill would require the Franchise Tax Board to certify qualifying projects and qualified cargo upon making specified findings and the receipt of a resolution, as specified, which determines that there would be sufficient revenues received by the state as a result of the economic impacts of these projects and cargo, to offset the costs to the state of providing the tax credits.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The primary purpose of this act is to encourage the
4 development and growth of California-originated export cargoes
5 and California-destined import cargoes, and to encourage and help
6 finance the further investment in, and subsequent increased use
7 of, California's public port facilities and districts.

8 (b) The need to continually invest in California's exports and
9 imports and California's public port infrastructure is predicated
10 on the fact that California's public seaports and the international
11 trade that they facilitate are critical components of the state
12 economy, directly or indirectly employing millions of Californians,
13 contributing billions of dollars in economic activity, and generating
14 significant local and state tax revenues as a result of this activity.
15 As such, our ports must be given the ability to successfully compete
16 for cargo volume, attract new trade, and continue to grow.

17 (c) The development, improvement, expansion and maintenance
18 of the state's public ports and port infrastructure facilities, and the
19 utilization of public port facilities for the export and import of
20 cargo to or from distribution, manufacturing, fabrication, assembly,
21 processing, transloading, and warehousing sites in California are
22 essential to the growth of the state's economic well-being and the
23 ability of those businesses and workers associated with
24 trade-related industries to continue to compete cost effectively on
25 a regional, national, and global scale.

26 SEC. 2. This act shall be known, and may be cited, as the
27 Export-Import Incentive and Public Port Infrastructure Investment
28 Act of 2011.

29 SEC. 3. Section 17057.6 is added to the Revenue and Taxation
30 Code, to read:

31 17057.6. (a) Subject to subdivision (g), for each taxable year
32 beginning on or after January 1, 2011, and before January 1, 2021,
33 there shall be allowed to a qualified taxpayer as a trade
34 infrastructure investment tax credit against the "net tax," as defined
35 by Section 17039, an amount of up to, but not to exceed, 50 percent
36 of the total capital costs of each qualifying project constructed in
37 this state, and only up to 5 percent each year subject to the terms,
38 conditions, and qualifications established by this section.

1 (1) A qualified taxpayer may claim up to, but not to exceed, 5
2 percent of the total capital costs for each year beginning on or after
3 2011, and before 2021.

4 (2) This credit shall be allowed to a qualified taxpayer that has
5 completed a qualified project.

6 (b) For purposes of this section:

7 (1) “Breakbulk or bulk cargo” means any nonliquid
8 commodities, automobiles, trucks, lumber, agricultural products
9 and commodities, machinery, equipment, materials, products, or
10 other cargo transported as palletized or unpalletized bagged,
11 packaged, wrapped, drummed, baled, or crated goods, or that are
12 loaded in bulk directly into the hold of a ship that are shipped via
13 oceangoing vessel. Breakbulk or bulk cargo shall not include any
14 liquid commodities that are handled in bulk or any containerized
15 cargo.

16 (2) “Capital costs” means all costs and expenses incurred by
17 one or more qualified taxpayers in connection with the acquisition,
18 construction, installation, and equipping of a qualifying project,
19 including any environmental mitigation undertaken specifically
20 to reduce the impacts of a qualifying project, during the period
21 commencing with the date on which the acquisition, construction,
22 installation, and equipping commences and ending on the date on
23 which the qualifying project is placed in service.

24 (A) Capital costs shall include, but not be limited to, the
25 following:

26 (i) The costs of acquiring, constructing, installing, equipping,
27 and financing a qualifying project, including all obligations
28 incurred for labor and to contractors, subcontractors, builders, and
29 materialmen.

30 (ii) The costs of acquiring land or rights in land and any cost
31 incidental thereto, including recording fees.

32 (iii) The costs of contract bonds and of insurance of any kind
33 that may be required or necessary during the acquisition,
34 construction, or installation of a qualifying project.

35 (iv) The costs of architectural and engineering services,
36 including test borings, surveys, estimates, plans, specifications,
37 preliminary investigations, environmental mitigation, and
38 supervision of construction, as well as for the performance of all
39 the duties required by or consequent upon the acquisition,
40 construction, and installation of a qualifying project.

1 (v) The costs associated with installation of fixtures and
2 equipment, surveys, including archaeological and environmental
3 surveys, site tests and inspections, subsurface site work, excavation,
4 removal of structures, roadways, and other surface obstructions,
5 filling, grading, paving, and provisions for drainage, stormwater
6 retention, installation of utilities, including water, sewerage
7 treatment, gas, electricity, communications, and similar facilities,
8 and offsite construction of utility extensions to the boundaries of
9 the property.

10 (vi) The costs of completing any environmental mitigation
11 associated with the completion of the project which is capital in
12 nature, and not an ongoing operating cost, including, but not limited
13 to, the following:

14 (I) The replacement, repower, or retrofit of heavy-duty diesel
15 trucks.

16 (II) The replacement, repower, or retrofit of diesel locomotive
17 engines.

18 (III) The replacement, repower, or retrofit of harbor craft.

19 (IV) The provision of on-shore electrical power for ocean freight
20 carriers calling at the state's seaports, which reduce the use of
21 auxiliary and main engine ship power.

22 (V) Mobile or portable shoreside distributed power generation
23 projects that eliminate the need of oceangoing vessels to use the
24 electricity grid.

25 (VI) The replacement, repower, or retrofit of cargo handling
26 equipment.

27 (VII) Electrification infrastructure to reduce engine idling and
28 use of internal combustion auxiliary power systems by trucks and
29 cargo handling equipment.

30 (VIII) The installation of solar power systems.

31 (IX) The installation of alternative fueling systems or acquisition
32 of alternative fueling equipment.

33 (vii) All other costs of a nature comparable to those described,
34 including, but not limited to, all project costs required to be
35 capitalized for federal income tax purposes pursuant to the
36 provisions of Section 263(a) of Title 26 of the United States Code.

37 (viii) Costs otherwise defined as capital costs incurred by the
38 taxpayer where the qualifying taxpayer is the lessee under a lease
39 that contains a term of not less than five years and is characterized
40 as a capital lease for federal income tax purposes.

1 (B) Capital costs shall not include property owned or leased by
2 the qualifying taxpayer or a related entity before the
3 commencement of the acquisition, construction, installation, or
4 equipping of the qualified project, unless the property was
5 physically located outside the state for a period of at least one year
6 prior to the date on which the qualifying project was placed in
7 service.

8 (C) Capital costs shall not include those project costs that were
9 expended prior to January 1, 2011.

10 (3) “Containerized cargo” shall mean any machinery, equipment,
11 materials, products, commodities, or any other cargo transported
12 by containers, which are rigid, sealable, and reusable metal boxes
13 built to a recognized international standard, in which goods are
14 shipped via oceangoing vessel.

15 (4) “Export” means any breakbulk or bulk cargo or containerized
16 cargo which is shipped in interstate or foreign commerce from the
17 State of California to a foreign country or a domestic
18 noncontiguous state or territory via oceangoing vessel.

19 (5) “Import” means any breakbulk or bulk cargo or containerized
20 cargo that is shipped in interstate or foreign commerce to the State
21 of California from a foreign country or from a domestic
22 noncontiguous state or territory via oceangoing vessel.

23 (6) “Oceangoing vessel” means a vessel, ship, or barge engaged,
24 for compensation, in transporting breakbulk or bulk cargo or
25 containerized cargo in interstate or foreign commerce.

26 (7) “Port or port and harbor activity” means any trade or
27 business conducted on premises in which a public port or harbor
28 district has an ownership, leasehold, or other possessory interest
29 and those premises are used as part of the regular cargo-related
30 operations of a public port or proposed to be used as part of
31 pending construction of a qualifying project.

32 (8) “Project” means any land, building, or other improvement,
33 and all real and personal properties deemed necessary or useful in
34 connection therewith, whether or not previously in existence,
35 located or to be located on public port property or within the
36 planning jurisdiction of a public port in this state.

37 (9) “Public port” means any port or harbor operating under grant
38 from the state, subject to the restrictions of the tidelands trust, or
39 any other public port or harbor district established by a political

1 subdivision of the state for the purposes of conducting interstate
2 or foreign trade.

3 (10) “Qualifying investment” means the undertaking by one or
4 more qualifying taxpayers of a qualifying project.

5 (11) “Qualifying project” means a project to be undertaken by
6 one or more qualifying taxpayers that has a capital cost of not less
7 than five million dollars (\$5,000,000) and at which the predominant
8 trade or business activity conducted will constitute industrial,
9 warehousing, or port and harbor operations and cargo handling,
10 including any port or port and harbor activity, and which is certified
11 by the Franchise Tax Board pursuant to the terms of this section.

12 (12) “Qualified taxpayer” means a taxpayer, who is qualified
13 by the Franchise Tax Board for the receipt of a credit pursuant to
14 this section.

15 (c) (1) A qualifying taxpayer seeking certification of a
16 qualifying project shall submit an application to the Franchise Tax
17 Board that includes the following information:

18 (A) A detailed description of the qualifying project, including
19 a summary of total actual capital costs prepared by an independent
20 certified public accountant.

21 (B) A statement that the proposed project meets the requirements
22 of this section, as well as any subsequent requirements adopted
23 by the Franchise Tax Board to facilitate the administration of this
24 section, to be classified as a qualifying project, and accompanied
25 by any relevant evidence or supporting documents necessary to
26 the statement.

27 (C) The name of each taxpayer or the name or names of its
28 shareholders, partners, members, owners, or beneficiaries that will
29 become entitled to the tax credit.

30 (D) The amount of total tax credits sought per year, not to
31 exceed 5 percent of total capital costs annually.

32 (E) Any other information required by the Franchise Tax Board.

33 (2) If the application is incomplete, additional information may
34 be requested prior to further action by the Franchise Tax Board.

35 (3) The Franchise Tax Board may develop a standard form,
36 instructions, or form and instructions to facilitate the submission
37 of applications pursuant to this paragraph.

38 (4) The applicant shall remit a fee paid to the Franchise Tax
39 Board that shall cover the costs of the Franchise Tax Board’s
40 review and evaluation of the project application and certification.

1 (d) (1) The Franchise Tax Board shall issue a certification to
2 a qualified project upon making a finding that the terms of this
3 section have been met.

4 (2) The certification shall include:

5 (A) A unique identifying number for each qualifying project.

6 (B) The maximum annual amount of tax credits that could
7 possibly be claimed in a given taxable year by the qualifying
8 taxpayer under the terms of this section

9 (C) The annual amount that could possibly be claimed by the
10 qualifying taxpayer under this section, not to exceed 5 percent of
11 total capital costs each taxable year.

12 (D) A statement advising the qualifying taxpayer that no credits
13 may be claimed by the taxpayer for any tax year for any qualified
14 project until the taxpayer is in receipt of a notification issued by
15 the Franchise Tax Board pursuant to paragraph (3) of subdivision
16 (g) advising the taxpayer of the amount of the credit authorized
17 by the Legislature and the taxpayer's pro rata share of that
18 authorization for the current tax year.

19 (3) The Franchise Tax Board shall submit notice of its
20 certification of a project as a qualifying project to the Department
21 of Finance, the Joint Legislative Budget Committee, and the
22 Legislative Analyst.

23 (e) The Franchise Tax Board shall not certify a project unless
24 it receives a resolution adopted pursuant to subdivision (f) from
25 the public port where the project is located which determines that
26 there will be sufficient revenue received by the state as a result of
27 the economic impacts resulting from the completion of the project
28 and from increased port or port and harbor activity resulting from
29 the completion of the project, whether because of the grant of the
30 tax credit or otherwise, to offset the cost to the state of providing
31 the tax credit.

32 (f) (1) If a public port adopts a resolution in order to estimate
33 the economic impacts resulting from the completion of a qualifying
34 project pursuant to subdivision (e), the findings adopted shall be
35 based on estimates in a report that includes, but is not limited to,
36 the following:

37 (A) The total state tax revenues generated by the project and
38 project-related economic activity.

39 (B) The total local tax and user fee revenues generated by the
40 project and project-related economic activity.

1 (C) The total jobs created by the project and project-related
2 economic activity, including the specific impact of the project on
3 the employment of California residents.

4 (2) All estimates and projections made in a report under this
5 paragraph shall be made based on, and consistent with, one or
6 more of the following:

7 (A) Official statements or annual disclosure documents or other
8 similar financial disclosure documents issued by the public port
9 to its creditors, underwriters, or other bondholders or lienholders
10 in the normal course of business.

11 (B) Economic impact studies, reports, or evaluations that were
12 completed by a third party, based on a published, or otherwise
13 peer-reviewed, economic impact methodology and made available
14 to the public in a previous meeting of the public port's governing
15 body.

16 (3) This section shall not be construed to require any public port
17 to prepare a report or adopt a resolution except at its own
18 discretion.

19 (g) (1) A qualified taxpayer may not claim the credit authorized
20 under this section until the Legislature enacts a statute specifying
21 the total amount of the credit allowed to be claimed by the qualified
22 taxpayer for the preceding taxable year.

23 (2) If the aggregate amount of credits certified by the Franchise
24 Tax Board for qualified projects under this section for the taxable
25 year is greater than the amount authorized for the credit by the
26 Legislature pursuant to paragraph (1), then the Franchise Tax Board
27 shall allocate the total amount of the credit on a prorated basis,
28 based on each qualified project's percentage of the total tax credits
29 certified by the Franchise Tax Board as of July 1 of each year.

30 (3) The Franchise Tax Board shall notify all qualified taxpayers
31 of the amount of the credit authorized by the Legislature and the
32 pro rata share of that authorization. The Franchise Tax Board shall
33 make all notifications pursuant to this paragraph within 90 days
34 of any tax credit authorization legislation being signed by the
35 Governor.

36 (h) In the case where the credit allowed by this section exceeds
37 the "net tax," the excess may be carried over to reduce the "net
38 tax" in the following year, and the 10 succeeding years if necessary,
39 until the credit is exhausted.

1 (i) If a qualifying taxpayer that claims a credit under this section
2 sells, transfers, or otherwise disposes of, either directly or
3 indirectly, a qualifying project within 10 years of the taxable year
4 during which the taxpayer first claimed the credit, there shall be
5 added to the “net tax” of the qualifying taxpayer during the taxable
6 year of sale, transfer, or disposition an amount equal to the total
7 credit claimed multiplied by a fraction, the numerator of which is
8 the remaining term of 10 years and the denominator of which is
9 10, unless an equivalent balance of the credit is expressly assigned
10 to the new owner of the qualified project in question and the
11 assignment is approved by the Franchise Tax Board.

12 (j) The Franchise Tax Board may audit any certified qualifying
13 project or inspect the physical site of the qualifying project in order
14 to verify claims and costs presented to the Franchise Tax Board
15 by a qualifying taxpayer in an application.

16 (k) (1) If the Franchise Tax Board finds the funds for which a
17 qualifying taxpayer received credits according to this section are
18 not invested in and expended with respect to capital costs of a
19 qualifying investment, the qualifying taxpayer’s tax for that taxable
20 year shall be increased by an amount necessary for the recapture
21 of credit provided by this section.

22 (2) Interest that may be assessed and collected on recovered
23 credits computed from the original due date of the return on which
24 the credit was taken.

25 (l) By January 1, 2020, the Legislative Analyst shall prepare an
26 evaluation of the effectiveness of the infrastructure investment tax
27 credit, which shall include the overall impact of the tax credits,
28 the amount of the tax credits issued, the number of new jobs
29 created, the amount of California payroll created, the economic
30 impact of the tax credits on the port and maritime industry located
31 in this state and regionally, the amount of new infrastructure that
32 has been developed in the state, and any other factors that describe
33 the impact of the program.

34 (m) This credit shall be in lieu of the credit allowed under
35 Section 17057.7.

36 (n) This section shall remain in effect only until December 1,
37 2022, and as of that date is repealed, unless a later enacted statute,
38 that is enacted before December 1, 2022, deletes or extends that
39 date.

1 SEC. 4. Section 17057.7 is added to the Revenue and Taxation
2 Code, to read:

3 17057.7. (a) Subject to the enactment of a statute as described
4 in subdivision (d), for each taxable year beginning on or after
5 January 1, 2011, and before January 1, 2021, there shall be allowed
6 to a qualified taxpayer as an import-export cargo tax credit against
7 the “net tax,” as defined by Section 17039, of an amount equal to
8 no more than the product of five dollars (\$5) and the qualified
9 taxpayer’s number of tons of additional qualified cargo for the
10 taxable year.

11 (b) For purposes of this section the following shall apply:

12 (1) “Additional cargo” means the amount of qualified cargo
13 moved in the current taxable year over and above the cargo moved
14 in the preceding taxable year.

15 (2) “Breakbulk or bulk cargo” means any nonliquid
16 commodities, automobiles, trucks, lumber, agricultural products
17 and commodities, machinery, equipment, materials, products, or
18 other cargo transported as palletized or unpalletized bagged,
19 packaged, wrapped, drummed, baled, or crated goods, or that are
20 loaded in bulk directly into the hold of a ship that are shipped via
21 oceangoing vessel. Breakbulk or bulk cargo shall not include any
22 liquid commodities that are handled in bulk or any containerized
23 cargo.

24 (3) “Containerized cargo” shall mean any machinery, equipment,
25 materials, products, commodities, or any other cargo transported
26 by containers, which are rigid, sealable, and reusable metal boxes
27 built to a recognized international standard, in which goods are
28 shipped via oceangoing vessel.

29 (4) “Export” means any breakbulk or bulk cargo or containerized
30 cargo which is shipped in interstate or foreign commerce from the
31 State of California to a foreign country or a domestic
32 noncontiguous state or territory via oceangoing vessel.

33 (5) “Import” means any breakbulk or bulk cargo or containerized
34 cargo that is shipped in interstate or foreign commerce to the State
35 of California from a foreign country or from a domestic
36 noncontiguous state or territory via oceangoing vessel.

37 (6) “Oceangoing vessel” means a vessel, ship, or barge engaged,
38 for compensation, in transporting breakbulk or bulk cargo or
39 containerized cargo in interstate or foreign commerce.

1 (7) “Public port” means any port or harbor operating under grant
2 from the state, subject to the restrictions of the tidelands trust, or
3 any other public port or harbor district established by a political
4 subdivision of the state for the purposes of conducting interstate
5 or foreign trade.

6 (8) “Qualified business entity” means a commercial entity, all
7 or a portion of whose activities involve the import or export of
8 breakbulk or bulk cargo or containerized cargo to or from cargo
9 facilities located within California. For purposes of this section, a
10 marine terminal, intermodal rail terminal, or truck terminal which
11 handles cargo, but which is not a usual and regular final destination
12 or origination point of those cargoes, shall not be considered a
13 qualified business entity.

14 (9) “Qualified cargo” means any breakbulk or bulk cargo or
15 containerized cargo that is imported or exported to or from a
16 manufacturing, fabrication, assembly, distribution, processing, or
17 warehouse facility located in California and that is moved by way
18 of an oceangoing vessel berthed at a public port facility in
19 California during the taxable year and certified by the Franchise
20 Tax Board as meeting the terms of this section. For purposes of
21 this section all agricultural products and commodities shipped
22 from or to California by way of an oceangoing vessel berthed at
23 a public port facility in California shall be considered qualified
24 cargo.

25 (10) “Qualified taxpayer” means a qualified business entity that
26 is certified by the Franchise Tax Board to receive an Import-Export
27 Cargo Tax Credit pursuant to this section.

28 (11) “Ton” means a net ton of 2,000 pounds and, in the case of
29 containerized cargo, shall exclude the weight of the container.

30 (c) (1) A qualified business entity seeking certification of a
31 qualified cargo shall submit an application to the Franchise Tax
32 Board that includes the following information:

33 (A) A verified statement of additional cargo volume data for
34 the taxable year for which the credit is being sought and the cargo
35 volumes for the taxable year prior to the taxable year of the
36 application, specifically including the total annual volume and
37 tons of breakbulk or containerized cargo imported and exported
38 from or to, manufacturing, fabrication, assembly, distribution,
39 processing, or warehousing facilities located in California.

40 (B) Any other information required by the Franchise Tax Board.

1 (2) If the application is incomplete, additional information may
2 be requested prior to further action by the Franchise Tax Board.
3 (3) The Franchise Tax Board may develop a standard form,
4 instructions, or form and instructions to facilitate the submission
5 of applications pursuant to this paragraph.
6 (4) The applicant shall remit a fee paid to the Franchise Tax
7 Board, which shall cover the costs of the Franchise Tax Board’s
8 review and evaluation of the project application and certification.
9 (d) The Franchise Tax Board shall issue a certification to a
10 qualifying business entity as a qualified taxpayer upon making a
11 finding that the terms of this section have been met, subject to the
12 Legislature enacting a statute specifying the total amount of the
13 credit allowable to all qualified taxpayers for taxable years
14 beginning before January 1, 2021.
15 (e) The Franchise Tax Board shall not certify qualified cargo
16 unless it receives a resolution adopted pursuant to subdivision (f)
17 from a public port which determines that there will be sufficient
18 revenue received by the state as a result of the economic impacts
19 from the additional qualified cargo import or export activity,
20 whether because of the grant of the tax credit or otherwise, to offset
21 the cost to the state of providing the tax credit.
22 (f) (1) If a public port adopts a resolution in order to estimate
23 the economic impacts resulting from the additional qualifying
24 cargo identified pursuant to subdivision (e), the findings adopted
25 shall be based on estimates in a report that includes, but is not
26 limited to, the following:
27 (A) The total state tax revenues generated by the additional
28 cargo and cargo-related economic activity.
29 (B) The total local tax and user fee revenues generated by the
30 cargo and cargo-related economic activity.
31 (C) The total jobs created by the cargo and cargo-related
32 economic activity, including the impact of the cargo on the
33 employment of California residents.
34 (2) All estimates and projections made in a report under this
35 paragraph shall be made based on, and consistent with, one or
36 more of the following:
37 (A) Official statements or annual disclosure documents or other
38 similar financial disclosure documents issued by the public port
39 to its creditors, underwriters, or other bondholders or lienholders
40 in the normal course of business.

1 (B) Economic impact studies, reports, or evaluations that were
2 completed by a third party, based on a published, or otherwise
3 peer-reviewed, economic impact methodology and made available
4 to the public in a previous meeting of the public port’s governing
5 body.

6 (3) This section shall not be construed to require any public port
7 to prepare a report or adopt a resolution except at its own
8 discretion.

9 (g) (1) The amount available to be applied to any additional
10 qualified cargo shall never exceed five dollars (\$5) per ton of
11 additional cargo, but may be less than five dollars (\$5) per ton if
12 the cumulative amount of credits certified by the Franchise Tax
13 Board under this section in a fiscal year is greater than the amount
14 authorized for the credit by the Legislature pursuant to subdivision
15 (d), then the Franchise Tax Board shall allocate the total amount
16 of the credit on a prorated basis equal to the qualifying business
17 entity’s share of the total amount of additional qualified cargo
18 certified by the Franchise Tax Board as of July 1 of each year.

19 (2) The Franchise Tax Board shall notify a qualifying business
20 entity with additional qualified cargo applications submitted prior
21 to July 1 of each year of the amount of the credit authorized by
22 the Legislature and the pro rata share for each qualified taxpayer
23 of that authorization during the fiscal year.

24 (h) In the case where the credit allowed by this section exceeds
25 the “net tax,” the excess may be carried over to reduce the “net
26 tax” in the following year, and the 10 succeeding years if necessary,
27 until the credit is exhausted.

28 (i) The Franchise Tax Board may promulgate rules and
29 regulations as necessary to implement the provisions of this section.

30 (j) The Franchise Tax Board may audit any qualified business
31 entity in order to verify claims presented to the Franchise Tax
32 Board in an application submitted pursuant to this section.

33 (k) (1) If the Franchise Tax Board finds that any claims
34 regarding additional cargo for which a qualified business entity
35 received credits according to this section were inaccurate, the
36 qualified business entity’s tax for that taxable period shall be
37 increased by an amount necessary for the recapture of credit
38 provided by this section.

1 (2) Interest that may be assessed and collected on recovered
 2 credits computed from the original due date of the return on which
 3 the credit was taken.

4 (3) The provisions of this section shall be in addition to and
 5 shall not limit the authority of the Franchise Tax Board to assess
 6 or to collect under any other provision of law.

7 (l) By January 1, 2020, the Legislative Analyst shall prepare an
 8 evaluation of the effectiveness of the import-export cargo tax credit
 9 which shall include the overall impact of the tax credits, the amount
 10 of the tax credits issued, the number of new jobs created, the
 11 amount of California payroll created, the economic impact of the
 12 tax credits on the port and maritime industry located in this state
 13 and regionally, the amount of new infrastructure that has been
 14 developed in the state, and any other factors that describe the
 15 impact of the program.

16 (m) This credit shall be in lieu of the credit allowed under
 17 Section 17057.6.

18 (n) This section shall remain in effect only until December 1,
 19 2022, and as of that date is repealed, unless a later enacted statute,
 20 that is enacted before December 1, 2022, deletes or extends that
 21 date.

22 SEC. 5. Section 23670 is added to the Revenue and Taxation
 23 Code, to read:

24 23670. (a) Subject to subdivision (g), for each taxable year
 25 beginning on or after January 1, 2011, and before January 1, 2021,
 26 there shall be allowed to a qualified taxpayer as a trade
 27 infrastructure investment tax credit against the “tax,” as defined
 28 by Section 23036, an amount of up to, but not to exceed, 5 percent
 29 of the total capital costs of each qualifying project constructed in
 30 this state, subject to the terms, conditions, and qualifications
 31 established by this section.

32 (1) A qualified taxpayer may claim up to, but not to exceed, 5
 33 percent of the total capital costs for each year beginning on or after
 34 2011, and before 2021.

35 (2) This credit shall be allowed to a qualified taxpayer that has
 36 completed a qualified project.

37 (b) For purposes of this section:

38 (1) “Breakbulk or bulk cargo” means any nonliquid
 39 commodities, automobiles, trucks, lumber, agricultural products
 40 and commodities, machinery, equipment, materials, products, or

1 other cargo transported as palletized or unpalletized bagged,
2 packaged, wrapped, drummed, baled, or crated goods, or that are
3 loaded in bulk directly into the hold of a ship that are shipped via
4 oceangoing vessel. Breakbulk or bulk cargo shall not include any
5 liquid commodities that are handled in bulk or any containerized
6 cargo.

7 (2) “Capital costs” means all costs and expenses incurred by
8 one or more qualified taxpayers in connection with the acquisition,
9 construction, installation, and equipping of a qualifying project,
10 including any environmental mitigation undertaken specifically
11 to reduce the impacts of a qualifying project, during the period
12 commencing with the date on which the acquisition, construction,
13 installation, and equipping commences and ending on the date on
14 which the qualifying project is placed in service.

15 (A) Capital costs shall include, but not be limited to, the
16 following:

17 (i) The costs of acquiring, constructing, installing, equipping,
18 and financing a qualifying project, including all obligations
19 incurred for labor and to contractors, subcontractors, builders, and
20 materialmen.

21 (ii) The costs of acquiring land or rights in land and any cost
22 incidental thereto, including recording fees.

23 (iii) The costs of contract bonds and of insurance of any kind
24 that may be required or necessary during the acquisition,
25 construction, or installation of a qualifying project.

26 (iv) The costs of architectural and engineering services,
27 including test borings, surveys, estimates, plans, specifications,
28 preliminary investigations, environmental mitigation, and
29 supervision of construction, as well as for the performance of all
30 the duties required by or consequent upon the acquisition,
31 construction, and installation of a qualifying project.

32 (v) The costs associated with installation of fixtures and
33 equipment, surveys, including archaeological and environmental
34 surveys, site tests and inspections, subsurface site work, excavation,
35 removal of structures, roadways, and other surface obstructions,
36 filling, grading, paving, and provisions for drainage, stormwater
37 retention, installation of utilities, including water, sewerage
38 treatment, gas, electricity, communications, and similar facilities,
39 and offsite construction of utility extensions to the boundaries of
40 the property.

- 1 (vi) The costs of completing any environmental mitigation
2 associated with the completion of the project which is capital in
3 nature, and not an ongoing operating cost, including, but not limited
4 to, the following:
- 5 (I) The replacement, repower, or retrofit of heavy-duty diesel
6 trucks.
- 7 (II) The replacement, repower, or retrofit of diesel locomotive
8 engines.
- 9 (III) The replacement, repower, or retrofit of harbor craft.
- 10 (IV) The provision of on-shore electrical power for ocean freight
11 carriers calling at the state's seaports, which reduce the use of
12 auxiliary and main engine ship power.
- 13 (V) Mobile or portable shoreside distributed power generation
14 projects that eliminate the need of oceangoing vessels to use the
15 electricity grid.
- 16 (VI) The replacement, repower, or retrofit of cargo handling
17 equipment.
- 18 (VII) Electrification infrastructure to reduce engine idling and
19 use of internal combustion auxiliary power systems by trucks and
20 cargo handling equipment.
- 21 (VIII) The installation of solar power systems.
- 22 (IX) The installation of alternative fueling systems or acquisition
23 of alternative fueling equipment.
- 24 (vii) All other costs of a nature comparable to those described,
25 including, but not limited to, all project costs required to be
26 capitalized for federal income tax purposes pursuant to the
27 provisions of Section 263(a) of Title 26 of the United States Code.
- 28 (viii) Costs otherwise defined as capital costs incurred by the
29 taxpayer where the qualifying taxpayer is the lessee under a lease
30 that contains a term of not less than five years and is characterized
31 as a capital lease for federal income tax purposes.
- 32 (B) Capital costs shall not include property owned or leased by
33 the qualifying taxpayer or a related entity before the
34 commencement of the acquisition, construction, installation, or
35 equipping of the qualified project, unless the property was
36 physically located outside the state for a period of at least one year
37 prior to the date on which the qualifying project was placed in
38 service.
- 39 (C) Capital costs shall not include those project costs that were
40 expended prior to January 1, 2011.

1 (3) “Containerized cargo” shall mean any machinery, equipment,
2 materials, products, commodities, or any other cargo transported
3 by containers, which are rigid, sealable, and reusable metal boxes
4 built to a recognized international standard, in which goods are
5 shipped via oceangoing vessel.

6 (4) “Export” means any breakbulk or bulk cargo or containerized
7 cargo which is shipped in interstate or foreign commerce from the
8 State of California to a foreign country or a domestic
9 noncontiguous state or territory via oceangoing vessel.

10 (5) “Import” means any breakbulk or bulk cargo or containerized
11 cargo that is shipped in interstate or foreign commerce to the State
12 of California from a foreign country or from a domestic
13 noncontiguous state or territory via oceangoing vessel.

14 (6) “Oceangoing vessel” means a vessel, ship, or barge engaged,
15 for compensation, in transporting breakbulk or bulk cargo or
16 containerized cargo in interstate or foreign commerce.

17 (7) “Port or port and harbor activity” means any trade or
18 business conducted on premises in which a public port or harbor
19 district has an ownership, leasehold, or other possessory interest
20 and those premises are used as part of the regular cargo-related
21 operations of a public port or proposed to be used as part of
22 pending construction of a qualifying project.

23 (8) “Project” means any land, building, or other improvement,
24 and all real and personal properties deemed necessary or useful in
25 connection therewith, whether or not previously in existence,
26 located or to be located on public port property or within the
27 planning jurisdiction of a public port in this state.

28 (9) “Public port” means any port or harbor operating under grant
29 from the state, subject to the restrictions of the tidelands trust, or
30 any other public port or harbor district established by a political
31 subdivision of the state for the purposes of conducting interstate
32 or foreign trade.

33 (10) “Qualifying investment” means the undertaking by one or
34 more qualifying taxpayers of a qualifying project.

35 (11) “Qualifying project” means a project to be undertaken by
36 one or more qualifying taxpayers that has a capital cost of not less
37 than five million dollars (\$5,000,000) and at which the predominant
38 trade or business activity conducted will constitute industrial,
39 warehousing, or port and harbor operations and cargo handling,

1 including any port or port and harbor activity, and which is certified
2 by the Franchise Tax Board pursuant to the terms of this section.

3 (12) “Qualified taxpayer” means a taxpayer, who is qualified
4 by the Franchise Tax Board for the receipt of a credit pursuant to
5 this section.

6 (c) (1) A qualifying taxpayer seeking certification of a
7 qualifying project shall submit an application to the Franchise Tax
8 Board that includes the following information:

9 (A) A detailed description of the qualifying project, including
10 a summary of total actual capital costs prepared by an independent
11 certified public accountant.

12 (B) A statement that the proposed project meets the requirements
13 of this section, as well as any subsequent requirements adopted
14 by the Franchise Tax Board to facilitate the administration of this
15 section, to be classified as a qualifying project, and accompanied
16 by any relevant evidence or supporting documents necessary to
17 the statement.

18 (C) The name of each taxpayer or the name or names of its
19 shareholders, partners, members, owners, or beneficiaries that will
20 become entitled to the tax credit.

21 (D) The amount of total tax credits sought per year, not to
22 exceed 5 percent of total capital costs annually.

23 (E) Any other information required by the Franchise Tax Board.

24 (2) If the application is incomplete, additional information may
25 be requested prior to further action by the Franchise Tax Board.

26 (3) The Franchise Tax Board may develop a standard form,
27 instructions, or form and instructions to facilitate the submission
28 of applications pursuant to this paragraph.

29 (4) The applicant shall remit a fee paid to the Franchise Tax
30 Board that shall cover the costs of the Franchise Tax Board’s
31 review and evaluation of the project application and certification.

32 (d) (1) The Franchise Tax Board shall issue a certification to
33 a qualified project upon making a finding that the terms of this
34 section have been met.

35 (2) The certification shall include:

36 (A) A unique identifying number for each qualifying project.

37 (B) The maximum annual amount of tax credits that could
38 possibly be claimed in a given taxable year by the qualifying
39 taxpayer under the terms of this section.

1 (C) The annual amount that could possibly be claimed by the
2 qualifying taxpayer under this section, not to exceed 5 percent of
3 total capital costs each taxable year.

4 (D) A statement advising the qualifying taxpayer that no credits
5 may be claimed by the taxpayer for any tax year for any qualified
6 project until the taxpayer is in receipt of a notification issued by
7 the Franchise Tax Board pursuant to paragraph (3) of subdivision
8 (g) advising the taxpayer of the amount of the credit authorized
9 by the Legislature and the taxpayer's pro rata share of that
10 authorization for the current tax year.

11 (3) The Franchise Tax Board shall submit notice of its
12 certification of a project as a qualifying project to the Department
13 of Finance, the Joint Legislative Budget Committee, and the
14 Legislative Analyst.

15 (e) The Franchise Tax Board shall not certify a project unless
16 it receives a resolution adopted pursuant to subdivision (f) from
17 the public port where the project is located which determines that
18 there will be sufficient revenue received by the state as a result of
19 the economic impacts resulting from the completion of the project
20 and from increased port or port and harbor activity resulting from
21 the completion of the project, whether because of the grant of the
22 tax credit or otherwise, to offset the cost to the state of providing
23 the tax credit.

24 (f) (1) If a public port adopts a resolution in order to estimate
25 the economic impacts resulting from the completion of a qualifying
26 project pursuant to subdivision (e), the findings adopted shall be
27 based on estimates in a report that includes, but is not limited to,
28 the following:

29 (A) The total state tax revenues generated by the project and
30 project-related economic activity.

31 (B) The total local tax and user fee revenues generated by the
32 project and project-related economic activity.

33 (C) The total jobs created by the project and project-related
34 economic activity, including the specific impact of the project on
35 the employment of California residents.

36 (2) All estimates and projections made in a report under this
37 paragraph shall be made based on, and consistent with, one or
38 more of the following:

39 (A) Official statements or annual disclosure documents or other
40 similar financial disclosure documents issued by the public port

1 to its creditors, underwriters, or other bondholders or lienholders
2 in the normal course of business.

3 (B) Economic impact studies, reports, or evaluations that were
4 completed by a third party, based on a published, or otherwise
5 peer-reviewed, economic impact methodology and made available
6 to the public in a previous meeting of the public port’s governing
7 body.

8 (3) This section shall not be construed to require any public port
9 to prepare a report or adopt a resolution except at its own
10 discretion.

11 (g) (1) A qualified taxpayer may not claim the credit authorized
12 under this section until the Legislature enacts a statute specifying
13 the total amount of the credit allowed to be claimed by the qualified
14 taxpayer for the preceding taxable year.

15 (2) If the aggregate amount of credits certified by the Franchise
16 Tax Board for qualified projects under this section for the taxable
17 year is greater than the amount authorized for the credit by the
18 Legislature pursuant to paragraph (1), then the Franchise Tax Board
19 shall allocate the total amount of the credit on a prorated basis,
20 based on each qualified project’s percentage of the total tax credits
21 certified by the Franchise Tax Board as of July 1 of each year.

22 (3) The Franchise Tax Board shall notify all qualified taxpayers
23 of the amount of the credit authorized by the Legislature and the
24 pro rata share of that authorization. The Franchise Tax Board shall
25 make all notifications pursuant to this paragraph within 90 days
26 of any tax credit authorization legislation being signed by the
27 Governor.

28 (h) In the case where the credit allowed by this section exceeds
29 the “tax,” the excess may be carried over to reduce the “tax” in
30 the following year, and the 10 succeeding years if necessary, until
31 the credit is exhausted.

32 (i) If a qualifying taxpayer that claims a credit under this section
33 sells, transfers, or otherwise disposes of, either directly or
34 indirectly, a qualifying project within 10 years of the taxable year
35 during which the taxpayer first claimed the credit, there shall be
36 added to the “tax” of the qualifying taxpayer during the taxable
37 year of sale, transfer, or disposition an amount equal to the total
38 credit claimed multiplied by a fraction, the numerator of which is
39 the remaining term of 10 years and the denominator of which is
40 10, unless an equivalent balance of the credit is expressly assigned

1 to the new owner of the qualified project in question and the
2 assignment is approved by the Franchise Tax Board.

3 (j) The Franchise Tax Board may audit any certified qualifying
4 project or inspect the physical site of the qualifying project in order
5 to verify claims and costs presented to the Franchise Tax Board
6 by a qualifying taxpayer in an application.

7 (k) (1) If the Franchise Tax Board finds that funds for which a
8 qualifying taxpayer received credits according to this section are
9 not invested in and expended with respect to capital costs of a
10 qualifying investment, the qualifying taxpayer's tax for that taxable
11 year shall be increased by an amount necessary for the recapture
12 of credit provided by this section.

13 (2) Interest that may be assessed and collected on recovered
14 credits computed from the original due date of the return on which
15 the credit was taken.

16 (l) By January 1, 2020, the Legislative Analyst shall prepare an
17 evaluation of the effectiveness of the infrastructure investment tax
18 credit, which shall include the overall impact of the tax credits,
19 the amount of the tax credits issued, the number of new jobs
20 created, the amount of California payroll created, the economic
21 impact of the tax credits on the port and maritime industry located
22 in this state and regionally, the amount of new infrastructure that
23 has been developed in the state, and any other factors that describe
24 the impact of the program.

25 (m) This credit shall be in lieu of the credit allowed under
26 Section 23671.

27 (n) This section shall remain in effect only until December 1,
28 2022, and as of that date is repealed, unless a later enacted statute,
29 that is enacted before December 1, 2022, deletes or extends that
30 date.

31 SEC. 6. Section 23671 is added to the Revenue and Taxation
32 Code, to read:

33 23671. (a) Subject to the enactment of a statute as described
34 in subdivision (d), for each taxable year beginning on or after
35 January 1, 2011, and before January 1, 2021, there shall be allowed
36 to a qualified taxpayer as an import-export cargo tax credit against
37 the "tax," as defined by Section 23036, of an amount equal to no
38 more than the product of five dollars (\$5) and the qualified
39 taxpayer's number of tons of additional qualified cargo for the
40 taxable year.

1 (b) For purposes of this section the following shall apply:

2 (1) “Additional cargo” means the amount of qualified cargo
3 moved in the current taxable year over and above the cargo moved
4 in the preceding taxable year.

5 (2) “Breakbulk or bulk cargo” means any nonliquid
6 commodities, automobiles, trucks, lumber, agricultural products
7 and commodities, machinery, equipment, materials, products, or
8 other cargo transported as palletized or unpalletized bagged,
9 packaged, wrapped, drummed, baled, or crated goods, or that are
10 loaded in bulk directly into the hold of a ship that are shipped via
11 oceangoing vessel. Breakbulk or bulk cargo shall not include any
12 liquid commodities that are handled in bulk or any containerized
13 cargo.

14 (3) “Containerized cargo” shall mean any machinery, equipment,
15 materials, products, commodities, or any other cargo transported
16 by containers, which are rigid, sealable, and reusable metal boxes
17 built to a recognized international standard, in which goods are
18 shipped via oceangoing vessel.

19 (4) “Export” means any breakbulk or bulk cargo or containerized
20 cargo which is shipped in interstate or foreign commerce from the
21 State of California to a foreign country or a domestic
22 noncontiguous state or territory via oceangoing vessel.

23 (5) “Import” means any breakbulk or bulk cargo or containerized
24 cargo that is shipped in interstate or foreign commerce to the State
25 of California from a foreign country or from a domestic
26 noncontiguous state or territory via oceangoing vessel.

27 (6) “Oceangoing vessel” means a vessel, ship, or barge engaged,
28 for compensation, in transporting breakbulk or bulk cargo or
29 containerized cargo in interstate or foreign commerce.

30 (7) “Public port” means any port or harbor operating under grant
31 from the state, subject to the restrictions of the tidelands trust, or
32 any other public port or harbor district established by a political
33 subdivision of the state for the purposes of conducting interstate
34 or foreign trade.

35 (8) “Qualified business entity” means a commercial entity, all
36 or a portion of whose activities involve the import or export of
37 breakbulk or bulk cargo or containerized cargo to or from cargo
38 facilities located within California. For purposes of this section, a
39 marine terminal, intermodal rail terminal, or truck terminal which
40 handles cargo, but which is not a usual and regular final destination

1 or origination point of those cargoes, shall not be considered a
2 qualified business entity.

3 (9) “Qualified cargo” means any breakbulk or bulk cargo or
4 containerized cargo that is imported or exported to or from a
5 manufacturing, fabrication, assembly, distribution, processing, or
6 warehouse facility located in California and that is moved by way
7 of an oceangoing vessel berthed at a public port facility in
8 California during the taxable year and certified by the Franchise
9 Tax Board as meeting the terms of this section. For purposes of
10 this section all agricultural products and commodities shipped
11 from or to California by way of an oceangoing vessel berthed at
12 a public port facility in California shall be considered qualified
13 cargo.

14 (10) “Qualified taxpayer” means a qualified business entity that
15 is certified by the Franchise Tax Board to receive an Import-Export
16 Cargo Tax Credit pursuant to this section.

17 (11) “Ton” means a net ton of 2,000 pounds and, in the case of
18 containerized cargo, shall exclude the weight of the container.

19 (c) (1) A qualified business entity seeking certification of a
20 qualified cargo shall submit an application to the Franchise Tax
21 Board that includes the following information:

22 (A) A verified statement of additional cargo volume data for
23 the taxable year for which the credit is being sought and the cargo
24 volumes for the taxable year prior to the taxable year of the
25 application, specifically including the total annual volume and
26 tons of breakbulk or containerized cargo imported and exported
27 from or to, manufacturing, fabrication, assembly, distribution,
28 processing, or warehousing facilities located in California.

29 (B) Any other information required by the Franchise Tax Board.

30 (2) If the application is incomplete, additional information may
31 be requested prior to further action by the Franchise Tax Board.

32 (3) The Franchise Tax Board may develop a standard form,
33 instructions, or form and instructions to facilitate the submission
34 of applications pursuant to this paragraph.

35 (4) The applicant shall remit a fee paid to the Franchise Tax
36 Board, which shall cover the costs of the Franchise Tax Board’s
37 review and evaluation of the project application and certification.

38 (d) The Franchise Tax Board shall issue a certification to a
39 qualifying business entity as a qualified taxpayer upon making a
40 finding that the terms of this section have been met, subject to the

1 Legislature enacting a statute specifying the total amount of the
2 credit allowable to all qualified taxpayers for taxable years
3 beginning before January 1, 2021.

4 (e) The Franchise Tax Board shall not certify qualified cargo
5 unless it receives a resolution adopted pursuant to subdivision (f)
6 from a public port which determines that there will be sufficient
7 revenue received by the state as a result of the economic impacts
8 from the additional qualified cargo import or export activity,
9 whether because of the grant of the tax credit or otherwise, to offset
10 the cost to the state of providing the tax credit.

11 (f) (1) If a public port adopts a resolution in order to estimate
12 the economic impacts resulting from the additional qualifying
13 cargo identified pursuant to subdivision (e), the findings adopted
14 shall be based on estimates in a report that includes, but is not
15 limited to, the following:

16 (A) The total state tax revenues generated by the additional
17 cargo and cargo-related economic activity.

18 (B) The total local tax and user fee revenues generated by the
19 cargo and cargo-related economic activity.

20 (C) The total jobs created by the cargo and cargo-related
21 economic activity, including the impact of the cargo on the
22 employment of California residents.

23 (2) All estimates and projections made in a report under this
24 paragraph shall be made based on, and consistent with, one or
25 more of the following:

26 (A) Official statements or annual disclosure documents or other
27 similar financial disclosure documents issued by the public port
28 to its creditors, underwriters, or other bondholders or lienholders
29 in the normal course of business.

30 (B) Economic impact studies, reports, or evaluations that were
31 completed by a third party, based on a published, or otherwise
32 peer-reviewed, economic impact methodology and made available
33 to the public in a previous meeting of the public port’s governing
34 body.

35 (3) This section shall not be construed to require any public port
36 to prepare a report or adopt a resolution except at its own
37 discretion.

38 (g) (1) The amount available to be applied to any additional
39 qualified cargo shall never exceed five dollars (\$5) per ton of
40 additional cargo, but may be less than five dollars (\$5) per ton if

1 the cumulative amount of credits certified by the Franchise Tax
2 Board under this section in a fiscal year is greater than the amount
3 authorized for the credit by the Legislature pursuant to subdivision
4 (d), then the Franchise Tax Board shall allocate the total amount
5 of the credit on a prorated basis equal to the qualifying business
6 entity's share of the total amount of additional qualified cargo
7 certified by the Franchise Tax Board as of July 1 of each year.

8 (2) The Franchise Tax Board shall notify a qualifying business
9 entity with additional qualified cargo applications submitted prior
10 to July 1 of each year of the amount of the credit authorized by
11 the Legislature and the pro rata share for each qualified taxpayer
12 of that authorization during the fiscal year.

13 (h) In the case where the credit allowed by this section exceeds
14 the "tax," the excess may be carried over to reduce the "tax" in
15 the following year, and the 10 succeeding years if necessary, until
16 the credit is exhausted.

17 (i) The Franchise Tax Board may promulgate rules and
18 regulations as necessary to implement the provisions of this section.

19 (j) The Franchise Tax Board may audit any qualified business
20 entity in order to verify claims presented to the Franchise Tax
21 Board in an application submitted pursuant to this section.

22 (k) (1) If the Franchise Tax Board finds that any claims
23 regarding additional cargo for which a qualified business entity
24 received credits according to this section were inaccurate, the
25 qualified business entity's tax for that taxable period shall be
26 increased by an amount necessary for the recapture of credit
27 provided by this section.

28 (2) Interest that may be assessed and collected on recovered
29 credits computed from the original due date of the return on which
30 the credit was taken.

31 (3) The provisions of this section shall be in addition to and
32 shall not limit the authority of the Franchise Tax Board to assess
33 or to collect under any other provision of law.

34 (l) By January 1, 2020, the Legislative Analyst shall prepare an
35 evaluation of the effectiveness of the import-export cargo tax credit
36 which shall include the overall impact of the tax credits, the amount
37 of the tax credits issued, the number of new jobs created, the
38 amount of California payroll created, the economic impact of the
39 tax credits on the port and maritime industry located in this state
40 and regionally, the amount of new infrastructure that has been

1 developed in the state, and any other factors that describe the
2 impact of the program.

3 (m) This credit shall be in lieu of the credit allowed under
4 Section 23670.

5 (n) This section shall remain in effect only until December 1,
6 2022, and as of that date is repealed, unless a later enacted statute,
7 that is enacted before December 1, 2022, deletes or extends that
8 date.

O