

AMENDED IN SENATE APRIL 12, 2011

SENATE BILL

No. 830

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~~ 17057.6 and 23670 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 830, as amended, 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~~ *the* total amount of credit, authorize ~~2 credits~~ *a credit* 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

1 of the total capital costs of each qualifying project constructed in
2 this state, and only up to 5 percent each year subject to the terms,
3 conditions, and qualifications established by this section.

4 (1) A qualified taxpayer may claim up to, but not to exceed, 5
5 percent of the total capital costs for each year beginning on or after
6 2011, and before 2021.

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

9 (b) For purposes of this section:

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

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

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

31 (i) The costs of acquiring, constructing, installing, equipping,
32 and financing a qualifying project, including all obligations
33 incurred for labor and to contractors, subcontractors, builders, and
34 materialmen.

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

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

1 (iv) The costs of architectural and engineering services,
2 including test borings, surveys, estimates, plans, specifications,
3 preliminary investigations, environmental mitigation, and
4 supervision of construction, as well as for the performance of all
5 the duties required by or consequent upon the acquisition,
6 construction, and installation of a qualifying project.

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

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

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

22 (II) The replacement, repower, or retrofit of diesel locomotive
23 engines.

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

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

28 (V) Mobile or portable shoreside distributed power generation
29 projects that eliminate the need of oceangoing vessels to use the
30 electricity grid.

31 (VI) The replacement, repower, or retrofit of cargo handling
32 equipment.

33 (VII) Electrification infrastructure to reduce engine idling and
34 use of internal combustion auxiliary power systems by trucks and
35 cargo handling equipment.

36 (VIII) The installation of solar power systems.

37 (IX) The installation of alternative fueling systems or acquisition
38 of alternative fueling equipment.

39 (vii) All other costs of a nature comparable to those described,
40 including, but not limited to, all project costs required to be

1 capitalized for federal income tax purposes pursuant to the
2 provisions of Section 263(a) of Title 26 of the United States Code.

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

7 (B) Capital costs shall not include ~~property~~ *the following*:

8 (i) *Property* owned or leased by the qualifying taxpayer or a
9 related entity before the commencement of the acquisition,
10 construction, installation, or equipping of the qualified project,
11 unless the property was physically located outside the state for a
12 period of at least one year prior to the date on which the qualifying
13 project was placed in service.

14 (ii) *Expenses, costs, or profits of any kind incurred by a*
15 *qualifying taxpayer incurred after the date in which the project is*
16 *placed in service.*

17 ~~(C) Capital costs shall not include those project~~

18 (iii) *Projects* costs that were expended prior to January 1, 2011.

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

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

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

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

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

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

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

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

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

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

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

27 (A) A detailed description of the qualifying project, including
28 *a statement of project completion, including the date on which the*
29 *project was placed in service, and* a summary of total actual capital
30 costs prepared by an independent certified public accountant.

31 (B) A statement that the proposed project meets the requirements
32 of this section, as well as any subsequent requirements adopted
33 by the Franchise Tax Board to facilitate the administration of this
34 section, to be classified as a qualifying project, and accompanied
35 by any relevant evidence or supporting documents necessary to
36 the statement.

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

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

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

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

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

9 (4) The applicant shall remit a fee paid to the Franchise Tax
10 Board that shall cover the costs of the Franchise Tax Board's
11 review and evaluation of the project application and certification.

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

15 (2) The certification shall include:

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

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

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

23 (D) A statement advising the qualifying taxpayer that no credits
24 may be claimed by the taxpayer for any ~~tax~~ *taxable* year for any
25 qualified project until the taxpayer is in receipt of a notification
26 issued by the Franchise Tax Board pursuant to paragraph (3) of
27 subdivision (g) advising the taxpayer of the amount of the credit
28 authorized by the Legislature and the taxpayer's pro rata share of
29 that authorization for the current ~~tax~~ *taxable* year.

30 (3) The Franchise Tax Board shall submit notice of its
31 certification of a project as a qualifying project to the Department
32 of Finance, the Joint Legislative Budget Committee, and the
33 Legislative Analyst.

34 (e) The Franchise Tax Board shall not certify a project unless
35 it receives a resolution adopted pursuant to subdivision (f) from
36 the public port where the project is located which determines that
37 there will be sufficient revenue received by the state as a result of
38 the economic impacts resulting from the completion of the project
39 and from increased port or port and harbor activity resulting from
40 the completion of the project, whether because of the grant of the

1 tax credit or otherwise, to offset the cost to the state of providing
2 the tax credit.

3 (f) (1) If a public port adopts a resolution in order to estimate
4 the economic impacts resulting from the completion of a qualifying
5 project pursuant to subdivision (e), the findings adopted shall be
6 based on estimates in a report *prepared pursuant to paragraph (2)*
7 *of this subdivision* that includes, but is not limited to, the following:

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

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

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

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

18 ~~(A) Official statements or annual disclosure documents or other~~
19 ~~similar financial disclosure documents issued by the public port~~
20 ~~to its creditors, underwriters, or other bondholders or lienholders~~
21 ~~in the normal course of business.~~

22 ~~(B) Economic impact studies, reports, or evaluations that were~~
23 ~~completed by a third party, based on a published, or otherwise~~
24 ~~peer-reviewed, economic impact methodology and made available~~
25 ~~to the public in a previous meeting of the public port's governing~~
26 ~~body.~~

27 (2) (A) *Prior to making any estimates or projections in a report*
28 *under this paragraph upon which a port resolution may be based,*
29 *a port may adopt guidelines for the preparation of a project's*
30 *economic impact study. These guidelines shall be completed by a*
31 *third party economist, based on a published economic impact*
32 *methodology. The guidelines and published economic impact*
33 *methodology shall be incorporated into the findings of a peer*
34 *review conducted pursuant to subparagraph (B), and shall be*
35 *adopted in a public meeting of the governing body of the port with*
36 *a finding that the guidelines and methodology were developed in*
37 *a manner consistent with this section.*

38 (B) *A peer review of the economic impact study and the*
39 *economic methodology to be adopted under this section shall be*
40 *peer reviewed and evaluated by an independent party that is*

1 *selected through a competitive bid process and without any*
2 *financial association with the third-party that completed the*
3 *economic impact study and economic methodology. The peer*
4 *review shall evaluate the adequacy of the guidelines and make*
5 *specific recommendations regarding the methodologies, which*
6 *should be incorporated into the peer review by the port upon*
7 *adoption.*

8 (C) *Official statements or annual disclosure documents or other*
9 *similar financial disclosure documents issued by the public port*
10 *to its creditors, underwriters, or other bondholders or lienholders*
11 *in the normal course of its business may be relied on to*
12 *conclusively substantiate any facts regarding operations at a public*
13 *port.*

14 (D) *This paragraph shall not prohibit a public port from relying*
15 *on and utilizing guidelines for study preparation developed by a*
16 *third-party for another public port as long as the final guidelines*
17 *are adopted pursuant to subparagraph (A).*

18 (3) *If a port chooses to adopt a resolution pursuant to paragraph*
19 *(1) of this subdivision, it shall make findings regarding the*
20 *estimated improvements to the freight transportation system of the*
21 *state which may result from the qualifying project with respect to*
22 *the following factors:*

23 (A) *“Velocity,” which means the speed by which large cargo*
24 *would travel from the port through the distribution system.*

25 (B) *“Throughput,” which means the volume of cargo that would*
26 *move from the port through the distribution system.*

27 (C) *“Reliability,” which means a reasonably consistent and*
28 *predictable amount of time for cargo to travel from one point to*
29 *another on a given day or at a given time in California.*

30 (D) *“Congestion reduction,” which means the reduction in*
31 *recurrent daily hours of delay to be achieved.*

32 ~~(3)~~

33 (4) *This section shall not be construed to require any public port*
34 *to prepare a report or adopt a resolution except at its own*
35 *discretion.*

36 (g) (1) *A qualified taxpayer may not claim the credit authorized*
37 *under this section until the Legislature enacts a statute specifying*
38 *the total amount of the credit allowed to be claimed by the qualified*
39 *taxpayer for the preceding taxable year.*

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

8 (3) The Franchise Tax Board shall notify all qualified taxpayers
9 of the amount of the credit authorized by the Legislature and the
10 pro rata share of that authorization. The Franchise Tax Board shall
11 make all notifications pursuant to this paragraph within 90 days
12 of any tax credit authorization legislation being signed by the
13 Governor.

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

18 (i) If a qualifying taxpayer that claims a credit under this section
19 sells, transfers, or otherwise disposes of, either directly or
20 indirectly, a qualifying project within 10 years of the taxable year
21 during which the taxpayer first claimed the credit, there shall be
22 added to the "net tax" of the qualifying taxpayer during the taxable
23 year of sale, transfer, or disposition an amount equal to the total
24 credit claimed multiplied by a fraction, the numerator of which is
25 the remaining term of 10 years and the denominator of which is
26 10, unless an equivalent balance of the credit is expressly assigned
27 to the new owner of the qualified project in question and the
28 assignment is approved by the Franchise Tax Board.

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

33 (k) (1) If the Franchise Tax Board finds the funds for which a
34 qualifying taxpayer received credits according to this section are
35 not invested in and expended with respect to capital costs of a
36 qualifying investment, the qualifying taxpayer's tax for that taxable
37 year shall be increased by an amount necessary for the recapture
38 of credit 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 (l) By January 1, 2020, the Legislative Analyst shall prepare an
5 evaluation of the effectiveness of the infrastructure investment tax
6 credit, which shall include the overall impact of the tax credits,
7 the amount of the tax credits issued, the number of new jobs
8 created, the amount of California payroll created, the economic
9 impact of the tax credits on the port and maritime industry located
10 in this state and regionally, the amount of new infrastructure that
11 has been developed in the state, and any other factors that describe
12 the impact of the program.

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

15 (n) This section shall remain in effect only until December 1,
16 2022, and as of that date is repealed, unless a later enacted statute,
17 that is enacted before December 1, 2022, deletes or extends that
18 date.

19 ~~SEC. 4. Section 17057.7 is added to the Revenue and Taxation~~
20 ~~Code, to read:~~

21 ~~17057.7. (a) Subject to the enactment of a statute as described~~
22 ~~in subdivision (d), for each taxable year beginning on or after~~
23 ~~January 1, 2011, and before January 1, 2021, there shall be allowed~~
24 ~~to a qualified taxpayer as an import-export cargo tax credit against~~
25 ~~the “net tax,” as defined by Section 17039, of an amount equal to~~
26 ~~no more than the product of five dollars (\$5) and the qualified~~
27 ~~taxpayer’s number of tons of additional qualified cargo for the~~
28 ~~taxable year.~~

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

30 (1) ~~“Additional cargo” means the amount of qualified cargo~~
31 ~~moved in the current taxable year over and above the cargo moved~~
32 ~~in the preceding taxable year.~~

33 (2) ~~“Breakbulk or bulk cargo” means any nonliquid~~
34 ~~commodities, automobiles, trucks, lumber, agricultural products~~
35 ~~and commodities, machinery, equipment, materials, products, or~~
36 ~~other cargo transported as palletized or unpalletized bagged,~~
37 ~~packaged, wrapped, drummed, baled, or crated goods, or that are~~
38 ~~loaded in bulk directly into the hold of a ship that are shipped via~~
39 ~~ocean-going vessel. Breakbulk or bulk cargo shall not include any~~

1 liquid commodities that are handled in bulk or any containerized
2 cargo.

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

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

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

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

19 (7) ~~“Public port” means any port or harbor operating under grant~~
20 ~~from the state, subject to the restrictions of the tidelands trust, or~~
21 ~~any other public port or harbor district established by a political~~
22 ~~subdivision of the state for the purposes of conducting interstate~~
23 ~~or foreign trade.~~

24 (8) ~~“Qualified business entity” means a commercial entity, all~~
25 ~~or a portion of whose activities involve the import or export of~~
26 ~~breakbulk or bulk cargo or containerized cargo to or from cargo~~
27 ~~facilities located within California. For purposes of this section, a~~
28 ~~marine terminal, intermodal rail terminal, or truck terminal which~~
29 ~~handles cargo, but which is not a usual and regular final destination~~
30 ~~or origination point of those cargoes, shall not be considered a~~
31 ~~qualified business entity.~~

32 (9) ~~“Qualified cargo” means any breakbulk or bulk cargo or~~
33 ~~containerized cargo that is imported or exported to or from a~~
34 ~~manufacturing, fabrication, assembly, distribution, processing, or~~
35 ~~warehouse facility located in California and that is moved by way~~
36 ~~of an oceangoing vessel berthed at a public port facility in~~
37 ~~California during the taxable year and certified by the Franchise~~
38 ~~Tax Board as meeting the terms of this section. For purposes of~~
39 ~~this section all agricultural products and commodities shipped~~
40 ~~from or to California by way of an oceangoing vessel berthed at~~

1 a public port facility in California shall be considered qualified
2 cargo.

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

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

8 (e) (1) A qualified business entity seeking certification of a
9 qualified cargo shall submit an application to the Franchise Tax
10 Board that includes the following information:

11 (A) A verified statement of additional cargo volume data for
12 the taxable year for which the credit is being sought and the cargo
13 volumes for the taxable year prior to the taxable year of the
14 application, specifically including the total annual volume and
15 tons of breakbulk or containerized cargo imported and exported
16 from or to, manufacturing, fabrication, assembly, distribution,
17 processing, or warehousing facilities located in California.

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

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

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

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

27 (d) The Franchise Tax Board shall issue a certification to a
28 qualifying business entity as a qualified taxpayer upon making a
29 finding that the terms of this section have been met, subject to the
30 Legislature enacting a statute specifying the total amount of the
31 credit allowable to all qualified taxpayers for taxable years
32 beginning before January 1, 2021.

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

1 (f) (1) If a public port adopts a resolution in order to estimate
2 the economic impacts resulting from the additional qualifying
3 cargo identified pursuant to subdivision (c), the findings adopted
4 shall be based on estimates in a report that includes, but is not
5 limited to, the following:

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

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

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

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

16 (A) Official statements or annual disclosure documents or other
17 similar financial disclosure documents issued by the public port
18 to its creditors, underwriters, or other bondholders or lienholders
19 in the normal course of business.

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

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

28 (g) (1) The amount available to be applied to any additional
29 qualified cargo shall never exceed five dollars (\$5) per ton of
30 additional cargo, but may be less than five dollars (\$5) per ton if
31 the cumulative amount of credits certified by the Franchise Tax
32 Board under this section in a fiscal year is greater than the amount
33 authorized for the credit by the Legislature pursuant to subdivision
34 (d), then the Franchise Tax Board shall allocate the total amount
35 of the credit on a prorated basis equal to the qualifying business
36 entity's share of the total amount of additional qualified cargo
37 certified by the Franchise Tax Board as of July 1 of each year.

38 (2) The Franchise Tax Board shall notify a qualifying business
39 entity with additional qualified cargo applications submitted prior
40 to July 1 of each year of the amount of the credit authorized by

1 the Legislature and the pro rata share for each qualified taxpayer
2 of that authorization during the fiscal year.

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

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

9 (j) ~~The Franchise Tax Board may audit any qualified business
10 entity in order to verify claims presented to the Franchise Tax
11 Board in an application submitted pursuant to this section.~~

12 (k) ~~(1) If the Franchise Tax Board finds that any claims
13 regarding additional cargo for which a qualified business entity
14 received credits according to this section were inaccurate, the
15 qualified business entity’s tax for that taxable period shall be
16 increased by an amount necessary for the recapture of credit
17 provided by this section.~~

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

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

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

33 (m) ~~This credit shall be in lieu of the credit allowed under
34 Section 17057.6.~~

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

1 ~~SEC. 5.~~

2 ~~SEC. 4.~~ Section 23670 is added to the Revenue and Taxation
3 Code, to read:

4 23670. (a) Subject to subdivision (g), for each taxable year
5 beginning on or after January 1, 2011, and before January 1, 2021,
6 there shall be allowed to a qualified taxpayer as a trade
7 infrastructure investment tax credit against the “tax,” as defined
8 by Section 23036, an amount of up to, but not to exceed, 5 percent
9 of the total capital costs of each qualifying project constructed in
10 this state, subject to the terms, conditions, and qualifications
11 established by this section.

12 (1) A qualified taxpayer may claim up to, but not to exceed, 5
13 percent of the total capital costs for each year beginning on or after
14 2011, and before 2021.

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

17 (b) For purposes of this section:

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

27 (2) “Capital costs” means all costs and expenses incurred *prior*
28 *to the date on which the qualifying project was placed in service*
29 by one or more qualified taxpayers in connection with the
30 acquisition, construction, installation, and equipping of a qualifying
31 project, including any environmental mitigation undertaken
32 specifically to reduce the impacts of a qualifying project, during
33 the period commencing with the date on which the acquisition,
34 construction, ~~installation, and equipping commences and ending~~
35 ~~on the date on which the qualifying project is placed in service.~~
36 *installation, or equipping began.*

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

39 (i) The costs of acquiring, constructing, installing, equipping,
40 and financing a qualifying project, including all obligations

1 incurred for labor and to contractors, subcontractors, builders, and
2 materialmen.

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

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

8 (iv) The costs of architectural and engineering services,
9 including test borings, surveys, estimates, plans, specifications,
10 preliminary investigations, environmental mitigation, and
11 supervision of construction, as well as for the performance of all
12 the duties required by or consequent upon the acquisition,
13 construction, and installation of a qualifying project.

14 (v) The costs associated with installation of fixtures and
15 equipment, surveys, including archaeological and environmental
16 surveys, site tests and inspections, subsurface site work, excavation,
17 removal of structures, roadways, and other surface obstructions,
18 filling, grading, paving, and provisions for drainage, stormwater
19 retention, installation of utilities, including water, sewerage
20 treatment, gas, electricity, communications, and similar facilities,
21 and offsite construction of utility extensions to the boundaries of
22 the property.

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

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

29 (II) The replacement, repower, or retrofit of diesel locomotive
30 engines.

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

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

35 (V) Mobile or portable shoreside distributed power generation
36 projects that eliminate the need of oceangoing vessels to use the
37 electricity grid.

38 (VI) The replacement, repower, or retrofit of cargo handling
39 equipment.

1 (VII) Electrification infrastructure to reduce engine idling and
 2 use of internal combustion auxiliary power systems by trucks and
 3 cargo handling equipment.

4 (VIII) The installation of solar power systems.

5 (IX) The installation of alternative fueling systems or acquisition
 6 of alternative fueling equipment.

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

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

15 (B) Capital costs shall not include ~~property~~ *the following*:

16 (i) *Property* owned or leased by the qualifying taxpayer or a
 17 related entity before the commencement of the acquisition,
 18 construction, installation, or equipping of the qualified project,
 19 unless the property was physically located outside the state for a
 20 period of at least one year prior to the date on which the qualifying
 21 project was placed in service.

22 (ii) *Expenses, costs, or profits of any kind incurred by a*
 23 *qualifying taxpayer incurred after the date in which the project is*
 24 *placed in service.*

25 ~~(C) Capital costs shall not include those project~~

26 (iii) *Projects* costs that were expended prior to January 1, 2011.

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

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

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

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

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

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

15 (9) “Public port” means any port or harbor operating under grant
16 from the state, subject to the restrictions of the tidelands trust, or
17 any other public port or harbor district established by a political
18 subdivision of the state for the purposes of conducting interstate
19 or foreign trade.

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

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

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

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

36 (A) A detailed description of the qualifying project, including
37 *a statement of project completion, including the date on which the*
38 *project was placed in service, and a summary of total actual capital*
39 *costs prepared by an independent certified public accountant.*

1 (B) A statement that the proposed project meets the requirements
2 of this section, as well as any subsequent requirements adopted
3 by the Franchise Tax Board to facilitate the administration of this
4 section, to be classified as a qualifying project, and accompanied
5 by any relevant evidence or supporting documents necessary to
6 the statement.

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

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

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

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

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

18 (4) The applicant shall remit a fee paid to the Franchise Tax
19 Board that shall cover the costs of the Franchise Tax Board's
20 review and evaluation of the project application and certification.

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

24 (2) The certification shall include:

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

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

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

32 (D) A statement advising the qualifying taxpayer that no credits
33 may be claimed by the taxpayer for any ~~tax~~ *taxable* year for any
34 qualified project until the taxpayer is in receipt of a notification
35 issued by the Franchise Tax Board pursuant to paragraph (3) of
36 subdivision (g) advising the taxpayer of the amount of the credit
37 authorized by the Legislature and the taxpayer's pro rata share of
38 that authorization for the current ~~tax~~ *taxable* year.

39 (3) The Franchise Tax Board shall submit notice of its
40 certification of a project as a qualifying project to the Department

1 of Finance, the Joint Legislative Budget Committee, and the
2 Legislative Analyst.

3 (e) The Franchise Tax Board shall not certify a project unless
4 it receives a resolution adopted pursuant to subdivision (f) from
5 the public port where the project is located which determines that
6 there will be sufficient revenue received by the state as a result of
7 the economic impacts resulting from the completion of the project
8 and from increased port or port and harbor activity resulting from
9 the completion of the project, whether because of the grant of the
10 tax credit or otherwise, to offset the cost to the state of providing
11 the tax credit.

12 (f) (1) If a public port adopts a resolution in order to estimate
13 the economic impacts resulting from the completion of a qualifying
14 project pursuant to subdivision (e), the findings adopted shall be
15 based on estimates in a report *prepared pursuant to paragraph (2)*
16 that includes, but is not limited to, the following:

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

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

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

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

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

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

36 (2) (A) *Prior to making any estimates or projections in a report*
37 *under this paragraph upon which a port resolution may be based,*
38 *a port may adopt guidelines for the preparation of a project's*
39 *economic impact study. These guidelines shall be completed by a*
40 *third party economist, based on a published economic impact*

1 methodology. The guidelines and published economic impact
2 methodology shall be incorporated into the findings of a peer
3 review conducted pursuant to subparagraph (B), and shall be
4 adopted in a public meeting of the governing body of the port with
5 a finding that the guidelines and methodology were developed in
6 a manner consistent with this section.

7 (B) A peer review of the economic impact study and the
8 economic methodology to be adopted under this section shall be
9 peer reviewed and evaluated by an independent party that is
10 selected through a competitive bid process and without any
11 financial association with the third-party that completed the
12 economic impact study and economic methodology. The peer
13 review shall evaluate the adequacy of the guidelines and make
14 specific recommendations regarding the methodologies, which
15 should be incorporated into the peer review by the port upon
16 adoption.

17 (C) Official statements or annual disclosure documents or other
18 similar financial disclosure documents issued by the public port
19 to its creditors, underwriters, or other bondholders or lienholders
20 in the normal course of its business may be relied on to
21 conclusively substantiate any facts regarding operations at a public
22 port.

23 (D) This paragraph shall not prohibit a public port from relying
24 on and utilizing guidelines for study preparation developed by a
25 third-party for another public port as long as the final guidelines
26 are adopted pursuant to subparagraph (A).

27 (3) If a port chooses to adopt a resolution pursuant to paragraph
28 (1) of this subdivision, it shall make findings regarding the
29 estimated improvements to the freight transportation system of the
30 state which may result from the qualifying project with respect to
31 the following factors:

32 (A) "Velocity," which means the speed by which large cargo
33 would travel from the port through the distribution system.

34 (B) "Throughput," which means the volume of cargo that would
35 move from the port through the distribution system.

36 (C) "Reliability," which means a reasonably consistent and
37 predictable amount of time for cargo to travel from one point to
38 another on a given day or at a given time in California.

39 (D) "Congestion reduction," which means the reduction in
40 recurrent daily hours of delay to be achieved.

1 ~~(3)~~

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

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

9 (2) If the aggregate amount of credits certified by the Franchise
10 Tax Board for qualified projects under this section for the taxable
11 year is greater than the amount authorized for the credit by the
12 Legislature pursuant to paragraph (1), then the Franchise Tax Board
13 shall allocate the total amount of the credit on a prorated basis,
14 based on each qualified project's percentage of the total tax credits
15 certified by the Franchise Tax Board as of July 1 of each year.

16 (3) The Franchise Tax Board shall notify all qualified taxpayers
17 of the amount of the credit authorized by the Legislature and the
18 pro rata share of that authorization. The Franchise Tax Board shall
19 make all notifications pursuant to this paragraph within 90 days
20 of any tax credit authorization legislation being signed by the
21 Governor.

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

26 (i) If a qualifying taxpayer that claims a credit under this section
27 sells, transfers, or otherwise disposes of, either directly or
28 indirectly, a qualifying project within 10 years of the taxable year
29 during which the taxpayer first claimed the credit, there shall be
30 added to the "tax" of the qualifying taxpayer during the taxable
31 year of sale, transfer, or disposition an amount equal to the total
32 credit claimed multiplied by a fraction, the numerator of which is
33 the remaining term of 10 years and the denominator of which is
34 10, unless an equivalent balance of the credit is expressly assigned
35 to the new owner of the qualified project in question and the
36 assignment is approved by the Franchise Tax Board.

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

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

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

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

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

21 (n) This section shall remain in effect only until December 1,
22 2022, and as of that date is repealed, unless a later enacted statute,
23 that is enacted before December 1, 2022, deletes or extends that
24 date.

25 ~~SEC. 6. Section 23671 is added to the Revenue and Taxation~~
26 ~~Code, to read:~~

27 ~~23671. (a) Subject to the enactment of a statute as described~~
28 ~~in subdivision (d), for each taxable year beginning on or after~~
29 ~~January 1, 2011, and before January 1, 2021, there shall be allowed~~
30 ~~to a qualified taxpayer as an import-export cargo tax credit against~~
31 ~~the "tax," as defined by Section 23036, of an amount equal to no~~
32 ~~more than the product of five dollars (\$5) and the qualified~~
33 ~~taxpayer's number of tons of additional qualified cargo for the~~
34 ~~taxable year.~~

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

36 (1) ~~"Additional cargo" means the amount of qualified cargo~~
37 ~~moved in the current taxable year over and above the cargo moved~~
38 ~~in the preceding taxable year.~~

39 (2) ~~"Breakbulk or bulk cargo" means any nonliquid~~
40 ~~commodities, automobiles, trucks, lumber, agricultural products~~

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

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

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

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

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

24 (7) “Public port” means any port or harbor operating under grant
25 from the state, subject to the restrictions of the tidelands trust, or
26 any other public port or harbor district established by a political
27 subdivision of the state for the purposes of conducting interstate
28 or foreign trade.

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

37 (9) “Qualified cargo” means any breakbulk or bulk cargo or
38 containerized cargo that is imported or exported to or from a
39 manufacturing, fabrication, assembly, distribution, processing, or
40 warehouse facility located in California and that is moved by way

1 of an oceangoing vessel berthed at a public port facility in
2 California during the taxable year and certified by the Franchise
3 Tax Board as meeting the terms of this section. For purposes of
4 this section all agricultural products and commodities shipped
5 from or to California by way of an oceangoing vessel berthed at
6 a public port facility in California shall be considered qualified
7 cargo.

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

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

13 (e) (1) A qualified business entity seeking certification of a
14 qualified cargo shall submit an application to the Franchise Tax
15 Board that includes the following information:

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

23 (B) 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, which shall cover the costs of the Franchise Tax Board’s
31 review and evaluation of the project application and certification.

32 (d) The Franchise Tax Board shall issue a certification to a
33 qualifying business entity as a qualified taxpayer upon making a
34 finding that the terms of this section have been met, subject to the
35 Legislature enacting a statute specifying the total amount of the
36 credit allowable to all qualified taxpayers for taxable years
37 beginning before January 1, 2021.

38 (e) The Franchise Tax Board shall not certify qualified cargo
39 unless it receives a resolution adopted pursuant to subdivision (f)
40 from a public port which determines that there will be sufficient

1 revenue received by the state as a result of the economic impacts
2 from the additional qualified cargo import or export activity,
3 whether because of the grant of the tax credit or otherwise, to offset
4 the cost to the state of providing the tax credit.

5 (f) (1) If a public port adopts a resolution in order to estimate
6 the economic impacts resulting from the additional qualifying
7 cargo identified pursuant to subdivision (c), the findings adopted
8 shall be based on estimates in a report that includes, but is not
9 limited to, the following:

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

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

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

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

20 (A) Official statements or annual disclosure documents or other
21 similar financial disclosure documents issued by the public port
22 to its creditors, underwriters, or other bondholders or lienholders
23 in the normal course of business.

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

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

32 (g) (1) The amount available to be applied to any additional
33 qualified cargo shall never exceed five dollars (\$5) per ton of
34 additional cargo, but may be less than five dollars (\$5) per ton if
35 the cumulative amount of credits certified by the Franchise Tax
36 Board under this section in a fiscal year is greater than the amount
37 authorized for the credit by the Legislature pursuant to subdivision
38 (d), then the Franchise Tax Board shall allocate the total amount
39 of the credit on a prorated basis equal to the qualifying business

1 ~~entity's share of the total amount of additional qualified cargo~~
2 ~~certified by the Franchise Tax Board as of July 1 of each year.~~

3 ~~(2) The Franchise Tax Board shall notify a qualifying business~~
4 ~~entity with additional qualified cargo applications submitted prior~~
5 ~~to July 1 of each year of the amount of the credit authorized by~~
6 ~~the Legislature and the pro rata share for each qualified taxpayer~~
7 ~~of that authorization during the fiscal year.~~

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

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

14 ~~(j) The Franchise Tax Board may audit any qualified business~~
15 ~~entity in order to verify claims presented to the Franchise Tax~~
16 ~~Board in an application submitted pursuant to this section.~~

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

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

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

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

38 ~~(m) This credit shall be in lieu of the credit allowed under~~
39 ~~Section 23670.~~

1 ~~(n) This section shall remain in effect only until December 1,~~
2 ~~2022, and as of that date is repealed, unless a later enacted statute,~~
3 ~~that is enacted before December 1, 2022, deletes or extends that~~
4 ~~date.~~

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