

AMENDED IN ASSEMBLY JULY 2, 2013
AMENDED IN ASSEMBLY JULY 1, 2013
AMENDED IN ASSEMBLY JUNE 26, 2013

SENATE BILL

No. 90

Introduced by Senators ~~Cannella and Galgiani~~ *Galgiani and Cannella*

January 10, 2013

An act to amend Sections 6377.1, 17053.73, 17059.2, 23626, and 23689 of the Revenue and Taxation Code, as added by Assembly Bill 93 of the 2013–14 Regular Session, relating to economic development, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 90, as amended, *Cannella Galgiani*. Economic development: taxation: credits: exemption.

Existing sales and use tax laws impose taxes on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and provides various exemptions from those taxes.

Existing law exempts from those taxes, on and after July 1, 2014, and before January 1, 2019, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased by a qualified person for use primarily in manufacturing, processing, refining, fabricating, or recycling of property, as specified; qualified tangible personal property purchased for use by a contractor for specified purposes, as provided; and qualified tangible

personal property purchased for use by a qualified person to be used primarily in research and development, as provided, and until January 1, 2021, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased by a qualified person for those purposes for use within a designated census tract or a former enterprise zone. Existing law specifies that this exemption does not apply to local sales and use taxes, transactions and use taxes, and specified state taxes from which revenues are deposited into the Local Public Safety Fund, the Education Protection Account, the Local Revenue Fund, the Fiscal Recovery Fund, or the Local Revenue Fund 2011.

This bill would extend the application of the exemption from January 1, 2019, to July 1, 2022, and eliminate the requirement that, after January 1, 2019, the qualified tangible personal property purchased by a qualified person for those purposes for use within a designated census tract or a former enterprise zone.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including hiring credits within the specified economic development areas, and a hiring credit for taxpayers, other than those allowed a credit with respect to operating in the specified economic development areas.

This bill would, under both laws for taxable years beginning on or after January 1, 2014, and before January 1, 2021, revise the definitions of “qualified full-time employee,” “qualified taxpayer,” and “small business” for the credit against those taxes for portions of the wages paid by a taxpayer, engaged in a trade or business within a designated census tract, as defined, or an economic development area, to certain full-time employees who provide services for that taxpayer in connection with that trade or business. This bill would additionally expand the definition of “qualified wages” for qualified full-time employees within a designated pilot area, as provided.

Existing law also allows a credit against tax under both laws for each taxable year beginning on or after January 1, 2014, and before January 1, 2025, in an amount as provided in a written agreement between the Governor’s Office of Business and Economic Development and the taxpayer, agreed upon by the California Competes Tax Credit Committee, and based on specified factors, including the number of jobs the taxpayer will create or retain in the state and the amount of investment in the state by the taxpayer. Existing law limits the aggregate

amount of credits allocated to taxpayers to a specified sum per fiscal year.

This bill would make specifications regarding the fiscal year allocation under these provisions of credit amounts and the taxable years for which the allocated amounts may be claimed as a credit allowed to taxpayers.

This bill would also restate the carryover period of certain tax credits that were amended by AB 93 of the 2013–14 Regular Session and the operation of existing law with respect to those carryover credits.

This bill would make the operation of its modifications and revisions contingent on the enactment of AB 93 of the 2013–14 Regular Session, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 6377.1 of the Revenue and Taxation
2 Code, as added by Section 6 of Assembly Bill 93 of the 2013–14
3 Regular Session, is amended to read:

4 6377.1. (a) Except as provided in subdivision (e), on or after
5 July 1, 2014, and before July 1, 2022, there are exempted from the
6 taxes imposed by this part the gross receipts from the sale of, and
7 the storage, use, or other consumption in this state of, any of the
8 following:

9 (1) Qualified tangible personal property purchased for use by
10 a qualified person to be used primarily in any stage of the
11 manufacturing, processing, refining, fabricating, or recycling of
12 tangible personal property, beginning at the point any raw materials
13 are received by the qualified person and introduced into the process
14 and ending at the point at which the manufacturing, processing,
15 refining, fabricating, or recycling has altered tangible personal
16 property to its completed form, including packaging, if required.

17 (2) Qualified tangible personal property purchased for use by
18 a qualified person to be used primarily in research and
19 development.

20 (3) Qualified tangible personal property purchased for use by
21 a qualified person to be used primarily to maintain, repair, measure,

1 or test any qualified tangible personal property described in
2 paragraph (1) or (2).

3 (4) Qualified tangible personal property purchased for use by
4 a contractor purchasing that property for use in the performance
5 of a construction contract for the qualified person, that will use
6 that property as an integral part of the manufacturing, processing,
7 refining, fabricating, or recycling process, or as a research or
8 storage facility for use in connection with those processes.

9 (b) For purposes of this section:

10 (1) “Fabricating” means to make, build, create, produce, or
11 assemble components or tangible personal property to work in a
12 new or different manner.

13 (2) “Manufacturing” means the activity of converting or
14 conditioning tangible personal property by changing the form,
15 composition, quality, or character of the property for ultimate sale
16 at retail or use in the manufacturing of a product to be ultimately
17 sold at retail. Manufacturing includes any improvements to tangible
18 personal property that result in a greater service life or greater
19 functionality than that of the original property.

20 (3) “Primarily” means 50 percent or more of the time.

21 (4) “Process” means the period beginning at the point at which
22 any raw materials are received by the qualified person and
23 introduced into the manufacturing, processing, refining, fabricating,
24 or recycling activity of the qualified person and ending at the point
25 at which the manufacturing, processing, refining, fabricating, or
26 recycling activity of the qualified person has altered tangible
27 personal property to its completed form, including packaging, if
28 required. Raw materials shall be considered to have been
29 introduced into the process when the raw materials are stored on
30 the same premises where the qualified person’s manufacturing,
31 processing, refining, fabricating, or recycling activity is conducted.
32 Raw materials that are stored on premises other than where the
33 qualified person’s manufacturing, processing, refining, fabricating,
34 or recycling activity is conducted shall not be considered to have
35 been introduced into the manufacturing, processing, refining,
36 fabricating, or recycling process.

37 (5) “Processing” means the physical application of the materials
38 and labor necessary to modify or change the characteristics of
39 tangible personal property.

1 (6) (A) “Qualified person” means a person that is primarily
2 engaged in those lines of business described in Codes 3111 to
3 3399, inclusive, 541711, or 541712 of the North American Industry
4 Classification System (NAICS) published by the United States
5 Office of Management and Budget (OMB), 2012 edition.

6 (B) Notwithstanding subparagraph (A), “qualified person” shall
7 not include either of the following:

8 (i) An apportioning trade or business that is required to apportion
9 its business income pursuant to subdivision (b) of Section 25128.

10 (ii) A trade or business conducted wholly within this state that
11 would be required to apportion its business income pursuant to
12 subdivision (b) of Section 25128 if it were subject to apportionment
13 pursuant to Section 25101.

14 (7) (A) “Qualified tangible personal property” includes, but is
15 not limited to, all of the following:

16 (i) Machinery and equipment, including component parts and
17 contrivances such as belts, shafts, moving parts, and operating
18 structures.

19 (ii) Equipment or devices used or required to operate, control,
20 regulate, or maintain the machinery, including, but not limited to,
21 computers, data-processing equipment, and computer software,
22 together with all repair and replacement parts with a useful life of
23 one or more years therefor, whether purchased separately or in
24 conjunction with a complete machine and regardless of whether
25 the machine or component parts are assembled by the qualified
26 person or another party.

27 (iii) Tangible personal property used in pollution control that
28 meets standards established by this state or any local or regional
29 governmental agency within this state.

30 (iv) Special purpose buildings and foundations used as an
31 integral part of the manufacturing, processing, refining, fabricating,
32 or recycling process, or that constitute a research or storage facility
33 used during those processes. Buildings used solely for warehousing
34 purposes after completion of those processes are not included.

35 (B) “Qualified tangible personal property” shall not include any
36 of the following:

37 (i) Consumables with a useful life of less than one year.

38 (ii) Furniture, inventory, and equipment used in the extraction
39 process, or equipment used to store finished products that have

1 completed the manufacturing, processing, refining, fabricating, or
2 recycling process.

3 (iii) Tangible personal property used primarily in administration,
4 general management, or marketing.

5 (8) “Refining” means the process of converting a natural
6 resource to an intermediate or finished product.

7 (9) “Research and development” means those activities that are
8 described in Section 174 of the Internal Revenue Code or in any
9 regulations thereunder.

10 (10) “Useful life” for tangible personal property that is treated
11 as having a useful life of one or more years for state income or
12 franchise tax purposes shall be deemed to have a useful life of one
13 or more years for purposes of this section. “Useful life” for tangible
14 personal property that is treated as having a useful life of less than
15 one year for state income or franchise tax purposes shall be deemed
16 to have a useful life of less than one year for purposes of this
17 section.

18 (c) An exemption shall not be allowed under this section unless
19 the purchaser furnishes the retailer with an exemption certificate,
20 completed in accordance with any instructions or regulations as
21 the board may prescribe, and the retailer retains the exemption
22 certificate in its records and furnishes it to the board upon request.

23 (d) (1) Notwithstanding the Bradley-Burns Uniform Local
24 Sales and Use Tax Law (Part 1.5 (commencing with Section 7200))
25 and the Transactions and Use Tax Law (Part 1.6 (commencing
26 with Section 7251)), the exemption established by this section
27 shall not apply with respect to any tax levied by a county, city, or
28 district pursuant to, or in accordance with, either of those laws.

29 (2) Notwithstanding subdivision (a), the exemption established
30 by this section shall not apply with respect to any tax levied
31 pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, pursuant
32 to Section 35 of Article XIII of the California Constitution, or any
33 tax levied pursuant to Section 6051 or 6201 that is deposited in
34 the State Treasury to the credit of the Local Revenue Fund 2011
35 pursuant to Section 6051.15 or 6201.15.

36 (e) (1) The exemption provided by this section shall not apply
37 to either of the following:

38 (A) Any tangible personal property purchased during any
39 calendar year that exceeds two hundred million dollars
40 (\$200,000,000) of purchases of qualified tangible personal property

1 for which an exemption is claimed by a qualified person under
2 this section. For purposes of this subparagraph, in the case of a
3 qualified person that is required to be included in a combined report
4 under Section 25101 or authorized to be included in a combined
5 report under Section 25101.15, the aggregate of all purchases of
6 qualified personal property for which an exemption is claimed
7 pursuant to this section by all persons that are required or
8 authorized to be included in a combined report shall not exceed
9 two hundred million dollars (\$200,000,000) in any calendar year.

10 (B) The sale or storage, use, or other consumption of property
11 that, within one year from the date of purchase, is removed from
12 California, converted from an exempt use under subdivision (a)
13 to some other use not qualifying for exemption, or used in a manner
14 not qualifying for exemption.

15 (2) If a purchaser certifies in writing to the seller that the tangible
16 personal property purchased without payment of the tax will be
17 used in a manner entitling the seller to regard the gross receipts
18 from the sale as exempt from the sales tax, and the purchase
19 exceeds the two-hundred-million-dollar (\$200,000,000) limitation
20 described in subparagraph (A) of paragraph (1), or within one year
21 from the date of purchase, the purchaser removes that property
22 from California, converts that property for use in a manner not
23 qualifying for the exemption, or uses that property in a manner
24 not qualifying for the exemption, the purchaser shall be liable for
25 payment of sales tax, with applicable interest, as if the purchaser
26 were a retailer making a retail sale of the tangible personal property
27 at the time the tangible personal property is so purchased, removed,
28 converted, or used, and the cost of the tangible personal property
29 to the purchaser shall be deemed the gross receipts from that retail
30 sale.

31 (f) This section shall apply to leases of qualified tangible
32 personal property classified as “continuing sales” and “continuing
33 purchases” in accordance with Sections 6006.1 and 6010.1. The
34 exemption established by this section shall apply to the rentals
35 payable pursuant to the lease, provided the lessee is a qualified
36 person and the tangible personal property is used in an activity
37 described in subdivision (a).

38 (g) (1) Upon the effective date of this section, the Department
39 of Finance shall estimate the total dollar amount of exemptions

1 that will be taken for each calendar year, or any portion thereof,
2 for which this section provides an exemption.

3 (2) No later than each March 1 next following a calendar year
4 for which this section provides an exemption, the board shall
5 provide to the Joint Legislative Budget Committee a report of the
6 total dollar amount of exemptions taken under this section for the
7 immediately preceding calendar year. The report shall compare
8 the total dollar amount of exemptions taken under this section for
9 that calendar year with the department's estimate for that same
10 calendar year. If that total dollar amount taken is less than the
11 estimate for that calendar year, the report shall identify options for
12 increasing exemptions taken so as to meet estimated amounts.

13 (h) This section is repealed on January 1, 2023.

14 SEC. 2. Section 17053.73 of the Revenue and Taxation Code,
15 as added by Section 13 of Assembly Bill 93 of the 2013–14 Regular
16 Session, is amended to read:

17 17053.73. (a) (1) For each taxable year beginning on or after
18 January 1, 2014, and before January 1, 2021, there shall be allowed
19 to a qualified taxpayer that hires a qualified full-time employee
20 and pays or incurs qualified wages attributable to work performed
21 by the qualified full-time employee in a designated census tract
22 or economic development area, and that receives a tentative credit
23 reservation for that qualified full-time employee, a credit against
24 the "net tax," as defined in Section 17039, in an amount calculated
25 under this section.

26 (2) The amount of the credit allowable under this section for a
27 taxable year shall be equal to the product of the tentative credit
28 amount for the taxable year and the applicable percentage for that
29 taxable year.

30 (3) (A) If a qualified taxpayer relocates to a designated census
31 tract or economic development area, the qualified taxpayer shall
32 be allowed a credit with respect to qualified wages for each
33 qualified full-time employee employed within the new location
34 only if the qualified taxpayer provides each employee at the
35 previous location or locations a written offer of employment at the
36 new location in the designated census tract or economic
37 development area with comparable compensation.

38 (B) For purposes of this paragraph, "relocates to a designated
39 census tract or economic development area" means an increase in
40 the number of qualified full-time employees, employed by a

1 qualified taxpayer, within a designated census tract or tracts or
2 economic development areas within a 12-month period in which
3 there is a decrease in the number of full-time employees, employed
4 by the qualified taxpayer in this state, but outside of designated
5 census tracts or economic development areas.

6 (C) This paragraph shall not apply to a small business.

7 (4) The credit allowed by this section may be claimed only on
8 a timely filed original return of the qualified taxpayer and only
9 with respect to a qualified full-time employee for whom the
10 qualified taxpayer has received a tentative credit reservation.

11 (b) For purposes of this section:

12 (1) The “tentative credit amount” for a taxable year shall be
13 equal to the product of the applicable credit percentage for each
14 qualified full-time employee and the qualified wages paid by the
15 qualified taxpayer during the taxable year to that qualified full-time
16 employee.

17 (2) The “applicable percentage” for a taxable year shall be equal
18 to a fraction, the numerator of which is the net increase in the total
19 number of full-time employees employed in this state during the
20 taxable year, determined on an annual full-time equivalent basis,
21 as compared with the total number of full-time employees
22 employed in this state during the base year, determined on the
23 same basis, and the denominator of which shall be the total number
24 of qualified full-time employees employed in this state during the
25 taxable year. The applicable percentage shall not exceed 100
26 percent.

27 (3) The “applicable credit percentage” means the credit
28 percentage for the calendar year during which a qualified full-time
29 employee was first employed by the qualified taxpayer. The
30 applicable credit percentage for all calendar years shall be 35
31 percent.

32 (4) “Base year” means the 2013 taxable year, except in the case
33 of a qualified taxpayer who first hires a qualified full-time
34 employee in a taxable year beginning on or after January 1, 2015,
35 the base year means the taxable year immediately preceding the
36 taxable year in which a qualified full-time employee was first hired
37 by the qualified taxpayer.

38 (5) “Acquired” includes any gift, inheritance, transfer incident
39 to divorce, or any other transfer, whether or not for consideration.

40 (6) “Annual full-time equivalent” means either of the following:

1 (A) In the case of a full-time employee paid hourly qualified
2 wages, “annual full-time equivalent” means the total number of
3 hours worked for the qualified taxpayer by the employee, not to
4 exceed 2,000 hours per employee, divided by 2,000.

5 (B) In the case of a salaried full-time employee, “annual
6 full-time equivalent” means the total number of weeks worked for
7 the qualified taxpayer by the employee divided by 52.

8 (7) “Designated census tract” means a census tract within the
9 state that is determined by the Department of Finance to have a
10 civilian unemployment rate that is within the top 25 percent of all
11 census tracts within the state and has a poverty rate within the top
12 25 percent of all census tracts within the state, as prescribed in
13 Section 13073.5 of the Government Code.

14 (8) “Economic development area” means either of the following:

15 (A) A former enterprise zone. For purposes of this section,
16 “former enterprise zone” means an enterprise zone designated and
17 in effect as of December 31, 2011, any enterprise zone designated
18 during 2012, and any revision of an enterprise zone prior to June
19 30, 2013, under former Chapter 12.8 (commencing with Section
20 7070) of Division 7 of Title 1 of the Government Code, as in effect
21 on December 31, 2012, excluding any census tract within an
22 enterprise zone that is identified by the Department of Finance
23 pursuant to Section 13073.5 of the Government Code as a census
24 tract within the lowest quartile of census tracts with the lowest
25 civilian unemployment and poverty.

26 (B) A local agency military base recovery area designated as
27 of the effective date of the act adding this subparagraph, in
28 accordance with Section 7114 of the Government Code.

29 (9) “Minimum wage” means the wage established pursuant to
30 Chapter 1 (commencing with Section 1171) of Part 4 of Division
31 2 of the Labor Code.

32 (10) (A) “Qualified full-time employee” means an individual
33 who meets all of the following requirements:

34 (i) Performs at least 50 percent of his or her services for the
35 qualified taxpayer during the taxable year in a designated census
36 tract or economic development area.

37 (ii) Receives starting wages that are at least 150 percent of the
38 minimum wage.

39 (iii) Is hired by the qualified taxpayer on or after January 1,
40 2014.

1 (iv) Is hired by the qualified taxpayer after the date the
2 Department of Finance determines that the census tract referred
3 to in clause (i) is a designated census tract or that the census tracts
4 within a former enterprise zone are not census tracts with the lowest
5 civilian unemployment and poverty.

6 (v) Satisfies either of the following conditions:

7 (I) Is paid qualified wages by the qualified taxpayer for services
8 not less than an average of 35 hours per week.

9 (II) Is a salaried employee and was paid compensation during
10 the taxable year for full-time employment, within the meaning of
11 Section 515 of the Labor Code, by the qualified taxpayer.

12 (vi) Upon commencement of employment with the qualified
13 taxpayer, satisfies any of the following conditions:

14 (I) Was unemployed for the six months immediately preceding
15 employment with the qualified taxpayer. In the case of an
16 individual that completed a program of study at a college,
17 university, or other postsecondary educational institution, received
18 a baccalaureate, postgraduate, or professional degree, and was
19 unemployed for the six months immediately preceding employment
20 with the qualified taxpayer, that individual must have completed
21 that program of study at least 12 months prior to the individual's
22 commencement of employment with the qualified taxpayer.

23 (II) Is a veteran who separated from service in the Armed Forces
24 of the United States within the 12 months preceding
25 commencement of employment with the qualified taxpayer.

26 (III) Was a recipient of the credit allowed under Section 32 of
27 the Internal Revenue Code, relating to earned income, as applicable
28 for federal purposes, for the previous taxable year.

29 (IV) Is an ex-offender previously convicted of a felony.

30 (V) Is a recipient of either CalWORKs, in accordance with
31 Article 2 (commencing with Section 11250) of Chapter 2 of Part
32 3 of Division 9 of the Welfare and Institutions Code, or general
33 assistance, in accordance with Section 17000.5 of the Welfare and
34 Institutions Code.

35 (B) An individual may be considered a qualified full-time
36 employee only for the period of time commencing with the date
37 the individual is first employed by the qualified taxpayer and
38 ending 60 months thereafter.

39 (11) (A) "Qualified taxpayer" means a person or entity engaged
40 in a trade or business within a designated census tract or economic

1 development area that, during the taxable year, pays or incurs
2 qualified wages.

3 (B) In the case of any pass-thru entity, the determination of
4 whether a taxpayer is a qualified taxpayer under this section shall
5 be made at the entity level and any credit under this section or
6 Section 23626 shall be allowed to the pass-thru entity and passed
7 through to the partners and shareholders in accordance with
8 applicable provisions of this part or Part 11 (commencing with
9 Section 23001). For purposes of this subdivision, the term
10 “pass-thru entity” means any partnership or “S” corporation.

11 (C) “Qualified taxpayers” shall not include any of the following:

12 (i) Employers that provide temporary help services, as described
13 in Code 561320 of the North American Industry Classification
14 System (NAICS) published by the United States Office of
15 Management and Budget, 2012 edition.

16 (ii) Employers that provide retail trade services, as described
17 in Sector 44-45 of the North American Industry Classification
18 System (NAICS) published by the United States Office of
19 Management and Budget, 2012 edition.

20 (iii) Employers that are primarily engaged in providing food
21 services, as described in Code 711110, 722511, 722513, 722514,
22 or 722515 of the North American Industry Classification System
23 (NAICS) published by the United States Office of Management
24 and Budget, 2012 edition.

25 (iv) Employers that are primarily engaged in services as
26 described in Code 713210, 721120, or 722410 of the North
27 American Industry Classification System (NAICS) published by
28 the United States Office of Management and Budget, 2012 edition.

29 (v) (I) An employer that is a sexually oriented business.

30 (II) For purposes of this clause:

31 (aa) “Sexually oriented business” means a nightclub, bar,
32 restaurant, or similar commercial enterprise that provides for an
33 audience of two or more individuals live nude entertainment or
34 live nude performances where the nudity is a function of everyday
35 business operations and where nudity is a planned and intentional
36 part of the entertainment or performance.

37 (ab) “Nude” means clothed in a manner that leaves uncovered
38 or visible, through less than fully opaque clothing, any portion of
39 the genitals or, in the case of a female, any portion of the breasts
40 below the top of the areola of the breasts.

1 (D) Subparagraph (C) shall not apply to a taxpayer that is a
2 “small business.”

3 (12) “Qualified wages” means those wages that meet all of the
4 following requirements:

5 (A) (i) Except as provided in clause (ii), that portion of wages
6 paid or incurred by the qualified taxpayer during the taxable year
7 to each qualified full-time employee that exceeds 150 percent of
8 minimum wage, but does not exceed 350 percent of minimum
9 wage.

10 (ii) (I) In the case of a qualified *full-time* employee employed
11 in a designated pilot area, that portion of wages paid or incurred
12 by the qualified taxpayer during the taxable year to each qualified
13 full-time employee that exceeds ten dollars (\$10) per hour or an
14 equivalent amount for salaried employees, *but does not exceed*
15 *350 percent of minimum wage. For qualified full-time employees*
16 *described in the preceding sentence, clause (ii) of subparagraph*
17 *(A) of paragraph (10) is modified by substituting “ten dollars (\$10)*
18 *per hour or an equivalent amount for salaried employees” for*
19 *“150 percent of the minimum wage.”*

20 (II) For purposes of this clause:

21 (aa) “Designated pilot area” means an area designated as a
22 designated pilot area by the Governor’s Office of Business and
23 Economic Development.

24 (ab) Areas that may be designated as a designated pilot area are
25 limited to areas within a designated census tract or an economic
26 development area with average wages less than the statewide
27 average wages, based on information from the Labor Market
28 Division of the Employment Development Department, and areas
29 within a designated census tract or an economic development area
30 based on high poverty or high unemployment.

31 (ac) The total number of designated pilot areas that may be
32 designated is limited to five, one or more of which must be an area
33 within five or fewer designated census tracts within a single county
34 based on high poverty or high unemployment or an area within an
35 economic development area based on high poverty or high
36 unemployment.

37 (ad) The designation of a designated pilot area shall be
38 applicable for a period of four calendar years, commencing with
39 the first calendar year for which the designation of a designated
40 pilot area is effective. The applicable period of a designated pilot

1 area may be extended, in the sole discretion of the Governor's
2 Office of Business and Economic Development, for an additional
3 period of up to three calendar years. The applicable period, and
4 any extended period, shall not extend beyond December 31, 2020.

5 (III) The designation of an area as a designated pilot area and
6 the extension of the applicable period of a designated pilot area
7 shall be at the sole discretion of the Governor's Office of Business
8 and Economic Development and shall not be subject to
9 administrative appeal or judicial review.

10 (B) Wages paid or incurred during the 60-month period
11 beginning with the first day the qualified full-time employee
12 commences employment with the qualified taxpayer. In the case
13 of any employee who is reemployed, including a regularly
14 occurring seasonal increase, in the trade or business operations of
15 the qualified taxpayer, this reemployment shall not be treated as
16 constituting commencement of employment for purposes of this
17 section.

18 (C) Except as provided in paragraph (3) of subdivision (n),
19 qualified wages shall not include any wages paid or incurred by
20 the qualified taxpayer on or after the date that the Department of
21 Finance's redesignation of designated census tracts is effective,
22 as provided in paragraph (2) of subdivision (g), so that a census
23 tract is no longer a designated census tract.

24 (13) "Seasonal employment" means employment by a qualified
25 taxpayer that has regular and predictable substantial reductions in
26 trade or business operations.

27 (14) (A) "Small business" means a trade or business that has
28 aggregate gross receipts, less returns and allowances reportable to
29 this state, of less than two million dollars (\$2,000,000) during the
30 previous taxable year.

31 (B) (i) For purposes of this paragraph, "gross receipts, less
32 returns and allowances reportable to this state," means the sum of
33 the gross receipts from the production of business income, as
34 defined in subdivision (a) of Section 25120, and the gross receipts
35 from the production of nonbusiness income, as defined in
36 subdivision (d) of Section 25120.

37 (ii) In the case of any trade or business activity conducted by a
38 partnership or an "S" corporation, the limitations set forth in
39 subparagraph (A) shall be applied to the partnership or "S"
40 corporation and to each partner or shareholder.

1 (C) (i) “Small business” shall not include a sexually oriented
2 business.

3 (ii) For purposes of this subparagraph:

4 (I) “Sexually oriented business” means a nightclub, bar,
5 restaurant, or similar commercial enterprise that provides for an
6 audience of two or more individuals live nude entertainment or
7 live nude performances where the nudity is a function of everyday
8 business operations and where nudity is a planned and intentional
9 part of the entertainment or performance.

10 (II) “Nude” means clothed in a manner that leaves uncovered
11 or visible, through less than fully opaque clothing, any portion of
12 the genitals or, in the case of a female, any portion of the breasts
13 below the top of the areola of the breasts.

14 (15) An individual is “unemployed” for any period for which
15 the individual is all of the following:

16 (A) Not in receipt of wages subject to withholding under Section
17 13020 of the Unemployment Insurance Code for that period.

18 (B) Not a self-employed individual (within the meaning of
19 Section 401(c)(1)(B) of the Internal Revenue Code, relating to
20 self-employed individual) for that period.

21 (C) Not a registered full-time student at a high school, college,
22 university, or other postsecondary educational institution for that
23 period.

24 (c) The net increase in full-time employees of a qualified
25 taxpayer shall be determined as provided by this subdivision:

26 (1) (A) The net increase in full-time employees shall be
27 determined on an annual full-time equivalent basis by subtracting
28 from the amount determined in subparagraph (C) the amount
29 determined in subparagraph (B).

30 (B) The total number of full-time employees employed in the
31 base year by the taxpayer and by any trade or business acquired
32 by the taxpayer during the current taxable year.

33 (C) The total number of full-time employees employed in the
34 current taxable year by the taxpayer and by any trade or business
35 acquired during the current taxable year.

36 (2) For taxpayers who first commence doing business in this
37 state during the taxable year, the number of full-time employees
38 for the base year shall be zero.

39 (d) For purposes of this section:

1 (1) All employees of the trades or businesses that are treated as
2 related under Section 267, 318, or 707 of the Internal Revenue
3 Code shall be treated as employed by a single taxpayer.

4 (2) In determining whether the taxpayer has first commenced
5 doing business in this state during the taxable year, the provisions
6 of subdivision (f) of Section 17276.20, without application of
7 paragraph (7) of that subdivision, shall apply.

8 (e) (1) To be eligible for the credit allowed by this section, a
9 qualified taxpayer shall, upon hiring a qualified full-time employee,
10 request a tentative credit reservation from the Franchise Tax Board
11 within 30 days of complying with the Employment Development
12 Department's new hire reporting requirements as provided in
13 Section 1088.5 of the Unemployment Insurance Code, in the form
14 and manner prescribed by the Franchise Tax Board.

15 (2) To obtain a tentative credit reservation with respect to a
16 qualified full-time employee, the qualified taxpayer shall provide
17 necessary information, as determined by the Franchise Tax Board,
18 including the name, social security number, the start date of
19 employment, the rate of pay of the qualified full-time employee,
20 the qualified taxpayer's gross receipts, less returns and allowances,
21 for the previous taxable year, and whether the qualified full-time
22 employee is a resident of a targeted employment area, as defined
23 in former Section 7072 of the Government Code, as in effect on
24 December 31, 2013.

25 (3) The qualified taxpayer shall provide the Franchise Tax Board
26 an annual certification of employment with respect to each
27 qualified full-time employee hired in a previous taxable year, on
28 or before, the 15th day of the third month of the taxable year. The
29 certification shall include necessary information, as determined
30 by the Franchise Tax Board, including the name, social security
31 number, start date of employment, and rate of pay for each qualified
32 full-time employee employed by the qualified taxpayer.

33 (4) A tentative credit reservation provided to a taxpayer with
34 respect to an employee of that taxpayer shall not constitute a
35 determination by the Franchise Tax Board with respect to any of
36 the requirements of this section regarding a taxpayer's eligibility
37 for the credit authorized by this section.

38 (f) The Franchise Tax Board shall do all of the following:

39 (1) Approve a tentative credit reservation with respect to a
40 qualified full-time employee hired during a calendar year.

1 (2) Determine the aggregate tentative reservation amount and
2 the aggregate small business tentative reservation amount for a
3 calendar year.

4 (3) A tentative credit reservation request from a qualified
5 taxpayer with respect to a qualified full-time employee who is a
6 resident of a targeted employment area, as defined in former
7 Section 7072 of the Government Code, as in effect on December
8 31, 2013, shall be expeditiously processed by the Franchise Tax
9 Board. The residence of a qualified full-time employee in a targeted
10 employment area shall have no other effect on the eligibility of an
11 individual as a qualified full-time employee or the eligibility of a
12 qualified taxpayer for the credit authorized by this section.

13 (4) Notwithstanding Section 19542, provide as a searchable
14 database on its Internet Web site, for each taxable year beginning
15 on or after January 1, 2014, and before January 1, 2021, the
16 employer names, amounts of tax credit claimed, and number of
17 new jobs created for each taxable year pursuant to this section and
18 Section 23626.

19 (g) (1) The Department of Finance shall, by January 1, 2014,
20 and by January 1 of every fifth year thereafter, provide the
21 Franchise Tax Board with a list of the designated census tracts and
22 a list of census tracts with the lowest civilian unemployment rate.

23 (2) The redesignation of designated census tracts and lowest
24 civilian unemployment census tracts by the Department of Finance
25 as provided in Section 13073.5 of the Government Code shall be
26 effective, for purposes of this credit, one year after the date the
27 Department of Finance redesignates the designated census tracts.

28 (h) For purposes of this section:

29 (1) All employees of the trades or businesses that are treated as
30 related under Section 267, 318, or 707 of the Internal Revenue
31 Code shall be treated as employed by a single taxpayer.

32 (2) All employees of trades or businesses that are not
33 incorporated, and that are under common control, shall be treated
34 as employed by a single taxpayer.

35 (3) The credit, if any, allowable by this section with respect to
36 each trade or business shall be determined by reference to its
37 proportionate share of the expense of the qualified wages giving
38 rise to the credit, and shall be allocated to that trade or business in
39 that manner.

1 (4) Principles that apply in the case of controlled groups of
2 corporations, as specified in subdivision (h) of Section 23626,
3 shall apply with respect to determining employment.

4 (5) If an employer acquires the major portion of a trade or
5 business of another employer, hereinafter in this paragraph referred
6 to as the predecessor, or the major portion of a separate unit of a
7 trade or business of a predecessor, then, for purposes of applying
8 this section, other than subdivision (i), for any taxable year ending
9 after that acquisition, the employment relationship between a
10 qualified full-time employee and an employer shall not be treated
11 as terminated if the employee continues to be employed in that
12 trade or business.

13 (i) (1) If the employment of any qualified full-time employee,
14 with respect to whom qualified wages are taken into account under
15 subdivision (a), is terminated by the qualified taxpayer at any time
16 during the first 36 months after commencing employment with
17 the qualified taxpayer, whether or not consecutive, the tax imposed
18 by this part for the taxable year in which that employment is
19 terminated shall be increased by an amount equal to the credit
20 allowed under subdivision (a) for that taxable year and all prior
21 taxable years attributable to qualified wages paid or incurred with
22 respect to that employee.

23 (2) Paragraph (1) shall not apply to any of the following:

24 (A) A termination of employment of a qualified full-time
25 employee who voluntarily leaves the employment of the qualified
26 taxpayer.

27 (B) A termination of employment of a qualified full-time
28 employee who, before the close of the period referred to in
29 paragraph (1), becomes disabled and unable to perform the services
30 of that employment, unless that disability is removed before the
31 close of that period and the qualified taxpayer fails to offer
32 reemployment to that employee.

33 (C) A termination of employment of a qualified full-time
34 employee, if it is determined that the termination was due to the
35 misconduct, as defined in Sections 1256-30 to 1256-43, inclusive,
36 of Title 22 of the California Code of Regulations, of that employee.

37 (D) A termination of employment of a qualified full-time
38 employee due to a substantial reduction in the trade or business
39 operations of the qualified taxpayer, including reductions due to
40 seasonal employment.

1 (E) A termination of employment of a qualified full-time
2 employee, if that employee is replaced by other qualified full-time
3 employees so as to create a net increase in both the number of
4 employees and the hours of employment.

5 (F) A termination of employment of a qualified full-time
6 employee, when that employment is considered seasonal
7 employment and the qualified employee is rehired on a seasonal
8 basis.

9 (3) For purposes of paragraph (1), the employment relationship
10 between the qualified taxpayer and a qualified full-time employee
11 shall not be treated as terminated by reason of a mere change in
12 the form of conducting the trade or business of the qualified
13 taxpayer, if the qualified full-time employee continues to be
14 employed in that trade or business and the qualified taxpayer retains
15 a substantial interest in that trade or business.

16 (4) Any increase in tax under paragraph (1) shall not be treated
17 as tax imposed by this part for purposes of determining the amount
18 of any credit allowable under this part.

19 (j) In the case of an estate or trust, both of the following apply:

20 (1) The qualified wages for any taxable year shall be apportioned
21 between the estate or trust and the beneficiaries on the basis of the
22 income of the estate or trust allocable to each.

23 (2) Any beneficiary to whom any qualified wages have been
24 apportioned under paragraph (1) shall be treated, for purposes of
25 this part, as the employer with respect to those wages.

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

30 (l) The Franchise Tax Board may prescribe rules, guidelines,
31 or procedures necessary or appropriate to carry out the purposes
32 of this section, including any guidelines regarding the allocation
33 of the credit allowed under this section. Chapter 3.5 (commencing
34 with Section 11340) of Part 1 of Division 3 of Title 2 of the
35 Government Code shall not apply to any rule, guideline, or
36 procedure prescribed by the Franchise Tax Board pursuant to this
37 section.

38 (m) (1) Upon the effective date of this section, the Department
39 of Finance shall estimate the total dollar amount of credits that

1 will be claimed under this section with respect to each fiscal year
2 from the 2013–14 fiscal year to the 2020–21 fiscal year, inclusive.

3 (2) The Franchise Tax Board shall annually provide to the Joint
4 Legislative Budget Committee, by no later than March 1, a report
5 of the total dollar amount of the credits claimed under this section
6 with respect to the relevant fiscal year. The report shall compare
7 the total dollar amount of credits claimed under this section with
8 respect to that fiscal year with the department’s estimate with
9 respect to that same fiscal year. If the total dollar amount of credits
10 claimed for the fiscal year is less than the estimate for that fiscal
11 year, the report shall identify options for increasing annual claims
12 of the credit so as to meet estimated amounts.

13 (n) (1) This section shall remain in effect only until December
14 1, 2024, and as of that date is repealed.

15 (2) Notwithstanding paragraph (1) of subdivision (a), this section
16 shall continue to be operative for taxable years beginning on or
17 after January 1, 2021, but only with respect to qualified full-time
18 employees who commenced employment with a qualified taxpayer
19 in a designated census tract or economic development area in a
20 taxable year beginning before January 1, 2021.

21 (3) This section shall remain operative for any qualified taxpayer
22 with respect to any qualified full-time employee after the
23 designated census tract is no longer designated or an economic
24 development area ceases to be an economic development area, as
25 defined in this section, for the remaining period, if any, of the
26 60-month period after the original date of hiring of an otherwise
27 qualified full-time employee and any wages paid or incurred with
28 respect to those qualified full-time employees after the designated
29 census tract is no longer designated or an economic development
30 area ceases to be an economic development area, as defined in this
31 section, shall be treated as qualified wages under this section,
32 provided the employee satisfies any other requirements of
33 paragraphs (10) and (12) of subdivision (b), as if the designated
34 census tract was still designated and binding or the economic
35 development area was still in existence.

36 SEC. 3. Section 17059.2 of the Revenue and Taxation Code,
37 as added by Section 18 of Assembly Bill 93 of the 2013–14 Regular
38 Session, is amended to read:

39 17059.2. (a) (1) For each taxable year beginning on and after
40 January 1, 2014, and before January 1, 2025, there shall be allowed

1 as a credit against the “net tax,” as defined in Section 17039, an
2 amount as determined by the committee pursuant to paragraph (2)
3 and approved pursuant to Section 18410.2.

4 (2) The credit under this section shall be allocated by GO-Biz
5 with respect to the 2013–14 fiscal year through and including the
6 2017–18 fiscal year. The amount of credit allocated to a taxpayer
7 with respect to a fiscal year pursuant to this section shall be as set
8 forth in a written agreement between GO-Biz and the taxpayer and
9 shall be based on the following factors:

10 (A) The number of jobs the taxpayer will create or retain in this
11 state.

12 (B) The compensation paid or proposed to be paid by the
13 taxpayer to its employees, including wages and fringe benefits.

14 (C) The amount of investment in this state by the taxpayer.

15 (D) The extent of unemployment or poverty in the area
16 according to the United States Census in which the taxpayer’s
17 project or business is proposed or located.

18 (E) The incentives available to the taxpayer in this state,
19 including incentives from the state, local government, and other
20 entities.

21 (F) The incentives available to the taxpayer in other states.

22 (G) The duration of the proposed project and the duration the
23 taxpayer commits to remain in this state.

24 (H) The overall economic impact in this state of the taxpayer’s
25 project or business.

26 (I) The strategic importance of the taxpayer’s project or business
27 to the state, region, or locality.

28 (J) The opportunity for future growth and expansion in this state
29 by the taxpayer’s business.

30 (K) The extent to which the anticipated benefit to the state
31 exceeds the projected benefit to the taxpayer from the tax credit.

32 (3) The written agreement entered into pursuant to paragraph
33 (2) shall include:

34 (A) Terms and conditions that include the taxable year or years
35 for which the credit allocated shall be allowed, a minimum
36 compensation level, and a minimum job retention period.

37 (B) Provisions indicating whether the credit is to be allocated
38 in full upon approval or in increments based on mutually agreed
39 upon milestones when satisfactorily met by the taxpayer.

1 (C) Provisions that allow the committee to recapture the credit,
2 in whole or in part, if the taxpayer fails to fulfill the terms and
3 conditions of the written agreement.

4 (b) For purposes of this section:

5 (1) “Committee” means the California Competes Tax Credit
6 Committee established pursuant to Section 18410.2.

7 (2) “GO-Biz” means the Governor’s Office of Business and
8 Economic Development.

9 (c) For purposes of this section, GO-Biz shall do the following:

10 (1) Give priority to a taxpayer whose project or business is
11 located or proposed to be located in an area of high unemployment
12 or poverty.

13 (2) Negotiate with a taxpayer the terms and conditions of
14 proposed written agreements that provide the credit allowed
15 pursuant to this section to a taxpayer.

16 (3) Provide the negotiated written agreement to the committee
17 for its approval pursuant to Section 18410.2.

18 (4) Inform the Franchise Tax Board of the terms and conditions
19 of the written agreement upon approval of the written agreement
20 by the committee.

21 (5) Inform the Franchise Tax Board of any recapture, in whole
22 or in part, of a previously allocated credit upon approval of the
23 recapture by the committee.

24 (6) Post on its Internet Web site all of the following:

25 (A) The name of each taxpayer allocated a credit pursuant to
26 this section.

27 (B) The estimated amount of the investment by each taxpayer.

28 (C) The estimated number of jobs created or retained.

29 (D) The amount of the credit allocated to the taxpayer.

30 (E) The amount of the credit recaptured from the taxpayer, if
31 applicable.

32 (d) For purposes of this section, the Franchise Tax Board shall
33 do all of the following:

34 (1) (A) Except as provided in subparagraph (B), review the
35 books and records of all taxpayers allocated a credit pursuant to
36 this section to ensure compliance with the terms and conditions
37 of the written agreement between the taxpayer and GO-Biz.

38 (B) In the case of a taxpayer that is a “small business,” as
39 defined in Section 17053.73, review the books and records of the
40 taxpayer allocated a credit pursuant to this section to ensure

1 compliance with the terms and conditions of the written agreement
2 between the taxpayer and GO-Biz when, in the sole discretion of
3 the Franchise Tax Board, a review of those books and records is
4 appropriate or necessary in the best interests of the state.

5 (2) Notwithstanding Section 19542:

6 (A) Notify GO-Biz of a possible breach of the written agreement
7 by a taxpayer and provide detailed information regarding the basis
8 for that determination.

9 (B) Provide information to GO-Biz with respect to whether a
10 taxpayer is a “small business,” as defined in Section 17053.73.

11 (e) In the case where the credit allowed under this section
12 exceeds the “net tax,” as defined in Section 17039, for a taxable
13 year, the excess credit may be carried over to reduce the “net tax”
14 in the following taxable year, and succeeding five taxable years,
15 if necessary, until the credit has been exhausted.

16 (f) Any recapture, in whole or in part, of a credit approved by
17 the committee pursuant to Section 18410.2 shall be treated as a
18 mathematical error appearing on the return. Any amount of tax
19 resulting from that recapture shall be assessed by the Franchise
20 Tax Board in the same manner as provided by Section 19051. The
21 amount of tax resulting from the recapture shall be added to the
22 tax otherwise due by the taxpayer for the taxable year in which
23 the committee’s recapture determination occurred.

24 (g) (1) The aggregate amount of credit that may be allocated
25 in any fiscal year pursuant to this section and Section 23689 shall
26 be an amount equal to the sum of subparagraphs (A), (B), and (C),
27 less the amount specified in subparagraph (D):

28 (A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal
29 year, one hundred fifty million dollars (\$150,000,000) for the
30 2014–15 fiscal year, and two hundred million dollars
31 (\$200,000,000) for each fiscal year from 2015–16 to 2017–18,
32 inclusive.

33 (B) The unallocated credit amount, if any, from the preceding
34 fiscal year.

35 (C) The amount of any previously allocated credits that have
36 been recaptured.

37 (D) The amount estimated by the Director of Finance, in
38 consultation with the Franchise Tax Board and the State Board of
39 Equalization, to be necessary to limit the aggregation of the
40 estimated amount of exemptions claimed pursuant to Section

1 6377.1 and of the amounts estimated to be claimed pursuant to
2 this section and Sections 17053.73, 23626, and 23689 to no more
3 than seven hundred fifty million dollars (\$750,000,000) for either
4 the current fiscal year or the next fiscal year.

5 (i) The Director of Finance shall notify the Chairperson of the
6 Joint Legislative Budget Committee of the estimated annual
7 allocation authorized by this paragraph. Any allocation pursuant
8 to these provisions shall be made no sooner than 30 days after
9 written notification has been provided to the Chairperson of the
10 Joint Legislative Budget Committee and the chairpersons of the
11 committees of each house of the Legislature that consider
12 appropriation, or not sooner than whatever lesser time the
13 Chairperson of the Joint Legislative Budget Committee, or his or
14 her designee, may determine.

15 (ii) In no event shall the amount estimated in this subparagraph
16 be less than zero dollars (\$0).

17 (2) Each fiscal year, 25 percent of the aggregate amount of the
18 credit that may be allocated pursuant to this section and Section
19 23689 shall be reserved for small business, as defined in Section
20 17053.73 or 23626.

21 (3) Each fiscal year, no more than 20 percent of the aggregate
22 amount of the credit that may be allocated pursuant to this section
23 shall be allocated to any one taxpayer.

24 (h) GO-Biz may prescribe rules and regulations as necessary to
25 carry out the purposes of this section. Any rule or regulation
26 prescribed pursuant to this section may be by adoption of an
27 emergency regulation in accordance with Chapter 3.5 (commencing
28 with Section 11340) of Part 1 of Division 3 of Title 2 of the
29 Government Code.

30 (i) A written agreement between GO-Biz and a taxpayer with
31 respect to the credit authorized by this section shall comply with
32 existing law on the date the agreement is executed.

33 (j) (1) Upon the effective date of this section, the Department
34 of Finance shall estimate the total dollar amount of credits that
35 will be claimed under this section with respect to each fiscal year
36 from the 2013–14 fiscal year to the 2024–25 fiscal year, inclusive.

37 (2) The Franchise Tax Board shall annually provide to the Joint
38 Legislative Budget Committee, by no later than March 1, a report
39 of the total dollar amount of the credits claimed under this section
40 with respect to the relevant fiscal year. The report shall compare

1 the total dollar amount of credits claimed under this section with
2 respect to that fiscal year with the department’s estimate with
3 respect to that same fiscal year. If the total dollar amount of credits
4 claimed for the fiscal year is less than the estimate for that fiscal
5 year, the report shall identify options for increasing annual claims
6 of the credit so as to meet estimated amounts.

7 (k) This section is repealed on December 1, 2025.

8 SEC. 4. Section 23626 of the Revenue and Taxation Code, as
9 added by Section 33 of Assembly Bill 93 of the 2013–14 Regular
10 Session, is amended to read:

11 23626. (a) (1) For each taxable year beginning on or after
12 January 1, 2014, and before January 1, 2021, there shall be allowed
13 to a qualified taxpayer that hires a qualified full-time employee
14 and pays or incurs qualified wages attributable to work performed
15 by the qualified full-time employee in a designated census tract
16 or economic development area, and that receives a tentative credit
17 reservation for that qualified full-time employee, a credit against
18 the “tax,” as defined by Section 23036, in an amount calculated
19 under this section.

20 (2) The amount of the credit allowable under this section for a
21 taxable year shall be equal to the product of the tentative credit
22 amount for the taxable year and the applicable percentage for the
23 taxable year.

24 (3) (A) If a qualified taxpayer relocates to a designated census
25 tract or economic development area, the qualified taxpayer shall
26 be allowed a credit with respect to qualified wages for each
27 qualified full-time employee who is employed within the new
28 location only if the qualified taxpayer provides each employee at
29 the previous location or locations a written offer of employment
30 at the new location in the designated census tract or economic
31 development area with comparable compensation.

32 (B) For purposes of this paragraph, “relocates to a designated
33 census tract or economic development area” means an increase in
34 the number of qualified full-time employees, employed by a
35 qualified taxpayer, within a designated census tract or tracts or
36 economic development areas within a 12-month period in which
37 there is a decrease in the number of full-time employees, employed
38 by the qualified taxpayer in this state, but outside of designated
39 census tracts or economic development areas.

40 (C) This paragraph shall not apply to a small business.

1 (4) The credit allowed by this section may only be claimed on
2 a timely filed original return of the qualified taxpayer and only
3 with respect to a qualified full-time employee for whom the
4 qualified taxpayer has received a tentative credit reservation.

5 (b) For purposes of this section:

6 (1) The “tentative credit amount” for a taxable year shall be
7 equal to the product of the applicable credit percentage for each
8 qualified full-time employee and the qualified wages paid by the
9 qualified taxpayer during the taxable year to that qualified full-time
10 employee.

11 (2) The “applicable percentage” for a taxable year shall be equal
12 to a fraction, the numerator of which is the net increase in the total
13 number of full-time employees employed in this state during the
14 taxable year, determined on an annual full-time equivalent basis,
15 as compared with the total number of full-time employees
16 employed in this state during the base year, determined on the
17 same basis, and the denominator of which shall be the total number
18 of qualified full-time employees employed in this state during the
19 taxable year. The applicable percentage shall not exceed 100
20 percent.

21 (3) The “applicable credit percentage” means the credit
22 percentage for the calendar year during which a qualified full-time
23 employee was first employed by the qualified taxpayer. The
24 applicable credit percentage for all calendar years shall be 35
25 percent.

26 (4) “Base year” means the 2013 taxable year, or in the case of
27 a qualified taxpayer who first hires a qualified full-time employee
28 in a taxable year beginning on or after January 2015, the taxable
29 year immediately preceding the taxable year in which the qualified
30 full-time employee was hired.

31 (5) “Acquired” includes any gift, inheritance, transfer incident
32 to divorce, or any other transfer, whether or not for consideration.

33 (6) “Annual full-time equivalent” means either of the following:

34 (A) In the case of a full-time employee paid hourly qualified
35 wages, “annual full-time equivalent” means the total number of
36 hours worked for the qualified taxpayer by the employee (not to
37 exceed 2,000 hours per employee) divided by 2,000.

38 (B) In the case of a salaried full-time employee, “annual
39 full-time equivalent” means the total number of weeks worked for
40 the qualified taxpayer by the employee divided by 52.

1 (7) “Designated census tract” means a census tract within the
2 state that is determined by the Department of Finance to have a
3 civilian unemployment rate that is within the top 25 percent of all
4 census tracts within the state and has a poverty rate within the top
5 25 percent of all census tracts within the state, as prescribed in
6 Section 13073.5 of the Government Code.

7 (8) “Economic development area” means either of the following:

8 (A) A former enterprise zone. For purposes of this section,
9 “former enterprise zone” means an enterprise zone designated and
10 in effect as of December 31, 2011, any enterprise zone designated
11 during 2012, and any revision of an enterprise zone prior to June
12 30, 2013, under former Chapter 12.8 (commencing with Section
13 7070) of Division 7 of Title 1 of the Government Code, as in effect
14 on December 31, 2012, excluding any census tract within an
15 enterprise zone that is identified by the Department of Finance
16 pursuant to Section 13073.5 of the Government Code as a census
17 tract within the lowest quartile of census tracts with the lowest
18 civilian unemployment and poverty.

19 (B) A local agency military base recovery area designated as
20 of the effective date of the act adding this subparagraph, in
21 accordance with Section 7114 of the Government Code.

22 (9) “Minimum wage” means the wage established pursuant to
23 Chapter 1 (commencing with Section 1171) of Part 4 of Division
24 2 of the Labor Code.

25 (10) (A) “Qualified full-time employee” means an individual
26 who meets all of the following requirements:

27 (i) Performs at least 50 percent of his or her services for the
28 qualified taxpayer during the taxable year in a designated census
29 tract or economic development area.

30 (ii) Receives starting wages that are at least 150 percent of the
31 minimum wage.

32 (iii) Is hired by the qualified taxpayer on or after January 1,
33 2014.

34 (iv) Is hired by the qualified taxpayer after the date the
35 Department of Finance determines that the census tract referred
36 to in clause (i) is a designated census tract or that the census tracts
37 within a former enterprise zone are not census tracts with the lowest
38 civilian unemployment and poverty.

39 (v) Satisfies either of the following conditions:

- 1 (I) Is paid qualified wages by the qualified taxpayer for services
- 2 not less than an average of 35 hours per week.
- 3 (II) Is a salaried employee and was paid compensation during
- 4 the taxable year for full-time employment, within the meaning of
- 5 Section 515 of the Labor Code, by the qualified taxpayer.
- 6 (vi) Upon commencement of employment with the qualified
- 7 taxpayer, satisfies any of the following conditions:
- 8 (I) Was unemployed for the six months immediately preceding
- 9 employment with the qualified taxpayer. In the case of an
- 10 individual who completed a program of study at a college,
- 11 university, or other postsecondary educational institution, received
- 12 a baccalaureate, postgraduate, or professional degree, and was
- 13 unemployed for the six months immediately preceding employment
- 14 with the qualified taxpayer, that individual must have completed
- 15 that program of study at least 12 months prior to the individual’s
- 16 commencement of employment with the qualified taxpayer.
- 17 (II) Is a veteran who separated from service in the Armed Forces
- 18 of the United States within the 12 months preceding
- 19 commencement of employment with the qualified taxpayer.
- 20 (III) Was a recipient of the credit allowed under Section 32 of
- 21 the Internal Revenue Code, relating to earned income, as applicable
- 22 for federal purposes, for the previous taxable year.
- 23 (IV) Is an ex-offender previously convicted of a felony.
- 24 (V) Is a recipient of either CalWORKs, in accordance with
- 25 Article 2 (commencing with Section 11250) of Chapter 2 of Part
- 26 3 of Division 9 of the Welfare and Institutions Code, or general
- 27 assistance, in accordance with Section 17000.5 of the Welfare and
- 28 Institutions Code.
- 29 (B) An individual may only be considered a qualified full-time
- 30 employee for the period of time commencing with the date the
- 31 individual is first employed by the qualified taxpayer and ending
- 32 60 months thereafter.
- 33 (11) (A) “Qualified taxpayer” means a corporation engaged in
- 34 a trade or business within designated census tract or economic
- 35 development area that, during the taxable year, pays or incurs
- 36 qualified wages.
- 37 (B) In the case of any pass-thru entity, the determination of
- 38 whether a taxpayer is a qualified taxpayer under this section shall
- 39 be made at the entity level and any credit under this section or
- 40 Section 17053.73 shall be allowed to the pass-thru entity and

1 passed through to the partners and shareholders in accordance with
2 applicable provisions of this part or Part 10 (commencing with
3 Section 17001). For purposes of this subdivision, the term
4 “pass-thru entity” means any partnership or “S” corporation.

5 (C) “Qualified taxpayer” shall not include any of the following:

6 (i) Employers that provide temporary help services, as described
7 in Code 561320 of the North American Industry Classification
8 System (NAICS) published by the United States Office of
9 Management and Budget, 2012 edition.

10 (ii) Employers that provide retail trade services, as described
11 in Sector 44-45 of the North American Industry Classification
12 System (NAICS) published by the United States Office of
13 Management and Budget, 2012 edition.

14 (iii) Employers that are primarily engaged in providing food
15 services, as described in Code 711110, 722511, 722513, 722514,
16 or 722515 of the North American Industry Classification System
17 (NAICS) published by the United States Office of Management
18 and Budget, 2012 edition.

19 (iv) Employers that are primarily engaged in services as
20 described in Code 713210, 721120, or 722410 of the North
21 American Industry Classification System (NAICS) published by
22 the United States Office of Management and Budget, 2012 edition.

23 (v) (I) An employer that is a sexually oriented business.

24 (II) For purposes of this clause:

25 (aa) “Sexually oriented business” means a nightclub, bar,
26 restaurant, or similar commercial enterprise that provides for an
27 audience of two or more individuals live nude entertainment or
28 live nude performances where the nudity is a function of everyday
29 business operations and where nudity is a planned and intentional
30 part of the entertainment or performance.

31 (ab) “Nude” means clothed in a manner that leaves uncovered
32 or visible, through less than fully opaque clothing, any portion of
33 the genitals or, in the case of a female, any portion of the breasts
34 below the top of the areola of the breasts.

35 (D) Subparagraph (C) shall not apply to a taxpayer that is a
36 “small business.”

37 (12) “Qualified wages” means those wages that meet all of the
38 following requirements:

39 (A) (i) Except as provided in clause (ii), that portion of wages
40 paid or incurred by the qualified taxpayer during the taxable year

1 to each qualified full-time employee that exceeds 150 percent of
2 minimum wage, but does not exceed 350 percent of the minimum
3 wage.

4 (ii) (I) In the case of a qualified *full-time* employee employed
5 in a designated pilot area, that portion of wages paid or incurred
6 by the qualified taxpayer during the taxable year to each qualified
7 full-time employee that exceeds ten dollars (\$10) per hour or an
8 equivalent amount for salaried employees, *but does not exceed*
9 *350 percent of the minimum wage. For qualified full-time*
10 *employees described in the preceding sentence, clause (ii) of*
11 *subparagraph (A) of paragraph (10) is modified by substituting*
12 *“ten dollars (\$10) per hour or an equivalent amount for salaried*
13 *employees” for “150 percent of the minimum wage.”*

14 (II) For purposes of this clause:

15 (aa) “Designated pilot area” means an area designated as a
16 designated pilot area by the Governor’s Office of Business and
17 Economic Development.

18 (ab) Areas that may be designated as a designated pilot area are
19 limited to areas within a designated census tract or an economic
20 development area with average wages less than the statewide
21 average wages, based on information from the Labor Market
22 Division of the Employment Development Department, and areas
23 within a designated census tract or an economic development area
24 based on high poverty or high unemployment.

25 (ac) The total number of designated pilot areas that may be
26 designated is limited to five, one or more of which must be an area
27 within five or fewer designated census tracts within a single county
28 based on high poverty or high unemployment or an area within an
29 economic development area based on high poverty or high
30 unemployment.

31 (ad) The designation of a designated pilot area shall be
32 applicable for a period of four calendar years, commencing with
33 the first calendar year for which the designation of a designated
34 pilot area is effective. The applicable period of a designated pilot
35 area may be extended, in the sole discretion of the Governor’s
36 Office of Business and Economic Development, for an additional
37 period of up to three calendar years. The applicable period, and
38 any extended period, shall not extend beyond December 31, 2020.

39 (III) The designation of an area as a designated pilot area and
40 the extension of the applicable period of a designated pilot area

1 shall be at the sole discretion of the Governor’s Office of Business
2 and Economic Development and shall not be subject to
3 administrative appeal or judicial review.

4 (B) Wages paid or incurred during the 60-month period
5 beginning with the first day the qualified full-time employee
6 commences employment with the qualified taxpayer. In the case
7 of any employee who is reemployed, including regularly occurring
8 seasonal increase, in the trade or business operations of the
9 qualified taxpayer, this reemployment shall not be treated as
10 constituting commencement of employment for purposes of this
11 section.

12 (C) Except as provided in paragraph (3) of subdivision (m),
13 qualified wages shall not include any wages paid or incurred by
14 the qualified taxpayer on or after the date that the Department of
15 Finance’s redesignation of designated census tracts is effective,
16 as provided in paragraph (2) of subdivision (g), so that a census
17 tract is no longer determined to be a designated census tract.

18 (13) “Seasonal employment” means employment by a qualified
19 taxpayer that has regular and predictable substantial reductions in
20 trade or business operations.

21 (14) (A) “Small business” means a trade or business that has
22 aggregate gross receipts, less returns and allowances reportable to
23 this state, of less than two million dollars (\$2,000,000) during the
24 previous taxable year.

25 (B) (i) For purposes of this paragraph, “gross receipts, less
26 returns and allowances reportable to this state,” means the sum of
27 the gross receipts from the production of business income, as
28 defined in subdivision (a) of Section 25120, and the gross receipts
29 from the production of nonbusiness income, as defined in
30 subdivision (d) of Section 25120.

31 (ii) In the case of any trade or business activity conducted by a
32 partnership or an “S” corporation, the limitations set forth in
33 subparagraph (A) shall be applied to the partnership or “S”
34 corporation and to each partner or shareholder.

35 (iii) For taxpayers that are required to be included in a combined
36 report under Section 25101 or authorized to be included in a
37 combined report under Section 25101.15, the dollar amount
38 specified in subparagraph (A) shall apply to the aggregate gross
39 receipts of all taxpayers that are required to be or authorized to be
40 included in a combined report.

- 1 (C) (i) “Small business” shall not include a sexually oriented
- 2 business.
- 3 (ii) For purposes of this subparagraph:
- 4 (I) “Sexually oriented business” means a nightclub, bar,
- 5 restaurant, or similar commercial enterprise that provides for an
- 6 audience of two or more individuals live nude entertainment or
- 7 live nude performances where the nudity is a function of everyday
- 8 business operations and where nudity is a planned and intentional
- 9 part of the entertainment or performance.
- 10 (II) “Nude” means clothed in a manner that leaves uncovered
- 11 or visible, through less than fully opaque clothing, any portion of
- 12 the genitals or, in the case of a female, any portion of the breasts
- 13 below the top of the areola of the breasts.
- 14 (15) An individual is “unemployed” for any period for which
- 15 the individual is all of the following:
- 16 (A) Not in receipt of wages subject to withholding under Section
- 17 13020 of the Unemployment Insurance Code for that period.
- 18 (B) Not a self-employed individual (within the meaning of
- 19 Section 401(c)(1)(B) of the Internal Revenue Code, relating to
- 20 self-employed individual) for that period.
- 21 (C) Not a registered full-time student at a high school, college,
- 22 university, or other postsecondary educational institution for that
- 23 period.
- 24 (c) The net increase in full-time employees of a qualified
- 25 taxpayer shall be determined as provided by this subdivision:
- 26 (1) (A) The net increase in full-time employees shall be
- 27 determined on an annual full-time equivalent basis by subtracting
- 28 from the amount determined in subparagraph (C) the amount
- 29 determined in subparagraph (B).
- 30 (B) The total number of full-time employees employed in the
- 31 base year by the taxpayer and by any trade or business acquired
- 32 by the taxpayer during the current taxable year.
- 33 (C) The total number of full-time employees employed in the
- 34 current taxable year by the taxpayer and by any trade or business
- 35 acquired during the current taxable year.
- 36 (2) For taxpayers who first commence doing business in this
- 37 state during the taxable year, the number of full-time employees
- 38 for the base year shall be zero.
- 39 (d) For purposes of this section:

1 (1) All employees of the trades or businesses that are treated as
2 related under Section 267, 318, or 707 of the Internal Revenue
3 Code shall be treated as employed by a single taxpayer.

4 (2) In determining whether the taxpayer has first commenced
5 doing business in this state during the taxable year, the provisions
6 of subdivision (g) of Section 24416.20, without application of
7 paragraph (7) of that subdivision, shall apply.

8 (e) (1) To be eligible for the credit allowed by this section, a
9 qualified taxpayer shall, upon hiring a qualified full-time employee,
10 request a tentative credit reservation from the Franchise Tax Board
11 within 30 days of complying with the Employment Development
12 Department's new hire reporting requirement as provided in
13 Section 1088.5 of the Unemployment Insurance Code, in the form
14 and manner prescribed by the Franchise Tax Board.

15 (2) To obtain a tentative credit reservation with respect to a
16 qualified full-time employee, the qualified taxpayer shall provide
17 necessary information, as determined by the Franchise Tax Board,
18 including the name, the social security number, the start date of
19 employment, the rate of pay of the qualified full-time employee,
20 the qualified taxpayer's gross receipts, less returns and allowances,
21 for the previous taxable year, and whether the qualified full-time
22 employee is a resident of a targeted employment area, as defined
23 in former Section 7072 of the Government Code, as in effect on
24 December 31, 2013.

25 (3) The qualified taxpayer shall provide the Franchise Tax Board
26 an annual certification of employment with respect to each
27 qualified full-time employee hire in a previous taxable year, on or
28 before the 15th day of the third month of the taxable year. The
29 certification shall include necessary information, as determined
30 by the Franchise Tax Board, including the name, social security
31 number, start date of employment, and rate of pay for each qualified
32 full-time employee employed by the qualified taxpayer.

33 (4) A tentative credit reservation provided to a taxpayer with
34 respect to an employee of that taxpayer shall not constitute a
35 determination by the Franchise Tax Board with respect to any of
36 the requirements of this section regarding a taxpayer's eligibility
37 for the credit authorized by this section.

38 (f) The Franchise Tax Board shall do all of the following:

39 (1) Approve a tentative credit reservation with respect to a
40 qualified full-time employee hired during a calendar year.

1 (2) Determine the aggregate tentative reservation amount and
2 the aggregate small business tentative reservation amount for a
3 calendar year.

4 (3) A tentative credit reservation request from a qualified
5 taxpayer with respect to a qualified full-time employee who is a
6 resident of a targeted employment area, as defined in former
7 Section 7072 of the Government Code, as in effect on December
8 31, 2013, shall be expeditiously processed by the Franchise Tax
9 Board. The residence of a qualified full-time employee in a targeted
10 employment area shall have no other effect on the eligibility of an
11 individual as a qualified full-time employee or the eligibility of a
12 qualified taxpayer for the credit authorized by this section.

13 (4) Notwithstanding Section 19542, provide as a searchable
14 database on its Internet Web site, for each taxable year beginning
15 on or after January 1, 2014, and before January 1, 2021, the
16 employer names, amounts of tax credit claimed, and number of
17 new jobs created for each taxable year pursuant to this section and
18 Section 17053.73.

19 (g) (1) The Department of Finance shall, by January 1, 2014,
20 and by January 1 of every fifth year thereafter, provide the
21 Franchise Tax Board with a list of the designated census tracts and
22 a list of census tracts with the lowest civilian unemployment rate.

23 (2) The redesignation of designated census tracts and lowest
24 civilian unemployment census tracts by the Department of Finance
25 as provided in Section 13073.5 of the Government Code shall be
26 effective, for purposes of this credit, one year after the date that
27 the Department of Finance redesignates the designated census
28 tracts.

29 (h) (1) For purposes of this section:

30 (A) All employees of the trades or businesses that are treated
31 as related under Section 267, 318, or 707 of the Internal Revenue
32 Code shall be treated as employed by a single qualified taxpayer.

33 (B) All employees of all corporations that are members of the
34 same controlled group of corporations shall be treated as employed
35 by a single qualified taxpayer.

36 (C) The credit, if any, allowable by this section to each member
37 shall be determined by reference to its proportionate share of the
38 expense of the qualified wages giving rise to the credit, and shall
39 be allocated in that manner.

1 (D) If a qualified taxpayer acquires the major portion of a trade
2 or business of another taxpayer, hereinafter in this paragraph
3 referred to as the predecessor, or the major portion of a separate
4 unit of a trade or business of a predecessor, then, for purposes of
5 applying this section for any taxable year ending after that
6 acquisition, the employment relationship between a qualified
7 full-time employee and a qualified taxpayer shall not be treated
8 as terminated if the employee continues to be employed in that
9 trade or business.

10 (2) For purposes of this subdivision, “controlled group of
11 corporations” means a controlled group of corporations as defined
12 in Section 1563(a) of the Internal Revenue Code, except that:

13 (A) “More than 50 percent” shall be substituted for “at least 80
14 percent” each place it appears in Section 1563(a)(1) of the Internal
15 Revenue Code.

16 (B) The determination shall be made without regard to
17 subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal
18 Revenue Code.

19 (3) Rules similar to the rules provided in Sections 46(e) and
20 46(h) of the Internal Revenue Code, as in effect on November 4,
21 1990, shall apply to both of the following:

22 (A) An organization to which Section 593 of the Internal
23 Revenue Code applies.

24 (B) A regulated investment company or a real estate investment
25 trust subject to taxation under this part.

26 (i) (1) If the employment of any qualified full-time employee,
27 with respect to whom qualified wages are taken into account under
28 subdivision (a), is terminated by the qualified taxpayer at any time
29 during the first 36 months after commencing employment with
30 the qualified taxpayer, whether or not consecutive, the tax imposed
31 by this part for the taxable year in which that employment is
32 terminated shall be increased by an amount equal to the credit
33 allowed under subdivision (a) for that taxable year and all prior
34 taxable years attributable to qualified wages paid or incurred with
35 respect to that employee.

36 (2) Paragraph (1) shall not apply to any of the following:

37 (A) A termination of employment of a qualified full-time
38 employee who voluntarily leaves the employment of the qualified
39 taxpayer.

1 (B) A termination of employment of a qualified full-time
2 employee who, before the close of the period referred to in
3 paragraph (1), becomes disabled and unable to perform the services
4 of that employment, unless that disability is removed before the
5 close of that period and the qualified taxpayer fails to offer
6 reemployment to that employee.

7 (C) A termination of employment of a qualified full-time
8 employee, if it is determined that the termination was due to the
9 misconduct, as defined in Sections 1256-30 to 1256-43, inclusive,
10 of Title 22 of the California Code of Regulations, of that employee.

11 (D) A termination of employment of a qualified full-time
12 employee due to a substantial reduction in the trade or business
13 operations of the qualified taxpayer, including reductions due to
14 seasonal employment.

15 (E) A termination of employment of a qualified full-time
16 employee, if that employee is replaced by other qualified full-time
17 employees so as to create a net increase in both the number of
18 employees and the hours of employment.

19 (F) A termination of employment of a qualified full-time
20 employee, when that employment is considered seasonal
21 employment and the qualified employee is rehired on a seasonal
22 basis.

23 (3) For purposes of paragraph (1), the employment relationship
24 between the qualified taxpayer and a qualified full-time employee
25 shall not be treated as terminated by reason of a mere change in
26 the form of conducting the trade or business of the qualified
27 taxpayer, if the qualified full-time employee continues to be
28 employed in that trade or business and the qualified taxpayer retains
29 a substantial interest in that trade or business.

30 (4) Any increase in tax under paragraph (1) shall not be treated
31 as tax imposed by this part for purposes of determining the amount
32 of any credit allowable under this part.

33 (j) In the case where the credit allowed by this section exceeds
34 the “tax,” the excess may be carried over to reduce the “tax” in
35 the following year, and the succeeding four years if necessary,
36 until exhausted.

37 (k) The Franchise Tax Board may prescribe rules, guidelines,
38 or procedures necessary or appropriate to carry out the purposes
39 of this section, including any guidelines regarding the allocation
40 of the credit allowed under this section. Chapter 3.5 (commencing

1 with Section 11340) of Part 1 of Division 3 of Title 2 of the
2 Government Code shall not apply to any rule, guideline, or
3 procedure prescribed by the Franchise Tax Board pursuant to this
4 section.

5 (l) (1) Upon the effective date of this section, the Department
6 of Finance shall estimate the total dollar amount of credits that
7 will be claimed under this section with respect to each fiscal year
8 from the 2013–14 fiscal year to the 2020–21 fiscal year, inclusive.

9 (2) The Franchise Tax Board shall annually provide to the Joint
10 Legislative Budget Committee, by no later than March 1, a report
11 of the total dollar amount of the credits claimed under this section
12 with respect to the relevant fiscal year. The report shall compare
13 the total dollar amount of credits claimed under this section with
14 respect to that fiscal year with the department’s estimate with
15 respect to that same fiscal year. If the total dollar amount of credits
16 claimed for the fiscal year is less than the estimate for that fiscal
17 year, the report shall identify options for increasing annual claims
18 of the credit so as to meet estimated amounts.

19 (m) (1) This section shall remain in effect only until December
20 1, 2024, and as of that date is repealed.

21 (2) Notwithstanding paragraph (1) of subdivision (a), this section
22 shall continue to be operative for taxable years beginning on or
23 after January 1, 2021, but only with respect to qualified full-time
24 employees who commenced employment with a qualified taxpayer
25 in a designated census tract or economic development area in a
26 taxable year beginning before January 1, 2021.

27 (3) This section shall remain operative for any qualified taxpayer
28 with respect to any qualified full-time employee after the
29 designated census tract is no longer designated or an economic
30 development area ceases to be an economic development area, as
31 defined in this section, for the remaining period, if any, of the
32 60-month period after the original date of hiring of an otherwise
33 qualified full-time employee and any wages paid or incurred with
34 respect to those qualified full-time employees after the designated
35 census tract is no longer designated or an economic development
36 area ceases to be an economic development area, as defined in this
37 section, shall be treated as qualified wages under this section,
38 provided the employee satisfies any other requirements of
39 paragraphs (10) and (12) of subdivision (b), as if the designated

1 census tract was still designated and binding or the economic
2 development area was still in existence.

3 SEC. 5. Section 23689 of the Revenue and Taxation Code, as
4 added by Section 38 of Assembly Bill 93 of the 2013–14 Regular
5 Session, is amended to read:

6 23689. (a) (1) For each taxable year beginning on and after
7 January 1, 2014, and before January 1, 2025, there shall be allowed
8 as a credit against the “tax,” as defined in Section 23036, an amount
9 as determined by the committee pursuant to paragraph (2) and
10 approved pursuant to Section 18410.2.

11 (2) The credit under this section shall be allocated by GO-Biz
12 with respect to the 2013–14 fiscal year through and including the
13 2017–18 fiscal year. The amount of credit allocated to a taxpayer
14 with respect to a fiscal year pursuant to this section shall be as set
15 forth in a written agreement between GO-Biz and the taxpayer and
16 shall be based on the following factors:

17 (A) The number of jobs the taxpayer will create or retain in this
18 state.

19 (B) The compensation paid or proposed to be paid by the
20 taxpayer to its employees, including wages and fringe benefits.

21 (C) The amount of investment in this state by the taxpayer.

22 (D) The extent of unemployment or poverty in the area
23 according to the United States Census in which the taxpayer’s
24 project or business is proposed or located.

25 (E) The incentives available to the taxpayer in the state,
26 including incentives from the state, local government and other
27 entities.

28 (F) The incentives available to the taxpayer in other states.

29 (G) The duration of the proposed project and the duration the
30 taxpayer commits to remain in this state.

31 (H) The overall economic impact in this state of the taxpayer’s
32 project or business.

33 (I) The strategic importance of the taxpayer’s project or business
34 to the state, region, or locality.

35 (J) The opportunity for future growth and expansion in this state
36 by the taxpayer’s business.

37 (K) The extent to which the anticipated benefit to the state
38 exceeds the projected benefit to the taxpayer from the tax credit.

39 (3) The written agreement entered into pursuant to paragraph
40 (2) shall include:

1 (A) Terms and conditions that include the taxable year or years
2 for which the credit allocated shall be allowed, a minimum
3 compensation level, and a minimum job retention period.

4 (B) Provisions indicating whether the credit is to be allocated
5 in full upon approval or in increments based on mutually agreed
6 upon milestones when satisfactorily met by the taxpayer.

7 (C) Provisions that allow the committee to recapture the credit,
8 in whole or in part, if the taxpayer fails to fulfill the terms and
9 conditions of the written agreement.

10 (b) For purposes of this section:

11 (1) “Committee” means the California Competes Tax Credit
12 Committee established pursuant to Section 18410.2.

13 (2) “GO-Biz” means the Governor’s Office of Business and
14 Economic Development.

15 (c) For purposes of this section, GO-Biz shall do the following:

16 (1) Give priority to a taxpayer whose project or business is
17 located or proposed to be located in an area of high unemployment
18 or poverty.

19 (2) Negotiate with a taxpayer the terms and conditions of
20 proposed written agreements that provide the credit allowed
21 pursuant to this section to a taxpayer.

22 (3) Provide the negotiated written agreement to the committee
23 for its approval pursuant to Section 18410.2.

24 (4) Inform the Franchise Tax Board of the terms and conditions
25 of the written agreement upon approval of the written agreement
26 by the committee.

27 (5) Inform the Franchise Tax Board of any recapture, in whole
28 or in part, of a previously allocated credit upon approval of the
29 recapture by the committee.

30 (6) Post on its Internet Web site all of the following:

31 (A) The name of each taxpayer allocated a credit pursuant to
32 this section.

33 (B) The estimated amount of the investment by each taxpayer.

34 (C) The estimated number of jobs created or retained.

35 (D) The amount of the credit allocated to the taxpayer.

36 (E) The amount of the credit recaptured from the taxpayer, if
37 applicable.

38 (d) For purposes of this section, the Franchise Tax Board shall
39 do all of the following:

1 (1) (A) Except as provided in subparagraph (B), review the
2 books and records of all taxpayers allocated a credit pursuant to
3 this section to ensure compliance with the terms and conditions
4 of the written agreement between the taxpayer and GO-Biz.

5 (B) In the case of a taxpayer that is a “small business,” as
6 defined in Section 23626, review the books and records of the
7 taxpayer allocated a credit pursuant to this section to ensure
8 compliance with the terms and conditions of the written agreement
9 between the taxpayers and GO-Biz when, in the sole discretion of
10 the Franchise Tax Board, a review of those books and records is
11 appropriate or necessary in the best interests of the state.

12 (2) Notwithstanding Section 19542:

13 (A) Notify GO-Biz of a possible breach of the written agreement
14 by a taxpayer and provide detailed information regarding the basis
15 for that determination.

16 (B) Provide information to GO-Biz with respect to whether a
17 taxpayer is a “small business,” as defined in Section 23626.

18 (e) In the case where the credit allowed under this section
19 exceeds the “tax,” as defined in Section 23036, for a taxable year,
20 the excess credit may be carried over to reduce the “tax” in the
21 following taxable year, and succeeding five taxable years, if
22 necessary, until the credit has been exhausted.

23 (f) Any recapture, in whole or in part, of a credit approved by
24 the committee pursuant to Section 18410.2 shall be treated as a
25 mathematical error appearing on the return. Any amount of tax
26 resulting from that recapture shall be assessed by the Franchise
27 Tax Board in the same manner as provided by Section 19051. The
28 amount of tax resulting from the recapture shall be added to the
29 tax otherwise due by the taxpayer for the taxable year in which
30 the committee’s recapture determination occurred.

31 (g) (1) The aggregate amount of credit that may be allocated
32 in any fiscal year pursuant to this section and Section 17059.2 shall
33 be an amount equal to the sum of subparagraphs (A), (B), and (C),
34 less the amount specified in subparagraph (D):

35 (A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal
36 year, one hundred fifty million dollars (\$150,000,000) for the
37 2014–15 fiscal year, and two hundred million dollars
38 (\$200,000,000) for each fiscal year from 2015–16 to 2017–18,
39 inclusive.

1 (B) The unallocated credit amount, if any, from the preceding
2 fiscal year.

3 (C) The amount of any previously allocated credits that have
4 been recaptured.

5 (D) The amount estimated by the Director of Finance, in
6 consultation with the Franchise Tax Board and the State Board of
7 Equalization, to be necessary to limit the aggregation of the
8 estimated amount of exemptions claimed pursuant to Section
9 6377.1 and of the amounts estimated to be claimed pursuant to
10 this section and Sections 17053.73, 17059.2, and 23626 to no more
11 than seven hundred fifty million dollars (\$750,000,000) for either
12 the current fiscal year or the next fiscal year.

13 (i) The Director of Finance shall notify the Chairperson of the
14 Joint Legislative Budget Committee of the estimated annual
15 allocation authorized by this paragraph. Any allocation pursuant
16 to these provisions shall be made no sooner than 30 days after
17 written notification has been provided to the Chairperson of the
18 Joint Legislative Budget Committee and the chairpersons of the
19 committees of each house of the Legislature that consider
20 appropriation, or not sooner than whatever lesser time the
21 Chairperson of the Joint Legislative Budget Committee, or his or
22 her designee, may determine.

23 (ii) In no event shall the amount estimated in this subparagraph
24 be less than zero dollars (\$0).

25 (2) Each fiscal year, 25 percent of the aggregate amount of the
26 credit that may be allocated pursuant to this section and Section
27 17059.2 shall be reserved for “small business,” as defined in
28 Section 17053.73 or 23626.

29 (3) Each fiscal year, no more than 20 percent of the aggregate
30 amount of the credit that shall be allocated pursuant to this section
31 may be allocated to any one taxpayer.

32 (h) GO-Biz may prescribe rules and regulations as necessary to
33 carry out the purposes of this section. Any rule or regulation
34 prescribed pursuant to this section may be by adoption of an
35 emergency regulation in accordance with Chapter 3.5 (commencing
36 with Section 11340) of Part 1 of Division 3 of Title 2 of the
37 Government Code.

38 (i) (1) A written agreement between GO-Biz and a taxpayer
39 with respect to the credit authorized by this section shall not
40 restrict, broaden, or otherwise alter the ability of the taxpayer to

1 assign that credit or any portion thereof in accordance with Section
2 23663.

3 (2) A written agreement between GO-Biz and a taxpayer with
4 respect to the credit authorized by this section must comply with
5 existing law on the date the agreement is executed.

6 (j) (1) Upon the effective date of this section, the Department
7 of Finance shall estimate the total dollar amount of credits that
8 will be claimed under this section with respect to each fiscal year
9 from the 2013–14 fiscal year to the 2024–25 fiscal year, inclusive.

10 (2) The Franchise Tax Board shall annually provide to the Joint
11 Legislative Budget Committee, by no later than March 1, a report
12 of the total dollar amount of the credits claimed under this section
13 with respect to the relevant fiscal year. The report shall compare
14 the total dollar amount of credits claimed under this section with
15 respect to that fiscal year with the department’s estimate with
16 respect to that same fiscal year. If the total dollar amount of credits
17 claimed for the fiscal year is less than the estimate for that fiscal
18 year, the report shall identify options for increasing annual claims
19 of the credit so as to meet estimated amounts.

20 (k) This section is repealed on December 1, 2025.

21 SEC. 6. (a) (1) For purposes of applying Sections 17053.33,
22 17053.34, 17053.45, 17053.46, 17053.47, 17053.70, 17053.74,
23 23612.2, 23622.7, 23622.8, 23633, 23634, 23645, and 23646 of
24 the Revenue and Taxation Code, as amended by Assembly Bill
25 93 of the 2013–14 Regular Session, the revision of the carryover
26 period of the credit under each of those sections to a period of 10
27 years applies to credits under those sections and carryovers of
28 credits under those sections that are available for carryover to the
29 taxable year beginning on or after January 1, 2014. The carryover
30 period for hiring credits earned under Section 17053.34, 17053.46,
31 17053.47, 17053.74, 23622.7, 23622.8, 23634, and 23646 of the
32 Revenue and Taxation Code in taxable years beginning on or after
33 January 1, 2014, is also 10 taxable years, beginning with the taxable
34 year after the taxable year the credit is earned.

35 (2) Notwithstanding the repeal of Sections 17053.33, 17053.34,
36 17053.45, 17053.46, 17053.47, 17053.70, 17053.74, 23612.2,
37 23622.7, 23622.8, 23633, 23634, 23645, and 23646 of the Revenue
38 and Taxation Code by amendments made by Assembly Bill 93 of
39 the 2013–14 Regular Session, pursuant to subdivision (d) of Section
40 17039 of the Revenue and Taxation Code and subdivision (f) of

1 Section 23036 of the Revenue and Taxation Code, any remaining
2 carryover from a credit under those sections is allowed to be carried
3 over under the provisions of those sections as they read
4 immediately prior to the repeal.

5 (b) The Legislature finds and declares that, for purposes of
6 proper implementation of the amendments made by Assembly Bill
7 93 of the 2013–14 Regular Session to Sections 17053.33, 17053.34,
8 17053.45, 17053.46, 17053.47, 17053.70, 17053.74, 23612.2,
9 23622.7, 23622.8, 23633, 23634, 23645, and 23646 of the Revenue
10 and Taxation Code, this section does both of the following:

11 (1) Clarifies the changes made by Assembly Bill 93 of the
12 2013–14 Regular Session with respect to the carryover periods of
13 each of those provisions of the Revenue and Taxation Code.

14 (2) Reiterates the application of existing law regarding the
15 continuing availability of carryover credits after repeal of each of
16 those provisions of the Revenue and Taxation Code.

17 SEC. 7. Section 1 of this bill that amends Section 6377.1 of
18 the Revenue and Taxation Code, as added by Assembly Bill 93 of
19 the 2013–14 Regular Session, Section 2 of this bill that amends
20 Section 17053.73 of the Revenue and Taxation Code, as added by
21 Assembly Bill 93 of the 2013–14 Regular Session, Section 3 of
22 this bill that amends Section 17059.2 of the Revenue and Taxation
23 Code, as added by Assembly Bill 93 of the 2013–14 Regular
24 Session, Section 4 of this bill that amends Section 23626 of the
25 Revenue and Taxation Code, as added by Assembly Bill 93 of the
26 2013–14 Regular Session, and Section 5 of this bill that amends
27 Section 23689 of the Revenue and Taxation Code, as added by
28 Assembly Bill 93 of the 2013–14 Regular Session, shall become
29 operative only if Assembly Bill 93 of the 2013–14 Regular Session
30 is chaptered and becomes operative. The effect and operation of
31 Sections 1, 2, 3, 4, and 5 of this bill are subject to Section 47 of
32 Assembly Bill 93 of the 2013–14 Regular Session.

33 SEC. 8. This act is an urgency statute necessary for the
34 immediate preservation of the public peace, health, or safety within
35 the meaning of Article IV of the Constitution and shall go into
36 immediate effect. The facts constituting the necessity are:

37 In order to ensure the public good by providing certainty
38 regarding the incentives available for attracting and retaining jobs

- 1 in economically distressed areas of the state, it is necessary that
- 2 this act take effect immediately.

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