

AMENDED IN SENATE JULY 9, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 904**

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**Introduced by Assembly Member V. Manuel Perez**

February 26, 2009

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An act to amend Section 51298 of, *to add Section 51298.5 to, and to repeal Chapter 8 (commencing with Section 51298) of Part 1 of Division 1 of Title 5 of, the Government Code, relating to local government finance.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 904, as amended, V. Manuel Perez. Local capital investment incentives: qualified manufacturing facilities.

Existing law, *known as the Capital Investment Incentive Program*, authorizes a city, county, or city and county to pay capital investment incentive amounts to a requesting proponent of a qualified manufacturing facility. A “qualified manufacturing facility” is defined for these purposes to include a facility operated by a business described in specified provisions of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, and a facility operated by a business engaged in the recovery of minerals from geothermal resources. *Existing law authorizes a city, special district, or school district to, with specific authorization, pay a portion of its ad valorem property tax revenues toward the incentive program.*

*This bill would eliminate the ability of a school district to pay a portion of its ad valorem property tax revenues toward the incentive program. This bill would include within the definition of a “qualified*

manufacturing facility” a facility operated by a business engaged in the manufacturing of parts or components related to the production of electricity using solar, wind, biomass, hydropower, or geothermal resources on or after July 1, 2010. This bill would also delete the references to the Technology, Trade, and Commerce Agency and impose its duties under these provisions on the Business, Transportation and Housing Agency. *This bill would repeal the provisions authorizing this incentive program on January 1, 2017.*

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

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

1 SECTION 1. Section 51298 of the Government Code is  
2 amended to read:  
3 51298. It is the intent of the Legislature in enacting this chapter  
4 to provide local governments with opportunities to attract large  
5 manufacturing facilities to invest in their communities and to  
6 encourage industries, such as high technology, aerospace,  
7 automotive, biotechnology, software, environmental sources, and  
8 others, to locate and invest in those facilities in California.  
9 (a) Commencing in the 1998–99 fiscal year, the governing body  
10 of a county, city and county, or city, may, by means of an ordinance  
11 or resolution approved by a majority of its entire membership,  
12 elect to establish a capital investment incentive program. In any  
13 county, city and county, or city in which the governing body has  
14 so elected, the county, city and county, or city shall, upon the  
15 approval by a majority of the entire membership of its governing  
16 body of a written request therefor, pay a capital investment  
17 incentive amount to the proponent of a qualified manufacturing  
18 facility for up to 15 consecutive fiscal years. A request for the  
19 payment of capital investment incentive amounts shall be filed by  
20 a proponent in writing with the governing body of an electing  
21 county, city and county, or city in the time and manner specified  
22 in procedures adopted by that governing body. In the case in which  
23 the governing body of an electing county, city and county, or city  
24 approves a request for the payment of capital investment incentive  
25 amounts, both of the following conditions shall apply:  
26 (1) The consecutive fiscal years during which a capital  
27 investment incentive amount is to be paid shall commence with

1 the first fiscal year commencing after the date upon which the  
2 qualified manufacturing facility is certified for occupancy or, if  
3 no certification is issued, the first fiscal year commencing after  
4 the date upon which the qualified manufacturing facility  
5 commences operation.

6 (2) In accordance with paragraph (4) of subdivision (d), the  
7 annual payment to a proponent of each capital investment incentive  
8 amount shall be contingent upon the proponent's payment of a  
9 community services fee.

10 (b) For purposes of this section:

11 (1) "Qualified manufacturing facility" means a proposed  
12 manufacturing facility that meets all of the following criteria:

13 (A) The proponent's initial investment in that facility, in real  
14 and personal property, necessary for the full and normal operation  
15 of that facility, made pursuant to the capital investment incentive  
16 program, that comprises any portion of that facility or has its situs  
17 at that facility, exceeds one hundred fifty million dollars  
18 (\$150,000,000). Compliance with this subparagraph shall be  
19 certified by the Business, Transportation and Housing Agency  
20 upon the agency's approval of a proponent's application for  
21 certification of a qualified manufacturing facility. An application  
22 for certification shall be submitted by a proponent to the agency  
23 in writing in the time and manner as specified by the agency.

24 (B) The facility is to be located within the jurisdiction of the  
25 electing county, city and county, or city to which the request is  
26 made for payment of capital investment incentive amounts.

27 (C) The facility is operated by any of the following:

28 (i) A business described in Codes 3500 to 3899, inclusive, of  
29 the Standard Industrial Classification (SIC) Manual published by  
30 the United States Office of Management and Budget, 1987 edition,  
31 except that "January 1, 1997," shall be substituted for "January 1,  
32 1994," in each place in which it appears.

33 (ii) A business engaged in the recovery of minerals from  
34 geothermal resources, including the proportional amount of a  
35 geothermal electric generating plant that is integral to the recovery  
36 process by providing electricity for it.

37 (iii) A business engaged in the manufacturing of parts or  
38 components related to the production of electricity using solar,  
39 wind, biomass, hydropower, or geothermal resources on or after  
40 July 1, 2010.

(D) The proponent is either currently engaged in commercial production or engaged in the perfection of the manufacturing process, or the perfection of a product intended to be manufactured.

(2) “Proponent” means a party or parties that meet all of the following criteria:

(A) The party is named in the application to the county, city and county, or city within which the qualified manufacturing facility would be located for a permit to construct a qualified manufacturing facility.

(B) The party will be the fee owner of the qualified manufacturing facility upon the completion of that facility. Notwithstanding the previous sentence, the party may enter into a sale-leaseback transaction and nevertheless be considered the proponent.

(C) If a proponent that is receiving capital investment incentive amounts subsequently leases the subject qualified manufacturing facility to another party, the lease may provide for the payment to that lessee of any portion of a capital investment incentive amount. Any lessee receiving any portion of a capital investment incentive amount shall also be considered a proponent for the purposes of subdivision (d).

(3) “Capital investment incentive amount” means, with respect to a qualified manufacturing facility for a relevant fiscal year, an amount up to or equal to the amount of ad valorem property tax revenue derived by the participating local agency from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (1) that is in excess of one hundred fifty million dollars (\$150,000,000).

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

(c) ~~A city, special district, or school district~~ *city or special district* may, upon the approval by a majority of the entire membership of its governing body, pay to the county, city and county, or city an amount equal to the amount of ad valorem property tax revenue allocated to that ~~city, special district, or school~~

1 ~~district, city or special district~~, but not the actual allocation, derived  
2 from the taxation of that portion of the total assessed value of that  
3 real and personal property described in subparagraph (A) of  
4 paragraph (1) of subdivision (b) that is in excess of one hundred  
5 fifty million dollars (\$150,000,000).

6 (d) A proponent whose request for the payment of capital  
7 investment incentive amounts is approved by an electing county,  
8 city and county, or city shall enter into a community services  
9 agreement with that county, city and county, or city that includes,  
10 but is not limited to, all of the following provisions:

11 (1) A provision requiring that a community services fee be  
12 remitted by the proponent to the county, city and county, or city,  
13 in each fiscal year subject to the agreement, in an amount that is  
14 equal to 25 percent of the capital investment incentive amount  
15 calculated for that proponent for that fiscal year, except that in no  
16 fiscal year shall the amount of the community services fee exceed  
17 two million dollars (\$2,000,000).

18 (2) A provision specifying the dates in each relevant fiscal year  
19 upon which payment of the community services fee is due and  
20 delinquent, and the rate of interest to be charged to a proponent  
21 for any delinquent portion of the community services fee amount.

22 (3) A provision specifying the procedures and rules for the  
23 determination of underpayments or overpayments of a community  
24 services fee, for the appeal of determinations of any underpayment,  
25 and for the refunding or crediting of any overpayment.

26 (4) A provision specifying that a proponent is ineligible to  
27 receive a capital investment incentive amount if that proponent is  
28 currently delinquent in the payment of any portion of a community  
29 services fee amount, if the qualified manufacturing facility is  
30 constructed in a manner materially different from the facility as  
31 described in building permit application materials, or if the facility  
32 is no longer operated as a qualified manufacturing facility meeting  
33 the requirements of paragraph (1) of subdivision (b). If a proponent  
34 becomes ineligible to receive a capital investment incentive amount  
35 as a result of an agreement provision included pursuant to this  
36 subparagraph, the running of the number of consecutive fiscal  
37 years specified in an agreement made pursuant to subdivision (a)  
38 is not tolled during the period in which the proponent is ineligible.

39 (5) A provision that sets forth a job creation plan with respect  
40 to the relevant qualified manufacturing facility. The plan shall

1 specify the number of jobs to be created by that facility, and the  
2 types of jobs and compensation ranges to be created thereby. The  
3 plan shall also specify that for the entire term of the community  
4 services agreement, both of the following shall apply:

5 (A) All of the employees working at the qualified manufacturing  
6 facility shall be covered by an employer-sponsored health benefits  
7 plan.

8 (B) The average weekly wage, exclusive of overtime, paid to  
9 all of the employees working at the qualified manufacturing  
10 facility, who are not management or supervisory employees, shall  
11 be not less than the state average weekly wage.

12 For the purpose of this subdivision, “state average weekly wage”  
13 means the average weekly wage paid by employers to employees  
14 covered by unemployment insurance, as reported to the  
15 Employment Development Department for the four calendar  
16 quarters ending June 30 of the preceding calendar year.

17 (6) (A) In the case in which the proponent fails to operate the  
18 qualified manufacturing facility as required by the community  
19 services agreement, a provision that requires the recapture of any  
20 portion of any capital investment incentive amounts previously  
21 paid to the proponent equal to the lesser of the following:

22 (i) All of the capital investment incentive amounts paid to the  
23 proponent, less all of the community services fees received from  
24 the proponent, and less any capital investment incentive amounts  
25 previously recaptured.

26 (ii) The last capital investment incentive amount paid to the  
27 proponent, less the last community services fee received from the  
28 proponent, multiplied by 40 percent of the number of years  
29 remaining in the community services agreement, but not to exceed  
30 10 years, and less any capital investment incentive amounts  
31 previously recaptured.

32 (B) If the proponent fails to operate the qualified manufacturing  
33 facility as required by the community services agreement, the  
34 county, city and county, or city may, upon a finding that good  
35 cause exists, waive any portion of the recapture of any capital  
36 investment incentive amount due under this subdivision. For the  
37 purpose of this subdivision, good cause includes, but is not limited  
38 to, the following:

39 (i) The proponent has sold or leased the property to a person  
40 who has entered into an agreement with the county, city and

1 county, or city to assume all of the responsibilities of the proponent  
2 under the community services agreement.

3 (ii) The qualified manufacturing facility has been rendered  
4 inoperable and beyond repair as a result of an act of God.

5 (C) For purposes of this subdivision, failure to operate a  
6 qualified manufacturing facility as required by the community  
7 services agreement includes, but is not limited to, failure to  
8 establish the number of jobs specified in the jobs creation plan  
9 created pursuant to paragraph (5).

10 (e) (1) Each county, city and county, or city that elects to  
11 establish a capital investment incentive program shall notify the  
12 Business, Transportation and Housing Agency of its election to  
13 do so no later than June 30th of the fiscal year in which the election  
14 was made.

15 (2) In addition to the information required to be reported  
16 pursuant to paragraph (1), each county, city and county, or city  
17 that has elected to establish a capital investment incentive program  
18 shall notify the Business, Transportation and Housing Agency  
19 each fiscal year no later than June 30th of the amount of any capital  
20 investment incentive payments made and the proponent of the  
21 qualified manufacturing facility to whom the payments were made  
22 during that fiscal year.

23 (3) The Business, Transportation and Housing Agency shall  
24 compile the information submitted by each county, city and county,  
25 and city pursuant to paragraphs (1) and (2) and submit a report to  
26 the Legislature containing this information no later than October  
27 1, every two years commencing October 1, 2000.

28 *SEC. 2. Section 51298.5 is added to the Government Code, to*  
29 *read:*

30 *51298.5. (a) This chapter shall remain in effect only until*  
31 *January 1, 2017, and as of that date is repealed, unless a later*  
32 *enacted statute, that is enacted before January 1, 2017, deletes or*  
33 *extends that date.*

34 *(b) A capital investment incentive program established pursuant*  
35 *to this chapter before January 1, 2017, may remain in effect for*  
36 *the full term of that program, regardless of the repeal of this*  
37 *chapter.*