AMENDED IN SENATE AUGUST 19, 2009

AMENDED IN SENATE JUNE 30, 2009

california legislature—2009–10 regular session

# ASSEMBLY BILL No. 1554

**Introduced by Committee on Jobs, Economic Development, and the Economy (V. Manuel Perez (Chair), Logue (Vice Chair), Beall, Bill Berryhill, Block, Huber, and Salas)**

March 11, 2009

An act to amend Sections 7076.1 and 7085.1 of, and to repeal Section 7085 of, the Government Code, relating to economic development.

legislative counsel's digest

AB 1554, as amended, Committee on Jobs, Economic Development, and the Economy. Economic development: omnibus bill.

Existing law requires the Department of Housing and Community Development to submit a report to the Legislature every 5 years evaluating specified effects of enterprise zones.

This bill would repeal, recast, and make technical changes to these provisions.

Existing law requires a geographically targeted economic development area (G-TEDA) to report to the Department of Housing and Community Development every 2 years on progress made toward its existing goals and objectives and plans for the following 2-year period. Existing law also requires that a copy of this biennial report be submitted to the legislative bodies of the local jurisdictions comprising the G-TEDA for review.

This bill would delete the requirement that this report be submitted to the legislative bodies of the local ~~jurisdiction~~ *jurisdictions comprising the G-TEDA*.

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

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

SECTION 1. The Legislature finds and declares that this act by the Assembly Committee on Jobs, Economic Development, and the Economy is the committee's annual omnibus bill on geographically targeted economic development areas.

SEC. 2. Section 7076.1 of the Government Code is amended to read:

7076.1. (a) The department may audit the program of any jurisdiction in any designated G-TEDA at any time during the duration of the designation, as appropriate. However, the department shall audit each G-TEDA at least once every five years from the date of designation or the operative date of this section, whichever is the latest. The matters to be examined in the course of an audit shall include an examination of the progress made by the G-TEDA toward meeting the goals, objectives, and commitments set forth in its original application and the department's memorandum of understanding with the G-TEDA.

(b) The department shall, for each audit, determine a result of superior, pass, or fail in accordance with subdivision (c). The results of each audit shall be based upon the success of the G-TEDA in making substantial and sustained efforts since the later of its designation or last audit to meet the standards, criteria, and conditions contained in the application and the memorandum of understanding (MOU) between the department and the G-TEDA, as may be amended pursuant to the agreement of the G-TEDA and the department. In each audit, the department shall focus upon the G-TEDA's use of the marketing plan, local incentives, financing programs, job development, and program management as described in the application and the MOU. The department shall also evaluate the vouchering plan, staffing levels, budget, and elements unique to each application.

(c) For purposes of subdivision (b), an audit determination of superior, pass, or fail shall be made in accordance with the following:

(1) A G-TEDA will be determined to be superior if each jurisdiction comprising the G-TEDA does all of the following:

(A) Meets 100 percent of its goals, objectives, and commitments as defined in its application, most recent audit, biennial report, and memorandum of understanding with the department, and as determined by the department in consultation with the G-TEDA. An equivalent or similar commitment may be substituted for an existing commitment of a G-TEDA if it is determined by the department that an original commitment was not realistically practical or is no longer relevant.

(B) Demonstrates that it has reviewed and updated its goals, objectives, and commitments as defined in its original application, most recent audit, biennial report, and memorandum of understanding with the department.

(C) Identifies to the department's satisfaction that it has incorporated economic development commitments in addition to those commitments previously made in its application.

(2) (A) A G-TEDA will be determined to be passing if each jurisdiction comprising the area meets or exceeds 75 percent of its goals, objectives, or commitments as defined in its original application, most recent audit, biennial report, and memorandum of understanding with the department, and as determined by the department in consultation with the G-TEDA. An equivalent or similar commitment may be substituted for an existing commitment of a G-TEDA if it is determined by the department that an original commitment was not realistically practical or is no longer relevant.

(B) Any G-TEDA that is determined to be passing may appeal in writing to the department for a determination of superior. Only one appeal may be filed pursuant to this subparagraph with respect to a determination by the department, and may be filed no later than 30 days after the G-TEDA's receipt of the determination to which the appeal pertains. The department shall respond in writing to any appeal that is properly filed pursuant to this subparagraph within 60 days of the date of that filing.

(3) (A) A G-TEDA will be determined to be failing if any jurisdiction comprising the G-TEDA fails to meet or exceed 75 percent of its goals, objectives, or commitments as defined in its

original application, most recent audit, biennial report, and memorandum of understanding with the department, and as determined by the department in consultation with the G-TEDA. An equivalent or similar commitment may be substituted for an existing commitment of a G-TEDA if it is determined by the department that an original commitment was not realistically practical or is no longer relevant.

(B) Any G-TEDA that is determined to be failing shall enter into a written agreement with the department that specifies those items that the G-TEDA is required to remedy or improve. Failure of the G-TEDA and the department to negotiate and enter into a written agreement as so described within 60 days of the last day upon which the department is required to deliver a response letter pursuant to subparagraph (C) shall result in the dedesignation of the G-TEDA on January 1 immediately following the department's written notice of dedesignation to the G-TEDA. A written agreement entered into pursuant to this subparagraph shall be for a six-month period. If, upon the expiration of the agreement, the department determines that the G-TEDA has not met or implemented at least 75 percent of the conditions set forth in the agreement, the department shall, after immediately providing written notification to each jurisdiction comprising the G-TEDA that the G-TEDA is to be dedesignated, dedesignate the G-TEDA effective on the first day of the month next following the date upon which the agreement expired. If, upon expiration of the agreement, the department determines that the G-TEDA has met or implemented at least 75 percent of the conditions set forth in the agreement, the department shall do either of the following:

(i) Allow the G-TEDA an additional year, or a longer period in the department's discretion, to meet or implement those conditions in their entirety.

(ii) Pursuant to written notice provided immediately to each jurisdiction that comprises the G-TEDA that the G-TEDA is to be dedesignated, dedesignate the G-TEDA effective on January 1 immediately following the date of the department's written notification of dedesignation to those jurisdictions.

Any business, located within any jurisdiction that comprises a G-TEDA that has been dedesignated, that has elected to avail itself of any state tax incentive specifically applicable to a G-TEDA for any taxable or income year beginning prior to the dedesignation of the G-TEDA may, to the extent the business is otherwise still eligible for those incentives, continue to avail itself of those incentives for a period equal to the remaining life of the G-TEDA. However, any business, located within any jurisdiction that comprises a G-TEDA that has been dedesignated, that has not availed itself of any state tax incentive in the manner described in the preceding sentence may not, after dedesignation of the G-TEDA, avail itself of any state incentive specifically applicable to a G-TEDA.

(4) (A) Notwithstanding paragraphs (1) to (3), inclusive, a G-TEDA shall be determined to be failing if any jurisdiction comprising the G-TEDA, in the determination of the director, provides funding support in at least three of the previous five years at a level that is less than 75 percent of the amount committed to in the G-TEDA's memorandum of understanding with the department.

(B) In the event that a G-TEDA is determined to be failing pursuant to this paragraph, subparagraph (B) of paragraph (3) shall apply.

(C) Any G-TEDA that is determined to be failing pursuant to this paragraph may appeal in writing to the department. The appeal shall be filed within 30 days of the G-TEDA's receipt of the determination to which the appeal pertains. The department shall respond in writing to any appeal that is properly filed within 60 days of the date of filing.

(d) (1) For purposes of this section, "dedesignation" means that a G-TEDA is no longer a G-TEDA for purposes of either Section 7073 or 7085.1.

(2) Upon notification by the department of the dedesignation of a G-TEDA and the end of the appeal period with respect to that dedesignation, the department shall initiate an application process for a new designation as provided in Section 7073, 7073.8, 7097, or 7114.

SEC. 3. Section 7085 of the Government Code is repealed.

~~SEC. 3.~~

*SEC. 4.* Section 7085.1 of the Government Code is amended to read:

7085.1. (a) The governing board of the G-TEDA shall report to the department by October 1, 2008, and by that date every other year thereafter, on the activities of the G-TEDA in the previous two fiscal years and its plans for the current and following fiscal year. The biennial report shall include at least both of the following:

(1) The progress the G-TEDA has made during the period covered by the report relative to its goals, objectives, and commitments set forth in its original application and the department's memorandum of understanding with the G-TEDA.

(2) Identification of the previous two years' funding, including in-kind funding. The previous two years' funding levels shall be compared to the funding levels identified in its original application and the department's memorandum of understanding with the G-TEDA, and the amount identified in the previous biennial report. An explanation of any meaningful discrepancies in these amounts shall be provided.

*(b) The progress of the G-TEDA in meeting the goals, objectives, and commitments set forth in the original application and the memorandum of understanding with the department shall be reviewed at least biennially by the legislative bodies comprising the G-TEDA.*

~~(b)~~

*(c)* An enterprise zone governing body shall provide information at the request of the department as necessary for the department to prepare the report required pursuant to subdivisions ~~(d) and (e)~~ *(e) and (f)*.

~~(c)~~

*(d)* (1) G-TEDAs designated prior to January 1, 2007, shall have until April 15, 2008, to update their benchmarks, goals, objectives, and funding levels for administering the G-TEDA program, in order to make them measurable and conducive to the successful completion of the economic development strategy. The local legislative body and the department shall approve the updated goals and objectives. The updated goals and objectives shall be included as an update to the existing memorandum of understanding between the G-TEDA and the department.

(2) G-TEDAs that fail to obtain approved updated goals and objectives by April 15, 2008, shall be dedesignated effective July 1, 2008. The Director of Housing and Community Development shall provide notice of prospective dedesignation to the local government no later than May 1, 2008. The director may authorize up to two 60-calendar-day extensions, if the local government and G-TEDA are acting in good faith and the additional time would

allow them to meet the requirements of this subdivision. Businesses located within a G-TEDA that have been dedesignated shall continue to have access to tax incentives previously authorized within the G-TEDA pursuant to Section 7082.2.

(3) G-TEDAs designated prior to January 1, 2007, are not required to implement the biennial reporting requirements of subdivisions (a) and (b) until October 1, 2009.

(4) G-TEDAs that expire prior to January 1, 2010, are not required to meet the conditions of this subdivision.

~~(d)~~

*(e)* The department shall biennially, beginning on or before December 31, 2008, make available to the Legislature information related to the progress that each G-TEDA is making toward implementing its goals, objectives, and commitments set forth in the original application, the department's memorandum of understanding with the G-TEDA, and the G-TEDA's biennial report.

~~(e)~~

*(f)* The department shall submit a report to the Legislature on or before December 31, 2010, addressing the period of January 1, 2004, to July 1, 2010, inclusive, and submit a report every six years thereafter, addressing the period of the six immediately preceding fiscal years, that evaluates the effect of the program on employment, investment, and incomes, and on state and local tax revenues in designated enterprise zones. The assessment shall differentiate the progress made by G-TEDAs designated prior to January 1, 2007, and those designated after January 1, 2007.

~~SEC. 4.~~

*SEC. 5.* The Legislature finds and declares both of the following:

(a) This is an act by the Assembly Committee on Jobs, Economic Development, and the Economy for code maintenance.

(b) The changes made by this act to subdivision ~~(d)~~ *(e)* of Section 7085.1 of the Government Code are technical, nonsubstantive corrections.

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