

AMENDED IN ASSEMBLY APRIL 27, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2687

Introduced by Assembly Member Bradford

February 19, 2010

An act to ~~amend Section 23036 of, and to add and repeal Sections 23670~~ *add and repeal Sections 17057.6, 17057.7, 23670, and 23671* of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2687, as amended, Bradford. ~~Corporation~~ *Income* taxes: credit: trade infrastructure investment: import-export cargo.

The *Personal Income Tax Law and the Corporation Tax Law* ~~authorize~~ *authorizes* various credits against the taxes imposed by ~~that law~~ *those laws*.

This bill would, subject to a subsequent act ~~determining total cost~~ *authorizing a total amount of credit*, authorize credits against those taxes for each taxable year beginning on or after January 1, 2011, and before January 1, 2021, *with the first credit* in an amount not to exceed 5% of the amount paid or incurred during the taxable year for capital costs of a project relating to port or harbor activity, as provided, and *the 2nd credit* in an amount not to exceed the product of \$5 and the number of tons of additional qualified cargo, as provided. This bill would require the Legislative Analyst to evaluate the effectiveness of this tax credit, as provided. *This bill would require the Franchise Tax Board to estimate the economic impacts of the allowance of these tax credits, and to certify qualifying projects and qualified cargo only if it determines that there would be sufficient revenues received by the state*

as a result of the economic impacts of these projects and cargo, to offset the costs to the state of providing the tax credits.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

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

3 (a) The primary purpose of this act is to encourage private
4 investment in, and the use of, public port facilities in California.

5 (b) Because there are limited public funding sources for port
6 and cargo infrastructure facilities, and the need to invest in our
7 ports and port facilities has not abated during the economic
8 downturn, additional private investment and public-private
9 partnerships should be encouraged as a means to assist in the
10 financing improvements to California's public ports and port
11 infrastructure facilities.

12 (c) The development, improvement, expansion, and maintenance
13 of the state's public ports and port infrastructure facilities, and the
14 utilization of public port facilities for the import and export of
15 cargo to or from distribution, manufacturing, fabrication, assembly,
16 processing, or warehousing sites in California, are essential to
17 California's economic health and the ability of business and
18 industry associated with the maritime industry to compete
19 cost-effectively on a regional, national, and global scale.

20 ~~SEC. 2. Section 23036 of the Revenue and Taxation Code is~~
21 ~~amended to read:~~

22 ~~23036. (a) (1) The term "tax" includes any of the following:~~

23 ~~(A) The tax imposed under Chapter 2 (commencing with Section~~
24 ~~23101).~~

25 ~~(B) The tax imposed under Chapter 3 (commencing with Section~~
26 ~~23501).~~

27 ~~(C) The tax on unrelated business taxable income, imposed~~
28 ~~under Section 23731.~~

29 ~~(D) The tax on S corporations imposed under Section 23802.~~

30 ~~(2) The term "tax" does not include any amount imposed under~~
31 ~~paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)~~
32 ~~of subdivision (f) of Section 24667.~~

1 ~~(b) For purposes of Article 5 (commencing with Section 18661)~~
2 ~~of Chapter 2, Article 3 (commencing with Section 19031) of~~
3 ~~Chapter 4, Article 6 (commencing with Section 19101) of Chapter~~
4 ~~4, and Chapter 7 (commencing with Section 19501) of Part 10.2,~~
5 ~~and for purposes of Sections 18601, 19001, and 19005, the term~~
6 ~~“tax” also includes all of the following:~~

7 ~~(1) The tax on limited partnerships, imposed under Section~~
8 ~~17935, the tax on limited liability companies, imposed under~~
9 ~~Section 17941, and the tax on registered limited liability~~
10 ~~partnerships and foreign limited liability partnerships imposed~~
11 ~~under Section 17948.~~

12 ~~(2) The alternative minimum tax imposed under Chapter 2.5~~
13 ~~(commencing with Section 23400).~~

14 ~~(3) The tax on built-in gains of S corporations, imposed under~~
15 ~~Section 23809.~~

16 ~~(4) The tax on excess passive investment income of S~~
17 ~~corporations, imposed under Section 23811.~~

18 ~~(c) Notwithstanding any other provision of this part, credits are~~
19 ~~allowed against the “tax” in the following order:~~

20 ~~(1) Credits that do not contain carryover provisions.~~

21 ~~(2) Credits that, when the credit exceeds the “tax,” allow the~~
22 ~~excess to be carried over to offset the “tax” in succeeding taxable~~
23 ~~years, except for those credits that are allowed to reduce the “tax”~~
24 ~~below the tentative minimum tax, as defined by Section 23455.~~
25 ~~The order of credits within this paragraph shall be determined by~~
26 ~~the Franchise Tax Board.~~

27 ~~(3) The minimum tax credit allowed by Section 23453.~~

28 ~~(4) Credits that are allowed to reduce the “tax” below the~~
29 ~~tentative minimum tax, as defined by Section 23455.~~

30 ~~(5) Credits for taxes withheld under Section 18662.~~

31 ~~(d) Notwithstanding any other provision of this part, each of~~
32 ~~the following applies:~~

33 ~~(1) No credit may reduce the “tax” below the tentative minimum~~
34 ~~tax (as defined by paragraph (1) of subdivision (a) of Section~~
35 ~~23455), except the following credits:~~

36 ~~(A) The credit allowed by former Section 23601 (relating to~~
37 ~~solar energy).~~

38 ~~(B) The credit allowed by former Section 23601.4 (relating to~~
39 ~~solar energy).~~

- 1 ~~(C) The credit allowed by former Section 23601.5 (relating to~~
2 ~~solar energy).~~
3 ~~(D) The credit allowed by Section 23609 (relating to research~~
4 ~~expenditures).~~
5 ~~(E) The credit allowed by former Section 23609.5 (relating to~~
6 ~~clinical testing expenses).~~
7 ~~(F) The credit allowed by Section 23610.5 (relating to~~
8 ~~low-income housing).~~
9 ~~(G) The credit allowed by former Section 23612 (relating to~~
10 ~~sales and use tax credit).~~
11 ~~(H) The credit allowed by Section 23612.2 (relating to enterprise~~
12 ~~zone sales or use tax credit).~~
13 ~~(I) The credit allowed by former Section 23612.6 (relating to~~
14 ~~Los Angeles Revitalization Zone sales tax credit).~~
15 ~~(J) The credit allowed by former Section 23622 (relating to~~
16 ~~enterprise zone hiring credit).~~
17 ~~(K) The credit allowed by Section 23622.7 (relating to enterprise~~
18 ~~zone hiring credit).~~
19 ~~(L) The credit allowed by former Section 23623 (relating to~~
20 ~~program area hiring credit).~~
21 ~~(M) The credit allowed by former Section 23623.5 (relating to~~
22 ~~Los Angeles Revitalization Zone hiring credit).~~
23 ~~(N) The credit allowed by former Section 23625 (relating to~~
24 ~~Los Angeles Revitalization Zone hiring credit).~~
25 ~~(O) The credit allowed by Section 23633 (relating to targeted~~
26 ~~tax area sales or use tax credit).~~
27 ~~(P) The credit allowed by Section 23634 (relating to targeted~~
28 ~~tax area hiring credit).~~
29 ~~(Q) The credit allowed by former Section 23649 (relating to~~
30 ~~qualified property).~~
31 ~~(R) The credit allowed by Section 23670 (relating to trade~~
32 ~~infrastructure investments).~~
33 ~~(S) The credit allowed by Section 23671 (relating to~~
34 ~~import-export cargo).~~
35 ~~(2) No credit against the tax may reduce the minimum franchise~~
36 ~~tax imposed under Chapter 2 (commencing with Section 23101).~~
37 ~~(e) Any credit which is partially or totally denied under~~
38 ~~subdivision (d) is allowed to be carried over to reduce the “tax”~~
39 ~~in the following year, and succeeding years if necessary, if the~~

provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative is allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer is eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part is computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit applies to the S corporation and to each shareholder.

(i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity is limited in accordance with paragraphs (2) and (3):

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "tax," as defined in subdivision (a), for the taxable year is limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. No credit is allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f):

~~(j) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-through entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.~~

~~(2) For purposes of this subdivision, "eligible pass-through entity" means any partnership or S corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit pursuant to this part for the taxable year that begins during the last year a credit is operative.~~

~~(3) This subdivision applies to credits that become inoperative on or after the operative date of the act adding this subdivision.~~

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

~~23670. (a) Subject to the total cost of the credit described in this section being determined by the Legislature, as described in subdivision (h), for each taxable year beginning on or after January 1, 2011, and before January 1, 2021, there shall be allowed as a trade infrastructure investment tax credit against the "tax," as defined by Section 23036, an amount equal to no more than 5 percent of the total capital costs of each qualifying project constructed in this state, subject to the terms, conditions, and qualifications established by this section.~~

~~(b) For purposes of this section:~~

~~(1) "Breakbulk cargo" means any commodities, machinery, equipment, materials, products, or other cargo transported as palletized or unpalletized bagged, packaged, wrapped, drummed, baled, or crated goods, which are shipped via oceangoing vessel. For purposes of this section, automobiles, trucks, and lumber shall be considered breakbulk cargo. Breakbulk cargo shall not include any liquid or dry commodities that are handled in bulk or any containerized cargo.~~

~~(2) "Capital costs" means all costs and expenses incurred by one or more investing taxpayers in connection with the acquisition, construction, installation, and equipping of a qualifying project, including any environmental mitigation undertaken specifically to reduce the impacts of a qualifying project, during the period commencing with the date on which the acquisition, construction,~~

1 installation, and equipping commences and ending on the date on
2 which the qualifying project is placed in service.

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

5 (i) The costs of acquiring, constructing, installing, equipping,
6 and financing a qualifying project, including all obligations
7 incurred for labor and to contractors, subcontractors, builders, and
8 materialmen.

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

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

14 (iv) The costs of architectural and engineering services,
15 including test borings, surveys, estimates, plans, specifications,
16 preliminary investigations, environmental mitigation, and
17 supervision of construction, as well as for the performance of all
18 the duties required by or consequent upon the acquisition,
19 construction, and installation of a qualifying project.

20 (v) The costs associated with installation of fixtures and
21 equipment, surveys, including archaeological and environmental
22 surveys, site tests and inspections, subsurface site work, excavation,
23 removal of structures, roadways, and other surface obstructions,
24 filling, grading, paving, and provisions for drainage, storm water
25 retention, installation of utilities, including water, sewerage
26 treatment, gas, electricity, communications, and similar facilities,
27 and off-site construction of utility extensions to the boundaries of
28 the property.

29 (vi) The costs of completing any environmental mitigation
30 related to the qualifying project.

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

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

39 (B) Capital costs shall not include property owned or leased by
40 the investing taxpayer or a related entity before the commencement

1 of the acquisition, construction, installation, or equipping of the
2 qualified project, unless the property was physically located outside
3 the state for a period of at least one year prior to the date on which
4 the qualifying project was placed in service.

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

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

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

18 (6) “Investing taxpayer” means a taxpayer corporation,
19 partnership, limited liability company, proprietorship, trust, or
20 other business entity, regardless of form, making a qualified
21 investment.

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

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

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

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

1 ~~(11) “Qualifying investment” means the undertaking by one or~~
2 ~~more investing taxpayers of a qualifying project.~~

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

10 ~~(c) The tax credit shall be earned at the time the total capital~~
11 ~~costs are identified by an investing taxpayer in a qualified project.~~
12 ~~However, tax credits shall not be earned for capital costs expended~~
13 ~~prior to January 1, 2011, and shall not be applied against a tax~~
14 ~~liability until the project receives certification from the Franchise~~
15 ~~Tax Board.~~

16 ~~(d) A project shall not be certified as a qualifying project unless~~
17 ~~the Franchise Tax Board determines that there will be sufficient~~
18 ~~revenue received by the state as a result of the economic impacts~~
19 ~~from the completion of the project from increased port or port and~~
20 ~~harbor activity, whether because of the grant of the tax credit or~~
21 ~~otherwise, to offset the cost to the state of providing the tax credit.~~

22 ~~(e) The Franchise Tax Board shall develop a dynamic revenue~~
23 ~~anticipation model designed to estimate the following economic~~
24 ~~impacts from the completion of a qualifying project:~~

25 ~~(1) The total state tax revenues generated by the project and~~
26 ~~project-related economic activity.~~

27 ~~(2) The total local tax and user fee revenues generated by the~~
28 ~~project and project-related economic activity.~~

29 ~~(3) The total jobs created by the project and project-related~~
30 ~~economic activity, including the impact of the project on the~~
31 ~~employment of California residents.~~

32 ~~(4) The impact of the qualifying project on the overall economy~~
33 ~~of the state.~~

34 ~~(f) (1) An investing taxpayer seeking certification of a~~
35 ~~qualifying project shall submit an application to the Franchise Tax~~
36 ~~Board that includes the following information:~~

37 ~~(A) A detailed description of the qualifying project, including~~
38 ~~a summary of total actual capital costs prepared by an independent~~
39 ~~certified public accountant.~~

1 ~~(B) A revenue analysis prepared pursuant to the Franchise Tax~~
2 ~~Board's model developed pursuant to subdivision (e).~~

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

9 ~~(D) The name of each investing taxpayer or the name or names~~
10 ~~of its shareholders, partners, members, owners, or beneficiaries~~
11 ~~that will become entitled to the tax credit.~~

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

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

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

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

21 ~~(g) (1) The Franchise Tax Board shall certify a qualifying~~
22 ~~project upon making a finding that the terms of this section have~~
23 ~~been met.~~

24 ~~(2) The Franchise Tax Board shall submit notice of its~~
25 ~~certification of a project as a qualifying project to the Department~~
26 ~~of Finance, the Joint Legislative Budget Committee, and the~~
27 ~~Legislative Analyst.~~

28 ~~(3) The certification shall include a unique identifying number~~
29 ~~for each qualifying project, the total amount of tax credits eligible~~
30 ~~to be applied to the qualifying project, and the amount equal to 5~~
31 ~~percent of each taxable year.~~

32 ~~(h) (1) A tax credit for a certified qualifying project for any~~
33 ~~taxable year shall not be allowed under this section an investing~~
34 ~~taxpayer until the project receives notification from the Franchise~~
35 ~~Tax Board of the amount available to be applied, which shall not~~
36 ~~exceed 5 percent of total project capital costs, for the current~~
37 ~~taxable year.~~

38 ~~(2) The amount available to be applied to a project shall be equal~~
39 ~~to the project's share of the total cost of this credit as will be~~
40 ~~determined by the Legislature, based on each project's percentage~~

1 of the total amount of project capital costs certified by the
2 Franchise Tax Board as of July 1 of each taxable year.

3 (3) The Franchise Tax Board shall make all notifications
4 pursuant to this paragraph within 90 days of an appropriation by
5 the Legislature for the purposes of funding the tax credit, or, if no
6 appropriation is made, within 90 days of the adoption of a state
7 budget.

8 (i) The aggregate of all credits determined under subdivision
9 (a) for a qualifying project shall not exceed the total capital costs
10 of the project.

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

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

26 (l) The Franchise Tax Board may audit any certified qualifying
27 project or inspect the physical site of the qualifying project in order
28 to verify claims and costs presented to the Franchise Tax Board
29 by an investing taxpayer in an application.

30 (m) (1) If the Franchise Tax Board finds that funds for which
31 an investing company received credits according to the provisions
32 of this section are not invested in and expended with respect to
33 capital costs of a qualifying investment, the investing company's
34 tax for that taxable year shall be increased by an amount necessary
35 for the recapture of credit provided by this section.

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

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

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

~~(o) This section shall remain in effect only until December 1, 2021, and as of that date is repealed, and an investor tax credit pursuant to the provisions of this section shall not be granted after that date.~~

~~SEC. 4. Section 23671 is added to the Revenue and Taxation Code, to read:~~

~~23671. (a) Subject to the total cost of the credit described in this section being determined by the Legislature, as provided in subdivision (f), for each taxable year beginning on or after January 1, 2011, and before January 1, 2021, there shall be allowed as an import-export cargo tax credit against the "tax," as defined by Section 23036, of an amount equal to no more than the product of five dollars (\$5) and the taxpayer's number of tons of additional qualified cargo for the taxable year, subject to the terms, conditions, and qualifications of this section.~~

~~(b) For purposes of this section, subdivision (b) of Section 23670 and the following shall apply:~~

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

~~(2) "Qualified business entity" means a taxpayer corporation, partnership, limited liability company, or other commercial entity, all or a portion of whose activities involve the import or export of breakbulk or containerized cargo to or from cargo facilities located within California.~~

~~(3) "Qualified cargo" means any breakbulk or containerized cargo which is imported or exported to or from a manufacturing, fabrication, assembly, distribution, processing, or warehouse~~

1 facility located in California and which is moved by way of an
2 oceangoing vessel berthed at a public port facility in California
3 during the taxable year and certified by the Franchise Tax Board
4 as meeting the terms of this section.

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

7 (c) A project shall not be certified as a qualifying project unless
8 the Franchise Tax Board determines that there will be sufficient
9 revenue received by the state as a result of the economic impacts
10 from the additional qualified cargo import or export activity,
11 whether because of the grant of the tax credit or otherwise, to offset
12 the cost to the state of providing the tax credit.

13 (d) The Franchise Tax Board shall develop a dynamic revenue
14 anticipation model designed to estimate the following economic
15 impacts from the additional qualifying cargo identified:

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

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

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

23 (4) The impact of the qualified cargo on the overall economy
24 of the state.

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

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

35 (B) A revenue analysis prepared pursuant to the Franchise Tax
36 Board’s model developed pursuant to subdivision (d).

37 (C) A statement that the proposed project meets the requirements
38 of this section, as well as any subsequent requirements adopted
39 by the Franchise Tax Board to facilitate the administration of this
40 section, to be classified as a qualifying project, accompanied by

1 any relevant evidence or supporting documents necessary to the
2 statement.

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

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

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

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

12 (f) The Franchise Tax Board shall certify additional cargo as
13 qualifying cargo upon making a finding that the terms of this
14 section have been met, subject to all of the following:

15 (1) A tax credit shall not be allowed under this section in a
16 taxable year for which no amount is determined for the purpose
17 of funding the costs of the credit.

18 (2) The amount available to be applied to any additional
19 qualified cargo shall never exceed five dollars (\$5) per ton of cargo,
20 but may be less than five dollars (\$5) per ton if equal to the
21 qualifying business entity's share of the total cost of this credit as
22 will be determined by the Legislature, based on each qualifying
23 business entity's percentage of the total amount of additional
24 qualified cargo certified by the Franchise Tax Board as of July 1
25 of each taxable year.

26 (3) The Franchise Tax Board shall notify a qualifying business
27 entity with additional qualified cargo applications submitted prior
28 to July 1 of each taxable year within 90 days of an appropriation
29 by the Legislature for the purposes of funding the tax credit, or, if
30 no appropriation is made, within 90 days of the adoption of a state
31 budget.

32 (g) In the case where the credit allowed by this section exceeds
33 the "tax," the excess may be carried over to reduce the "tax" in
34 the following year, and the 10 succeeding years if necessary, until
35 the credit is exhausted.

36 (h) The Franchise Tax Board may promulgate rules and
37 regulations as necessary to implement the provisions of this section.

38 (i) The Franchise Tax Board may audit any qualified business
39 entity in order to verify claims presented to the Franchise Tax
40 Board in an application submitted pursuant to this section.

1 ~~(j) (1) If the Franchise Tax Board finds that any claims~~
2 ~~regarding additional cargo for which a qualified business entity~~
3 ~~received credits according to the provisions of this section were~~
4 ~~inaccurate, the qualified business entity's tax for that taxable period~~
5 ~~shall be increased by an amount necessary for the recapture of~~
6 ~~credit provided by this section.~~

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

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

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

22 ~~(l) This section shall remain in effect only until December 1,~~
23 ~~2021, and as of that date is repealed, and no investor tax credit~~
24 ~~pursuant to the provisions of this section shall be granted after that~~
25 ~~date.~~

26 *SEC. 2. Section 17057.6 is added to the Revenue and Taxation*
27 *Code, to read:*

28 *17057.6. (a) (1) Subject to subdivision (h), for each taxable*
29 *year beginning on or after January 1, 2011, and before January*
30 *1, 2021, there shall be allowed to a qualified taxpayer as a trade*
31 *infrastructure investment tax credit against the "net tax," as*
32 *defined by Section 17039, an amount of up to, but not to exceed,*
33 *5 percent of the total capital costs of each qualifying project*
34 *constructed in this state, subject to the terms, conditions, and*
35 *qualifications established by this section.*

36 *(b) For purposes of this section:*

37 *(1) "Breakbulk or bulk cargo" means any nonliquid*
38 *commodities, machinery, equipment, materials, products, or other*
39 *cargo transported as palletized or unpalletized bagged, packaged,*
40 *wrapped, drummed, baled, or crated goods, or that are loaded in*

1 bulk directly into the hold of a ship that are shipped via oceangoing
2 vessel. For purposes of this section, automobiles, trucks, and
3 lumber shall be considered breakbulk or bulk cargo. For purposes
4 of this section all agricultural products and commodities shall be
5 considered breakbulk or bulk cargo. Breakbulk or bulk cargo shall
6 not include any liquid commodities that are handled in bulk or
7 any containerized cargo.

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

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

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

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

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

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

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

1 *and offsite construction of utility extensions to the boundaries of*
2 *the property.*

3 *(vi) The costs of completing any environmental mitigation.*

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

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

12 *(B) Capital costs shall not include property owned or leased by*
13 *the qualifying taxpayer or a related entity before the*
14 *commencement of the acquisition, construction, installation, or*
15 *equipping of the qualified project, unless the property was*
16 *physically located outside the state for a period of at least one*
17 *year prior to the date on which the qualifying project was placed*
18 *in service.*

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

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

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

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

34 *(6) "Oceangoing vessel" means a vessel, ship, or barge*
35 *engaged, for compensation, in transporting breakbulk or bulk*
36 *cargo or containerized cargo in interstate or foreign commerce.*

37 *(7) "Port or port and harbor activity" means any trade or*
38 *business conducted on premises in which a public port or harbor*
39 *district has an ownership, leasehold, or other possessory interest*
40 *and those premises are used as part of the regular cargo-related*

1 operations of a public port or proposed to be used as part of
2 pending construction of a qualifying project.

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

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

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

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

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

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

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

32 (B) A revenue analysis prepared pursuant to the Franchise Tax
33 Board’s model developed pursuant to subdivision (e).

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

1 (D) The name of each taxpayer or the name or names of its
2 shareholders, partners, members, owners, or beneficiaries that
3 will become entitled to the tax credit.

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

6 (F) Any other information required by the Franchise Tax Board.

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

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

12 (4) The applicant shall remit a fee paid to the Franchise Tax
13 Board that shall cover the costs of the Franchise Tax Board's
14 review and evaluation of the project application.

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

18 (2) The certification shall include:

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

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

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

26 (D) A statement advising the qualifying taxpayer that no credits
27 may be claimed by the taxpayer for any tax year for any qualified
28 project until the taxpayer is in receipt of a notification issued by
29 the Franchise Tax Board pursuant to paragraph (3) of subdivision
30 (h) advising the taxpayer of the amount of the credit authorized
31 by the Legislature and the taxpayers pro rata share of such
32 authorization for the current tax year.

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

37 (e) The Franchise Tax Board shall not certify a project unless
38 it determines that there will be sufficient revenue received by the
39 state as a result of the economic impacts resulting from the
40 completion of the project and from increased port or port and

1 harbor activity, whether because of the grant of the tax credit or
2 otherwise, to offset the cost to the state of providing the tax credit.

3 (f) The Franchise Tax Board shall adopt a methodology to
4 estimate the economic impacts resulting from the completion of a
5 qualifying project for the purpose of making a determination
6 pursuant to subdivision (d) that includes, but is not limited to, the
7 following:

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

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

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

15 (g) (1) A qualified taxpayer may not claim the credit authorized
16 under this section until the Legislature enacts a statute by January
17 1, 2012, specifying the total amount of the credit allowed to be
18 claimed by the qualified taxpayer for the 2011 taxable year or
19 annually thereafter for the preceding taxable year.

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

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

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

38 (i) If a qualifying taxpayer that claims a credit under this section
39 sells, transfers, or otherwise disposes of, either directly or
40 indirectly, a qualifying project within 10 years of the taxable year

during which the taxpayer first claimed the credit, there shall be added to the “net tax” of the qualifying taxpayer during the taxable year of sale, transfer, or disposition an amount equal to the total credit claimed multiplied by a fraction, the numerator of which is the remaining term of 10 years and the denominator of which is 10, unless an equivalent balance of the credit is expressly assigned to the new owner of the qualified project in question and the assignment is approved by the Franchise Tax Board.

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

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

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

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

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

SEC. 3. Section 17057.7 is added to the Revenue and Taxation Code, to read:

17057.7. (a) Subject to subdivision (f), for each taxable year beginning on or after January 1, 2011, and before January 1, 2021, there shall be allowed as an import-export cargo tax credit against the “net tax,” as defined by Section 17039, of an amount

1 equal to no more than the product of five dollars (\$5) and the
2 taxpayer's number of tons of additional qualified cargo for the
3 taxable year.

4 (b) For purposes of this section, subdivision (b) of Section
5 17057.6 and the following shall apply:

6 (1) "Additional cargo" means the amount of qualified cargo
7 moved in the current taxable year over and above the cargo moved
8 in the taxable year.

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

16 (3) "Qualified cargo" means any breakbulk or bulk cargo or
17 containerized cargo, as defined by paragraphs (1) and (3) of
18 subdivision (b) of Section 23670 that is imported or exported to
19 or from a manufacturing, fabrication, assembly, distribution,
20 processing, or warehouse facility located in California and that
21 is moved by way of an oceangoing vessel berthed at a public port
22 facility in California during the taxable year and certified by the
23 Franchise Tax Board as meeting the terms of this section. For
24 purposes of this section all agricultural products and commodities
25 shipped from or to California by way of an oceangoing vessel
26 berthed at a public port facility in California shall be considered
27 qualified cargo.

28 (4) "Qualified taxpayer" means a qualified business entity that
29 is certified by the Franchise Tax board to receive an Import-Export
30 Cargo Tax Credit pursuant to this section.

31 (5) "Ton" means a net ton of 2,000 pounds and, in the case of
32 containerized cargo, shall exclude the weight of the container.

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

36 (A) A verified statement of additional cargo volume data for
37 the taxable year for which the credit is being sought and the cargo
38 volumes for the taxable year prior to the taxable year of the
39 application, specifically including the total annual volume and
40 tons of breakbulk or containerized cargo imported and exported

1 from or to, manufacturing, fabrication, assembly, distribution,
2 processing, or warehousing facilities located in California.

3 (B) A revenue analysis prepared pursuant to the Franchise Tax
4 Board's model developed pursuant to subdivision (d).

5 (C) A statement that the proposed project meets the requirements
6 of this section, as well as any subsequent requirements adopted
7 by the Franchise Tax Board to facilitate the administration of this
8 section, to be classified as a qualifying project, accompanied by
9 any relevant evidence or supporting documents necessary to the
10 statement.

11 (D) Any other information required by the Franchise Tax Board.

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

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

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

20 (d) The Franchise Tax Board shall issue a certification to a
21 qualifying business entity as a qualified taxpayer upon making a
22 finding that the terms of this section have been met, subject to the
23 Legislature enacting a statute by January 1, 2012, specifying the
24 total amount of the credit allowable to all qualified taxpayers for
25 the 2011 taxable year or annually each year thereafter.

26 (e) The Franchise Tax Board shall not certify qualified cargo
27 unless it determines that there will be sufficient revenue received
28 by the state as a result of the economic impacts from the additional
29 qualified cargo import or export activity, whether because of the
30 grant of the tax credit or otherwise, to offset the cost to the state
31 of providing the tax credit.

32 (f) The Franchise Tax Board shall adopt a methodology to
33 estimate the economic impacts resulting from the additional
34 qualifying cargo identified for the purpose of making a
35 determination pursuant to subdivision (c) that includes, but is not
36 limited to, the following:

37 (1) The total state tax revenues generated by the additional
38 cargo and cargo-related economic activity.

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

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

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

14 (2) *The Franchise Tax Board shall notify a qualifying business*
15 *entity with additional qualified cargo applications submitted prior*
16 *to July 1 of each year of the amount of the credit authorized by*
17 *the Legislature and the pro rata share for each qualified taxpayer*
18 *of that authorization during the fiscal year.*

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

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

25 (j) *The Franchise Tax Board may audit any qualified business*
26 *entity in order to verify claims presented to the Franchise Tax*
27 *Board in an application submitted pursuant to this section.*

28 (k) (1) *If the Franchise Tax Board finds that any claims*
29 *regarding additional cargo for which a qualified business entity*
30 *received credits according to the provisions of this section were*
31 *inaccurate, the qualified business entity's tax for that taxable*
32 *period shall be increased by an amount necessary for the recapture*
33 *of credit provided by this section.*

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

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

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

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

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

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

(b) For purposes of this section:

(1) "Breakbulk or bulk cargo" means any nonliquid commodities, machinery, equipment, materials, products, or other cargo transported as palletized or unpalletized bagged, packaged, wrapped, drummed, baled, or crated goods, or that are loaded in bulk directly into the hold of a ship that are shipped via oceangoing vessel. For purposes of this section, automobiles, trucks, and lumber shall be considered breakbulk or bulk cargo. For purposes of this section all agricultural products and commodities shall be considered breakbulk or bulk cargo. Breakbulk or bulk cargo shall not include any liquid commodities that are handled in bulk or any containerized cargo.

(2) "Capital costs" means all costs and expenses incurred by one or more qualified taxpayers in connection with the acquisition, construction, installation, and equipping of a qualifying project, including any environmental mitigation undertaken specifically to reduce the impacts of a qualifying project, during the period commencing with the date on which the acquisition, construction,

1 installation, and equipping commences and ending on the date on
2 which the qualifying project is placed in service.

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

5 (i) The costs of acquiring, constructing, installing, equipping,
6 and financing a qualifying project, including all obligations
7 incurred for labor and to contractors, subcontractors, builders,
8 and materialmen.

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

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

14 (iv) The costs of architectural and engineering services,
15 including test borings, surveys, estimates, plans, specifications,
16 preliminary investigations, environmental mitigation, and
17 supervision of construction, as well as for the performance of all
18 the duties required by or consequent upon the acquisition,
19 construction, and installation of a qualifying project.

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

29 (vi) The costs of completing any environmental mitigation.

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

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

38 (B) Capital costs shall not include property owned or leased by
39 the qualifying taxpayer or a related entity before the
40 commencement of the acquisition, construction, installation, or

1 *equipping of the qualified project, unless the property was*
2 *physically located outside the state for a period of at least one*
3 *year prior to the date on which the qualifying project was placed*
4 *in service.*

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

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

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

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

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

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

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

34 *(9) "Public port" means any port or harbor operating under*
35 *grant from the state, subject to the restrictions of the tidelands*
36 *trust, or any other public port or harbor district established by a*
37 *political subdivision of the state for the purposes of conducting*
38 *interstate or foreign trade.*

39 *(10) "Qualifying investment" means the undertaking by one or*
40 *more qualifying taxpayers of a qualifying project.*

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

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

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

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

18 (B) A revenue analysis prepared pursuant to the Franchise Tax
19 Board’s model developed pursuant to subdivision (e).

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

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

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

31 (F) Any other information required by the Franchise Tax Board.

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

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

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

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

4 (2) The certification shall include:

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

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

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

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

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

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

29 (f) The Franchise Tax Board shall adopt a methodology to
30 estimate the economic impacts resulting from the completion of a
31 qualifying project for the purpose of making a determination
32 pursuant to subdivision (d) that includes, but is not limited to, the
33 following:

34 (1) The total state tax revenues generated by the project and
35 project-related economic activity.

36 (2) The total local tax and user fee revenues generated by the
37 project and project-related economic activity.

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

1 (g) (1) A qualified taxpayer may not claim the credit authorized
2 under this section until the Legislature enacts a statute by January
3 1, 2012, specifying the total amount of the credit allowed to be
4 claimed by the qualified taxpayer for the 2011 taxable year or
5 annually thereafter for the preceding taxable year.

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

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

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

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

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

39 (k) (1) If the Franchise Tax Board finds that funds for which a
40 qualifying taxpayer received credits according to the provisions

1 of this section are not invested in and expended with respect to
2 capital costs of a qualifying investment, the qualifying taxpayer's
3 tax for that taxable year shall be increased by an amount necessary
4 for the recapture of credit provided by this section.

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

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

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

21 SEC. 5. Section 23671 is added to the Revenue and Taxation
22 Code, to read:

23 23671. (a) Subject to subdivision (f), for each taxable year
24 beginning on or after January 1, 2011, and before January 1,
25 2021, there shall be allowed as an import-export cargo tax credit
26 against the "tax," as defined by Section 23036, of an amount equal
27 to no more than the product of five dollars (\$5) and the taxpayer's
28 number of tons of additional qualified cargo for the taxable year.

29 (b) For purposes of this section, subdivision (b) of Section 23670
30 and the following shall apply:

31 (1) "Additional cargo" means the amount of qualified cargo
32 moved in the current taxable year over and above the cargo moved
33 in the taxable year.

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

(3) “Qualified cargo” means any breakbulk or bulk cargo or containerized cargo, as defined by paragraphs (1) and (3) of subdivision (b) of Section 23670 that is imported or exported to or from a manufacturing, fabrication, assembly, distribution, processing, or warehouse facility located in California and that is moved by way of an oceangoing vessel berthed at a public port facility in California during the taxable year and certified by the Franchise Tax Board as meeting the terms of this section. For purposes of this section all agricultural products and commodities shipped from or to California by way of an oceangoing vessel berthed at a public port facility in California shall be considered qualified cargo.

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

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

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

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

(B) A revenue analysis prepared pursuant to the Franchise Tax Board’s model developed pursuant to subdivision (d).

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

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

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

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

4 (4) The applicant shall remit a fee paid to the Franchise Tax
5 Board, which shall cover the costs of the Franchise Tax Board's
6 review and evaluation of the project application.

7 (d) The Franchise Tax Board shall issue a certification to a
8 qualifying business entity as a qualified taxpayer upon making a
9 finding that the terms of this section have been met, subject to the
10 Legislature enacting a statute by January 1, 2012, specifying the
11 total amount of the credit allowable to all qualified taxpayers for
12 the 2011 taxable year or annually each year thereafter.

13 (e) The Franchise Tax Board shall not certify qualified cargo
14 unless it determines that there will be sufficient revenue received
15 by the state as a result of the economic impacts from the additional
16 qualified cargo import or export activity, whether because of the
17 grant of the tax credit or otherwise, to offset the cost to the state
18 of providing the tax credit.

19 (f) The Franchise Tax Board shall adopt a methodology to
20 estimate the economic impacts resulting from the additional
21 qualifying cargo identified for the purpose of making a
22 determination pursuant to subdivision (c) that includes, but is not
23 limited to, the following:

24 (1) The total state tax revenues generated by the additional
25 cargo and cargo-related economic activity.

26 (2) The total local tax and user fee revenues generated by the
27 cargo and cargo-related economic activity.

28 (3) The total jobs created by the cargo and cargo-related
29 economic activity, including the impact of the cargo on the
30 employment of California residents.

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

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

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

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

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

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

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

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

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

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

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