AMENDED IN SENATE APRIL 27, 2011

AMENDED IN SENATE APRIL 12, 2011

SENATE BILL No. 830

Introduced by Senator Wright
(Principal coauthor: Assembly Member Bradford)

February 18, 2011

An act to add and repeal Sections 17057.6 and 23670 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 830, as amended, Wright. Income taxes: credit: trade infrastructure investment.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, subject to a subsequent act authorizing the total amount of credit, authorize a credit against those taxes for each taxable year beginning on or after January 1, 2011, and before January 1, 2021, in an amount not to exceed 50% of the total capital costs of a project relating to port or harbor activity, as provided. This bill would require the Legislative Analyst to evaluate the effectiveness of this tax credit, as provided. This bill would require the Franchise Tax Board to certify qualifying projects upon making specified findings and the receipt of a resolution, as specified, which determines that there would be sufficient revenues received by the state as a result of the economic impacts of these projects, 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:

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

(a) The primary purpose of this act is to encourage the development and growth of California-originated export cargoes and California-destined import cargoes, and to encourage and help finance the further investment in, and subsequent increased use of, California's public port facilities and districts.

(b) The need to continually invest in California's exports and imports and California's public port infrastructure is predicated on the fact that California's public seaports and the international trade that they facilitate are critical components of the state economy, directly or indirectly employing millions of Californians, contributing billions of dollars in economic activity, and generating significant local and state tax revenues as a result of this activity. As such, our ports must be given the ability to successfully compete for cargo volume, attract new trade, and continue to grow.

(c) The development, improvement, expansion, and maintenance of the state's public ports and port infrastructure facilities, and the utilization of public port facilities for the export and import of cargo to or from distribution, manufacturing, fabrication, assembly, processing, transloading, and warehousing sites in California are essential to the growth of the state's economic well-being and the ability of those businesses and workers associated with trade-related industries to continue to compete cost effectively on a regional, national, and global scale.

SEC. 2. This act shall be known, and may be cited, as the Public Port Infrastructure Investment Act of 2011.

~~SEC. 3. Section 17057.6 is added to the Revenue and Taxation Code, to read:~~

~~17057.6. (a) Subject to subdivision (g), 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 "net tax," as defined by Section 17039, an amount of up to, but not to exceed, 50 percent of the total capital costs of each qualifying project constructed in this state, and only up to 5 percent each year subject to the terms, conditions, and qualifications established by this section.~~

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

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

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

~~(1) “Breakbulk or bulk cargo” means any nonliquid commodities, automobiles, trucks, lumber, agricultural products and 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. 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 prior to the date on which the qualifying project was placed in service 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, installation, or equipping began.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(VIII) The installation of solar power systems.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(9) "Public port" means any port or harbor operating under grant from the state, subject to the restrictions of the tidelands trust, or~~

~~any other public port or harbor district established by a political subdivision of the state for the purposes of conducting interstate or foreign trade.~~

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

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

~~(12) "Qualified taxpayer" means a taxpayer, who is qualified by the Franchise Tax Board for the receipt of a credit pursuant to this section.~~

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

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

~~(B) 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, and accompanied by any relevant evidence or supporting documents necessary to the statement.~~

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

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

~~(E) 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.~~

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

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

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

~~(2) The certification shall include:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(3) If a port chooses to adopt a resolution pursuant to paragraph (1) of this subdivision, it shall make findings regarding the~~

~~estimated improvements to the freight transportation system of the state which may result from the qualifying project with respect to the following factors:~~

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

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

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

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

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

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

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

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

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

~~(i) If a qualifying taxpayer that claims a credit under this section sells, transfers, or otherwise disposes of, either directly or 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 the funds for which a qualifying taxpayer received credits according to 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 credit shall be in lieu of the credit allowed under Section 17057.7.~~

~~(n) 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 December 1, 2022, deletes or extends that date.~~

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

~~23670. (a) Subject to subdivision (g), 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.~~

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

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

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

~~(1) "Breakbulk or bulk cargo" means any nonliquid commodities, automobiles, trucks, lumber, agricultural products and 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. 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 prior to the date on which the qualifying project was placed in service 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, installation, or equipping began.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(VIII) The installation of solar power systems.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(B) 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, and accompanied by any relevant evidence or supporting documents necessary to the statement.~~

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

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

~~(E) 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.~~

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

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

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

~~(2) The certification shall include:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in~~

~~the following year, and the 10 succeeding years if necessary, until the credit is exhausted.~~

~~(i) If a qualifying taxpayer that claims a credit under this section sells, transfers, or otherwise disposes of, either directly or 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 "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 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 credit shall be in lieu of the credit allowed under Section 23671.~~

~~(n) 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 December 1, 2022, deletes or extends that date.~~

SEC. 3. Section 17057.6 is added to the Revenue and Taxation Code, to read:

17057.6. (a) Subject to subdivision (g), 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 "net tax," as defined by Section 17039, an amount of up to, but not to exceed, 50 percent of the total capital costs of each qualifying project constructed in this state, and only up to 5 percent each year subject to the terms, conditions, and qualifications established by this section.

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

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

(b) For purposes of this section:

(1) "Capital costs" means all costs and expenses incurred prior to the date on which the qualifying project was placed in service 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 environmental impacts of a qualifying project, during the period commencing with the date on which the acquisition, construction, installation, or equipping began.

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

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

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

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

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

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

(vi) (I) The costs of completing any environmental mitigation associated directly with the completion of the project which is capital in nature exclusively.

(II) Capital costs shall not include either the environmental mitigation expenses of a project, which are an ongoing operating expense, even if directly associated with mitigation required by a public agency as a condition of approval of the qualifying project, or any expenses, which are otherwise required to be expended by the qualified taxpayer in order for the qualified taxpayer to comply with a state environmental statute or regulation.

(vii) All other costs of a nature comparable to those described, including, but not limited to, all project costs required to be capitalized for federal income tax purposes pursuant to the provisions of Section 263(a) of the Internal Revenue Code.

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

(B) Capital costs shall not include the following:

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

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

(iii) Project costs that were expended prior to January 1, 2011.

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

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

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

(5) "Qualified project" or "qualifying project" means a project completed by one or more qualifying taxpayers that has a capital cost of not less than five million dollars ($5,000,000) and at which the predominant trade or business activity conducted will constitute industrial, warehousing, or port and harbor operations and cargo handling, including any port or port and harbor activity, and which is certified by the Franchise Tax Board pursuant to the terms of this section.

(6) "Qualified taxpayer" or "qualifying taxpayer" means a taxpayer, who is qualified by the Franchise Tax Board for the receipt of a credit pursuant to this section.

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

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

(B) A statement that the 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, and accompanied by any relevant evidence or supporting documents necessary to the statement.

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

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

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

(d) (1) The Franchise Tax Board shall issue a certification to a qualified taxpayer that the qualified project complies with this section.

(2) The certification shall include:

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

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

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

(D) A statement advising the qualifying taxpayer that credits may not be claimed by the taxpayer for any taxable year for any qualified project until the taxpayer is in receipt of a notification issued by the Franchise Tax Board pursuant to paragraph (3) of subdivision (g) advising the taxpayer of the amount of the credit authorized by the Legislature and the taxpayer's pro rata share of that authorization for the current taxable year.

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

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

the completion of the project, whether because of the grant of the tax credit or otherwise, to offset the cost to the state of providing the tax credit.

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

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

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

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

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

(B) The economic impact report guidelines and the economic methodology to be adopted under this section shall be peer reviewed and evaluated by an independent party that is selected through a competitive bidding process and without any financial association with the third party that completed the economic impact report guidelines and economic methodology. The peer review shall evaluate the adequacy of the guidelines and make specific recommendations regarding the methodologies, which should be incorporated into the peer review by the port upon adoption.

(C) A public port may adopt guidelines for study preparation developed by a third-party for another public port as long as the final guidelines are adopted pursuant to subparagraph (A).

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

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

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

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

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

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

(g) (1) A qualified taxpayer may not claim the credit authorized under this section, or reduce any estimated tax payments, until the Legislature enacts a statute specifying the total amount of the credit allowed to be claimed by the qualified taxpayer for the preceding taxable year.

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

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

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

reduction taken in any subsequent year shall not exceed 5 percent of the total capital costs.

(i) If a qualifying taxpayer that claims a credit under this section sells, transfers, or otherwise disposes of, either directly or 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) Notwithstanding any other section, the total amount of credits allocated to a qualified taxpayer by this section pursuant to paragraph (g), when combined with the total deductions taken with respect to the capital costs of the qualifying project including all depreciation deductions, shall not exceed the total capital costs of the qualifying project. If the total credits actually allocated pursuant to this section equal the total capital costs of the qualifying project, further deductions, depreciation, or credits shall not be taken by a taxpayer with respect to the capital costs of the qualifying project.

(k) If another deduction is claimed under this part for the capital costs of a qualifying project, this credit shall not be allowed for those capital costs.

(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 credit. The evaluation shall make its findings in the context of overall changes in the economy, cargo tonnage and container volumes at ports in California and elsewhere in North America, import and export prices and the relative value of the dollar, and overall employment in seaports, logistics and other goods movement related industries, or other such metrics by which

the Analyst may assist the Legislature best judge the effectiveness of the program and the appropriateness of the use of public funds.

(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 December 1, 2022, deletes or extends that date.

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

23670. (a) Subject to subdivision (g), 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, 50 percent of the total capital costs of each qualifying project constructed in this state, and only up to 5 percent each year subject to the terms, conditions, and qualifications established by this section.

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

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

(b) For purposes of this section:

(1) "Capital costs" means all costs and expenses incurred prior to the date on which the qualifying project was placed in service 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 environmental impacts of a qualifying project, during the period commencing with the date on which the acquisition, construction, installation, or equipping began.

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

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

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

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

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

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

(vi) (I) The costs of completing any environmental mitigation associated directly with the completion of the project which is capital in nature exclusively.

(II) Capital costs shall not include either the environmental mitigation expenses of a project, which are an ongoing operating expense, even if directly associated with mitigation required by a public agency as a condition of approval of the qualifying project, or any expenses, which are otherwise required to be expended by the qualified taxpayer in order for the qualified taxpayer to comply with a state environmental statute or regulation.

(vii) All other costs of a nature comparable to those described, including, but not limited to, all project costs required to be capitalized for federal income tax purposes pursuant to the provisions of Section 263(a) of the Internal Revenue Code.

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

(B) Capital costs shall not include the following:

(i) Property owned or leased by the qualifying taxpayer or a related entity before the commencement of the acquisition, construction, installation, or equipping of the qualified project,

unless the property was physically located outside the state for a period of at least one year prior to the date on which the qualifying project was placed in service.

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

(iii) Project costs that were expended prior to January 1, 2011.

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

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

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

(5) "Qualified project" or "qualifying project" means a project completed by one or more qualifying taxpayers that has a capital cost of not less than five million dollars ($5,000,000) and at which the predominant trade or business activity conducted will constitute industrial, warehousing, or port and harbor operations and cargo handling, including any port or port and harbor activity, and which is certified by the Franchise Tax Board pursuant to the terms of this section.

(6) "Qualified taxpayer" or "qualifying taxpayer" means a taxpayer, who is qualified by the Franchise Tax Board for the receipt of a credit pursuant to this section.

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

(A) A detailed description of the qualifying project, including a statement of project completion, including the date on which the

project was placed in service, and a summary of total actual capital costs prepared by an independent certified public accountant.

(B) A statement that the 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, and accompanied by any relevant evidence or supporting documents necessary to the statement.

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

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

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

(d) (1) The Franchise Tax Board shall issue a certification to a qualified taxpayer that the qualified project complies with this section.

(2) The certification shall include:

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

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

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

(D) A statement advising the qualifying taxpayer that credits may not be claimed by the taxpayer for any taxable year for any qualified project until the taxpayer is in receipt of a notification issued by the Franchise Tax Board pursuant to paragraph (3) of subdivision (g) advising the taxpayer of the amount of the credit authorized by the Legislature and the taxpayer's pro rata share of that authorization for the current taxable year.

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

(e) The Franchise Tax Board shall not certify a project unless it receives a resolution adopted pursuant to subdivision (f) from

the public port where the project is located which determines that there will be sufficient revenue received by the state as a result of the economic impacts resulting from the completion of the project and from increased port or port and harbor activity resulting from the completion of the project, whether because of the grant of the tax credit or otherwise, to offset the cost to the state of providing the tax credit.

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

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

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

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

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

(B) The economic impact report guidelines and the economic methodology to be adopted under this section shall be peer reviewed and evaluated by an independent party that is selected through a competitive bidding process and without any financial association with the third party that completed the economic impact report guidelines and economic methodology. The peer review shall evaluate the adequacy of the guidelines and make specific recommendations regarding the methodologies, which should be incorporated into the peer review by the port upon adoption.

(C) A public port may adopt guidelines for study preparation developed by a third party for another public port as long as the final guidelines are adopted pursuant to subparagraph (A).

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

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

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

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

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

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

(g) (1) A qualified taxpayer may not claim the credit authorized under this section, or reduce any estimated tax payments, until the Legislature enacts a statute specifying the total amount of the credit allowed to be claimed by the qualified taxpayer for the preceding taxable year.

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

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

(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and the 10 succeeding years if necessary, until the credit is exhausted, such that the excess reduction taken in any subsequent year shall not exceed 5 percent of the total capital costs.

(i) If a qualifying taxpayer that claims a credit under this section sells, transfers, or otherwise disposes of, either directly or 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 "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) Notwithstanding any other section, the total amount of credits allocated to a qualified taxpayer by this section pursuant to paragraph (g), when combined with the total deductions taken with respect to the capital costs of the qualifying project including all depreciation deductions, shall not exceed the total capital costs of the qualifying project. If the total credits actually allocated pursuant to this section equal the total capital costs of the qualifying project, further deductions, depreciation, or credits shall not be taken by a taxpayer with respect to the capital costs of the qualifying project.

(k) If another deduction is claimed under this part for the capital costs of a qualifying project, this credit shall not be allowed for those capital costs.

(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 credit. The evaluation shall make its findings in the context of overall changes in the economy, cargo tonnage and

container volumes at ports in California and elsewhere in North America, import and export prices and the relative value of the dollar, and overall employment in seaports, logistics and other goods movement related industries, or other such metrics by which the Analyst may assist the Legislature best judge the effectiveness of the program and the appropriateness of the use of public funds.

(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 December 1, 2022, deletes or extends that date.

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