

AMENDED IN SENATE APRIL 27, 2011

AMENDED IN SENATE APRIL 12, 2011

**SENATE BILL**

**No. 830**

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

February 18, 2011

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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:*

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

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

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

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

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

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

30 ~~17057.6.— (a) Subject to subdivision (g), for each taxable year~~  
31 ~~beginning on or after January 1, 2011, and before January 1, 2021,~~  
32 ~~there shall be allowed to a qualified taxpayer as a trade~~  
33 ~~infrastructure investment tax credit against the "net tax," as defined~~  
34 ~~by Section 17039, an amount of up to, but not to exceed, 50 percent~~  
35 ~~of the total capital costs of each qualifying project constructed in~~  
36 ~~this state, and only up to 5 percent each year subject to the terms,~~  
37 ~~conditions, and qualifications established by this section.~~

1 (1) ~~A qualified taxpayer may claim up to, but not to exceed, 5~~  
2 ~~percent of the total capital costs for each year beginning on or after~~  
3 ~~2011, and before 2021.~~

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

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

7 (1) ~~“Breakbulk or bulk cargo” means any nonliquid~~  
8 ~~commodities, automobiles, trucks, lumber, agricultural products~~  
9 ~~and commodities, machinery, equipment, materials, products, or~~  
10 ~~other cargo transported as palletized or unpalletized bagged,~~  
11 ~~packaged, wrapped, drummed, baled, or crated goods, or that are~~  
12 ~~loaded in bulk directly into the hold of a ship that are shipped via~~  
13 ~~ocean-going vessel. Breakbulk or bulk cargo shall not include any~~  
14 ~~liquid commodities that are handled in bulk or any containerized~~  
15 ~~cargo.~~

16 (2) ~~“Capital costs” means all costs and expenses incurred prior~~  
17 ~~to the date on which the qualifying project was placed in service~~  
18 ~~by one or more qualified taxpayers in connection with the~~  
19 ~~acquisition, construction, installation, and equipping of a qualifying~~  
20 ~~project, including any environmental mitigation undertaken~~  
21 ~~specifically to reduce the impacts of a qualifying project, during~~  
22 ~~the period commencing with the date on which the acquisition,~~  
23 ~~construction, installation, or equipping began.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1     ~~(4) The applicant shall remit a fee paid to the Franchise Tax~~  
2 ~~Board that shall cover the costs of the Franchise Tax Board's~~  
3 ~~review and evaluation of the project application and certification.~~  
4     ~~(d) (1) The Franchise Tax Board shall issue a certification to~~  
5 ~~a qualified project upon making a finding that the terms of this~~  
6 ~~section have been met.~~  
7     ~~(2) The certification shall include:~~  
8     ~~(A) A unique identifying number for each qualifying project.~~  
9     ~~(B) The maximum annual amount of tax credits that could~~  
10 ~~possibly be claimed in a given taxable year by the qualifying~~  
11 ~~taxpayer under the terms of this section~~  
12     ~~(C) The annual amount that could possibly be claimed by the~~  
13 ~~qualifying taxpayer under this section, not to exceed 5 percent of~~  
14 ~~total capital costs each taxable year.~~  
15     ~~(D) A statement advising the qualifying taxpayer that no credits~~  
16 ~~may be claimed by the taxpayer for any taxable year for any~~  
17 ~~qualified project until the taxpayer is in receipt of a notification~~  
18 ~~issued by the Franchise Tax Board pursuant to paragraph (3) of~~  
19 ~~subdivision (g) advising the taxpayer of the amount of the credit~~  
20 ~~authorized by the Legislature and the taxpayer's pro rata share of~~  
21 ~~that authorization for the current taxable year.~~  
22     ~~(3) The Franchise Tax Board shall submit notice of its~~  
23 ~~certification of a project as a qualifying project to the Department~~  
24 ~~of Finance, the Joint Legislative Budget Committee, and the~~  
25 ~~Legislative Analyst.~~  
26     ~~(e) The Franchise Tax Board shall not certify a project unless~~  
27 ~~it receives a resolution adopted pursuant to subdivision (f) from~~  
28 ~~the public port where the project is located which determines that~~  
29 ~~there will be sufficient revenue received by the state as a result of~~  
30 ~~the economic impacts resulting from the completion of the project~~  
31 ~~and from increased port or port and harbor activity resulting from~~  
32 ~~the completion of the project, whether because of the grant of the~~  
33 ~~tax credit or otherwise, to offset the cost to the state of providing~~  
34 ~~the tax credit.~~  
35     ~~(f) (1) If a public port adopts a resolution in order to estimate~~  
36 ~~the economic impacts resulting from the completion of a qualifying~~  
37 ~~project pursuant to subdivision (e), the findings adopted shall be~~  
38 ~~based on estimates in a report prepared pursuant to paragraph (2)~~  
39 ~~of this subdivision that includes, but is not limited to, the following:~~

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

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

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

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

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

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

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

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

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

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

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

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

11 (D) “Congestion reduction,” which means the reduction in  
12 recurrent daily hours of delay to be achieved.

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

16 (g) (1) A qualified taxpayer may not claim the credit authorized  
17 under this section until the Legislature enacts a statute specifying  
18 the total amount of the credit allowed to be claimed by the qualified  
19 taxpayer 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 Board  
24 shall allocate the total amount of the credit on a prorated basis,  
25 based on each qualified project’s percentage of the total tax credits  
26 certified by the Franchise Tax Board as of July 1 of each year.

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

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

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

1 added to the “net tax” of the qualifying taxpayer during the taxable  
2 year of sale, transfer, or disposition an amount equal to the total  
3 credit claimed multiplied by a fraction, the numerator of which is  
4 the remaining term of 10 years and the denominator of which is  
5 10, unless an equivalent balance of the credit is expressly assigned  
6 to the new owner of the qualified project in question and the  
7 assignment is approved by the Franchise Tax Board.

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

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

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

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

30 (m) This credit shall be in lieu of the credit allowed under  
31 Section 17057.7.

32 (n) This section shall remain in effect only until December 1,  
33 2022, and as of that date is repealed, unless a later enacted statute,  
34 that is enacted before December 1, 2022, deletes or extends that  
35 date.

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

38 23670. (a) Subject to subdivision (g), for each taxable year  
39 beginning on or after January 1, 2011, and before January 1, 2021,  
40 there shall be allowed to a qualified taxpayer as a trade

1 infrastructure investment tax credit against the “tax,” as defined  
2 by Section 23036, an amount of up to, but not to exceed, 5 percent  
3 of the total capital costs of each qualifying project constructed in  
4 this state, subject to the terms, conditions, and qualifications  
5 established by this section:

6 (1) ~~A qualified taxpayer may claim up to, but not to exceed, 5~~  
7 ~~percent of the total capital costs for each year beginning on or after~~  
8 ~~2011, and before 2021.~~

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

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

12 (1) ~~“Breakbulk or bulk cargo” means any nonliquid~~  
13 ~~commodities, automobiles, trucks, lumber, agricultural products~~  
14 ~~and commodities, machinery, equipment, materials, products, or~~  
15 ~~other cargo transported as palletized or unpalletized bagged,~~  
16 ~~packaged, wrapped, drummed, baled, or crated goods, or that are~~  
17 ~~loaded in bulk directly into the hold of a ship that are shipped via~~  
18 ~~ocean-going vessel. Breakbulk or bulk cargo shall not include any~~  
19 ~~liquid commodities that are handled in bulk or any containerized~~  
20 ~~cargo.~~

21 (2) ~~“Capital costs” means all costs and expenses incurred prior~~  
22 ~~to the date on which the qualifying project was placed in service~~  
23 ~~by one or more qualified taxpayers in connection with the~~  
24 ~~acquisition, construction, installation, and equipping of a qualifying~~  
25 ~~project, including any environmental mitigation undertaken~~  
26 ~~specifically to reduce the impacts of a qualifying project, during~~  
27 ~~the period commencing with the date on which the acquisition,~~  
28 ~~construction, installation, or equipping began.~~

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

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

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

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

- 1     ~~(iv) The costs of architectural and engineering services,~~  
2 ~~including test borings, surveys, estimates, plans, specifications,~~  
3 ~~preliminary investigations, environmental mitigation, and~~  
4 ~~supervision of construction, as well as for the performance of all~~  
5 ~~the duties required by or consequent upon the acquisition,~~  
6 ~~construction, and installation of a qualifying project.~~
- 7     ~~(v) The costs associated with installation of fixtures and~~  
8 ~~equipment, surveys, including archaeological and environmental~~  
9 ~~surveys, site tests and inspections, subsurface site work, excavation,~~  
10 ~~removal of structures, roadways, and other surface obstructions,~~  
11 ~~filling, grading, paving, and provisions for drainage, stormwater~~  
12 ~~retention, installation of utilities, including water, sewerage~~  
13 ~~treatment, gas, electricity, communications, and similar facilities,~~  
14 ~~and offsite construction of utility extensions to the boundaries of~~  
15 ~~the property.~~
- 16     ~~(vi) The costs of completing any environmental mitigation~~  
17 ~~associated with the completion of the project which is capital in~~  
18 ~~nature, and not an ongoing operating cost, including, but not limited~~  
19 ~~to, the following:~~
- 20         ~~(I) The replacement, repower, or retrofit of heavy-duty diesel~~  
21 ~~trucks.~~
- 22         ~~(II) The replacement, repower, or retrofit of diesel locomotive~~  
23 ~~engines.~~
- 24         ~~(III) The replacement, repower, or retrofit of harbor craft.~~
- 25         ~~(IV) The provision of on-shore electrical power for ocean freight~~  
26 ~~carriers calling at the state's seaports, which reduce the use of~~  
27 ~~auxiliary and main engine ship power.~~
- 28         ~~(V) Mobile or portable shoreside distributed power generation~~  
29 ~~projects that eliminate the need of oceangoing vessels to use the~~  
30 ~~electricity grid.~~
- 31         ~~(VI) The replacement, repower, or retrofit of cargo handling~~  
32 ~~equipment.~~
- 33         ~~(VII) Electrification infrastructure to reduce engine idling and~~  
34 ~~use of internal combustion auxiliary power systems by trucks and~~  
35 ~~cargo handling equipment.~~
- 36         ~~(VIII) The installation of solar power systems.~~
- 37         ~~(IX) The installation of alternative fueling systems or acquisition~~  
38 ~~of alternative fueling equipment.~~
- 39     ~~(vii) All other costs of a nature comparable to those described,~~  
40 ~~including, but not limited to, all project costs required to be~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (B) ~~A statement that the proposed project meets the requirements~~  
31 ~~of this section, as well as any subsequent requirements adopted~~  
32 ~~by the Franchise Tax Board to facilitate the administration of this~~  
33 ~~section, to be classified as a qualifying project, and accompanied~~  
34 ~~by any relevant evidence or supporting documents necessary to~~  
35 ~~the statement.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1     ~~(f) (1) If a public port adopts a resolution in order to estimate~~  
2 ~~the economic impacts resulting from the completion of a qualifying~~  
3 ~~project pursuant to subdivision (c), the findings adopted shall be~~  
4 ~~based on estimates in a report prepared pursuant to paragraph (2)~~  
5 ~~that includes, but is not limited to, the following:~~  
6     ~~(A) The total state tax revenues generated by the project and~~  
7 ~~project-related economic activity.~~  
8     ~~(B) The total local tax and user fee revenues generated by the~~  
9 ~~project and project-related economic activity.~~  
10     ~~(C) The total jobs created by the project and project-related~~  
11 ~~economic activity, including the specific impact of the project on~~  
12 ~~the employment of California residents.~~  
13     ~~(2) (A) Prior to making any estimates or projections in a report~~  
14 ~~under this paragraph upon which a port resolution may be based,~~  
15 ~~a port may adopt guidelines for the preparation of a project's~~  
16 ~~economic impact study. These guidelines shall be completed by a~~  
17 ~~third-party economist, based on a published economic impact~~  
18 ~~methodology. The guidelines and published economic impact~~  
19 ~~methodology shall be incorporated into the findings of a peer~~  
20 ~~review conducted pursuant to subparagraph (B), and shall be~~  
21 ~~adopted in a public meeting of the governing body of the port with~~  
22 ~~a finding that the guidelines and methodology were developed in~~  
23 ~~a manner consistent with this section.~~  
24     ~~(B) A peer review of the economic impact study and the~~  
25 ~~economic methodology to be adopted under this section shall be~~  
26 ~~peer reviewed and evaluated by an independent party that is~~  
27 ~~selected through a competitive bid process and without any~~  
28 ~~financial association with the third party that completed the~~  
29 ~~economic impact study and economic methodology. The peer~~  
30 ~~review shall evaluate the adequacy of the guidelines and make~~  
31 ~~specific recommendations regarding the methodologies, which~~  
32 ~~should be incorporated into the peer review by the port upon~~  
33 ~~adoption.~~  
34     ~~(C) Official statements or annual disclosure documents or other~~  
35 ~~similar financial disclosure documents issued by the public port~~  
36 ~~to its creditors, underwriters, or other bondholders or lienholders~~  
37 ~~in the normal course of its business may be relied on to~~  
38 ~~conclusively substantiate any facts regarding operations at a public~~  
39 ~~port.~~

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

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

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

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

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

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

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

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

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

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

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

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

3 (i) ~~If a qualifying taxpayer that claims a credit under this section  
4 sells, transfers, or otherwise disposes of, either directly or  
5 indirectly, a qualifying project within 10 years of the taxable year  
6 during which the taxpayer first claimed the credit, there shall be  
7 added to the “tax” of the qualifying taxpayer during the taxable  
8 year of sale, transfer, or disposition an amount equal to the total  
9 credit claimed multiplied by a fraction, the numerator of which is  
10 the remaining term of 10 years and the denominator of which is  
11 10, unless an equivalent balance of the credit is expressly assigned  
12 to the new owner of the qualified project in question and the  
13 assignment is approved by the Franchise Tax Board.~~

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

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

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

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

36 (m) ~~This credit shall be in lieu of the credit allowed under  
37 Section 23671.~~

38 (n) ~~This section shall remain in effect only until December 1,  
39 2022, and as of that date is repealed, unless a later enacted statute,~~

1 ~~that is enacted before December 1, 2022, deletes or extends that~~  
2 ~~date.~~

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

5 *17057.6. (a) Subject to subdivision (g), for each taxable year*  
6 *beginning on or after January 1, 2011, and before January 1,*  
7 *2021, there shall be allowed to a qualified taxpayer as a trade*  
8 *infrastructure investment tax credit against the “net tax,” as*  
9 *defined by Section 17039, an amount of up to, but not to exceed,*  
10 *50 percent of the total capital costs of each qualifying project*  
11 *constructed in this state, and only up to 5 percent each year subject*  
12 *to the terms, conditions, and qualifications established by this*  
13 *section.*

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

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

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

20 *(1) “Capital costs” means all costs and expenses incurred prior*  
21 *to the date on which the qualifying project was placed in service*  
22 *by one or more qualified taxpayers in connection with the*  
23 *acquisition, construction, installation, and equipping of a*  
24 *qualifying project, including any environmental mitigation*  
25 *undertaken specifically to reduce the environmental impacts of a*  
26 *qualifying project, during the period commencing with the date*  
27 *on which the acquisition, construction, installation, or equipping*  
28 *began.*

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

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

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

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

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

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

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

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

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

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

34 (B) *Capital costs shall not include the following:*

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

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

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

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

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

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

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

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

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

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

39 (B) A statement that the project meets the requirements of this  
40 section, as well as any subsequent requirements adopted by the

1 Franchise Tax Board to facilitate the administration of this section,  
2 to be classified as a qualifying project, and accompanied by any  
3 relevant evidence or supporting documents necessary to the  
4 statement.

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

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

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

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

16 (2) The certification shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6     (A) *“Velocity,” which means the speed by which large cargo*  
7 *would travel from the port through the distribution system.*

8     (B) *“Throughput,” which means the volume of cargo that would*  
9 *move from the port through the distribution system.*

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

13    (D) *“Congestion reduction,” which means the reduction in*  
14 *recurrent daily hours of delay to be achieved.*

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

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

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

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

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

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

3 (i) If a qualifying taxpayer that claims a credit under this section  
4 sells, transfers, or otherwise disposes of, either directly or  
5 indirectly, a qualifying project within 10 years of the taxable year  
6 during which the taxpayer first claimed the credit, there shall be  
7 added to the “net tax” of the qualifying taxpayer during the taxable  
8 year of sale, transfer, or disposition an amount equal to the total  
9 credit claimed multiplied by a fraction, the numerator of which is  
10 the remaining term of 10 years and the denominator of which is  
11 10, unless an equivalent balance of the credit is expressly assigned  
12 to the new owner of the qualified project in question and the  
13 assignment is approved by the Franchise Tax Board.

14 (j) Notwithstanding any other section, the total amount of credits  
15 allocated to a qualified taxpayer by this section pursuant to  
16 paragraph (g), when combined with the total deductions taken  
17 with respect to the capital costs of the qualifying project including  
18 all depreciation deductions, shall not exceed the total capital costs  
19 of the qualifying project. If the total credits actually allocated  
20 pursuant to this section equal the total capital costs of the  
21 qualifying project, further deductions, depreciation, or credits  
22 shall not be taken by a taxpayer with respect to the capital costs  
23 of the qualifying project.

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

27 (l) By January 1, 2020, the Legislative Analyst shall prepare  
28 an evaluation of the effectiveness of the infrastructure investment  
29 tax credit, which shall include the overall impact of the tax credits,  
30 the amount of the tax credits issued, the number of new jobs  
31 created, the amount of California payroll created, the economic  
32 impact of the tax credits on the port and maritime industry located  
33 in this state and regionally, the amount of new infrastructure that  
34 has been developed in the state, and any other factors that describe  
35 the impact of the credit. The evaluation shall make its findings in  
36 the context of overall changes in the economy, cargo tonnage and  
37 container volumes at ports in California and elsewhere in North  
38 America, import and export prices and the relative value of the  
39 dollar, and overall employment in seaports, logistics and other  
40 goods movement related industries, or other such metrics by which

1 *the Analyst may assist the Legislature best judge the effectiveness*  
2 *of the program and the appropriateness of the use of public funds.*  
3 *(m) This section shall remain in effect only until December 1,*  
4 *2022, and as of that date is repealed, unless a later enacted statute,*  
5 *that is enacted before December 1, 2022, deletes or extends that*  
6 *date.*

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

9 *23670. (a) Subject to subdivision (g), for each taxable year*  
10 *beginning on or after January 1, 2011, and before January 1,*  
11 *2021, there shall be allowed to a qualified taxpayer as a trade*  
12 *infrastructure investment tax credit against the “tax,” as defined*  
13 *by Section 23036, an amount of up to, but not to exceed, 50 percent*  
14 *of the total capital costs of each qualifying project constructed in*  
15 *this state, and only up to 5 percent each year subject to the terms,*  
16 *conditions, and qualifications established by this section.*

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

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

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

23 *(1) “Capital costs” means all costs and expenses incurred prior*  
24 *to the date on which the qualifying project was placed in service*  
25 *by one or more qualified taxpayers in connection with the*  
26 *acquisition, construction, installation, and equipping of a*  
27 *qualifying project, including any environmental mitigation*  
28 *undertaken specifically to reduce the environmental impacts of a*  
29 *qualifying project, during the period commencing with the date*  
30 *on which the acquisition, construction, installation, or equipping*  
31 *began.*

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

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

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

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

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

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

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

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

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

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

37 (B) *Capital costs shall not include the following:*

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

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

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

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

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

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

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

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

32 *(6) “Qualified taxpayer” or “qualifying taxpayer” means a*  
33 *taxpayer, who is qualified by the Franchise Tax Board for the*  
34 *receipt of a credit pursuant to this section.*

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

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

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

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

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

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

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

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

20 *(2) The certification shall include:*

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

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

25 *(C) The annual amount of tax credits that could possibly be*  
26 *claimed by the qualifying taxpayer under this section, not to exceed*  
27 *5 percent of total capital costs each taxable year.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (D) “Congestion reduction,” which means the reduction in  
17 recurrent daily hours of delay to be achieved.

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

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

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

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

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

7     (i) If a qualifying taxpayer that claims a credit under this section  
8 sells, transfers, or otherwise disposes of, either directly or  
9 indirectly, a qualifying project within 10 years of the taxable year  
10 during which the taxpayer first claimed the credit, there shall be  
11 added to the “tax” of the qualifying taxpayer during the taxable  
12 year of sale, transfer, or disposition an amount equal to the total  
13 credit claimed multiplied by a fraction, the numerator of which is  
14 the remaining term of 10 years and the denominator of which is  
15 10, unless an equivalent balance of the credit is expressly assigned  
16 to the new owner of the qualified project in question and the  
17 assignment is approved by the Franchise Tax Board.

18     (j) Notwithstanding any other section, the total amount of credits  
19 allocated to a qualified taxpayer by this section pursuant to  
20 paragraph (g), when combined with the total deductions taken  
21 with respect to the capital costs of the qualifying project including  
22 all depreciation deductions, shall not exceed the total capital costs  
23 of the qualifying project. If the total credits actually allocated  
24 pursuant to this section equal the total capital costs of the  
25 qualifying project, further deductions, depreciation, or credits  
26 shall not be taken by a taxpayer with respect to the capital costs  
27 of the qualifying project.

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

31     (l) By January 1, 2020, the Legislative Analyst shall prepare  
32 an evaluation of the effectiveness of the infrastructure investment  
33 tax credit, which shall include the overall impact of the tax credits,  
34 the amount of the tax credits issued, the number of new jobs  
35 created, the amount of California payroll created, the economic  
36 impact of the tax credits on the port and maritime industry located  
37 in this state and regionally, the amount of new infrastructure that  
38 has been developed in the state, and any other factors that describe  
39 the impact of the credit. The evaluation shall make its findings in  
40 the context of overall changes in the economy, cargo tonnage and

1 *container volumes at ports in California and elsewhere in North*  
2 *America, import and export prices and the relative value of the*  
3 *dollar, and overall employment in seaports, logistics and other*  
4 *goods movement related industries, or other such metrics by which*  
5 *the Analyst may assist the Legislature best judge the effectiveness*  
6 *of the program and the appropriateness of the use of public funds.*  
7 *(m) This section shall remain in effect only until December 1,*  
8 *2022, and as of that date is repealed, unless a later enacted statute,*  
9 *that is enacted before December 1, 2022, deletes or extends that*  
10 *date.*

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