

**SUMMARY ANALYSIS OF AMENDED BILL**

Author:   Arambula   Analyst:   Nicole Kwon   Bill Number:   AB 1398    
 Related Bills:   See Prior Analysis   Telephone:   845-7800   Amended Date:   January 17, 2008    
 Attorney:   Douglas Powers   Sponsor: \_\_\_\_\_

**SUBJECT:** Geographically Targeted Economic Development Area Hiring Credit

- \_\_\_\_\_ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.
- X   AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- \_\_\_\_\_ AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.
- \_\_\_\_\_ FURTHER AMENDMENTS NECESSARY.
- \_\_\_\_\_ DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.
- X   REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED   January 7, 2008  , STILL APPLIES.
- \_\_\_\_\_ OTHER – See comments below.

**SUMMARY**

This bill would do the following:

- Suspend individually offered hiring credits within each geographically targeted economic development area (G-TEDA).
- Authorize one hiring credit for qualified taxpayers within a G-TEDA.

**SUMMARY OF AMENDMENTS**

The January 17, 2008, amendments would make the following changes:

- Allow G-TEDA hiring credits to reduce tax below tentative minimum tax (TMT).
- Provide a single, coordinated zone income limitation for G-TEDA hiring credits, including credits generated under existing Enterprise Zone (EZ), Local Agency Military Base Recovery Area (LAMBRA), Targeted Tax Area (TTA), and Manufacturing Enhancement Area (MEA) hiring credit provisions.
- Add no repeal or “render inoperative” date for the carryover provision.
- Change the first year hiring credit percentage from 50% to 49% of the amount of all qualified wages paid to a qualified employee.

Board Position:	Legislative Director	Date
_____ S		
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<u>  X  </u> PENDING		

- Eliminate a former member of a criminal street gang, as certified by a specified law enforcement agency, from the requirement meeting the definition of a “dislocated worker.”
- Make numerous other minor technical changes.

As a result of the amendments, the “This Bill” and “Economic Impact” discussions have been revised and are provided below. In addition, the unresolved Implementation Considerations, Legal Impact, and Policy Concern identified on the department’s prior analysis of the bill as amended January 7, 2008, are provided below for convenience.

## **POSITION**

Pending.

## **ANALYSIS**

### THIS BILL

For taxable years beginning on or after January 1, 2008, this bill would suspend the hiring credits offered separately under each G-TEDA and instead authorize one hiring credit for qualified taxpayers that hire qualified employees within the G-TEDAs. In addition, this bill would change the first year hiring credit percentage from 50% to 49% of the amount of all qualified wages paid to a qualified employee.

This bill would define “geographically targeted economic development area” (G-TEDA) to mean an EZ, a LAMBRA, a TTA, and a MEA pursuant to specified sections of the Government Code.

This bill would contain "no inference" language that specifies that no inference shall be drawn with respect to the amendments made by this bill both for the existing law sections being amended and for the new sections being added for any taxable year beginning before January 1, 2008.

This bill would allow all G-TEDA hiring credits to reduce tax below TMT as is currently allowed for EZ and TTA hiring credits.

This bill provides a single, coordinated zone income limitation for G-TEDA hiring credits, including credits generated under existing EZ, MEA, TTA, and LAMBRA hiring credit provisions.

This bill would add no repeal or “render inoperative” date to taxable years beginning on or after January 1, 2008, for the carryover provision.

In addition, this bill would make the following changes:

- Replace the term “taxpayer” with “qualified taxpayer.”
- Replace the "California Job Training Automation System and WIA" with the “federal Job Training Partnership Act.”
- Change one criteria of “qualified employee” by replacing a person receiving benefits under the California Work Opportunity and Responsibility to Kids program with a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) program.
- Change the age of an economically disadvantaged individual from 14 years to 16 years old.
- Change the definition of a “dislocated worker” to an individual who meets any of the following requirements:
  1. Has been terminated or laid off or who has received a notice of termination of layoff from employment.
  2. Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise.
  3. Is long-term unemployed and has limited opportunities for employment of reemployment in the same or a similar occupation in the area in which the individual reside, including an individual 55 years of age or older.
  4. Was self-employed and is unemployed as a result of general economic conditions in the community.
  5. Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned.
  6. Was an active member of the Armed Forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.
  7. Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry.
  8. Has been terminated or laid off or has received a notice of termination or layoff as a consequence of compliance with the Clean Air Act.
- Add to the criteria for satisfying the definition of veteran: (1) an individual who served in the active military, naval, or air service of the United States between February 28, 1961, and May 8, 1975, and (2) an individual who was discharged or released in the last 48 months from active service in the National Guard if the individual served on foreign soil prior to discharge.
- Change the definition of a “felon” to mean an individual who has been convicted of a felony or a misdemeanor offense punishable by incarceration, or a person charged with a felony offense or a misdemeanor offense punishable by incarceration but placed on probation by a state court without a finding of guilt.

- Require the qualified taxpayer located in a TTA to be a resident of that TTA immediately preceding the commencement of employment.
- Replace the "Standard Industrial Classification (SIC) Manual" with the "North American Industry Classification System Manual". In addition, the amendments will require the Employment Development Department (EDD) to determine which classifications apply and annually publish them on EDD's web site.
- Change the definition of a "qualified taxpayer" to mean a taxpayer that meets any of the following:
  1. Is a person or entity engaged in a trade or business within an EZ.
  2. Is a person or entity engaged in a trade or business within a LAMBRA.
  3. Is a person or entity that meets both: (a) is engaged in a trade or business within a TTA or an MEA, and (b) is engaged in those lines of business described as industrial in the North American Industry Classification System Manual.

### IMPLEMENTATION CONSIDERATIONS

The department has identified a number of implementation concerns relating to the use of extensive portions of existing incentive provisions in creating the new G-TEDA under sections 17053.76 and 23622.9 of the Revenue and Taxation Code; some of these are identified as examples below. The department has been made aware of these from its experience in administering the existing incentive provisions. Unless these implementation concerns are addressed, enactment of this bill in its current form would hinder the department's ability to administer the provisions of this bill. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The certification requirement in subdivision (c) (1) is not clear about what is being certified. Clarification of what is actually required to be certified could prevent disputes between the department and taxpayers.

The bill contains numerous terms such as "state rehabilitation plan" and "priority for employment" that are undefined. The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this credit.

The bill provides that the amount of the credit would range from 49% to 10% of qualified wages, depending on years of employment. It is unclear which percentage would apply in cases where there is a break in employment. For example, if an employee leaves after 11 months and is then rehired 2 weeks later, would a new 49% credit start for that employee?

## ECONOMIC IMPACT

### Revenue Estimate

Based on data and assumptions discussed below, this bill would result in the following revenue losses:

Estimated Revenue Impact of AB 1398 Enactment Assumed after June 30, 2008			
	2008-09	2009-10	2010-11
Hiring Credit	<-\$150,000	<-\$150,000	<-\$150,000

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

### Revenue Discussion

The revenue impact of this bill would be determined by the difference between hiring credits generated and applied to reduce tax under the bill and hiring credits generated and applied to reduce tax under current law. The bill is estimated to decrease revenue by less than \$150,000 for tax year 2008.

- Under current law, LAMBRA imposes a \$2 million per taxpayer per taxable year limitation on qualified wages for purposes of the LAMBRA hiring credit. This bill does not limit qualified wages for LAMBRA employees. An estimate is made that removal of the \$2 million per taxpayer per taxable year limitation on LAMBRA qualified wages will increase applied credits approximately \$1 million for tax year 2008.
- Under current law, LAMBRA and MEA hiring credits are not allowed to reduce tax below TMT. This bill does not limit LAMBRA and MEA credits to TMT. An estimate is made that removal of the TMT limitation for LAMBRA and MEA will increase applied credits approximately \$2 million for tax year 2008.
- Under current law, a declining rate of 50%, 40%, 30%, 20%, and 10% is applied to qualified wages for purposes of determining the amount of hiring credit. Under this bill, 49% would be applied to qualified wages in the first year of employment. An estimate is made that changing the percentage from 50% to 49% of qualified wages in the first year of employment will decrease applied credits approximately \$3 million for tax year 2008.
- This estimate assumes EZ, MEA, TTA, and LAMBRA G-TEDA hiring credits will grow at the same rate in the future.

Taxable year estimates are converted to fiscal year estimates in the table above.

## LEGAL IMPACT

This bill would include in the definition of “dislocated worker” a list of options that would allow the employee to be considered a “dislocated worker” for purposes of determining whether the employee is a qualified employee. One of those options would allow that employee to be considered a dislocated worker if that employee is 55 or older and may be subject to age-related barriers to employment. The California Government Code prohibits discrimination based on listed characteristics including age with respect to any state program or state-funded financial assistance. Thus, the credit in this bill that includes an age-related preference could be construed as discrimination against non-favored age groups and subject to challenge.

This bill would include in the definition of “qualified employee” a list of options that would allow the employee to be considered a “qualified employee” assuming other criteria were met. One of those options would allow that employee to be a qualified employee if that employee was a resident of the targeted employment area during a specified period. The U.S. Supreme Court in *Lunding Et Ux. v. New York Appeals Tribunal et al.* (1998) 522 U.S. 287, found that New York's denial of an alimony deduction to nonresident taxpayers, while allowing such a deduction to resident taxpayers, was discriminatory and thus unconstitutional. Targeted tax incentives such as the credit in this bill that are conditioned on residency in California – even though the bill would not require all qualified employees to reside in the targeted employment area – may be subject to constitutional challenge.

## POLICY CONCERN

This bill would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover period limitation because experience shows credits typically are exhausted within eight years of being earned.

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