

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Maienschein Analyst: Jessica Deitchman Bill Number: AB 1629
Related Bills: See Legislative History Telephone: 845-6310 Introduced Date: February 17, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: Employer Wages Paid to Disabled Employees Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), create an income tax credit for certain employers that hire employees eligible to be paid a “special minimum wage” and pay them at least regular minimum wage.

RECOMMENDATION – NO POSITION

REASON FOR THE BILL

The reason for the bill is to encourage employers to employ individuals that may be paid a “special minimum wage” and to pay them at least the minimum wage.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2018 and before January 1, 2023.

PROGRAM BACKGROUND

The federal Fair Labor Standards Act¹ authorizes employers, after receiving a certificate from the Wage and Hour Division of the Federal Department of Labor, to pay a “special minimum wage” to individuals whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury. A special minimum wage is less than the federal minimum wage and is determined on a case by case basis.

The California Labor Code² specifies that for any occupation in which a minimum wage has been established, the commission may issue to an employee who is mentally or physically handicapped, or both, a special license authorizing the employment of the licensee for a period not to exceed one year from date of issue, at a wage less than the legal minimum wage. The commission shall fix a special minimum wage for the licensee. Such license may be renewed on a yearly basis.

¹ Section 14(c) [29 U.S.C. §214(c)].

² Labor Code section 1191.

FEDERAL/STATE LAW

Existing federal law provides special tax incentives for empowerment zones and enterprise communities to provide economic revitalization of distressed urban and rural areas.

Current state and federal laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business.

Current state law allows a New Employment Credit that is available to a qualified taxpayer that hires a qualified full-time employee, has an overall net increase in employment, and pays or incurs qualified wages attributable to work performed by the qualified full-time employee in a designated census tract or former Enterprise Zone. The qualified taxpayer must receive a tentative credit reservation from the Franchise Tax Board (FTB) for that qualified full-time employee.

As of January 1, 2017, California's minimum wage is generally \$10.50 per hour.³

THIS BILL

For taxable years beginning on or after January 1, 2018, and before January 1, 2023, under the PITL and CTL, this bill would allow a credit to a qualified employer who pays a qualified employee a wage that equals or exceeds the state minimum wage during the taxable year. The credit would be in an amount equal to the difference between the special minimum wage paid or incurred to the qualified employee and the minimum wage, multiplied by the number of hours worked by the qualified employee for the qualified employer during the taxable year.

The bill would define the following terms:

- "Minimum wage" means the wage established by the Industrial Welfare Commission.
- "Qualified employee" means an individual who may be paid a special minimum wage, pursuant to Section 214 (c) of Title 29 of the United States Code or Section 1191 or 1191.5 of the Labor Code, that is subject to withholding under the Unemployment Insurance Code.
- "Qualified employer" means a taxpayer that employs a qualified employee in this state.

In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified employer would be made at the entity level and any credit under this bill would be allowed to the pass-thru entity and passed through to the partners or shareholders.

- For purposes of this bill, the term "pass-thru entity" would mean any partnership or S Corporation.

³ Labor Code section 1182.12. Those employees classified as "learners" may be paid a lesser wage. See Labor Code section 1192. Additionally, those employees that are the parent, spouse, or child of the employer are not subject to the minimum wage requirement.

A qualified taxpayer would be required to do both of the following:

- Obtain from the Industrial Welfare Commission a certification that a qualified employee meets the eligibility requirements, as specified. The certification would include the dollar amount of special minimum wage applicable to each qualified employee.
- Retain the certification and provide a copy of it upon request to the FTB.

This bill would exempt the FTB's standards, criteria, procedures, determinations, rules, notices or guidelines from the requirements of the Administrative Procedure Act.

Unused credits could be carried over for five years or until exhausted.

Any deduction otherwise allowed would be required to be reduced by the credit allowed.

On or before June 1, 2023, the FTB would be required to submit a report to the Legislature that contains the following:

- The number of Californians with developmental disabilities employed during each year this bill is operative,
- The number of employers who used and applied for a credit each year, and
- The number of employees for whom a credit was authorized by this bill was claimed.

This bill would remain in effect only until December 1, 2023, and would be repealed as of that date.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

The FTB would be required to report the number of Californians with developmental disabilities employed during the year. It is unclear how the FTB could determine this reporting requirement or whether another state agency currently gathers this information. It is recommended that this reporting requirement be removed or assigned to an appropriate state agency.

TECHNICAL CONSIDERATIONS

Because S-corporations are not classified as pass-thru entities, the reference on page 2, lines 34-35 should be deleted.

LEGISLATIVE HISTORY

AB 1404 (Grove, 2015/2016) substantially similar to this bill, would have allowed a credit for employers that hire employees eligible to be paid a special minimum wage and chose to pay them at or above the minimum wage. AB 1404 failed to pass out of the house of origin by the constitutional deadline.

AB 2582 (Maienschein, 2015/2016) substantially similar to this bill, would have allowed a credit for employers that hire employees eligible to be paid a special minimum wage and chose to pay them at or above minimum wage. AB 2582 failed to pass out of the house of origin by the constitutional deadline.

AB 236 (Swanson, 2011/2012) would have allowed a credit of \$5,000 for each full-time employee hired that is either an ex-offender or has been unemployed for 12 consecutive months. AB 236 failed to pass out of the Assembly Appropriations by the constitutional deadline.

AB 304 (Knight, 2011/2012), would have allowed a credit of either \$3,000 or \$5,000 for each qualified employee that was paid wages greater than or equal to 200 percent of the average wage in the county in which the employee completes at least 50 percent of their work. AB 304 failed to pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

AB 1009 (Wieckowski, 2011/2012) would have modified the former New Jobs Tax Credit to expand eligibility for the credit from employers with less than 20 employees to employers with 100 or less employees. AB 1009 failed to pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

SB 156 (Emmerson/Cook, 2011/2012) would have modified the current New Jobs Tax Credit to expand eligibility for the credit from employers with less than 20 employees to employers with 50 or less employees. SB 156 failed to pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

SB 640 (Runner, 2011/2012) would have allowed a credit of \$500 per month (not to exceed 12 months) for each full-time employee hired who has received unemployment benefits for six months prior to being hired. SB 640 failed to pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

OTHER STATES' INFORMATION

Review of *Illinois, Florida, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable tax credits relating to a special minimum wage. These states were selected and reviewed due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and the department will pursue a budget change proposal if necessary.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1629 As Introduced February 17, 2017 Assumed Enactment After June 30, 2017 (\$ in Millions)		
2017-18	2018-19	2019-20
- \$1.3	- \$4.9	- \$11

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

Revenue Discussion

The revenue impact of this bill would depend on the number of California employers who have qualified employees who are certified special minimum wage workers and are paid the prevailing minimum wage in California.

Using US Department of Labor statistics for certificate holders, the number of workers paid special minimum wages in California would be approximately 22,000 in 2018. It is assumed that 10 percent of these disabled persons work for for-profit entities that would claim this credit. It is further assumed that for-profit employers would learn about the new law over time and gradually increase wages paid to qualified employees. It is estimated that, 20 percent of for-profit employers would generate a credit in 2018, 50 percent in 2019, 85 percent in 2020, and 90 percent each year thereafter. It is assumed this bill would provide a small incentive for hiring disabled employees and the estimated number of qualified employees would increase 10 percent each year.

Using studies prepared by the US General Accounting Office on the special minimum wage, it was estimated the average special minimum wage worker would be paid 50 percent of California's minimum wage rate. Under current California law, the minimum wage is scheduled to increase incrementally each year. The minimum wage in California would be \$11 in 2018, \$12 in 2019 and increase to \$15 by 2022. Taxpayers would earn a credit for the difference between the special minimum wage and the California minimum wage. In 2018, the average special minimum wage is estimated to be \$5.50 per hour. The estimated average credit would be equal to \$5.50 per employee per hour of wages earned ($\$11.00 - \$5.50 = \$5.50$). Assuming the qualified employee works 20 hours per week and 50 weeks per year, the total estimated tax credit generated would be \$2.8 million in 2018, \$7.6 million in 2019, and \$14 million in 2020.

It is assumed that 80 percent of the credit generated would be used in the year generated and the remaining credits would be used over the next several years.

The tax year estimates are converted to fiscal years and rounded to arrive at the amounts reflected in the above table.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some may argue that this bill could increase the amount paid to employees that receive a “special minimum wage” designation by providing employers with a tax credit to encourage higher pay for these employees.

Opponents: Some may argue that providing a tax credit limited to employees that may be paid a “special minimum wage” may be overly narrow and inadvertently exclude other groups of employees who could benefit from an incentive to pay higher wages.

POLICY CONCERNS

This bill would allow an employer a tax credit based on wages paid to a qualified employee and under current law, allow a deduction for those same wages, although reduced by the credit allowed. Thus, allowing an employer in certain circumstances to claim multiple tax benefits for the same item of expense.

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