



## **Bill Analysis**

Author: Assembly  
Committee on Budget

Sponsor:  
Related Bills: See Legislative  
History

Bill Number: AB 152  
Amended: August 27, 2022

## **SUBJECT**

Small Business and Nonprofit COVID-19 Relief Grant Program

## **SUMMARY**

This bill would, under the Government Code (GC), establish the California Small Business and Nonprofit COVID-19 Supplemental Paid Sick Leave Relief Grant Program (Grant Program) to be implemented by the California Office of Small Business Advocate (CalOSBA) within the Governor's Office of Business and Economic Development (GO-Biz).

The bill also would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), provide taxpayers a gross income exclusion for grant allocations received from the Grant Program. Furthermore, this bill would, under the Administration of Franchise and Income Tax Law, require the Franchise Tax Board (FTB) to collect any grants identified for recapture by GO-Biz.

From January 1, 2022, to September 30, 2022, existing laws, under the Labor Code (LC), require employers to provide up to 80 hours of COVID-19 Supplemental Paid Sick Leave (SPSL) under specified circumstances. This bill would also modify the COVID-19 SPSL provisions; add the employer's ability to require additional diagnostic testing; and if the employee does not comply, the employer would not be obligated to provide the SPSL.

## **RECOMMENDATION**

No position.

## **SUMMARY OF AMENDMENTS**

The August 27, 2022, amendments removed intent language relating to the Budget Act of 2022, and replaced it with the provisions discussed in this analysis.

This is the department's first analysis of the bill and only addresses the provisions that impact the department's programs and operations.

## **REASON FOR THE BILL**

The reason for the bill is to provide grants to small businesses or nonprofits that incurred SPSL costs.

## **ANALYSIS**

This bill would, under the GC, establish the Grant Program within GO-Biz.

### *Grant Program*

This bill would provide grants to qualified small businesses or nonprofits for reimbursement of SPSL provided between January 1, 2022, and December 31, 2022. Grants could not be more than the qualified business or nonprofit's actual SPSL cost incurred between January 1, 2022, and December 31, 2022, not to exceed \$50,000 per applicant. The bill would also provide that a grant could be recaptured by GO-Biz if GO-Biz determines the grantee failed to meet the specified criteria. FTB's role in the Grant Program would be to collect any amounts identified for recapture by GO-Biz.

The bill specifies that both GO-Biz and the FTB may adopt regulations to implement this Grant Program, and that the Administrative Procedures Act would not apply to any regulation, standard, criterion, procedure, determination, rule, notice, guideline, or any other guidance established or issued by GO-Biz or the FTB.

The Grant Program would remain in effect until January 1, 2024, and as of that date would be repealed.

### *Gross Income Exclusion*

Under the PITL and CTL, for taxable years beginning on or after January 1, 2021, and before January 1, 2030, gross income would not include grant allocations received under the Grant Program.

Section 41 would not apply to the gross income exclusion allowed by this bill.

### *Collection of Recaptured SPSL Relief Grants*

GO-Biz would be required to provide to the FTB a list of grantees and their respective recaptured grant amounts for collection.

The following definitions would apply:

- “California Small Business and Nonprofit COVID-19 Supplemental Paid Sick Leave Relief Grant Program” or “program” means the Grant Program.
- “GO-Biz” or “office” means the Governor’s Office of Business and Economic Development.
- “Recaptured grant amount” means the amount identified in any recommendation for recapture of a grant approved, in whole or in part, by GO-Biz.

The bill specifies that any recaptured grant amount would be treated as final and due and payable to the State of California, and would be collected from the grantee by the FTB in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy, as specified, and any overpayment of any liability imposed under the PITL or CTL must be credited against any balance due.

In addition, recaptured grant amounts would accrue interest, as specified, and amounts collected by the FTB would not be considered a payment of income taxes as imposed under the PITL or the CTL.

The Controller, in their discretion, would be able to offset any amount due a grantee by a state agency against any recaptured grant amount, as specified.

The information, information sources, and enforcement remedies currently available to GO-Biz or the state with respect to recaptured amounts would also be available for use by the FTB.

The bill provides that the provisions of this act would be severable. If any provision of this act or its application is held to be invalid, that invalidity would not affect other provisions or applications that could be given effect without the invalid provision or application. In addition, the implementation and administration of the recapture cannot interfere with the primary mission of the FTB to administer income taxes.

The bill also provides that the Legislature finds and declares that the Grant Program would serve the public purpose of preventing revenue decreases, closures, and higher unemployment across the state in the small business and nonprofit sectors due to the COVID-19 pandemic and would not constitute a gift of public funds.

The article relating to FTB’s authority to collect recaptured SPSL grants would remain in effect until December 1, 2030, and as of that date would be repealed.

*Effective/Operative Date*

This bill, providing for appropriations relating to the Budget Bill, would be effective immediately upon enactment. The gross income exclusions would be specifically operative for taxable years beginning on or after January 1, 2021, and before January 1, 2030. The provisions relating to the collection of the recapture would be operative immediately upon enactment.

*Federal/State Law*

*Federal Law*

Under federal law, the United States (US) Small Business Administration (SBA) has offered several COVID-19 relief programs for small businesses, including:

- The Paycheck Protection Program (PPP) was established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (HR748; Public Law (PL) 116-136) for small businesses who were in operation on February 15, 2020. The PPP provided small businesses that have 500 or fewer employees (including nonprofit organizations, veterans' organizations, tribal businesses, individuals who are self-employed or are independent contractors), with funds to pay payroll costs including benefits. These funds could also be used to pay interest on mortgages, rent, and utilities. The funds were provided in the form of loans that could be fully forgiven when used for payroll costs, interest on mortgages, rent, and utilities.
- Section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Consolidated Appropriations Act of 2021 (CAA), (HR133; PL 116-260; Title 15 US Code section 9009a) also established Shuttered Venue Operator Grants (SVOGs), which were required to be used for certain expenses incurred, including payroll costs, scheduled mortgage payments, rent payments, and covered utility payments. Shuttered venue operators were eligible for an exclusion from gross income for grant amounts awarded for taxable years ending after December 27, 2020. Additionally, no basis or tax attribute adjustment were required with respect to the exclusion from income of the forgiven debt.
- The American Rescue Plan Act of 2021 (ARPA), (HR1319; PL 117-2), established the Restaurant Revitalization Fund and appropriated \$28.6 million for the SBA to provide grants to an eligible entity. During the covered period, Restaurant Revitalization Grants (RRGs) could be used for certain expenses incurred as a direct result of, or during, the COVID-19 pandemic. The specific expenses generally included payroll costs, principal or interest on mortgage payments, rent payments, utilities, maintenance expenses, supplies, food and beverage expenses, covered supplier costs, operational expenses, paid sick leave, and other expenses SBA determined to be essential to maintaining the eligible entity.

- Under ARPA Section 9673, eligible entities can exclude from gross income received RRGs. Deductions are allowed for expenses paid and tax basis and other tax attributes will not be modified because of the gross income exclusion. Additionally, certain tax basis adjustments related to partnerships and S corporations will be applied.

### *State Law*

California generally conforms to Internal Revenue Code section 61 pursuant to Revenue and Taxation Code sections 17071 and 24271 as of January 1, 2015, except as otherwise provided. For taxable years beginning on or after January 1, 2019, California conforms to the exclusion from gross income for covered loan amounts that are forgiven under the PPP established by Section 1106 of the CARES Act, modified by the Paycheck Protection Program and Health Care Enhancement Act, (HR266; PL 116-140), and Paycheck Program Flexibility Act of 2020 (HR7010; PL 116-142).

California also conforms to the exclusion from gross income of PPP covered loan amounts, PPP Second Draw loans, and Economic Injury Disaster Loan advance grant amounts that are forgiven under the CAA for taxable years beginning on or after January 1, 2019.

The Small Business COVID-19 Relief Grant Program offered grants between \$5,000 and \$25,000 to qualified small businesses and nonprofits who were impacted negatively by COVID-19. Qualified small businesses were defined as a sole proprietor, independent contractor, 1099 worker, C corporation, S corporation, cooperative, limited liability company, partnership, limited partnership, or registered nonprofit entity, that had gross revenue of \$2.5 million or less in the 2019 taxable year. This program was open for six rounds, with the final round closing to applicants on May 4, 2021. Grant amounts requiring recapture are referred to the FTB by CalOSBA for collection and accrue interest.

In addition, California law currently allows an exclusion from gross income for grants received from several COVID-19 grant programs, including grant amounts awarded as a SVOG under the CAA, for taxable years beginning on or after January 1, 2019, and grant amounts awarded as a RRG under the ARPA for taxable years beginning on or after January 1, 2020.

### *Implementation Considerations*

None noted.

### *Technical Considerations*

None noted.

### *Policy Considerations*

None noted.

### **LEGISLATIVE HISTORY**

SB 113 (Senate Committee on Budget and Fiscal Review, Chapter 3, Statutes of 2022), under the PITL and CTL, amongst other things, provided a gross income exclusion for Restaurant Revitalization Grants and conformed to the allowance of deductions and treatment of tax basis and other tax attributes relating to amounts excluded. In addition, this bill provided a gross income exclusion for SVOGs and conformed to the allowance of deductions and treatment of tax basis and other tax attributes relating to amounts excluded.

AB 81 (Ting, Chapter 5, Statutes of 2021), under the PITL, made several clarifying amendments and technical changes to existing state law related to state assistance to individuals impacted by the COVID-19 pandemic, including the State Rental Assistance Program, which includes provisions exempting rent forgiveness and certain rental assistance payments from gross income for purposes of the PITL.

AB 176 (Assembly Committee on Budget, Chapter 256, Statutes of 2021), amongst other items, under the PITL and CTL, added an exclusion from gross income for allocations received from the California Venues Grant Program, as defined, for taxable years beginning on or after September 1, 2020, and before January 1, 2030, and made minor technical changes to the existing exclusions from gross income for the other small business relief COVID-19 grant programs. This bill also allowed an exclusion from gross income for grant allocations received from the California Microbusiness COVID-19 Relief Programs for taxable years beginning on or after September 1, 2020, and before January 1, 2023.

SB 87 (Caballero and Min, Chapter 7, Statutes of 2021), under the GC, established the Small Business COVID-19 Relief Grant Program under CalOSBA. The bill also provided a gross income exclusion for these grants, under the PITL and CTL, and provided authority to the FTB to collect any grants identified for recapture by the CalOSBA.

### **PROGRAM BACKGROUND**

None noted.

### **FISCAL IMPACT**

At this time, the department will absorb costs to implement the changes in this bill. However, volumes are uncertain, and costs could change if workload demands resulting from this program later increase.

## **ECONOMIC IMPACT**

### *Revenue Estimate*

This bill, under the PITL and CTL, would exclude grant income awarded to qualified taxpayers from taxable income. Expenses related to income excluded from taxable income are not deductible. Therefore, the amount of the deductions no longer allowed would be offset against the grant income excluded from taxable income. The net effect would generally be a revenue impact of zero. This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

## **LEGAL IMPACT**

None noted.

## **APPOINTMENTS**

None noted.

## **SUPPORT/OPPOSITION**

As per the Senate Committee on Budget and Fiscal Review analysis dated August 28, 2022, there is no support or opposition on file.

## **ARGUMENTS**

As per the same analysis, there are no arguments on file.

## **LEGISLATIVE STAFF CONTACT**

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