



## **Analysis of Original Bill**

Author: Committee on  
Budget and Fiscal Review

Sponsor:

Bill Number: SB 151

Related Bills: See Legislative  
History

Amended: June 28, 2021

## **SUBJECT**

Budget Trailer Bill – Collection and Income Exclusion

## **SUMMARY**

This bill would do the following:

Provision No. 1: California Competes Grant (CCG) Program Review & Collection

Provision No. 2: Gross Income Exclusion for CalOSBA Microbusiness COVID-19 Relief Grant Program

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

## **RECOMMENDATION**

No position.

## **SUMMARY OF AMENDMENTS**

The June 28, 2021, amendments, removed intent language 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.

## **REASON FOR THE BILL**

The reason for the budget trailer bill is to make various statutory changes related to implementing the 2021 Budget Act.

### ***Analysis Provision No. 1: California Competes Grant (CCG) Program Review & Collection***

*Provision 1 (Sections 1, 21, 22, and 25)*

These provisions of the bill would require, upon appropriation by the Legislature, the Governor's Office of Business and Economic Development (GO-Biz) to create the CCG Program to provide grants to qualified grantees, as defined, that meet specified criteria relating to the creation of jobs or investments in the state.

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No more than 30 percent (30%) of the aggregate, appropriated CCG amounts could be allocated to any one qualified grantee in any fiscal year. This provision of the bill would also provide for recapture of CCG amounts if the qualified grantee fails to satisfy the terms of their written agreement when recapture of a grant is approved by the California Competes Tax Credit Committee (the Committee).

For purposes of this provision, the following definitions would apply:

- a) "Applicant" would mean any taxpayer that applies to GO-Biz, including, but not limited to, an individual, corporation, or partnership that is legally authorized to do business in this state or that would incorporate, qualify, or register with the Secretary of State to do business in this state prior to the execution of a CCG agreement.
- b) "California Competes Grant Program" would mean the program that authorizes CCGs allowed under this article.
- c) "Committee" would mean the Committee defined in Revenue and Taxation Code (RTC) section 18410.2.
- d) "GO-Biz" would mean the Governor's Office of Business and Economic Development.
- e) "Qualified grantee" would mean an applicant that satisfies at least one of the following requirements:
  - 1) Would create at least 500 new, full-time jobs in this state, determined on the basis of an annual full-time equivalent. Annual full-time equivalent would be defined by Section 8000 of Title 10 of the California Code of Regulations (CCR), as read on January 1, 2021.
  - 2) Would make a significant infrastructure investment, which is defined as a project requiring construction or renovation expenditures of at least ten million dollars (\$10,000,000) over no more than five years, in this state.
  - 3) Would create jobs or make the investments in a high-poverty area or a high-unemployment area in this state. High-poverty or high-unemployment areas would be defined by CCR section 8000 of Title 10, as read on January 1, 2021.
- f) "Recaptured grant amount" would mean the amount identified in any recommendation for recapture of a grant approved, in whole or in part, by the Committee.

Similar to the California Competes Tax Credit (CCTC) Program (discussed below), the Franchise Tax Board (FTB) would be required to review the books and records of any qualified grantee that is allocated a CCG to ensure compliance with the terms of the written agreement between the qualified grantee and GO-Biz. The FTB would be required to notify GO-Biz of a possible breach of the written agreement by a qualified grantee and provide detailed information regarding the basis for that determination.

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In addition, GO-Biz would be required to provide the FTB a list of qualified grantees and their recaptured CCG amount. This provision of the bill would, under the Administration of Franchise and Income Tax Law (AFITL), require the FTB to collect any recaptured CCG amounts. Any recaptured CCG amount would be treated as a final tax liability, and would be due and payable to the State of California, and would be collected from the qualified grantee by the FTB in any manner authorized under the AFITL. Interest would be assessed on any recaptured CCG amount. The FTB notice of the amount due would include interest and would be mailed to the qualified grantee. If the amount is paid within 15 days from the date of notice, no additional interest would be imposed for the period after the date of notice.

Any information, information sources, or enforcement remedies and capabilities available to GO-Biz or the state with respect to the recaptured CCG amount would also be available to the FTB to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities currently available to the FTB.

The Controller could, at the Controller's discretion, offset any amount due a qualified grantee by a state agency against any recaptured CCG amount.

The FTB's disclosure, required under this bill, would be treated as an exception to the disclosures rules under RTC section 19542.

The FTB and GO-Biz may prescribe regulations as necessary or appropriate to carry out the purposes of the collection of recaptured CCGs. Additionally, the Administrative Procedure Act would not apply to any regulation, standard, criterion, procedure, determination, rule, notice, guideline, or any other guidance established or issued by the FTB or GO-Biz for purposes of the collection of recaptured CCG amounts.

The provisions of this bill are severable. If any provision of this act or its application is held invalid, that invalidity would not affect other provisions or applications that could be given effect without the invalid provision or application.

This CCG Program would be repealed on January 1, 2030.

#### *Effective/Operative Date*

As a provision within a bill providing for appropriations related to the Budget Bill, this provision would be effective immediately upon enactment. The CCG provisions would be operative immediately upon enactment, upon appropriation by the Legislature.

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*Federal/State Law*

*Federal Law*

No provision comparable in federal law.

*State Law*

For taxable years beginning on or after January 1, 2014, and before January 1, 2030, the CCTC is an income or franchise tax credit available to businesses that come to California or stay and grow in California. CCTC agreements are negotiated by the GO-Biz and approved by the Committee, consisting of the State Treasurer, the Director of the Department of Finance, the Director of GO-Biz, and one appointee each by the Speaker of the Assembly and Senate Committees on Rules.

Upon approval of the tax credit agreement by the Committee, GO-Biz informs the FTB of the terms and conditions of the written agreement. The FTB reviews the books and records of taxpayers allocated a CCTC to ensure that the taxpayer complied with the terms and conditions of the written agreement. In the case of a small business, the FTB reviews the books and records of the taxpayer if it deems the review appropriate or necessary in the best interest of the state. If the FTB determines that a possible breach of the agreement has occurred, GO-Biz is provided detailed information regarding the basis of the possible breach.

In the case where a taxpayer fails to satisfy the terms and conditions of their written CCTC agreement, GO-Biz is required to notify the FTB of the amount of the CCTC to be recaptured from the taxpayer. Any recapture, in whole or in part, is assessed by the FTB and is treated as a mathematical error appearing on the return, and is added to the tax otherwise due by the taxpayer for the taxable year in which the Committee's recapture determination occurs.

*Implementation Considerations*

None noted.

*Technical Considerations*

None noted.

*Policy Considerations*

None noted.

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## **LEGISLATIVE HISTORY**

AB 150 (Assembly Committee on Budget, Chapter 82, Statutes of 2021), companion bill to SB 150 (Senate Committee on Budget and Fiscal Review, 2021/2022), increased the funding for the CCTC for the 2021-22 fiscal year under the PITL and the CTL. SB 150 was held by the Assembly Committee on Budget without further action as the provisions of that bill were incorporated into AB 150.

SB 313 (Durazo, 2021/2022) would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), modify the CCTC to be refundable for qualified taxpayers that reinvest the refund in immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities in the state. SB 313 was held in the Senate Governance and Finance Committee without further action.

SB 855 (Senate Committee on Budget and Fiscal Review, Chapter 52, Statutes of 2018), among other things, extended the sunset date for the CCTC from taxable years beginning before January 1, 2025, to taxable years beginning before January 1, 2030, with the repeal date of December 1, 2030.

## **PROGRAM BACKGROUND**

None noted.

## **FISCAL IMPACT**

This provision of the bill would impact the department's systems, resulting in programming, processing, and form revisions. In addition, the FTB would need to review the books and records of the grant recipients, and collect any recaptured grant amounts. The department's costs to implement this provision are estimated to be \$86,500 for fiscal year 2021-2022, and would be absorbed by the department. The on-going annual costs are estimated to be \$147,500. The department will pursue a budget change proposal for on-going years, if necessary.

## **ECONOMIC IMPACT**

### *Revenue Estimate*

This provision, as amended on June 28, 2021, would not impact state income or franchise tax revenue.

## **LEGAL IMPACT**

None noted.

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## **APPOINTMENTS**

None noted.

## **SUPPORT/OIPPOSITION**

None noted.

## **ARGUMENTS**

None noted.

### ***Analysis Provision No. 2: Gross Income Exclusion for CalOSBA Microbusiness COVID-19 Relief Grant Program***

*Provision 2 (Sections 18, 20, and 23)*

These provisions of the bill would, under the Government Code, create the California Microbusiness COVID-19 Relief Grant Program (program) within the Office of Small Business Advocate (CalOSBA).

Grant Program

CalOSBA will oversee a Request for Proposal in no more than two rounds, for a period of no more than sixty days per round. The first round will be open to all 58 county governments as eligible grantmaking entities. The second round will be open to the remaining county governments that did not apply in the first round and to nonprofits as eligible grantmaking entities.

The provision defines the following terms:

“Fiscal agent” means the eligible grantmaking entity or a designated representative of the eligible grantmaking entity selected by the CalOSBA from among eligible grantmaking entities to administer the program funds in a county.

“Qualified microbusiness” means an entity that meets and self-certifies, under penalty of perjury, all of the following criteria:

- The microbusiness began its operation prior to December 31, 2019.
- The microbusiness is currently active and operating, or has a clear plan to reopen when the state permits reopening of the business.
- The microbusiness was significantly impacted by COVID-19 pandemic.
- The microbusiness had less than fifty thousand dollars (\$50,000) in revenues in the 2019 taxable year.

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- The microbusiness currently has fewer than five full-time equivalent employees and had fewer than five full-time equivalent employees in the 2019 and 2020 taxable years.
- The microbusiness is not a business excluded from participation in the California Small Business COVID-19 Relief Grant Program, as specified in paragraph (2) of subdivision (f) of Section 12100.82 of the Government Code.

“Qualified microbusiness owner” means an individual that meets and self-certifies, under penalty of perjury, all of the following criteria:

- The microbusiness owner is the majority-owner and manager of the qualified microbusiness.
- The microbusiness owner’s primary means of income in the 2019 taxable year was the qualified microbusiness.
- The microbusiness owner did not receive a grant under the California Small Business COVID-19 Relief Grant Program.
- A microbusiness owner can also demonstrate their eligibility by providing the fiscal agent with a government issued photo identification (state, domestic, or foreign), and documentation that includes the owner’s name and may include, but is not limited to, a local business permit or license, bank statement, or a tax return.

Subject to appropriation by the Legislature, a grantmaking entity that receives an allocation will be required to administer a county program as specified, and award individual \$2,500 grants to qualified microbusinesses.

The article adding the Grant Program would remain in effect only until December 31, 2022, and as of that date would be repealed.

This provision provides restrictions and limitations to protect the personal information of the private individuals participating in the program.

Under the PITL, this provision indicates that for taxable years beginning on or after January 1, 2020, and before January 1, 2023, gross income does not include grant allocations received by a taxpayers pursuant to the program.

#### *Effective/Operative Date*

As a provision within a bill providing for appropriations related to the Budget Bill, these provisions would be effective immediately upon enactment. The grant provisions would be operative immediately and the gross income exclusion provision would be operative for taxable years beginning on or after January 1, 2020.

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### *Federal/State Law*

#### *Federal Law*

Under current federal law, the U.S. Small Business Administration (SBA) offers 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, is for small businesses who were in operation on February 15, 2020. The PPP provides small businesses that have 500 or fewer employees (including nonprofit organizations, veterans organizations, tribal business, individuals who are self-employed or are independent contractors), with funds to pay payroll costs including benefits. These funds can also be used to pay interest on mortgages, rent, and utilities. The funds are provided in the form of loans that will be fully forgiven when used for payroll costs, interest on mortgages, rent, and utilities. The Consolidated Appropriations Act, 2021 added another round of PPP loans. This round of PPP loans contains many similar provisions as those under the CARES Act with some differences.
- Economic Injury Disaster Loans provides economic relief to businesses, which may include agricultural businesses that are currently experiencing a temporary loss of revenue due to COVID-19. Loans are low-interest bearing and not forgivable. Additionally, Economic Injury Disaster Loan advance grants up to \$10,000 are available to provide funding to businesses meeting specific requirements.

#### *State Law*

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

#### *Implementation Considerations*

None noted.

#### *Technical Considerations*

None noted.



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### *Policy Considerations*

This bill would provide a tax benefit for taxpayers who fall under the PITL that would not be provided to taxpayers who fall under the CTL.

### **LEGISLATIVE HISTORY**

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

AB 176 (Committee on Budget, Chapter 176, Statutes of 2021), amongst other items, would under the CTL, provide that grant allocations received from the California Microbusiness COVID-19 Relief Grant Program are to be excluded from gross income.

### **PROGRAM BACKGROUND**

None noted.

### **FISCAL IMPACT**

This provision would not significantly impact the department's costs.

### **ECONOMIC IMPACT**

#### *Revenue Estimate*

This bill would, under the PITL, exclude grant income awarded to qualified microbusinesses 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.

Bill Analysis

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**SUPPORT/OPPOSITION**

Support: None of file.

Opposition: None on file.

**ARGUMENTS**

None noted.

**LEGISLATIVE CONTACT**

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