

Date of Hearing: January 10, 2022

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

Autumn R. Burke, Chairwoman

AB 1146 (Cervantes) – As Amended January 3, 2022

Majority vote. Fiscal committee.

SUBJECT: California Small Business Rent Relief Act

SUMMARY: Enacts the California Small Business Rent Relief Act, which would authorize counties to establish a local small business rent forgiveness and tax relief program, as specified, to provide credits to "qualified taxpayers" to be used against any tax or fee owed to the county by the "qualified taxpayer", and for which the county has authority to collect a credit in lieu of cash. Specifically, **this bill:**

- 1) Authorizes the Office of Small Business Advocate (CalOSBA) to establish the California Small Business Rent Forgiveness and Tax Relief Program (Program) for the purpose of allocating credit authority to "qualified counties" to implement a small business rent forgiveness and tax relief program.
- 2) Defines a "qualified taxpayer" as a taxpayer that satisfies both of the following conditions:
 - a) Owns "qualified property", defined as commercial real property that is rented or leased to a "qualified tenant"; and,
 - b) Has, with the intention of qualifying for a credit under this bill, entered into an enforceable agreement with a "qualified tenant" to forgive all past due rental or lease payments owed on the qualified property between April 1, 2020, and June 31, 2021. The terms of the agreement shall release the "qualified tenant" from any and all claims for nonpayment, rental debt, or related fees and charges.
- 3) Defines a "qualified county" as a county that establishes a local small business rent forgiveness and tax relief program pursuant to this bill.
- 4) Defines a "qualified tenant" as a tenant operating a business either for profit or as a nonprofit, however formed, including, but not limited to, a sole proprietorship, a partnership, a cooperative, a limited liability company, or a corporation, that satisfies all of the following conditions:
 - a) Rents or leases qualified property from a qualified taxpayer for an uninterrupted period from February 1, 2020, through June 30, 2021;
 - b) Is not an employer or employed 50 or fewer full-time equivalent employees, as defined, during the month of February 2020;
 - c) The business on the qualified property has been significantly impacted by COVID-19 emergency orders; and,

- d) Is currently active and operating, or has a clear plan to reopen when the state permits reopening of the business.
- 5) Creates the Small Business Rent Forgiveness and Tax Relief Account (Account) within the California Economic Development Fund, for the purpose of receiving moneys transferred to the Account, and requires all moneys in the Account to be available for expenditure, upon legislative appropriation, to implement the Program.
- 6) Provides that the Program shall not be implemented until sufficient moneys are transferred into the Account to implement the Program.
- 7) Requires CalOSBA to enter into a "credit-awarding agreement" with each "fiscal agent" selected to implement the Program. The "credit-awarding agreement" shall identify the duties and responsibilities of the "fiscal agent" and the qualified county in carrying out the purposes of this bill. The "credit-awarding agreement" shall identify the county the "fiscal agent" is required to serve, the fiscal controls that will be applied during the Program term, a commitment that outreach and marketing to underserved business groups and business owners located in low-wealth and rural areas, as appropriate, will be undertaken, and the tracking and reporting requirements related to outreach and technical assistance activities, applications received, and tax credits awarded.
 - a) Defines a "credit-awarding agreement" as the required cooperative agreement between CalOSBA and "fiscal agent" that includes the duties and responsibilities of the "fiscal agent" and the qualifying county in carrying out the purposes of this bill.
 - b) Defines a "fiscal agent" as the "eligible credit-awarding entity" selected by CalOSBA from among "eligible credit-awarding entities" to administer funds from the Program in one or more counties.
 - c) Defines an "eligible credit-awarding entity" as a qualified county, or a nonprofit or consortium of nonprofit community-based organizations designated by the qualified county to administer the Program in the county. The nonprofit or consortium of nonprofits shall be exempt from federal income taxation under Internal Revenue Code Section 501(c)(3) and shall have received, on or after July 1, 2020, funding through the California Small Business Technical Assistance Expansion Program created pursuant to Government Code Section 12100.63.
- 8) Provides that the amount of any tax credit authority made to a qualified county shall not exceed 25% of the county's share of property tax assessed on commercial property in the taxable year beginning on or after January 1, 2020, and before January 1, 2021.
- 9) Authorizes an eligible credit-awarding entity to request an allocation, in addition to the credit allocation authority otherwise provided, in an amount of up to 100% of the county's estimated and reasonable administration costs, including fiscal agent fees, marketing costs, and costs for conducting outreach to qualified tenants and taxpayers.
- 10) Provides that any unused grant money shall be transferred back to CalOSBA by December 30, 2022.
- 11) Authorizes the Governor to transfer moneys to the Account from any fund legally available.

- 12) Authorizes CalOSBA to use up to 0.5% of moneys transferred for administrative costs.
- 13) Authorizes qualified counties to submit to the Department of Finance (DOF) a countywide claim detailing credits applied by a qualified taxpayer for the payment of an eligible county tax or fee. Submittals shall be on a quarterly basis beginning in the first quarter following the award of tax credit authority by CalOSBA.
- 14) Requires the DOF to review the claims for accuracy and, upon determining the claims are accurate and complete, to notify the Controller. The Controller shall provide reimbursement in the amount specified by DOF.
- 15) Provides that claims shall only be paid for credits applied to an "eligible tax or fee" designated in the qualified county's local rent relief and tax forgiveness program.
- 16) Defines an "eligible tax and fee" as the tax and fee designated in the local rent forgiveness and tax relief program as being eligible for payment by the credits authorized pursuant to this bill. The tax and fee shall be limited to the county portion of the property tax or shall be a tax and fee that is imposed by and collected by the qualified county.
- 17) Requires DOF and the Controller to establish guidelines in carrying out the provisions of this bill. These guidelines shall include a procedure for the review of claims submitted by a qualified county to DOF for allocations under this bill. The Administrative Procedures Act shall not apply to these guidelines.
- 18) Provides that, upon the transfer of moneys to the Account, the CalOSBA director shall make a finding as to whether there are sufficient moneys in the Account to cover the costs of implementing the Program, including, but not limited to, appropriate oversight costs.
- 19) Provides that, upon the determination that there are sufficient funds to operate the Program, CalOSBA shall adopt guidelines for implementing the Program, including, but not limited to, all of the following:
 - a) A process for awarding credit authority to eligible credit-awarding entities through their fiscal agents;
 - b) A process that, to the extent that the total amount of credit authority applied for by eligible credit-awarding entities exceeds the funds available for implementation of the Program, reduces each applicant's grant amount by an equal percentage;
 - c) Criteria for selecting one fiscal agent per county from among eligible credit-awarding entities, to include all of the following:
 - i) Demonstrated operational experience and organizational capacity to serve one county, or in the case of a consortium of nonprofits, one or more counties, of the state, consistent with the requirements of this bill;
 - ii) Demonstrated preexisting relationships with the county's small business community;
 - iii) Identified key outreach activities that are for the specific county they will serve and that are aimed at ensuring all eligible small business groups are aware of the Program, including by identifying underserved small business groups that have faced historic

- barriers to accessing capital, such as businesses majority owned and operated on a daily basis by women, minorities or persons of color, veterans, undocumented individuals, and individuals living in low-wealth areas on low incomes;
- iv) Prioritization for proposed fiscal agents that are qualified and experienced in administering similar programs; and,
 - v) Prioritization for eligible credit-awarding entities that commit to working with nonprofit organizations with a mission that includes economic or business development support for California's underserved businesses and entrepreneurs;
- d) Deadlines and written procedures for qualified counties to apply for grants;
 - e) A process, developed in consultation with and approved by DOF, by which a qualified county shall receive reimbursement for the value of credits submitted to the county by a qualified taxpayer for an eligible tax or fee;
 - f) A process and requirements for monitoring, tracking, and reporting on the use of Program funds and credit authority by CalOSBA, each fiscal agent and qualified county, and the qualified taxpayer; and,
 - g) A process to be used by the fiscal agent for requesting each qualified tenant who receives rent forgiveness under this Program to self-identify the race, gender, and ethnicity of the small business owner. Each fiscal agent shall request, but shall not mandate, that a qualified tenant provide this information.
- 20) Provides that a credit may be recaptured, in whole or in part, if the fiscal agent or CalOSBA determines that a tenant has failed to meet the criteria for a qualified tenant or a taxpayer has failed to meet the criteria for a qualified taxpayer.
- 21) Authorizes a county to adopt a resolution or ordinance establishing a local small business rent forgiveness and tax relief program for the purpose of providing credits to qualified taxpayers that is consistent with the requirements of this bill and that is funded through a credit-awarding agreement with CalOSBA.
- 22) Authorizes a county to provide a credit, to be used against any tax or fee owed to the county by a qualified taxpayer, and for which the county has authority to collect a credit in lieu of cash. The local small business rent forgiveness and tax relief program established under this bill shall specifically designate eligible taxes and fees for which a credit may be applied. As part of the establishment of the program, the county shall also adopt a resolution that includes findings that applying the credit to the designated taxes and fees and receiving the reimbursement by the state, under the provisions of the Program, will not create a negative financial impact on the county or any known taxing entity.
- 23) Provides that the value of the credit shall be calculated as 30% of the estimated amount of 14 months of rental or lease payments, using the rental or lease rate for the month of February 2020, to determine this value.
- 24) Provides that, notwithstanding the above, if the qualified taxpayer collected rental or lease payments related to the qualified property between April 1, 2020, and June 31, 2021, the

value of the credit shall be reduced as necessary to ensure the sum of the credit and those rental or lease payments collected between April 1, 2020, and June 31, 2021, shall not exceed 100% of the estimated amount of 14 months of rental or lease payments, using the rental or lease rate for the month of February 2020 to determine this value.

- 25) Provides that the program may apply to taxes and fees owed to the county for the 2020-21, 2021-22, and 2022-23 fiscal years (FYs), including any amounts owed in arrears or delinquent during those years.
- 26) Requires the Program to prioritize outreach efforts to qualified tenants and qualified taxpayers who rent or lease commercial property to qualified tenants who meet both of the following criteria:
 - a) For purposes of ensuring all qualified tenants are aware of the Program, the qualified tenant is a member of a group that has faced historic barriers in accessing capital, and is defined as a business majority owned and operated on a daily basis by women, minorities or persons of color, veterans, undocumented individuals, or individuals living in low-wealth or rural areas on low incomes; and,
 - b) The qualified tenant has suffered economic impacts or revenue losses due to the COVID-19 pandemic, as determined by the fiscal agent.
- 27) Specifies that a fiscal agent shall request, but shall not mandate, that a qualified tenant that receives rent forgiveness through this program self-identify their race, gender, and ethnicity. This information shall be reported in aggregate to the state.
- 28) Authorizes a county to apply for a grant, in the form and manner prescribed by CalOSBA, to cover the costs of the Program.
- 29) Authorizes a county to designate an eligible credit-awarding entity to apply for and administer the local small business rent forgiveness and tax relief program.
- 30) Provides that participation in a local small business rent forgiveness and tax relief program by a qualified taxpayer shall be optional.
- 31) Requires CalOSBA to submit a report to the Governor and the Legislature on Program activities, as provided. Specifically, on or before one year after implementation of the Program, and annually thereafter, CalOSBA shall submit a report to the Governor and the Legislature on Program activity. The report shall include all of the following:
 - a) The total amount of moneys in the Account, at the beginning of the FY and at the end of the FY;
 - b) The number of qualified counties that applied for grants;
 - c) The number of qualified counties that received grants;
 - d) The number of qualified taxpayers that received a credit;

- e) The number of qualified tenants assisted in each of the FYs that credits were provided, and to the extent information has been provided by the fiscal agents, the race, gender, and ethnicity of the owners;
- f) The total dollar amount of rents forgiven;
- g) Information on the size of each qualified tenant that entered into an agreement with a qualified taxpayer for the forgiveness of rent or lease payments. The information required shall be categorized based on the number of employees as follows:
 - i) No employees;
 - ii) Five or fewer employees;
 - iii) Six to 20 employees; and,
 - iv) 21 to 50 employees.

32) Sunsets this bill's statutory provisions on January 1, 2024.

33) Contains provisions to comply with the requirements of Revenue and Taxation Code Section 41.

EXISTING LAW:

- 1) Establishes CalOSBA within the Governor's Office of Business and Economic Development, also known as GO-Biz, to advocate for causes of small business and to provide small businesses with the information they need to survive in the marketplace.
- 2) Authorizes counties, cities, and other local agencies to impose various taxes and fees in connection with activity or property within those jurisdictions.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) The author has provided the following statement in support of this bill:

Since March of 2020, the Assembly Committee on Jobs, Economic Development, and the Economy has focused its work on identifying and tracking the needs of small businesses, especially those that face systemic barriers to accessing capital. Data consistently show that small businesses who provide direct services and products to the public are among those businesses which have been most impacted.

As California transitions through the various stages of the pandemic, retail stores and restaurants are reopening and the temporary protections on commercial tenant evictions are expiring. Many small businesses are facing the potentially overwhelming challenge of repaying more than a year of past due rents. This is a difficult challenge, compounded by the fact that landlords who are owed commercial rents were often excluded from federal disaster programs and, lacking full rent payments as income, have faced their own difficulties in payment of property taxes, utilities, and other maintenance costs.

AB 1146 bridges this funding gap between small business tenants and landlords by authorizing the establishment of the California Rent Forgiveness and Tax Relief Program for the purpose of providing grants to qualified counties to implement local rent forgiveness and tax relief programs. For an agreement to forgive 100% of back rents over a specified period of time, the landlords would receive a credit which could be used to pay county-owed taxes and fees. Without legislative intervention, California small businesses may not have the 'reopening' that is required for a successful and inclusive recovery.

- 2) This bill is supported by the California Association for Micro Enterprise Opportunity, which notes:

AB 1146 authorizes the establishment of the California Rent Forgiveness and Tax Relief Program (Program) for the purpose of providing grants to qualified counties to implement local rent forgiveness and tax relief programs. The Program will be administered by the Governor's Office of Business and Economic Development and offers a new economic development tool for supporting inclusive small business retention within the state.

- 3) Committee Staff Comments:

- a) *What is a "tax expenditure"?* Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, U.S. Treasury officials began arguing that these features of the tax law should be referred to as "expenditures" since they are generally enacted to accomplish some governmental purpose and there is a determinable cost associated with each (in the form of foregone revenues).

As DOF notes in its annual Tax Expenditure Report, there are several key differences between tax expenditures and direct expenditures. First, tax expenditures are typically reviewed less frequently than direct expenditures once they are put in place. While this affords taxpayers greater financial predictability, it can also result in tax expenditures remaining a part of the tax code without demonstrating any public benefit. Second, there is generally no control over the amount of revenue losses associated with any given tax expenditure. Finally, it should also be noted that, once enacted, it takes a two-thirds vote to rescind an existing tax expenditure absent a sunset date. This effectively results in a "one-way ratchet" whereby tax expenditures can be conferred by majority vote, but cannot be rescinded, irrespective of their efficacy or cost, without a supermajority vote.

- b) *What would this bill do?* This bill would authorize CalOSBA to establish the state Program for the purpose of allocating credit authority to participating counties wishing to implement a local small business rent forgiveness and tax relief program. Under such a local program, credits would be provided to qualifying commercial property owners that have entered into an agreement with a qualified tenant to forgive all past due rental or lease payments owed for the period between April 1, 2020, and June 31, 2021. Such credits could then be applied to any "eligible tax or fee", defined as taxes and fees designated as eligible in the local program. Specifically, such taxes and fees are limited to the county portion of the property tax or those taxes and fees imposed by and collected by the qualified county. Participating counties would then submit claims to DOF for

reimbursement from the state. The author notes that this bill is intended to provide an incentive for property owners to renegotiate and forgive unpaid rental amounts.

- c) *Open questions:* This bill is motivated by an understandable desire to address one of the most challenging outcomes of the ongoing COVID-19 pandemic. That said, it is unclear to Committee staff if the Program envisioned by this bill would be the most effective and efficient mechanism for encouraging commercial property owners to forgive past due rents owed by their small business tenants. As a preliminary matter, this bill establishes a multi-layered Program with significant administrative complexity. The Committee and author may wish to consider whether it would be preferable to establish a self-certifying credit for commercial landlords that agree to forgive back due rents.

This bill also contemplates credits being applied to local taxes in lieu of state-imposed personal or corporate income taxes. Local tax administrators have far less experience (if any) applying credit amounts to local taxes and fees. Moreover, authorizing credits at the local level raises additional issues. For example, if a qualifying commercial property owner were to receive \$50,000 in credits, would the landlord be able to apply this in different amounts to the various taxes and fees authorized? Who would reconcile all the credited tax and fee amounts to ensure the taxpayer did not claim more than the entitled amount? What would happen if a taxpayer fully satisfied its local tax obligations and had remaining credit amounts left over? Would they be eligible to be carried over to future years? These are all issues that are well-defined in the context of state tax programs but may present unnecessary complexity at the local level.

- d) *Policy on tax expenditures:* SB 1335 (Leno), Chapter 845, Statutes of 2014, added R&TC Section 41, which recognized that the Legislature should apply the same level of review used for government spending programs to tax credits introduced on or after January 1, 2015. This Committee has recently adopted a new policy, requiring that all new tax expenditure proposals comply with the requirements of R&TC Section 41. A tax expenditure proposal must outline specific goals, purposes, and objectives that the tax expenditure will achieve, along with detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets those stated goals, purposes, and objectives. A tax expenditure bill will not be eligible for a Committee vote unless it has complied with these requirements. This bill currently complies with Section 41 requirements.

In addition to the R&TC Section 41 requirements, this Committee's policy also requires that all tax expenditure proposals contain an appropriate sunset provision to be eligible for a vote. According to this policy, an "appropriate sunset provision" shall mean five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" shall mean 10 years. This bill, as currently drafted, complies with the Committee's policy on sunsets.

REGISTERED SUPPORT / OPPOSITION:

Support

California Asian Pacific Chamber of Commerce
California Association for Micro Enterprise Opportunity

California Business Properties Association
California Catholic Conference
California Chamber of Commerce
California Hispanic Chambers of Commerce
Coalition of Small and Disabled Veteran Businesses
Flasher Barricade Association
Small Business Majority

Opposition

None on file

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