

Date of Hearing: January 20, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

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

Policy Committee:	Jobs, Economic Development, and the Economy	Vote: 7 - 0
	Revenue and Taxation	9 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill enacts the California Small Business Rent Relief Act. Specifically, this bill:

- 1) Authorizes a county to establish a local small business rent forgiveness and tax relief program, which provides county tax credits to commercial property owners that forgive small business tenants’ unpaid rent.
- 2) Authorizes the Office of Small Business Advocate (CalOSBA) to establish the California Rent Forgiveness and Tax Relief Program (Program) and allocate credit authority to participating counties. This bill creates a corresponding program account within the California Economic Development Fund, to receive and expend money to implement the Program, upon appropriation by the Legislature.
- 3) Requires the Department of Finance (DOF) to review credit claims submitted by participating counties for accuracy, and then notify the State Controller’s Office (SCO) to reimburse counties for the value of the credit. DOF and SCO must establish guidelines governing the claims process.
- 4) States the goal of creating the local tax credit and requires CalOSBA to provide a report with specified tax data.

FISCAL EFFECT:

- 1) General Fund (GF) cost pressures of an unknown amount, likely in the millions of dollars, depending on the amount of any appropriation made by the Legislature for the Program.
- 2) One-time GF costs of an unknown amount, likely in the mid-to-high hundreds of thousands of dollars for additional staff resources and technical expertise, to CalOSBA to establish and administer the Program, and to DOF and SCO to develop claims guidelines. This bill sunsets the Program on January 1, 2024.

COMMENTS:

- 1) **Purpose.** According to the author, “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.” The author also acknowledges the struggles of small business tenants to repay past

due rent, and states this bill “bridges this funding gap” by “providing grants to qualified counties to implement local rent forgiveness and tax relief programs.”

- 2) **Scope of This Bill.** Many government programs have been enacted to support small businesses struggling through the COVID-19 pandemic, such as the federal Paycheck Protection Program, Restaurant Revitalization Fund and Shuttered Venue Operators Grant Program. The state enacted a \$4 billion Small Business COVID-19 Relief Grant Program, \$50 million grant program for micro-businesses, \$150 million California Venues Grant Program, further augmented the California Competes Tax Credit by \$110 million and included \$120 million for a new grant program modeled after the tax credit, with more small business resources proposed in the Governor’s 2022-23 state budget. These programs do not directly subsidize commercial property owners owed past due rent, but are expected to help businesses with the costs of doing business, such as paying rent.

This bill establishes a new local program overseen by the state that provides tax credits to commercial property owners that forgive small business rent owed from April 1, 2020 to June 31, 2021. The tax credits may be used by commercial property owners to offset county taxes and fees, with county revenue loss backfilled by the state. Thus, this bill envisions the state paying for local tax credits allowed against local taxes, instead of simply allowing a credit against personal income or corporation tax or creating a grant program. As noted in the Committee on Revenue and Taxation’s analysis of this bill, it is unclear if creating a new “multi-layered Program with significant administrative complexity” would be the most effective and efficient approach to the problem.

- 3) **Tax Expenditure vs. Direct Expenditure.** The various tax credits, deductions, exclusions and exemptions in existing law are tax “expenditures” generally enacted to accomplish some governmental purpose, with a determinable cost associated with each in the form of foregone revenues. By authorizing a local tax credit program funded by the state, this bill creates a new tax expenditure.

As the Department of Finance notes in its annual Tax Expenditure Report, there are several key differences between tax expenditures and direct expenditures. First, tax expenditures are reviewed less frequently than direct expenditures once they are put in place, which may result in tax expenditures remaining 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.

- 4) **Related Legislation.** AB 255 (Muratsuchi) establishes protections from commercial evictions for non-payment of rent due to COVID-19 financial hardship. AB 255 failed passage on the Assembly Floor.

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