Date of Hearing: April 29, 2021

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
AB 71 (Luz Rivas) – As Amended March 25, 2021

SUBJECT: Homelessness funding: Bring California Home Act

SUMMARY: Conforms state law to the federal Global Intangible Low-Taxed Income (GILTI) provisions and taxes repatriated income to finance the Bring California Home Fund. Specifically, **this bill**:

1) Provides that it is the intent of the Legislature that the revenue, resulting from the application of this bill in any taxable year beginning on or after January 1, 2022, be used for purposes of the Bring California Home Act.

2) Establishes the Bring California Home Fund (Fund) and requires the Franchise Tax Board (FTB) in consultation with the Department of Finance, by June 1, 2022 and every year thereafter, to determine the amount of revenue resulting from the changes in tax liability resulting from this Act and deposit that amount in the Fund.

1) Makes various changes to the membership of the Homeless Coordinating and Financing Council (HCFC).

2) Requires the HCFC or an entity it contracts with to complete a statewide gaps and needs analysis to determine the resources available to address homelessness in the state.

3) Requires the HCFC to convene a funder's workgroup to include staff of the council, staff working for agencies or departments represented on the council, and other representatives as specified and to complete various activities to improve the coordination of the state's response to homelessness.

4) Appropriates the funds deposited into the Fund to the HCFC, annually, and requires the HCFC to administer the Fund, as specified.

5) Requires the HCFC to allocate the Fund as follows:

   a) Up to 5 percent for ongoing technical assistance and training to recipients, measuring data and performance, and the costs of the Franchise Tax Board incurred in implementing the bill;

   b) Sixty percent to counties and continuums of care (CoCs) that apply jointly;

   c) Forty percent to large cities (with populations of 300,000 or more); and

   d) $200 million for bonus awards to recipients, as provided.

6) Requires the HCFC to base the distribution of available funds on the following formula:

   a) Seventy percent weight based on the 2019 homeless point-in-time count conducted by the United States Department of Housing and Urban Development (HUD) for the relevant jurisdiction; and

   b) Thirty percent weight based on the number of extremely low-income households who are severely rent burdened in the relevant jurisdiction, based on the most recent American Community Survey at the time of the application.

7) Requires the HCFC to establish performance outcomes based on the following:

   a) Reductions in the number of people experiencing homelessness;

   b) Outcomes for more equitably serving populations who are overrepresented among people experiencing homelessness;

   c) Reductions in racial and gender disparities among people experiencing homelessness;

   d) Other performance outcomes may include, but are not limited to, the following:

      i. A minimum number of people experiencing homelessness who are diverted from a homeless shelter or who have successfully accessed permanent housing;

      ii. Reductions in people becoming homeless;

      iii. Number of people exiting homelessness during the relevant period;

      iv. Commitments of funding to solve homelessness from existing resources used to address mental illness, substance use, medical care, the justice system, and child welfare involvement within the jurisdiction;

      v. Meaningful commitments of local housing and homeless services funding toward solving homelessness; and

      vi. Inter-jurisdictional collaboration, with specific agreements to meet performance standards.

8) Specifies the uses of bonus funding ($200 million) to include, among other purposes, investing in data systems, updating a countywide gaps and needs analysis, improving homeless point-in-time counts, improving coordinated entry systems, and funding operating subsidy reserves in capital projects.

9) Requires the HCFC to provide technical assistance to those recipients and their sub-recipients to, among other activities, use data to invest in evidence-based interventions, work regionally to scale up housing and services interventions, and adopt Housing First core components.

10) Requires the HCFC to develop quality standards recipients must comply with, including standards for shared housing and supportive housing.

11) Requires funding recipients to annually report to the HCFC the following information:

    a) The amount of fund moneys expended on each eligible activities and the number of people served under the program;

    b) Steps taken to advance racial and gender equity within the recipient's programs and services; and

    c) Steps taken to improve systems serving the homeless population.

12) Requires the HCFC to conduct regular monitoring and audits of the activities and outcomes of recipients.

13) Requires the HCFC, no later than January 1, 2024, and every fifth January 1 thereafter, to submit a report documenting that evaluation to the Assembly Committee on Housing and Community Development and the Senate Committee on Housing, that includes the following:

    a) The number of people served and the number of participants accessing permanent housing;

    b) The status of coordinated entry systems and training or capacity building programs across a sample of geographically diverse communities;

    c) Innovations developed to reduce exits from institutional settings to homelessness and the outcomes of these innovations;

    d) Progress of recipient coordination and collaboration and housing stability outcomes;

    e) Any agreements reached and coordination brokered between jointly applying counties and continuums of care and cities to use funds in a consistent manner, to prioritize specific populations jointly, to scale up interventions by working across regions, and to offer housing and housing-based services;

    f) The extent to which racial and ethnic demographic groups of persons overrepresented in the homeless population are served under the program, including housing opportunities, housing placements, and housing retention;

    g) The extent to which women and female-identified people are served under the program, including access to housing opportunities, housing placements, and housing retention; and

    h) Impacts on other state programs, including, but not limited to, the utilization of acute care or skilled nursing facilities funded through Medi-Cal, recidivism to prison, and avoidance of foster care placements, as well as reductions or avoidance of other institutional settings, including hospitals, among the eligible population.

14) Requires counties and CoCs to apply for funding jointly and allows use of the funds for the following activities:

a) Rental assistance and master leasing for permanent housing;

b) Operating subsidies for funding building security, utilities, janitorial costs, and similar costs in existing affordable and supportive housing projects;

c) Operating costs of transitional housing projects serving persons under 25 years of age that comply with the core components of Housing First;

d) Incentives to landlords to provide permanent housing, including, but not limited to, payment of security deposits, holding fees, signing bonuses, repairs made in advance of occupancy to ensure compliance with habitability standards, and contractors to assist the landlord in making repairs;

e) Move-in assistance, including, but not limited to, security deposits, utility assistance, furniture, and other household goods;

f) Housing navigation, housing acquisition support, housing transition, and tenancy support services to help participants move into housing and remain stably housed, housing-based employment services, and linkages to education;

g) For persons at imminent risk of homelessness, homelessness prevention, problem solving, and other rapid resolution programs to assist these persons in becoming or remaining stably housed, so long as these interventions are targeted to people likely to become homeless, based on data;

h) Systems improvements, including, but not limited to, strengthening coordinated entry systems and assessment systems, collaboration between city and county agencies to coordinate resources and prevent discharges from institutional settings into homelessness, and Homeless Management Information System (HMIS) system and data matching advances;

i) Payment of an amount equal to the nonmedical out-of-home care rate for individuals without incomes and the enhanced services rates for those with or without incomes in licensed residential facilities for eligible participants who require care and supervision due to high vulnerability and complex needs. Moneys expended for the purposes described in this paragraph may be used to pay for the costs of board and care of eligible participants;

j) One or more of the following:

(i) Shelter diversion and operating support for interim interventions;

(ii) Safe parking programs, including safe parking programs for college students experiencing homelessness; and

(iii) Moving persons from congregate shelters or sites to noncongregate shelter for the purposes of complying with public health guidance during and after the COVID-19 pandemic and other future public health emergencies where public health officials recommend social distancing to mitigate disease spread.

k) Caps sending on temporarily shelter at 50 percent of a recipient's allocation in the first grant cycle and no more than 35 percent in subsequent cycles.

15) Requires a county and CoC that apply jointly pursue various activities including but not limited to offering services in supportive housing, allocating rental assistance and operating subsidies, and use HMIS data for reporting.

16) Requires large cities (populations of 300,000 more) to use 10 percent of funds to serve homeless youth, as specified.

17) Require large cities that receive funding to do the following:

a) Refer tenants to supportive housing units through a coordinated entry system, or an alternative process that ensures that persons with the greatest vulnerabilities receive priority;

b) If a recipient uses funding to pay for operating or services costs of housing converted from existing hotels, motels, or apartments, the recipient may continue to house residents of the existing property, even if not referred through a coordinated entry or similar system;

c) A recipient may use funding to house participants outside of the boundaries of the city, provided that housing is available, referral is based on participant choice, and the referring city funds the housing and any necessary services, or the receiving city or county, if within an unincorporated area, notifies the referring agency within two weeks of intent to fund the costs of housing and any necessary services;

d) To the extent feasible, referrals to housing should take into account participant choice, and services should include efforts to assist people to move into communities in which they are residing, if consistent with participant choice, and where the participant has access to services and community amenities;

e) Allocate funding through a local competitive application process;

f) Use HMIS data for all outcomes reporting;

g) Have a coordinated entry system to enter and share data across the homelessness system; and

h) Prioritize a portion of resources to populations experiencing homelessness who face barriers to accessing housing or who make up a disproportionate number of people experiencing homelessness, based on data from a needs and gaps analysis or an amendment updating an existing needs and gaps analysis.

18) Directs the State Department of Health Care Service (DHCS), by January 1, 2025 to seek federal approval for a Medi-Cal benefit to fund all of the following services for beneficiaries experiencing homelessness:

    a) Housing navigation and housing acquisition support services;

    b) Tenancy transition services;

    c) Tenancy sustaining services; and

    d) Housing-based employment services.

19) Requires DHCS to convene a stakeholder advisory group representing counties, health care consumers, and homeless advocates in developing the plan.

20) Requires DHCS to work with counties to determine an effective process for funding the state's share of the federal medical assistance percentage. Pursuant to an agreement with organizations representing California counties, the department may use up to 20 percent of the county-continuum allocation to pay for the state's federal medical assistance percentage associated with the benefit identified for Medi-Cal beneficiaries experiencing homelessness.

21) Requires DHCS to pursue philanthropic funding to carry out the administrative duties of this section. The Homeless Coordinating and Financing Council may allocate a portion of the administrative funds, pursuant to paragraph (1) of subdivision (a) of Section 13055, to create and pursue the plan in this section, and that portion shall equal no more than 1 percent of the Bring California Home Fund.

<u>Tax Provisions:</u>

3) Conforms, beginning on or after January 1, 2022, under the Personal Income Tax (PIT) Law, state law to GILTI, except as provided.

4) Provides that if a taxpayer that is not a C corporation has income under GILTI, which is derived from a corporation that is part of a combined reporting group doing business in this state and has made a water's-edge election, 50 percent of that income shall be apportioned to this state using the same apportionment factor as is used for the combined reporting group.

5) Provides that GILTI shall not apply to either of the following situations:

    a) The taxpayer is not a C corporation and the income under GILTI is derived from a corporation that is part of a combined reporting group doing business in this state that does not make a water's-edge election; or,

    b) The taxpayer is not a C corporation and the income under GILTI is derived from a corporation that is not part of a combined reporting group doing business in this state.

6) Provides that if a taxpayer has income under GILTI included in its gross income, the taxpayer may submit a petition to the Franchise Tax Board (FTB) for an alternative apportionment. The petition shall be in accordance with the standards and procedures established by the FTB.

7) Requires, beginning January 1, 2022, a taxpayer that makes a water's-edge election to take into account 50 percent of GILTI, but not the apportionment factors, of its affiliated corporations.

8) Requires, beginning January 1, 2022, a taxpayer that makes a water's-edge election to take into account 40 percent of the repatriation income, but not the apportionment factors, of its affiliated corporations.

9) Allows a taxpayer that includes repatriation income to either apportion 14 percent of the income to California or use the apportionment factor otherwise calculated for the combined group for that taxable year. The election shall be made in a form and manner prescribed by FTB.

10) Provides, with respect to GILTI, any dividend elimination will be allowed using the same rules that apply to dividends received from a controlled foreign corporation (CFC) under Revenue and Taxation Code (R&TC) Section 25110(a)(2)(A)(ii).

11) Provides that any taxpayer that includes repatriated income shall be entitled to a credit for any taxes already paid to this state on the repatriated income. The credit allowed shall be calculated by multiplying the final tax liability of the taxpayer for the taxable year in which tax was paid on repatriation income by a fraction not to exceed one, the numerator of which is repatriation income of that corporation for that taxable year and the denominator of which is the total taxable income of that corporation for that taxable year.

12) Provides a taxpayer that has made a water's–edge election with an opportunity to revoke the election for the 2022 calendar year.

13) Provides, as part of the water's-edge election, that for taxpayers not required to be included in a combined report or not authorized to be included in a combined report, the total of all business credits allowed, including carryover of any business credit under a former provision, for the taxable year shall not reduce the additional tax liability added by this bill by more than $5 million. This limitation does not apply to the credit for taxes that have already been paid on the repatriated income.

14) Provides, as part of the water's-edge election, that for taxpayers required to be included in a combined report or taxpayers authorized to be included in a combined report, the total of all business credits allowed, including carryover of any business credit under a former provision, by all members of the combined report shall not reduce the aggregate amount of the additional tax liability of all members of the combined report added by this bill by more than $5 million. The limitation does not apply to the credit for taxes that have already been paid on repatriated income.

15) Provides, under the Corporation Tax (CT) Law, that for taxpayers not required to be included in a combined report or not authorized to be included in a combined report, the total of all credits allowed, including the carryover of any credit under a former provision, for the taxable year shall not reduce the additional tax liability added by this bill by more than $5 million. This limitation does not apply to the credit for taxes that have already been paid on repatriated income, or the low-income housing tax credit (LIHTC).

16) Provides, under the CT Law, that for taxpayers required to be included in a combined report or taxpayers authorized to be included in a combined report, the total of all credits allowed, including the carryover of any credit under a former provision, by all members of the combined report shall not reduce the aggregate amount of the additional tax liability of all members of the combined report added by this bill by more than $5 million. The limitation does not apply to the credit for taxes that have already been paid on repatriated income, or the LIHTC.

17) Defines "affiliated corporation" as a corporation that is a member of a commonly controlled group, as provided in R&TC Section 25105.

18) Defines a "business credit" as a credit allowable under the PIT Law, other than the following credits:

    a) Earned income tax credit;

    b) Young child tax credit;

    c) Household and dependent care credit;

    d) Adoption costs credit;

    e) Renter's tax credit;

    f) Personal exemption credit;

    g) Qualified joint custody head of household and a qualified taxpayer with a dependent parent credit;

    h) Qualified senior head of household credit;

    i) LIHTC; or

    j) A credit related to refunds pursuant to the Unemployment Insurance Code.

19) Defines "global intangible low-taxed income" in the same manner as defined in Internal Revenue Code (IRC) Section 951A, but not taking into account any subtractions made pursuant to Title 26 of the Code of Federal Regulation Section 1.951A-2(c)(7).

20) Defines "repatriation income" as income that was deemed repatriated under IRC Section 965(a), relating to the treatment of deferred foreign income as subpart F income.

21) Provides that any standard, criterion, procedure, determination, rule, notice, or guidance established or issued by the FTB to implement this bill is exempted from the rulemaking provisions of the Administrative Procedure Act.

22) Provides that this bill's provisions are severable, and that if any provision of this bill or its application is held invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

23) Provides that it is the intent of the Legislature that the revenue, if any, resulting from the application of this bill in any taxable year beginning on or after January 1, 2022, be used for purposes of the Bring California Home Act.

24) Requires the Controller to transfer the additional revenue generated by GILTI and the inclusion of the repatriated income from the General Fund to the Bring California Home Fund.

25) Requires the Homeless Coordinating and Financing Council (HCFC) to set aside $200,000,000 for bonus awards to recipients, and allocate 60 percent of the remaining amount in the fund to counties and continuums of care applying jointly and 40 percent to large cities, in accordance with a specified formula and subject to certain requirements.

EXISTING FEDERAL LAW provides GILTI provisions enacted by the federal Tax Cuts and Jobs Act (TCJA), effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of US shareholders in which such taxable years of the foreign corporations end. Any US shareholder that owns at least 10 percent of the value or voting rights in a CFC must include in gross income for the taxable year its GILTI in a manner generally similar to the inclusion of Subpart F income, regardless of whether any amount is distributed to the shareholder. There is no comparable provision in state law.

EXISTING STATE LAW:

1) Establishes the Homeless Coordinating and Financing Council (HCFC), with the purpose of coordinating the state's response to homelessness by utilizing Housing First practices.

2) Requires agencies and departments administering state programs created on or after July 1, 2017 to incorporate the core components of Housing First.

3) Defines "Housing First" to mean the evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible. Housing First providers offer services as needed and requested on a voluntary basis and that do not make housing contingent on participation in services.

4) Establishes the Homeless Emergency Aid Program (HEAP) to provide one-time grant funds to address the immediate homelessness challenges of local cities and counties. HEAP is administered by the HCFC.

5) Establishes the Homeless Housing Assistance and Prevention Program (HHAPP) to build on HEAP and provide funds to help local jurisdictions combat homelessness. HHAPP is also administered by the HCFC.

FISCAL EFFECT: The FTB estimates a General Fund revenue increase of $310 million in fiscal year (FY) 2021-22, $950 million in FY 2022-23, $950 million in FY 2023-24, and $600 million in FY 2024-25.

COMMENTS:

Author's statement: According to the author, "Our state is facing an unprecedented homelessness crisis that has the potential of becoming a full-blown catastrophe due to the economic impacts of COVID-19 on low wage earners. Despite being the fifth largest economy in the world, one in four Americans experiencing homelessness reside in California. AB 71 delivers a comprehensive plan to address homelessness by investing, for the first time ever, dedicated annual state funding to our local governments; and, implements accountability and transparency measures to ensure every dollar is used effectively."

Homelessness in California*:* Based on the 2020 point in time count, California has the largest homeless population in the nation with 161,548 people experiencing homelessness on any given night. Over two-thirds of those people, 113,660 are unsheltered, meaning they are living outdoors and not in temporary shelters. Nearly half of all unsheltered people in the country are in California.

The homelessness crisis is driven in part by the lack of affordable rental housing for lower income people. In the current market, 2.2 million extremely low-income and very low-income renter households are competing for 664,000 affordable rental units. Of the six million renter households in the state, 1.7 million are paying more than 50 percent of their income toward rent. The National Low Income Housing Coalition estimates that the state needs an additional 1.5 million housing units affordable to very-low income Californians.

Investments in homelessness: Historically, the federal government has been the main source of funding for the local homeless response system. Federal funds flow to locally created Continuums of Care (CoCs) operated either by the county or local non-profits that fund services and shelter for people experiencing homelessness.

In response to COVID-19 the federal government provided one-time funding to immediately house people experiencing homeless at risk of contracting the virus. Project Roomkey reimbursed cities and counties from Federal Emergency Management Agency (FEMA) to temporarily house people. Statewide, 14,700 rooms were secured by Roomkey and 70 percent are occupied. Most of the rooms are in Los Angeles County, where over 55 percent of the available 4,500 rooms are occupied. Overall, the program has provided short-term housing for 23,000 people in 42 counties.

Project Homekey provided funding to purchase hotels and motels and master lease housing to house people experiencing homelessness. The 2020-21 budget allocated $800 million in one-time federal funding for the Homekey Program. As of December 2020, HCD had awarded $846 million to 51 local agencies for 94 projects which housed 6,000 people experiencing homelessness.

Historically, state has funded production of supportive housing and housing for lower income and extremely low income households. In recent years, in response to the growing population of people experiencing homelessness, especially those who are unsheltered, the state allocated money directly to local governments to reduce homelessness. From 2018 to 2020, through two programs – the Homeless Emergency Assistance Program (HEAP) and Homelessness Housing and Assistance Program (HHAP) – the state has invested $1.45 billion in flexible funding that can be used for shelters, navigation centers, rental assistance, permanent supportive housing, and services. The HCFC administers the HEAP and HHAP programs and is responsible for collecting data from CoCs, cities, and counties that receive funding on the use of funds.

The piecemeal approach of funding and a lack of a comprehensive strategy at the state level have led to poor outcomes and increasing homelessness. The Bring California Home Act, would be the first time the state has committed ongoing, sustainable funding to prevent and end homelessness in California. Based on the increased GF revenue from GILTI and deemed repatriated income, the Bring California Home Fund could generate $1billion, annually.

Other states have succeeded in significantly reducing homelessness through state investment in targeted, effective interventions. For example, reductions in homelessness in large states like New Jersey and Michigan, which reduced homelessness by 49 percent and 70 percent, respectively, were preceded by comprehensive state strategies and funding to reduce homelessness. Federal and state funding for ongoing, comprehensive, evidence-based strategies to house veterans experiencing homelessness reduced homelessness among veterans by 50 percent over the last 10 years. Homelessness among veterans decreased by 40 percent in California, even while homelessness among other populations increased. Moreover, 30 years of studies shows providing people experiencing homelessness with housing and services not only reduces homelessness, it decreases public costs of hospital and nursing home admissions, recidivism to jails and prisons, and foster care placement.

State's strategy to reduce homelessness: Although some meaningful steps have been taken to create a structured strategy to addressing homelessness at the state level, the state has lacks a comprehensive strategy for addressing homelessness. In 2017, SB 1380 (Mitchell), Chapter 847, created the HCFC to coordinate the state's response to homelessness. HCFC is responsible for working with all state agencies or departments that operate programs that provide housing or housing-related services to people experiencing to adopt guidelines and regulations to include Housing First policies. Housing First is an evidence-based housing model that centers on providing people experiencing homelessness with housing as quickly as possible and then providing services as needed. The HCFC was given a list of "goals" to focus on but no clear authority to make changes to state policy or programs that address homelessness. In March of this year, the HCFC adopted an Action Plan for Preventing and Ending Homelessness in California (Action Plan) with specified goals that member agencies approved and agreed to work collaboratively on.

HCFC also recently launched a state Homeless Data Integration System (HDIS) that captures the data from local HMIS. All 44 CoCs in the state have entered into contracts to provide their HMIS data to HCFC. HDIS is intended to give the state a more accurate picture of the local homelessness response system and inform the state's response to homelessness. Some state programs that serve people experiencing homelessness including CalWORKs Housing Support Program, the Housing and Disability Advocacy Program, and Bringing Families Home require counties and child welfare agencies to enter data into the local HMIS system. However, there is no statutory requirement that funding recipients enter data into the local HMIS. Other state programs that serve people experiencing homelessness do require data entry into local HMIS including Project Home Key.

The Legislative Analyst's Office has been critical of the state's response to homelessness over the last few years and presented the following recommendations at the January joint hearing of this committee and the Budget Sub-4 Committee:

> "The scale of the homelessness crisis in California is significant and even substantial resources could quickly dissipate without demonstrating much progress if investments are

made without a clear plan. Given the Legislature's interest in addressing homelessness in California, this section outlines issues to consider that could increase the likelihood that the state's resources are used in a way that results in meaningful reductions in homelessness.

- Identify Goals. Setting clear goals would help to structure programs and funding in a way that steadily moves the state towards curbing homelessness.

- Identify Solutions That Align With Goals. The structure of the state's homelessness programs should work towards achieving the identified goals.

- Set Clear State and Local Responsibilities. Having clear state and local responsibilities will deter inefficiencies and foster accountability among all of the entities involved in addressing homelessness statewide.

- Identify State Governance Structure. An effective governance model will provide clear leadership and guidance towards accomplishing the identified goals.

- Establish Funding Strategy. Identify the revenue sources for the homelessness programs and determine whether funding should be one time or ongoing in nature.

- Develop Rigorous Oversight Mechanism. Oversight efforts should assess the performance of state entities that administer homelessness programs and local partners."

Accountability: A main critique of past funding efforts, has been a lack of accountability tied to clear outcomes. The one-time nature of the funding and the desire to give local governments flexibility in how to best reduce homelessness has made accountability more challenging. AB 71 includes concrete measures to drive funding investments based on the overall goal of ending homelessness.

Gaps and needs analysis: The HCFC would be required to complete a statewide gaps and needs analysis to determine what resources exist throughout the state to direct state and local efforts to respond to homelessness. The gaps and needs analysis would serve as a guide to investment at the state and local level. Some local jurisdictions have completed gaps and needs analysis, like Los Angeles, and have used the information to identify the level of investment needed to reduce homelessness.

Outcome and performance goals: State investments in homelessness through HHAP and HEAP have been highly flexible and have not contained significant accountability requirements. AB 71 would require cities, counties and CoCs to work with the HCFC to develop outcome goals based on the number of people who exit homelessness, outcomes for over-represented populations of people experiencing homelessness and local commitments of spending to solve homelessness. Failure of the recipient to use money allocated to it for an authorized purpose would require the council to either select an alternative entity to administer the recipient's allocation in accordance with specified requirements or solely establish performance outcomes and program priorities for that recipient jurisdiction and work with local, regional, or statewide entities to administer the allocation on behalf of the recipient.

Audit and reporting functions: HCFC has authority to audit cities, counties, and CoCs use of funds and is required to report annually to the Legislature on outcomes.

Rewards for good outcomes: AB 71 creates an incentive allocation of funding for local governments that meet performance goals. The HCFC would have to set aside $200,000,000 for bonus awards to recipients, and would have to allocate 60 percent of the remaining amount in the fund to counties and continuums of care applying jointly and 40 percent to large cities, in accordance with a specified formula and subject to certain requirements.

Arguments in support: According to the sponsors of this bill, "AB 71 proposes taxing California's share of multinational corporations' Global Intangible Low Taxed Income (GILTI). According to the California Budget & Policy Center, corporate taxpayers in California have seen their tax bills cut in half over the past forty years. At the same time, corporate taxpayers benefited from the 2017 Trump Tax Cuts, which cut the federal corporate tax rate from 35 percent to 21 percent, delivering corporations a windfall benefit of approximately $100 billion per year. During the COVID-19 pandemic, when low-income Californians have struggled to avoid eviction, 45 of the 50 biggest businesses in this country have continued to turn a profit. California can and should ensure that these windfalls benefit our most vulnerable population.

AB 71's tax change is narrowly targeted at the most profitable multinational and international corporations. Only large multinational corporations would pay GILTI. GILTI ensures that corporations attempting to avoid taxes by shifting profits to low-tax jurisdictions, like the Cayman Islands, pay the taxes they owe in California. This tax-avoidance safeguard appropriately taxes California income and is a common-sense tax conformity measure that brings our tax code in line with other states and the federal Internal Revenue Code. AB 71 also imposes a one-time tax on repatriated income. This tax is not retroactive, as it only applies to income repatriated in future tax years, and is on profits previously shifted abroad that have never been taxed by California, and won't ever be taxed, unless AB 71 is enacted.
We reject out of hand any argument that these tax changes will cause businesses to relocate to other states. California's corporate tax is assessed on all corporations doing business in California, regardless of the location of their headquarters, making it impossible to avoid or lower tax liability by leaving the state. Thus, AB 71's revenue measures create no competitive disadvantage for California businesses."

Arguments in opposition: According to opponents, "This bill would impose a tax increase at a time when California businesses already pay some of the highest taxes in the country. California's existing corporate income tax rate is already the highest among the Western states and one of the highest in the nation. According to the Washington, D.C.-based Tax Foundation, California's business tax climate ranks second-worst in the United States. After comparing the costs of operating in California vs. other states, many employers left our state in 2020. The relocation of these companies and their employees to lower-cost states has a major impact on state and local tax revenue, causes unemployment for workers who cannot move to the new location, and is a sign that California must find ways to be more competitive. The tax on repatriated income is retroactive, reaching back to a one-time event from 2017-18. There is no possible way that taxpayers could have foreseen that they would have to pay taxes on income they reported years ago. Taxing income from years in the past should be flatly rejected.

Taxing companies that repatriate income back to the United States puts U.S.-based companies doing business in California at a substantial disadvantage to foreign corporations that do not bring income back to the United States. The additional costs from this proposal will be borne by U.S.-based businesses, and will be a significant disadvantage for companies in a competitive market."

Tax provisions of this bill: Below is an excerpt from the Assembly Revenue and Taxation Committee analysis, from the April 19, 2021 hearing of the bill:

> *GILTI*: Before the enactment of the TCJA, the U.S. generally taxed its firms and residents on their worldwide income. U.S. firms were allowed to defer tax on foreign subsidiaries' active business earnings until those earnings were repatriated to the U.S., generally as dividends. The prior system generally discouraged repatriating foreign profits since corporations only faced additional taxes once profits were brought back to the U.S. In order to address this distortion, the TCJA generally exempts earnings from active businesses of U.S. firms' foreign subsidiaries, even if the earnings are repatriated.
>
> Although the change may have partially addressed the distortion, eliminating the repatriation tax may also exacerbate profit shifting to low-tax or no-tax jurisdictions. According to former Multistate Tax Commission Executive Director, Dan Bucks, "congress recognized that the switch to the territorial system exposed the federal corporate tax to increased profit shifting, and that's why it included GILTI and [the base erosion and anti-abuse tax (BEAT), and other measures like a lowering of the corporate tax rate to try to counteract [profit shifting]. " Therefore, Congress added a new minimum tax on GILTI of 10.5%.
>
> In general, GILTI is income earned from intangible assets by foreign subsidiaries of US-based multinational corporations. Intangible assets include intellectual property such as patents, copyrights, and trademarks. Individuals or entities subject to GILTI are US shareholders or CFCs. GILTI operates, in part, as a way of finding shifted income by identifying suspiciously high returns. GILTI is calculated as the total active income earned by a US firm's foreign affiliates that exceeds 10% of the firm's depreciable tangible property. A corporation can generally deduct 50% of the GILTI and claim a foreign tax credit for 80% of foreign taxes paid or accrued on GILTI. If a foreign tax rate is zero, the effective US tax rate on GILTI will be 10.5%, which is half of the regular 21% corporate tax rate. In general, if the foreign tax rate is 13.125% or higher, there will be no US tax after the 80% credit for foreign taxes.
>
> *What does this bill do*? This bill conforms state law to the federal GILTI provisions, and requires a taxpayer that has made a water's-edge election and a taxpayer that is not a corporation but derives GILTI income from a combined reporting group to include 50% of GILTI for state purposes. As noted earlier, GILTI identifies shifted income by formula. If GILTI identifies $10 billion in a CFC in Ireland that was not really earned there, part of the $10 billion may have been shifted from the US and part of the $10 billion may have been shifted from another country like Germany. The 50% is used as a reasonable estimate of how much of the shifted income came from the US. If the taxpayer believes that the 50% amount is inappropriate, this bill allows a taxpayer, for taxable year 2022 only, to revoke the water's-election and use worldwide combined reporting. This bill also limits a taxpayer's ability to offset the additional tax liability created by these provisions with existing tax credits by more than $5 million.

Why should states tax GILTI? First, there is good evidence that the earnings are partially domestic insofar as profits have been shifted; and, as noted earlier, there appears to be evidence that profit shifting is increasing. As such, those earnings should have always been included as part of the water's edge election. And second, as noted earlier, the federal government's change to a more territorial system, and the elimination of the repatriation tax, may inadvertently be encouraging multinational corporations to shift profits oversees despite additional safety measures like GILTI, BEAT, and a reduction in the federal corporate tax rate. To the extent the federal corporate tax incentivizes erosion of the corporate tax base, the TCJA may in turn lead to a narrowing of the state's own corporate tax base under a water's edge election. According to Dan Bucks, "All of the states that are water's-edge or separate-entity states are exposed to substantial risk from the federal switch to its version of a territorial tax system. That switch, without some effective state action — be it global combined reporting, tax haven reporting, or inclusion of GILTI in its tax base — exposes the states to a substantial risk of increased profit shifting. " GILTI might actually be a necessary measure to address a further narrowing of the state's corporate tax base.

What does this bill do? This bill requires a taxpayer that has made a water's-edge election to include 40% of any repatriation income. As noted earlier with respect to GILTI, this bill attempts to make a reasonable determination as to how much has been shifted out of the US. The 40% for repatriation is lower than the 50% used for GILTI, in part, because some of that income might have been earned abroad and just left abroad. A taxpayer is then required to either apportion 14% of the repatriation to California or use the apportionment factor otherwise calculated for the combined group.

Why should states tax deemed repatriation? According to Professors Shanske and Gamage, there are several reasons why states should tax deemed repatriated funds, but the primary reason for taxing these funds is that these earnings are, at least partially, domestic. There appears to be significant evidence that at least a substantial portion of the earnings parked abroad were, in fact, earned in the US and should have always been part of the state's corporate tax base. Therefore, taxing repatriated income is a way of recapturing General Fund revenue that has been put away for a rainy day, ready to be used for large state projects.

Committee amendments: The committee may wish to consider the following amendment to address concerns raised by the State Council of Building Trades.

On page 41, between lines 33 and 34, insert:

(c) Moneys allocated pursuant to this chapter shall not be used to pay for land acquisition or for construction work.

Double referred: This bill is double referred. It was heard in the Assembly Committee on Revenue and Taxation and passed on a vote of 7-4 on April 19, 2021.

REGISTERED SUPPORT / OPPOSITION:

Support

All Home (Co-Sponsor)
Brilliant Corners (Co-Sponsor)
City of Los Angeles (Co-Sponsor)
City of Oakland (Co-Sponsor)
Corporation for Supportive Housing (Co-Sponsor)
Episcopal Community Services of San Francisco (Co-Sponsor)
HOPICS (Co-Sponsor)
Housing California (Co-Sponsor)
John Burton Advocates for Youth (Co-Sponsor)
Los Angeles County Board of Supervisors (Co-Sponsor)
Los Angeles Homeless Services Authority (Co-Sponsor)
National Alliance to End Homelessness (Co-Sponsor)
Non Profit Housing Association of Northern California (Co-Sponsor)
Steinberg Institute (Co-Sponsor)
United Way of Greater Los Angeles (Co-Sponsor)
Homebase
A Community of Friends
AAPIS for Civic Empowerment Education Fund
AARP
Abode Services
Abundant Housing LA
ACCE Action
Alexandria House
American Civil Liberties Union of California
American Family Housing
American Indian Movement SoCal
Ascencia
Bay Area Community Services
Bay Area Regional Health Inequities Initiative
Bend the Arc: Jewish Action, Southern California
Bet Tzedek
Bill Wilson Center
California Alliance for Retired Americans
California Alliance of Child and Family Services
California Association of Student Councils
California Calls
California Coalition for Rural Housing
California Coalition for Youth
California Council of Community Behavioral Health Agencies
California Democratic Party Renters Council
California Housing Consortium
California Housing Partnership Corporation
California Partnership to End Domestic Violence
California Reinvestment Coalition
California Rural Legal Assistance Foundation
California Youth Connection (CYC)
California Health + Advocates
Casa De Amparo
Center for Community Action & Environmental Justice

Central Hollywood Neighborhood Council
Cerritos Community College
Children Now
Chrysalis
City of Alameda
City of Hayward
City of West Sacramento
CLARE|MATRIX
Clifford Beers Housing
Coalition on Homelessness, San Francisco
Communities United for Restorative Youth Justice
Community Action Marin
Community Clinic Association of Los Angeles County
Community Corporation of Santa Monica
Community Economics
Community Forward SF
Community Housing Partnership
Community Housing Partnership San Francisco
Community Solutions for Children, Families and Individuals
Conard House
Contra Costa County
County of Los Angeles
David & Margaret Youth and Family Services
Del Rey Neighborhood Council
Delivering Innovation in Supportive Housing
Destination: Home
Dignity Health
Dignity Moves
Disability Rights California
Downtown Women's Center
EAH Housing
East Bay Asian Local Development Corporation
East Bay Housing Organizations
Edgewood Center for Children and Families
ElderFocus
Empowering Pacific Islander Communities (EPIC)
Encompass Community Services
Ensuring Opportunity Campaign to end Poverty in Contra Costa County
Enterprise Community Partners, INC.
Everyone Home
Family Violence Law Center
Father Joe's Villages
First Place for Youth
First to Serve INC
Five Keys Schools and Programs
Flacks Seed Consulting
Food on Foot
Foster Care Counts
Fred Finch Youth Center

Funders Together to End Homelessness San Diego
Glendale Youth Alliance
GLIDE
Good Seed Community Development Corporation
Good Shepherd Center
Habitat for Humanity Greater San Francisco
Hathaway-Sycamores
Hope Solutions
Housing Authority of the City of Oakland
Housing Consortium of the East Bay
Housing Is a Human Right OC
Housing Now! CA
Imperial Community College District
Inner City Law Center
Interface Children & Family Services
Interfaith Community Services
Interfaith Solidarity Network
Justice in Aging
Kings/Tulare Homeless Alliance
LA Care Health Plan
LA Family Housing
Larkin Street Youth Services
LavaMae^{x}
Linc Housing
Los Angeles LGBT Center
Los Angeles Regional Reentry Partnership (LARRP)
LYRIC
Me Too Survivors' March International
Mental Health America of Los Angeles
Merritt Community Capital Corporation
MidPen Housing
Mission Neighborhood Health Center
Mogavero Architects
Move LA
Multi-faith ACTION Coalition
Mutual Housing CA
Mutual Housing California
National Association of Social Workers, California Chapter
National Center for Youth Law
National Health Foundation
National Institute for Criminal Justice Reform
National Organization for Women, Hollywood Chapter
New Alternatives
Non-Profit Housing Association of Northern California
Norco College
Northeast Valley Health Corporation
Oakland Homeless Advocacy Working Group
Oakland; City of
Olive Crest

Open Heart Kitchen
Operation Checks and Balances
Operation Dignity
Operations Checks & Balances
Pasadena City College EOPS and the Foster Youth Programs
PATH
People's Budget Orange County
PolicyLink
Prevention Institute
Progressive Asian Network for Action (PANA)
Project: Peacemakers, Incorporated
Public Advocates
Public Counsel
Public Law Center
Rainbow Services
Rally
Reedley College
Regional Task Force on the Homeless
Rio Hondo College
Sacramento Advisors
Sacramento Homeless Organizing Committee
Sacramento Housing Alliance
Sacramento Regional Coalition to End Homelessness
Sacramento State Guardian Scholars
Safe Place for Youth
San Diego Housing Federation
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Board of Supervisors
San Francisco Youth Commission
San Gabriel Valley Consortium on Homelessness
San Ysidro Health
Santa Barbara Women's Political Committee
Sierra Nevada Connections
Silicon Valley Sponsoring Committee
Skid Row Housing Trust
Skid Row Now and 2040
South Bay Community Land Trust
Southern California Association of Non-profit Housing (SCANPH)
SPA 6 Homeless Coalition
SSG-HOPICS
St. Joseph Center
St. Joseph's Family Center
St. Mary's Center
Starting Over INC.
Stopping Pressure on Teens (SPOT)
Stronger Women United
TechEquity Collaborative
Tenderloin Housing Clinic
Tenderloin Neighborhood Development Corporation

The Center in Hollywood
The Echo Chamber
The Kelsey
The Kennedy Commission
The Living Room
The People Concern
The San Francisco Housing Accelerator Fund
The United Way of Greater Los Angeles
The Women's Building
The Women's Foundation of California
Time for Change Foundation
TLC Child and Family Services
TreasureHunt Grants
Union Station Homeless Services
United Friends of the Children
Urban Initiatives
Voices Youth Centers
Weingart Center Association
West Valley College
West Valley Community Services
Westcoast Children's Clinic
Western Center on Law & Poverty
Women's Empowerment
Women's Foundation California
Youth Alliance
YWCA
Individuals - 76

Opposition

Advanced Medical Technology Association (ADVAMED)
Bay Area Council
BizFed Central Valley
CalChamber
California Association of Winegrape Growers
California Attractions and Parks Association
California Bankers Association
California Beer and Beverage Distributors
California Building Industry Association
California Business Properties Association
California Cable & Telecommunications Association
California Cattlemen's Association
California Chamber of Commerce
California Grocers Association
California Hotel & Lodging Association
California Independent Petroleum Association (CIPA)
California League of Food Producers
California Life Sciences Association
California Manufacturers & Technology Association

California Manufacturers and Technology Association
California Mortgage Bankers Association
California New Car Dealers Association
California Restaurant Association
California Retailers Association
California Trucking Association
Central Valley Business Federation
Contra Costa Taxpayers Association
Council on State Taxation
East Bay Leadership Council
Family Business Association of California
Garden Grove Chamber of Commerce
Global Business Alliance
Greater Irvine Chamber of Commerce
Greater Sacramento Economic Council
Greater San Fernando Valley Chamber of Commerce
Hotel Council of San Francisco
Howard Jarvis Taxpayers Association
Inland Empire Economic Partnership
Kern County Hispanic Chamber of Commerce
Kern County Taxpayers Association
Los Angeles Area Chamber of Commerce
Monterey Bay Economic Partnership
National Association of Mutual Insurance Companies
North Bay Leadership Council
North Orange County Chamber
Opportunity Stanislaus
Orange County Business Council
Orange County Taxpayers Association
Oxnard Chamber of Commerce
Personal Insurance Federation of California
Regional Economic Association Leaders (R.E.A.L.) Coalition
San Gabriel Valley Economic Partnership
San Mateo Area Chamber of Commerce
Santa Cruz Area Chamber of Commerce
Santa Rosa Chamber of Commerce
Securities Industry and Financial Markets Association
Silicon Valley Leadership Group
South Bay Association of Chambers of Commerce
Southern California Leadership Council
Southwest California Legislative Council
TechNet
The Silicon Valley Organization
Tri County Chamber Alliance
West Coast Lumber & Building Material Association
Western Growers Association
Western Manufactured Housing Communities Association
Western States Petroleum Association
Wine Institute

Individuals - 1

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085