

ANALYSIS OF ORIGINAL BILL

Author: Maienschein Analyst: Jessica Deitchman Bill Number: AB 2582
See Legislative
Related Bills: History Telephone: 845-6310 Introduced Date: February 19, 2016
Attorney: Bruce Langston Sponsor _____

SUBJECT: Employer Wages Paid to Disabled Employees Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), provide a tax credit for certain employers.

RECOMMENDATION

No position.

REASON FOR THE BILL

The reason for the bill is to encourage employers to employ individuals that may be paid a “special minimum wage” and to pay them at least the minimum wage.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2017.

PROGRAM BACKGROUND

The federal Fair Labor Standards Act¹ authorizes employers, after receiving a certificate from the Wage and Hour Division of the Federal Department of Labor, to pay a “special minimum wage” to individuals whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury. A special minimum wage is less than the federal minimum wage and is determined on a case by case basis.

FEDERAL/STATE LAW

Existing federal law provides special tax incentives for empowerment zones and enterprise communities to provide economic revitalization of distressed urban and rural areas.

Current state and federal laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business.

¹ Section 14(c) [29 U.S.C. §214(c)].

Current state law allows a New Employment Credit that is available to a qualified taxpayer that hires a qualified full-time employee, has an overall net increase in employment, and pays or incurs qualified wages attributable to work performed by the qualified full-time employee in a designated census tract or former Enterprise Zone. The qualified taxpayer must receive a tentative credit reservation from the Franchise Tax Board (FTB) for that qualified full-time employee.

As of January 1, 2016, state minimum wage is generally \$10 per hour.²

THIS BILL

For taxable years beginning on or after January 1, 2017, under the PITL and CTL, this bill would allow a credit to a qualified employer who pays a qualified employee a wage that equals or exceeds the state minimum wage during the taxable year. The credit would be in an amount equal to the difference between the special minimum wage that may be paid to the qualified employee and the state minimum wage, multiplied by the number of hours worked by the qualified employee during the taxable year.

The bill would define the following terms:

- “Minimum wage” means the wage established by the Industrial Welfare Commission.
- “Qualified employee” means an individual who may be paid a special minimum wage, pursuant to Section 214 (c) (see Program Background) of title 29 of the United States Code or Section 1191 or 1191.5 of the Labor Code.
- “Qualified employer” means a taxpayer that employs a qualified employee in this state.

In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified employer would be made at the entity level and any credit under this bill would be allowed to the pass-thru entity and passed through to the partners or shareholders.³

- For purposes of this bill, the term “pass-thru entity” would mean any partnership or S Corporation.

² Labor Code section 1182.12. Those employees classified as “learners” may be paid a lesser wage. See Labor Code section 1192. Additionally, those employees that are the parent, spouse, or child of the employer are not subject to the minimum wage requirement.

³ In accordance with applicable provision of this part or part 11.

A qualified taxpayer would be required to do both of the following:

- Obtain from the Industrial Welfare Commission a certification that a qualified employee meets the eligibility requirements, as specified. The certification would include the dollar amount of special minimum wage applicable to each qualified employee.
- Retain the certification and provide a copy of it upon request to the FTB.

This bill would exempt the FTB's standards, criteria, procedures, determinations, rules, notices or guidelines from the requirements of the Administrative Procedure Act.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

The bill would allow a credit for wages paid to qualified employees; however, the bill fails to specify that the wages must be California wages. Because of this ambiguity, it may be possible for wages that are not California wages to be eligible for the credit. If this is contrary to the author's intent, the bill should be amended.

LEGISLATIVE HISTORY

AB 1404 (Grove, 2015/2016) nearly identical to this bill, would have allowed a credit for employers that hire employees eligible to be paid a special minimum wage and chose to pay them at or above the minimum wage. AB 1404 failed to pass out of the house of origin by the constitutional deadline.

AB 236 (Swanson, 2011/2012) would have allowed a credit of \$5,000 for each full-time employee hired that is either an ex-offender or has been unemployed for 12 consecutive months. AB 236 failed to pass out of the Assembly Appropriations by the constitutional deadline.

AB 304 (Knight, 2011/2012), would have allowed a credit of either \$3,000 or \$5,000 for each qualified employee that was paid wages greater than or equal to 200 percent of the average wage in the county in which the employee completes at least 50 percent of their work. AB 304 failed to pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

AB 1009 (Wieckowski, 2011/2012) would have modified the former New Jobs Tax Credit to expand eligibility for the credit from employers with less than 20 employees to employers with 100 or less employees. AB 1009 failed to pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

SB 156 (Emmerson/Cook, 2011/2012) would have modified the current New Jobs Tax Credit to expand eligibility for the credit from employers with less than 20 employees to employers with 50 or less employees. SB 156 failed to pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

SB 640 (Runner, 2011/2012) would have allowed a credit of \$500 per month (not to exceed 12 months) for each full-time employee hired who has received unemployment benefits for six months prior to being hired. SB 640 failed to pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

OTHER STATES' INFORMATION

Review of *Illinois, Florida, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable tax credits relating to a special minimum wage. These states were selected and reviewed due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and the department will pursue a budget change proposal if necessary.

ECONOMIC IMPACT

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2582 As Introduced on February 19, 2016 Assumed Enactment After June 30, 2016 (\$ in Millions)		
2016-17	2017-18	2018-19
- \$2.7	- \$11.0	- \$21.0

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact of this bill would depend on the number of employers who have qualified employees who are certified special minimum wage workers and are paid the prevailing minimum wage.

Using US Department of Labor statistics for certificate holders, the number of workers paid special minimum wages in California would be approximately 26,000 in 2016. It is assumed that 25 percent of these persons work for for-profit entities that would claim this credit. It further is assumed that for-profit employers would learn about the new law and gradually increase wages paid to qualified employees. It is estimated that, 20 percent of employers would claim a credit in 2017, 50 percent in 2018, 85 percent in 2019, and 90 percent each year thereafter. It is assumed this bill would provide a small incentive for hiring qualified employees and the estimated number of qualified employees would increase 10 percent in each year.

Using studies prepared by the United States General Accounting Office on the special minimum wage, it was estimated the average special minimum wage worker would be paid 50 percent of California's minimum wage rate. Therefore, the taxpayer would earn a credit for the difference between the special minimum wage and the California minimum wage, for a tax credit equal to \$5 per employee per hour of wages earned ($\$10 - \$5 = \$5$). Assuming the qualified employee works 20-hours per week and 50 weeks per year, the total estimated tax credit generated would be \$7 million in 2017, \$19 million in 2018, and \$33 million in 2019.

It is assumed that 80 percent of the credit amounts generated in each year would be used in that year. Because the bill lacks carryover language, 20 percent of the credit would be lost.

The tax year estimates are converted to fiscal years, rounded, and reflected in the above table.

This bill is substantially similar to AB 1404 (Grove, 2015/2016). The significant difference in the revenue estimates is due to this estimate using more accurate data obtained from the U.S. Department of Labor versus AB 1404 that used data from the U.S. Census.

SUPPORT/OPPOSITION⁴

Support: Autism Speaks, Center for Autism and Related Disorders.

Opposition: None provided.

ARGUMENTS

Proponents: Some may argue that this bill could increase the amount paid to employees that receive a "special minimum wage" designation by providing employers with a tax credit to encourage higher pay for these employees.

Opponents: Some may argue that providing a tax credit limited to employees that may be paid a "special minimum wage" may be overly narrow and inadvertently exclude other groups of employees who could benefit from an incentive to pay higher wages.

POLICY CONCERNS

This bill would allow an employer a tax credit based on wages paid to a qualified employee and under current law, allow a deduction for those same wages, therefore, allowing an employer in certain circumstances to claim multiple tax benefits for the same item of expense.

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of the credit by the Legislature.

⁴ As provided by the staffer to FTB.

This bill lacks carryover language. As a result, any unused credit would be lost if the taxpayer is unable to use the entire credit amount in the year claimed. The author may wish to add language allowing a limited carryover period.

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