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AB-2922 Economic development: capital investment incentive programs. (2023-2024)

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Assembly Bill No. 2922

CHAPTER 581

An act to amend Sections 51298 and 51298.5 of, and to add Section 51298.1 to, the Government Code, relating to local government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 2024. Filed with Secretary of State September 25, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2922, Garcia. Economic development: capital investment incentive programs.

Prior law, until January 1, 2024, authorized a county, city and county, or city to establish a capital investment incentive program, pursuant to which the county, city and county, or city was authorized to pay, upon request, a capital investment incentive amount that does not exceed the amount of property tax derived from that portion of the assessed value of a qualified manufacturing facility, as defined, that exceeds \$150,000,000 to a proponent of a qualified manufacturing facility for up to 15 years. Prior law required the proponent to enter into a community services agreement with the county, city and county, or city, including, among other things, a job creation plan.

This bill would reestablish the authorization for capital investment incentive programs until January 1, 2035. The bill would additionally authorize the above-described capital investment incentive program for proponents of a qualified manufacturing facility with an assessed value that exceeds \$25,000,000 and would include additional requirements for the above-described job creation plan for these proponents. The bill would make conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 51298 of the Government Code is amended to read:

51298. It is the intent of the Legislature in enacting this chapter to provide local governments with opportunities to attract large manufacturing facilities to invest in their communities and to encourage industries, such as high technology, aerospace, automotive, biotechnology, software, environmental sources, and others, to locate and invest in those facilities in California.

(a) Commencing in the 1998–99 fiscal year, the governing body of a county, city and county, or city, may, by means of an ordinance or resolution approved by a majority of its entire membership, elect to establish a capital investment incentive program. In any county, city and county, or city in which the governing body has so elected, the county, city and county, or city shall, upon the approval by a majority of the entire membership of its governing body of a written request therefor, pay a capital investment incentive amount to the proponent of a qualified manufacturing facility for up to 15 consecutive fiscal years. A request for the

payment of capital investment incentive amounts shall be filed by a proponent in writing with the governing body of an electing county, city and county, or city in the time and manner specified in procedures adopted by that governing body. In the case in which the governing body of an electing county, city and county, or city approves a request for the payment of capital investment incentive amounts, both of the following conditions shall apply:

(1) The consecutive fiscal years during which a capital investment incentive amount is to be paid shall commence with the first fiscal year commencing after the date upon which the qualified manufacturing facility is certified for occupancy or, if no certification is issued, the first fiscal year commencing after the date upon which the qualified manufacturing facility commences operation.

(2) In accordance with paragraph (4) of subdivision (d), the annual payment to a proponent of each capital investment incentive amount shall be contingent upon the proponent's payment of a community services fee.

(b) For purposes of this section:

(1) "Capital investment incentive amount" means, with respect to a qualified manufacturing facility for a relevant fiscal year, an amount up to or equal to the amount of ad valorem property tax revenue allocated to the participating local agency, which excludes the revenue transfers required by Sections 97.2 and 97.3 of the Revenue and Taxation Code, from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (4) that is in excess of one hundred fifty million dollars (\$150,000,000).

(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) "Proponent" means a party or parties that meet all of the following criteria:

(A) The party is named in the application to the county, city and county, or city within which the qualified manufacturing facility would be located for a permit to construct a qualified manufacturing facility.

(B) The party will be the fee owner of the qualified manufacturing facility upon the completion of that facility. Notwithstanding the previous sentence, the party may enter into a sale-leaseback transaction and nevertheless be considered the proponent.

(C) If a proponent that is receiving capital investment incentive amounts subsequently leases the subject qualified manufacturing facility to another party, the lease may provide for the payment to that lessee of any portion of a capital investment incentive amount. Any lessee receiving any portion of a capital investment incentive amount shall also be considered a proponent for the purposes of subdivision (d).

(4) "Qualified manufacturing facility" means a proposed manufacturing facility that meets all of the following criteria:

(A) The proponent's initial investment in that facility, in real and personal property, necessary for the full and normal operation of that facility, made pursuant to the capital investment incentive program, that comprises any portion of that facility or has its situs at that facility, exceeds one hundred fifty million dollars (\$150,000,000). Compliance with this subparagraph shall be certified by the Governor's Office of Business and Economic Development upon the director's approval of a proponent's application for certification of a qualified manufacturing facility. An application for certification shall be submitted by a proponent to the Governor's Office of Business and Economic Development in writing in the time and manner as specified by the director.

(B) The facility is to be located within the jurisdiction of the electing county, city and county, or city to which the request is made for payment of capital investment incentive amounts.

(C) The facility is operated by any of the following:

(i) A business described in Codes 3321 to 3399, inclusive, or Codes 541711 or 541712 of the 2012 North American Industry Classification System (NAICS) Manual published by the United States Office of Management and Budget.

(ii) A business engaged in the recovery of minerals from geothermal resources, including the proportional amount of a geothermal electric generating plant that is integral to the recovery process by providing electricity for it.

(iii) A business engaged in the manufacturing of parts or components related to the production of electricity using solar, wind, biomass, hydropower, or geothermal resources on or after July 1, 2010.

(iv) A business engaged in the manufacturing of fuels, electrical parts, or components used in the field of clean transportation or the production of alternative fuel vehicles or electric vehicles.

(D) The proponent is currently engaged in any of the following:

(i) Commercial production.

(ii) The perfection of the manufacturing process.

(iii) The perfection of a product intended to be manufactured.

(c) (1) A city or special district may, upon the approval by a majority of the entire membership of its governing body, pay to the county, city and county, or city an amount equal to the amount of ad valorem property tax revenue allocated to that city or special district, but not the actual allocation, derived from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (4) of subdivision (b) that is in excess of one hundred fifty million dollars (\$150,000,000).

(2) For purposes of this subdivision, "special district" shall not include a school district or a community college district.

(d) A proponent whose request for the payment of capital investment incentive amounts is approved by an electing county, city and county, or city shall enter into a community services agreement with that county, city and county, or city that includes, but is not limited to, all of the following provisions:

(1) A provision requiring that a community services fee be remitted by the proponent to the county, city and county, or city, in each fiscal year, in an amount that is equal to 25 percent of the capital investment incentive amount calculated for that proponent for that fiscal year, except that in no fiscal year shall the amount of the community services fee exceed two million dollars (\$2,000,000).

(2) A provision specifying the dates in each relevant fiscal year upon which payment of the community services fee is due and delinquent, and the rate of interest to be charged to a proponent for any delinquent portion of the community services fee amount.

(3) A provision specifying the procedures and rules for the determination of underpayments or overpayments of a community services fee, for the appeal of determinations of any underpayment, and for the refunding or crediting of any overpayment.

(4) A provision specifying that a proponent is ineligible to receive a capital investment incentive amount if that proponent is currently delinquent in the payment of any portion of a community services fee amount, if the qualified manufacturing facility is constructed in a manner materially different from the facility as described in building permit application materials, or if the facility is no longer operated as a qualified manufacturing facility meeting the requirements of paragraph (1) of subdivision (b). If a proponent becomes ineligible to receive a capital investment incentive amount as a result of an agreement provision included pursuant to this subparagraph, the running of the number of consecutive fiscal years specified in an agreement made pursuant to subdivision (a) is not tolled during the period in which the proponent is ineligible.

(5) A provision that sets forth a job creation plan with respect to the relevant qualified manufacturing facility. The plan shall specify the number of jobs to be created by that facility, and the types of jobs and compensation ranges to be created thereby. The plan shall also specify that for the entire term of the community services agreement, both of the following shall apply:

(A) All of the employees working at the qualified manufacturing facility shall be covered by an employer-sponsored health benefits plan, with the exception of any employee who was offered but declined coverage due to other available group coverage.

(B) The average weekly wage, exclusive of overtime, paid to all of the employees working at the qualified manufacturing facility, who are not management or supervisory employees, shall be not less than the state average weekly wage. For the purpose of this subdivision, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year.

(6) (A) In the case in which the proponent fails to operate the qualified manufacturing facility as required by the community services agreement, a provision that requires the recapture of any portion of any capital investment incentive amounts previously paid to the proponent equal to the lesser of the following:

(i) All of the capital investment incentive amounts paid to the proponent, less all of the community services fees received from the proponent, and less any capital investment incentive amounts previously recaptured.

(ii) The last capital investment incentive amount paid to the proponent, less the last community services fee received from the proponent, multiplied by 40 percent of the number of years remaining in the community services agreement, but not to exceed 10 years, and less any capital investment incentive amounts previously recaptured.

(B) If the proponent fails to operate the qualified manufacturing facility as required by the community services agreement, the county, city and county, or city may, upon a finding that good cause exists, waive any portion of the recapture of any capital investment incentive amount due under this subdivision. For the purpose of this subdivision, good cause includes, but is not limited to, the following:

(i) The proponent has sold or leased the property to a person who has entered into an agreement with the county, city and county, or city to assume all of the responsibilities of the proponent under the community services agreement.

(ii) The qualified manufacturing facility has been rendered inoperable and beyond repair as a result of an act of God, civil disorder, failure of power, riots, insurrections, war, acts of terrorism, or any other causes, whether the kind herein enumerated or otherwise, not within the control of the qualified manufacturing facility claiming good cause, which restrict or interfere with a qualified manufacturing facility's ability to timely perform, and which by the exercise of reasonable due diligence, such party is or would have been unable to prevent or overcome.

(C) For purposes of this subdivision, failure to operate a qualified manufacturing facility as required by the community services agreement includes, but is not limited to, failure to establish the number of jobs specified in the jobs creation plan created pursuant to paragraph (5).

(e) (1) Each county, city and county, or city that elects to establish a capital investment incentive program shall notify the Governor's Office of Business and Economic Development of its election to do so no later than June 30 of the fiscal year in which the election was made.

(2) In addition to the information required to be reported pursuant to paragraph (1), each county, city and county, or city that has elected to establish a capital investment incentive program shall notify the Governor's Office of Business and Economic Development each fiscal year no later than June 30 of the amount of any capital investment incentive payments made and the proponent of the qualified manufacturing facility to whom the payments were made during that fiscal year.

(3) The Governor's Office of Business and Economic Development shall compile the information submitted by each county, city and county, and city pursuant to paragraphs (1) and (2) and submit a report to the Legislature containing this information no later than October 1, every two years commencing October 1, 2026.

SEC. 2. Section 51298.1 is added to the Government Code, to read:

51298.1. (a) The governing body of a county, city and county, or city, may, by means of an ordinance or resolution approved by a majority of its entire membership, elect to establish a capital investment incentive program. In any county, city and county, or city in which the governing body has so elected, the county, city and county, or city shall, upon the approval by a majority of the entire membership of its governing body of a written request therefor, pay a capital investment incentive amount to the proponent of a qualified manufacturing facility for up to 15 consecutive fiscal years. A request for the payment of capital investment incentive amounts shall be filed by a proponent in writing with the governing body of an electing county, city and county, or city in the time and manner specified in procedures adopted by that governing body. In the case in which the governing body of an electing county, city and county, or city approves a request for the payment of capital investment incentive amounts, both of the following conditions shall apply:

(1) The consecutive fiscal years during which a capital investment incentive amount is to be paid shall commence with the first fiscal year commencing after the date upon which the qualified manufacturing facility is certified for occupancy or, if no certification is issued, the first fiscal year commencing after the date upon which the qualified manufacturing facility commences operation.

(2) In accordance with paragraph (4) of subdivision (d) of Section 51298, the annual payment to a proponent of each capital investment incentive amount shall be contingent upon the proponent's payment of a community services fee.

(b) (1) A city or special district may, upon the approval by a majority of the entire membership of its governing body, pay to the county, city and county, or city an amount equal to the amount of ad valorem property tax revenue allocated to that city or special district, but not the actual allocation, derived from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (4) of subdivision (e) that is in excess of twenty-five million dollars (\$25,000,000).

(2) For purposes of this subdivision, "special district" shall not include a school district or a community college district.

(c) A proponent whose request for the payment of capital investment incentive amounts is approved by an electing county, city and county, or city shall enter into a community services agreement with that county, city and county, or city that includes, but is not limited to, all of the following provisions:

(1) All of the provisions set forth in subdivision (d) of Section 51298.

(2) A provision that sets forth a job creation plan with respect to the relevant qualified manufacturing facility.

(A) The plan shall specify the number of jobs to be created by that facility, and the types of jobs and compensation ranges to be created thereby, and may include commitments for all of the following:

(i) The total dollar amount of the proponent's compensation to workers.

(ii) The hourly wage rate for each job classification.

(iii) The value and type of fringe benefits for each job classification.

(B) The plan shall include commitments by the proponent to provide both of the following:

(i) A hiring preference for local residents, community area residents, or disadvantaged workers.

(ii) A targeted hiring program, including all of the following:

(I) Meaningful outreach and recruitment activities to individuals facing barriers to employment or displaced workers.

(II) Hiring practices developed to provide fair access to and support the hiring of individuals facing barriers to employment.

(III) Directly support skill and career development for individuals facing barriers to employment. This may include collaboration with community groups and public entities.

(d) (1) Each county, city and county, or city that elects to establish a capital investment incentive program shall notify the Governor's Office of Business and Economic Development of its election to do so no later than June 30 of the fiscal year in which the election was made.

(2) In addition to the information required to be reported pursuant to paragraph (1), each county, city and county, or city that has elected to establish a capital investment incentive program shall notify the Governor's Office of Business and Economic Development each fiscal year no later than June 30 of the amount of any capital investment incentive payments made and the proponent of the qualified manufacturing facility to whom the payments were made during that fiscal year.

(3) The Governor's Office of Business and Economic Development shall compile the information submitted by each county, city and county, and city pursuant to paragraphs (1) and (2) and submit a report to the Legislature containing this information no later than October 1, every two years commencing October 1, 2026.

(e) For purposes of this section, the following definitions apply:

(1) "Capital investment incentive amount" means, with respect to a qualified manufacturing facility for a relevant fiscal year, an amount up to or equal to the amount of ad valorem property tax revenue allocated to the participating local agency, which excludes the revenue transfers required by Sections 97.2 and 97.3 of the Revenue and Taxation Code, from the taxation of that portion of the total assessed value of that real and personal property described in subparagraph (A) of paragraph (4) that is in excess of twenty-five million dollars (\$25,000,000).

(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) "Proponent" means a party or parties that meet all of the following criteria:

(A) The party is named in the application to the county, city and county, or city within which the qualified manufacturing facility would be located for a permit to construct a qualified manufacturing facility.

(B) The party will be the fee owner of the qualified manufacturing facility upon the completion of that facility. Notwithstanding the previous sentence, the party may enter into a sale-leaseback transaction and nevertheless be considered the proponent.

(C) If a proponent that is receiving capital investment incentive amounts subsequently leases the subject qualified manufacturing facility to another party, the lease may provide for the payment to that lessee of any portion of a capital investment incentive amount. Any lessee receiving any portion of a capital investment incentive amount shall also be considered a proponent for the purposes of subdivision (c).

(4) "Qualified manufacturing facility" means a proposed manufacturing facility that meets all of the following criteria:

(A) The proponent's initial investment in that facility, in real and personal property, necessary for the full and normal operation of that facility, made pursuant to the capital investment incentive program, that comprises any portion of that facility or has its situs at that facility, exceeds twenty-five million dollars (\$25,000,000). Compliance with this subparagraph shall be certified by the Governor's Office of Business and Economic Development upon the director's approval of a proponent's application for certification of a qualified manufacturing facility. An application for certification shall be submitted by a proponent to the Governor's Office of Business and Economic Development in writing in the time and manner as specified by the director.

(B) The facility is to be located within the jurisdiction of the electing county, city and county, or city to which the request is made for payment of capital investment incentive amounts.

(C) The facility is operated by any of the following:

(i) A business described in Codes 3321 to 3399, inclusive, or Codes 541711 or 541712 of the 2012 North American Industry Classification System (NAICS) Manual published by the United States Office of Management and Budget.

(ii) A business engaged in the recovery of minerals from geothermal resources, including the proportional amount of a geothermal electric generating plant that is integral to the recovery process by providing electricity for it.

(iii) A business engaged in the manufacturing of parts or components related to the production of electricity using solar, wind, biomass, hydropower, or geothermal resources on or after July 1, 2010.

(iv) A business engaged in the manufacturing of fuels, electrical parts, or components used in the field of clean transportation or the production of alternative fuel vehicles or electric vehicles.

(D) The proponent is currently engaged in any of the following:

(i) Commercial production.

(ii) The perfection of the manufacturing process.

(iii) The perfection of a product intended to be manufactured.

SEC. 3. Section 51298.5 of the Government Code is amended to read:

51298.5. (a) This chapter shall remain in effect only until January 1, 2035.

(b) A capital investment incentive program established pursuant to this chapter before January 1, 2035, may remain in effect for the full term of that program, regardless of whether this chapter becomes inoperative or is repealed.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure cities and counties can continue to use investment incentives and remain competitive with other regions that also offer robust incentives, it is necessary that this act take effect immediately.