



Gavin Newsom
Governor

Dee Dee Myers
Director

Chris Dombrowski
Chief Deputy Director

Scott Dosick
*Deputy Director,
California Competes
Tax Credit Program*

Jee Liyanage
*Assistant Deputy Director,
California Competes
Tax Credit Program*

Governor's Office of Business
and Economic Development
1325 J Street, 18th Floor
Sacramento, CA 95814
CalCompetes@gobiz.ca.gov
(916) 322-4051

California Competes

Committee Meeting

Thursday, June 15, 2023

1:00 p.m.

Department of Food and Agriculture
1220 N St
Sacramento, CA 95814

And via live stream via Zoom

MEMBERS:

Dee Dee Myers, *Chair
Director
Governor's Office of Business
and Economic Development*

Fiona Ma
State Treasurer

Joe Stephanshaw, *Director
Department of Finance*

Todd Walters, *Appointee of the
Senate Committee on Rules*

Madeline Janis, *Appointee of
the Speaker of the Assembly*

MINUTES

OPEN SESSION

A. Call to Order and Roll Call

Chair Myers called the meeting of the California Competes Tax Credit Committee (Committee) to order at 1:06pm.

Members Present: Chair Dee Dee Myers, Madeline Janis (representing the Speaker of the Assembly), Patrick Henning (representing the State Treasurer), Todd Walters (representing the Senate Committee on Rules), and Erica Gonzales (representing the Department of Finance).

Deputy Director Dosick stated that Deputy Director Gayle Miller from Department of Finance had a conflict but will be here approximately halfway through the meeting.

B. Approval of Minutes from April 27, 2023, Committee Meeting

Chair Myers asked if there were any questions from Committee Members or public comments on Item B with regards to the minutes from the April 27, 2023, meeting. Deputy Director Dosick confirmed there were no public comments. Member Janis complimented the California Competes team for excellent minutes. Mr. Dosick acknowledged Jonathan Sievers as the most recent minute taker. Chair Myers requested a motion for approval of Agenda Item B.



Action Moved/Seconded: Members Henning/Janis
Yes: Members Gonzales, Henning, Walters, Janis, Myers
No: None

C. Deputy Director's Report

- Agenda Overview – Agreements with 3 Businesses, Total Tax Credits \$46,333,333

Deputy Director Dosick reminded members of the public that if they wanted to make a public comment, then they may fill out one of the public comment cards located at the entrance of the room. All members of the public making comments were asked to provide their full name and organization (if applicable), and agenda item for which they have comments. Names and organization are optional and for identification purposes only, so that the Committee may introduce them when the Chair asks if there are any public comments for the current agenda item. Public commentators were requested to limit their comments to no more than 3 minutes.

Today, the Governor's Office of Business and Economic Development (GO-Biz) is recommending 3 tax credit awards totaling \$46.3 million. Each of the businesses recommended for an award today has certified in its application that this credit will be a significant factor in their decision or ability to come to or remain and expand in California.

Mr. Dosick stated that with the recent passage of the federal CHIPS Act, GO-Biz has an unprecedented opportunity to leverage CalCompetes to bring billions of dollars of investment and thousands of quality, full-time semiconductor development and manufacturing jobs to the state. The CHIPS Act requires a state and local match, and CalCompetes is the most valuable tool in the State's economic development arsenal. California has the ecosystem that is ready to maximize the investments, great jobs, and national and economic security benefits that will result from the forthcoming CHIPS and Science Act federal funding. These latest investments in the state's semiconductor and microchip manufacturing sector ensure that California will remain a global leader in technology innovation for decades to come.

Mr. Dosick commended and thanked the CalCompetes team.

D. Discussion and Approval of California Competes Tax Credit Agreements

Total Recommended Tax Credits:	\$46,000,000
Total Recommended Tax Credits after Adjusting for S-Corporation Law¹:	\$46,333,333

Chair Myers proposed removing Agenda Items D-1 and D-2 from consent for further discussion. She asked if there were any other items to discuss, other questions, or comments from the Committee or

¹ One-third of the California Competes Tax Credit may be utilized by an S-Corporation to offset the tax on net income at the S-Corporation level (R&TC §23803(a)(1)). The remaining two-thirds is disregarded and may not be used as a carryover for the S-Corporation (R&TC §23803(a)(2)(A)). However, the full amount of the California Competes Tax Credit is also passed through to the S-Corporation's shareholders (R&TC §23803(a)(2)(F)).



members of the public on the non-pulled item. Deputy Director Dosick confirmed that we did not receive any public comments on item D-3. Chair Myers called for a motion to approve Agenda Item D-3.

Action Moved/Seconded: Members Henning/Walters
Yes: Members Gonzales, Henning, Walters, Janis, Myers
No: None

E. Discussion and Approval of Recommendations for California Competes Tax Credit Recapture	
Total Tax Credits Recommended to be Recaptured:	\$29,665,362
Total Tax Credits Recommended to be Recaptured after	
Adjusting for S-Corporation Law²:	\$30,933,355

Chair Myers asked if there were any questions or comments from the Committee or members of the public on any of the items under Agenda Item E. Deputy Director Dosick confirmed that we did not receive any public comments.

Member Janis asked about Agenda Items E-14 and E-18. Ms. Janis wanted to know what was considered breach of agreement. She understood most of the recaptures were self-explanatory but wanted to know what the material breach was for these two companies.

Mr. Dosick stated that this is not the first time a company has been brought forward for recapture due to a material breach. He reminded the Committee that every company that signs a contract with CalCompetes, who is awarded a credit, must submit an annual report and provide materials as requested by the Franchise Tax Board (FTB) for their books and records review. He explained that if a company fails to provide that annual report and/or fails to provide the information required by FTB, we give them every opportunity to cure the breach (phone calls, emails, FedEx, and other communication mechanisms). If at that point, they still fail to cure the breach, then we bring it forward to the Committee with a recommendation for a full recapture.

Ms. Janis asked for clarification on what qualifies as a material breach as it is currently implemented. She asked for confirmation that if a company does not complete the report, or they do not provide the documentation then that would be a breach. She wanted to know if there were other documentation showing other types of breach of an agreement, would this be a similar strategy used.

Mr. Dosick replied that the contract has several requirements and at any point, if the company fails to uphold their provisions of the contract, that could be viewed as a material breach of the agreement.

² One-third of the California Competes Tax Credit may be utilized by an S-Corporation to offset the tax on net income at the S-Corporation level (R&TC §23803(a)(1)). The remaining two-thirds is disregarded and may not be used as a carryover for the S-Corporation (R&TC §23803(a)(2)(A)). However, the full amount of the California Competes Tax Credit is also passed through to the S-Corporation's shareholders (R&TC §23803(a)(2)(F)).



Deputy Director of Legal Affairs Van Nguyen, confirmed Mr. Dosick's response.

Chair Myers called for a motion to approve all items under Agenda Item E.

Action Moved/Seconded: Members Henning/Janis
Yes: Members Gonzales, Henning, Walters, Janis, Myers
No: None

F. Discussion and Approval of Recommendations for Modified California Competes Tax Credit Recapture

Total Recommended Tax Credits to be Recaptured:	\$646,000
Total Recommended Tax Credits to be Recaptured after Adjusting for S-Corporation Law³:	\$658,000

Chair Myers asked if there were any questions or comments from the Committee or members of the public on any of the items under Agenda Item F. Deputy Director Dosick confirmed that we did not receive any public comments. Chair Myers called for a motion to approve all items under Agenda Item F.

Action Moved/Seconded: Members Henning/Janis
Yes: Members Gonzales, Henning, Walters, Janis, Myers
No: None

D-1. Robert Bosch Semiconductor US Carbide LLC

At the request of Chair Myers, Deputy Director Dosick elaborated on Agenda Item D-1. He described the company and the proposed tax credit Agreement to the Committee. Robert Bosch Semiconductor US Carbide LLC (Bosch) is a manufacturer of semiconductors used primarily in electric vehicles. In exchange for a \$25 million California Competes Tax Credit, Bosch is proposing to create 140 new, full-time jobs and make \$1,246,000,000 in investments. Bosch has certified in its application that absent award of the California Competes Tax Credit, its project may occur in another state. The jobs Bosch is committing to create are in classifications such as operator, technician, shift lead, and engineer.

Bosch indicated in its application that it currently owns two semiconductor manufacturing facilities in Germany. It is seeking to expand production to North America. It is considering the proposed expansion in Roseville, California. Bosch stated that it is in the process of acquiring TSI Semiconductors LLC and TSI's existing fabrication site in Roseville.

³ One-third of the California Competes Tax Credit may be utilized by an S-Corporation to offset the tax on net income at the S-Corporation level (R&TC §23803(a)(1)). The remaining two-thirds is disregarded and may not be used as a carryover for the S-Corporation (R&TC §23803(a)(2)(A)). However, the full amount of the California Competes Tax Credit is also passed through to the S-Corporation's shareholders (R&TC §23803(a)(2)(F)).



Bosch indicated that it intends to use the California Competes Tax Credit to qualify for the maximum allowable Federal CHIPS for America Act (CHIPS Act) funding. The CHIPS Act requires that the project is offered incentives from the state where the project is located. The combined incentives will assist Bosch in making the project financially viable. It indicated that if Bosch does not receive the required state incentives needed for its CHIPS application that it will have no choice but to consider developing a facility in a state that provides the needed incentives to make the project financially viable.

Mr. Dosick introduced Max Haeusler, Vice President Manufacturing Projects; Michelle Zell, Human Resource Director; Tracy Crane, Leader, EVP Compensation and Change Management; and Steve Borgsdorf, Senior Legal Counsel, who were available to answer the Committee's questions. Mr. Borgsdorf thanked the Committee for its consideration and welcomed questions.

Member Henning stated that he appreciates this proposition coming before the board. He expressed his excitement for the company to work with local construction workers in the area and wants to see more of this type of work in the future. He stated that he loves California being a leader in semiconductors and being able to hire construction workers and the well-educated workers of the state.

Member Janis asked Bosch if it was in the process of acquiring an existing factory, TSI Semiconductor LLC (TSI) and asked how many employees are currently at TSI. Mr. Borgsdorf confirmed that they are in the process of the acquisition and there are about 215 employees at TSI.

Ms. Janis asked if Bosch could elaborate on their state-of-the-art product that will be replacing TSI's legacy product. Mr. Haeusler stated that the foundry serves about 30 to 40 smaller customers such as startups and universities, but it does not have exact knowledge regarding how TSI's products are ultimately used. The proposal is to invest in manufacturing silicon-carbide chips. He explained that silicon-carbide is a fairly new, wafer-based substrate. The chips it will make are called Power MOSFET which are switches that can control high voltage systems in electric mobilities and charging systems. The advantage of silicon-carbide chips over standard silicon basis chips is that they are more robust in the sense of heat which offers a longer range of battery life per charge and will therefore add to the increased mobility and economic improvement of the existing switches. He explained that if the transaction closes, over time this will lead to a replacement of the existing business as the new processes come in. There is still a semiconductor crisis so there is still a delay in ordering, and it will be about two years until they are able to implement the new process.

Ms. Janis stated that the semiconductor industry can be complex but recognizes that it is important to everything that we use. She noted that CalCompetes is about creating quality jobs in California and expressed concern about the TSI takeover and the halt in production. Mr. Haeusler responded it will not stop production immediately because there are existing customers, and it would be unfair to stop without warning as they would have no supply. He stated that Bosch intends to contact the existing customers and take over the responsibilities of TSI until it can no longer support due to space capacity



constraints. This will likely occur a little after a year and will allow enough time for Bosch and the customers to transition. Customers will have the opportunity for last time buys and stocks until they are able to find a new fabricator. He indicated that TSI's current process is also done by other foundries and customers will be able to change to another supplier.

Ms. Janis asked what will happen to the 215 TSI workers. Mr. Borgsdorf explained that the transaction is an asset purchase. As part of this transaction, Bosch will acquire the real estate of TSI and certain other assets, and the goal is to hire those employees. The fact that there are 200 highly qualified local workers is one of the main value drivers for Bosch. He stated that Bosch plans to hire them but due to the nature of the transaction the process is not automatic. The workers also have a choice whether they want to work for Bosch. Following the transaction, the goal is to hire them all and continue with the existing expertise and workforce.

Ms. Janis asked if the 140 new proposed jobs are in addition to the 215. Mr. Borgsdorf replied in the affirmative. The existing workforce will be needed to keep the operations going and to help grow but the overall growth pattern for the facility would require additional workers beyond the 200. Ms. Janis asked if Bosch is committing to not lose any of the existing jobs in the transfer process. Mr. Borgsdorf replied that is the goal, but it is also contingent on the workers themselves, whether they choose to remain with Bosch. Ms. Janis asked if Bosch is giving any kind of commitment to offer those employees a job. Mr. Borgsdorf stated that apart from a few positions such as CEO and CFO, it plans to hire everyone that wants to work for Bosch.

Ms. Janis asked if Bosch is looking at any programs to help retrain the existing workers. Mr. Haeusler stated that this will be part of its program. He indicated that as part of the transition, it plans to transfer over its new processes and have an extensive training for the TSI workforce, the old technical workers like technician services and operators. He expects extensive training to last several months, especially for technical workers, and may take place in Germany or onsite. Ms. Janis asked if the existing workers do not qualify for the new jobs. Mr. Haeusler replied that they are not a hire-and-fire company. They are committed to people and will seek all opportunities possible to find a suitable job for all workers including those with limited abilities.

Ms. Janis asked Mr. Dosick when an applicant is proposing to take over an existing factory, if CalCompetes has considered including worker retention language to ensure that the company does not let go of more workers than they are going to hire. Mr. Dosick replied that there were numerous examples over the course of the California Competes Tax Credit Program, where a company has acquired another company after being awarded; though it is not exactly like the current situation with Bosch. In those situations, we amend the agreement to incorporate all of the acquired employees into the base year of the agreement. If a theoretical company has 100 employees when they apply for CalCompetes and they acquire another company with 50 employees, the base year in that contract will increase to 150, which will reestablish the base year and the company will have to have a net increase



equivalent to what they committed to in the original agreement. He explained that for Bosch, if it proceeds with acquiring TSI, at that point there would be a conversation and we would have an amendment to their agreement that would incorporate all of TSI's employees and reestablish a new base year, thus keeping the net increase the same. Bosch will still need to create all of the new jobs that they committed to, above and beyond the ones they acquired from TSI. Ms. Janis asked Bosch if it would be willing to incorporate the employees as Mr. Dosick had mentioned. Mr. Dosick clarified that this has been discussed but this cannot be done now, as it cannot incorporate employees into the Agreement that are not currently Bosch's employees. This can only be done after the acquisition takes place. Mr. Borgsdorf confirmed Bosch is in agreement with this process.

Ms. Janis asked Bosch if they have another footprint in the United States. Mr. Borgsdorf confirmed that they have been in the U.S. since 1906. Ms. Janis asked how many employees Bosch has in the U.S. Mr. Borgsdorf answered that they have about 16,000 employees. Ms. Janis asked if any of the workers are unionized. Mr. Borgsdorf stated they have a union represented workforce at two of their facilities in Michigan, though about 90% of their workforce is not unionized. Ms. Janis asked if the workers in Germany are unionized. Mr. Borgsdorf confirmed they are. Ms. Janis asked if Bosch was opposed to unionized workers. Mr. Borgsdorf responded that they were not.

Ms. Janis inquired about their model of apprenticeship and asked if they will try to get that licensed in California or if they thought about building out a California registered apprenticeship program. Ms. Zell stated that as the company plans their strategy, they will consider all options. Their apprenticeship program exists at different levels for the hourly workforce, digital talent, and the higher-level engineers. She stated they are reskilling associates into these new roles in order to grow, develop, and fill those labor gaps. As more companies are looking to hire engineers at a higher level, Bosch is looking to build the talent pool in those areas as well and therefore would consider apprenticeships. Ms. Janis asked would Bosch consider at the production level as well. Ms. Zell answered yes.

Ms. Janis stated that apprenticeships in California are similar to the German model, in that they are most successful when they are in partnership with unions. Bosch will be making chips for electric vehicles so that would be the United Auto Workers (UAW). Ms. Janis asked if Bosch would consider working with a union partner on building registered apprenticeships. Mr. Borgsdorf responded yes but noted that there will be steps that need to happen due to the nature of the transaction. Bosch would need to hire the workforce first and then if the workers choose to organize with a union, then that is their right. He stated it is their choice who to do that with and after these steps have taken place then we can engage in further discussions.

Mr. Henning acknowledged that this is a multifaceted firm and that there may be more than one union that would be a direct fit. Ms. Janis clarified she is referring to the permanent workers and not the building trades. She stated that in Germany, companies are required to be neutral and there are such things as neutrality agreements where you agree to be neutral. She asked Bosch if they would be willing



to meet with UAW to talk about a relationship to build things like training and work together to create a workforce and infrastructure that we would all love to see. Mr. Borgsdorf responded they would, so long as the steps previously laid out have taken place then they will be willing to meet with UAW or whichever applicable union(s) to have the conversation, at the appropriate time. They must close the transaction and hire the workforce first. Ms. Janis asked if they would be willing to meet with them sooner. Ms. Zell responded if the associates choose to be represented by a union, their choice of representation will be honored by Bosch and that it is their right under the law and Bosch will not interfere with that, but it would be their choice. They will not usurp that right but will respect their right to choose their representation. Ms. Janis commented that agreeing to neutrality is the right thing.

Ms. Janis inquired about the demographics of the company. Ms. Zell stated that the female representation of its total workforce is roughly 29%, and people of color represent around 34% within the hourly workforce population. She clarified that this excludes the TSI employees. Bosch's hourly workforce population represents about 36% of their total 16,000 U.S. associates and within this category, about 35% are female, and almost 48% are people of color.

Ms. Janis stated that Bosch described a lot of efforts on the hiring front to screen for bias, to reach out and to support people. She stated that in California, they cannot require companies to focus on people of color and women, but there are certain extremely disadvantaged populations like people coming out of the criminal justice system or foster care, who require extra support to attain a quality job. Ms. Janis asked if there would be extra support for TSI employees who may not meet Bosch's criteria and asked if there would be extra support to help them be successful or to apply for Bosch's jobs. Ms. Zell indicated Bosch has diversity, equity and inclusion (DEI) embedded in their global values. The company has a dedicated DEI officer who partners with leadership, hiring managers, and talent acquisition staff to reduce unintentional and unconscious bias. They provide training, development, and learning for the entire workforce to be aware and conscious of how that might impact their hiring and retention strategies. Ms. Zell stated that the workforce is evolving, and Bosch wants to be able to meet those changes. They have recently partnered with a number of national organizations to directly recruit from underrepresented communities including the National Society of Black Engineers, Society of Hispanic Engineers, and Society of Women Engineers.

Member Walters asked if Bosch anticipates any down time during the initial takeover of TSI and what would happen to those employees affected during that time. Mr. Haeusler stated there may be some down time while the company is upgrading the facilities and they are limited by the law on what they can do between signing and closing, but it is not the employees' fault and there will not be negative consequences for the employees. Mr. Walters indicated that in some of the industries that he works in, some employers sign a Labor Peace Agreement. He recommended that Bosch look into it as it may come up in future discussion.



Chair Myers asked if there were any more questions or comments from the Committee or the public. Mr. Dosick stated the first public comment is Tom Hintze with UAW and then Sara Flocks with the California Labor Federation.

Mr. Hintze identified himself as an international representative of UAW. He stated that UAW appreciates the opportunity to comment on Item D-1 regarding Bosch's application for a CalCompetes Tax Credit and they appreciate California's investment in manufacturing. UAW is committed to building high quality jobs in auto manufacturing in California which includes jobs in the semiconductor industry. According to Bosch, every new vehicle will contain an average of 25 Bosch chips by 2025; an amazing statistic. They are the union that currently has collective bargaining agreements with Bosch in Michigan. His members are excited about the opportunity to manufacture semiconductor chips in the U.S. and in California to increase electric vehicle adoption to help fight climate change. In 2022, the global revenue of the semiconductor industry reached \$600 billion, doubling in size over 10 years. This technology underpins the electronics of today and tomorrow, from electric vehicles to consumer electronics, quantum computing, advanced technology, defense, and more. Its members know how important it is for jobs in this critical industry to be high quality jobs and provide a pathway for families to reach the middle class and have strong protections in the workplace. The stated purpose of the CalCompetes program is to attract, create, and retain high value employers in California that provide full-time jobs with good wages and benefits. GO-Biz is required by statute to consider if the credit will help businesses create new full-time jobs that might not otherwise be created in the state. He stated that in order to maximize California's \$25 million investments that is proposed to be awarded to Bosch, they believe that there should be a Community Benefits Agreement to ensure that the community benefits by the expenditure of its own taxpayer dollars. He stated that he invites Bosch to join UAW to work together to develop a Community Benefits Agreement which includes a plan to hire people from the local community, who would otherwise have barriers to employment, and to create a joint training program and potentially an apprenticeship program to make sure that the workers have the training and the skills that they need to succeed on the job, including retraining of the TSI employees who will be transferred over. The need for training is extra important in the semiconductor industry where the industry is expecting a shortage of 70,000-90,000 skilled workers and in a workplace where hazards include exposure to solvents, acids, caustic solutions, and carcinogenic substances. Training is also needed to empower workers to assert their right to a healthy and safe work environment. UAW has tried to engage Bosch to discuss partnering around a Community Benefits Agreement but has been unable to talk to the company. A Community Benefits Agreement would not only help workers but would also make Bosch more competitive for future funding that it may seek from the federal government. As part of the CHIPS Act, the Department of Commerce strongly encourages state incentives that support workforce development and education and benefit the community, not just incentives that benefit companies. This is exactly what UAW is trying to do. He explained that according to UAW, manufacturing jobs are not good jobs, but high road manufacturing jobs sustain families and communities for decades and build the middle class. UAW urges Bosch to discuss a Community Benefits



Agreement to ensure that the jobs Bosch creates with California's taxpayer dollars will be good jobs that sustain the workers they hire and the communities for decades to come.

Sara Flocks introduced herself as a representative of the California Labor Federation (CLF). She indicated that they represent 2 million members of the state of California, with 1,200 affiliated unions in private and public sector, building trades, manufacturing, and every industry in between. She thanked the Committee for its investment in manufacturing. High road, quality manufacturing union jobs, are important to the state of California. They have such an impact on our economy with a huge multiplier effect and California can rebuild its supply chain at the same time. We are committed to making sure that the jobs that are coming into California are good union jobs, wall to wall. It is important that if there is construction or refurbishing, that our union brothers and sisters in the building trades are used, and that the permanent manufacturing jobs in California are also unionized. Ms. Flocks urged Bosch to have conversations with the United Auto Workers and encouraged other companies that come before CalCompetes to partner with unions and find ways to create good union jobs and rebuild the middle class in California.

Deputy Director Dosick introduced Kevin Ferreira with the Sacramento Sierra Building Trades Council.

Kevin Ferreira introduced himself as the Executive Director of the Sacramento Sierra Building Construction Trades Council. Mr. Ferreira stated that he is here in support of Bosch's request for a California Competes Tax Credit. He asked that the Committee approve Bosch's request. The name Bosch is a premium product and with Bosch partnering with the building trades, they have sought out the highest skilled and trained construction workers in this region. When Bosch states they intend to do something, it is followed by, in our experience, delivery. When Bosch states that they are for the permanent workers, that in our experience, Bosch will follow through with that intent. He highly supports Bosch's request and urges the Committee to do so as well.

Ms. Janis asked Bosch with regards to a Community Benefits Agreement, if they would be willing to meet and discuss a partnership with an organization like UAW to talk about local hiring and training. Mr. Borgsdorf replied that a Community Benefits Agreement is something they should follow up on with the right group of people, at the right time. Ms. Janis asked if they would take Mr. Hintze's call after this meeting to get that conversation started. Mr. Borgsdorf responded when the time is right then they can have a conversation. Ms. Janis expressed that she hopes what Mr. Ferreira noted about Bosch's intention to do the right thing for California and for this emerging industry is true. She stated that it would be to Bosch's advantage to consider a Community Benefits Agreement as well as a Project Labor Agreement, so when they apply for the CHIPS fund, the Biden administration and other departments look favorably on giving points and credits.

Chair Myers asked if there were any more questions or comments from the Committee or the public. Hearing none, she requested a motion for approval of Agenda Item D-1.



Action Moved/Seconded: Members Henning/Gonzales

Yes: Members Gonzales, Henning, Walters, Janis, Myers

No: None

D-2. Akash Systems, Inc.

At the request of Chair Myers, Deputy Director Dosick elaborated on Agenda Item D-2. He described the company and the proposed tax credit Agreement to the Committee. Akash Systems, Inc. (Akash) is a semiconductor designer and manufacturer. It uses a proprietary gallium nitride-on-diamond process to manufacture semiconductors used in power amplifiers, satellite radios, and transmitters. In exchange for a \$20 million California Competes Tax Credit, Akash is proposing to create 339 new, full-time jobs and make \$62 million in investments. Akash has certified in its application that absent award of the California Competes Tax Credit, its project will occur in another state; and, it will terminate all or a portion of its employees in California or relocate all or a portion of its employees in California to another state. The jobs Akash is committing to create are in classifications such as, production operator, process technician, product developer, sales, marketing, human resources, recruitment, manager, legal, administrator, factory supervisor, repair and maintenance.

Akash indicated in its application that it is researching locations to establish a manufacturing facility for its semiconductors. It is considering the proposed expansion in Oakland, California. Akash stated that without the California Competes Tax Credit, it will not be eligible for CHIPS Act funding, resulting in the project not being fully funded, and forcing it to secure those funds from Texas instead. It indicated that it currently operates a research, design, and manufacturing facility in Texas. However, Akash indicated that if it is awarded a California Competes Tax Credit, it will commit the jobs and investment growth to California instead of Texas.

Mr. Dosick introduced Felix Ejeckam, PhD, Co-founder and CEO; and Ty Mitchell, PhD, Co-founder and Managing Director, who were here to answer the Committee's questions.

Member Erica Gonzales excused herself and Member Gayle Miller joined in her absence to represent the Director of Finance.

Mr. Ejeckam thanked the Committee for its consideration.

Member Henning asked about the exponential growth pattern for tax years 2024 to 2025. Mr. Mitchell explained this is timed around the completion of the facility. They are building a new semiconductor fabrication facility in Oakland and the facility is expected to be completed in 2025. That is when the hiring picks up because Akash will add production workers and technicians at that time.



Member Janis expressed her excitement that Akash is building in Oakland. Oakland is a city that needs something like this. She stated she was impressed with the way they laid out their recruitment and hiring plan, culture, accountability, and discussion of apprenticeships. She acknowledged that Akash indicated it was thinking of registering with the Division of Apprenticeship Standards and Department of Labor. She asked if it has thought about a particular type of apprenticeship program and will they develop and partner with unions and groups in the community. Mr. Ejeckam explained that they have been working with Semiconductor Equipment and Materials International (SEMI) in developing their apprenticeship strategy. There are a number of organizations they are considering but have not made a decision on which one they will use. They are in the process of developing the details of their proposal to CHIPS, but this is critical for them because they plan on hiring many people who are not from semiconductor backgrounds. He acknowledged that people would need training and from their point of view, apprenticeship is a very effective way to train.

Ms. Janis asked for clarification on whether Akash is considering both a pre-apprenticeship and an apprenticeship program since manufacturing is a technical industry and to reach their goal, having both programs would seem to be a model that works well. Mr. Ejeckam noted that the requirement is not as burdensome as one might think because a lot of the jobs that they will hire for, such as technicians or those on the floor, do not have to have any technical experience from the industry coming in. People who had experience working in a kitchen who are very good with their hands and juggle different things at the same time would be perfect for the kinds of jobs for which Akash is hiring. He indicated the need for a pre-apprenticeship is minimal.

Ms. Janis expressed appreciation that Akash is hiring people that are coming out of the criminal justice system, especially when considering some of the issues such as over policing communities of color, and how many people are prohibited for life from getting a decent job. She acknowledged Akash has time to plan but asked if they knew what this would look like. Mr. Ejeckham responded that he hopes to sign some agreements before it submits its full application but that these are important matters to Akash. Akash has been in Oakland for the last six to seven years. They are excited at the possibilities in hiring people from the community and people who have formerly been in the criminal justice system.

Member Walters indicated he was an apprentice meat cutter at one point. He stated when he looks at our society now, there are a lot of young people coming out of college who are college poor for half their life. Apprenticeships and trades are becoming careers again. He asked if Akash has looked at reaching out to local high schools and junior colleges to work the apprenticeship programs through there. Mr. Ejeckham replied they are looking at SNAP and a few other programs as a way to feed their company with talent and get them in their system and put them through the apprenticeship program.

Chair Myers asked if there were any more questions or comments from the Committee or the public. Mr. Dosick stated there were four public comments on this item.



Tim Frank introduced himself as a representative with the Alameda County Building and Construction Trades Council. He expressed his support for Akash's application. Mr. Frank indicated that they have collaborated with IEU-CWA and have had outreach with Akash and wanted to see that this will be wall to wall jobs including both the construction and permanent jobs, covered by labor agreements. They have had very productive conversations with Akash, and they have a verbal agreement around signing a letter of intent with the expectation that it will be included as an exhibit in the application to the Department of Commerce. He stated that they think this is a great project and will be a very competitive bid. Based on the guidance from the Department of Commerce, it cares about these things and Akash will be able to provide a very compelling case. This project will be a tremendous benefit to the city of Oakland especially bringing the Silicon Valley to Oakland and the East Bay. He indicated they will have an opportunity to discuss the Project Labor Agreement and include a hiring and targeting local area component, which Oakland can hugely benefit from. The Building Trades has worked with community-based organizations to help create a pipeline and they are happy to share with Communication Workers of America (CWA) and they have appreciated their offer to help build those relationships. There is tremendous opportunity for both the construction and permanent jobs to provide family sustaining careers for residents of Oakland. He encouraged the Committee to support this project.

Robert Longer introduced himself as a staff representative of the CWA District 9. He stated that today he is speaking on behalf of IEU-CWA, which is their manufacturing division, which represents over 40,000 workers across the country in manufacturing. Both CWA and IEU-CWA are deeply invested in ensuring that state and federal investments being made in the semiconductor industry through the historic CHIPS Act along with state funds like the California Competes Tax Credit go to high road actors committed to being good community partners and creating good family sustaining jobs. The semiconductor industry has a long and fraught history with environmental and safety hazards, lack of diversity in its workforce, and poor job quality for manufacturing workers in particular. It is critical to begin to reshore this work and ensure that the state and federal investments is supporting safe and equitable development in our communities. He indicated that IEU-CWA and the Alameda County Building and Construction Trades Council have met with the CEO of Akash to see what ways it can partner to ensure that the construction and the manufacturing jobs at Akash have a good path to good union jobs on the proposed project and that their robust labor management training and apprenticeship programs ensure a pipeline of trained workers from our communities, Oakland in particular. Akash is committed to signing a community benefits and labor peace agreement with our union; a private agreement that will demonstrate the company's commitment to being a good community partner. As part of this agreement, Akash has committed to strong hiring and training programs and therefore they support Akash's application for the tax credit.

Sara Flocks reintroduced herself and reminded everyone that she is a representative of the CLF. She stated that Akash is a model company that is doing all the right things, wall to wall. As Building Trades and CWA expressed, CLF is very happy to support this application and similar ones in the future.



Chair Myers asked if there were any more questions or comments from the Committee or the public. Hearing none, she requested a motion for approval of Agenda Item D-2.

Action Moved/Seconded: Members Henning/Janis

Yes: Members Miller, Henning, Walters, Janis, Myers

No: None

G. Discussion Items

1. California Revenue and Taxation Code 23689(c)(7)(E), (F) and (G)

Member Janis stated that she would like to discuss the new language that is going to apply to the new credit applications starting in the 2023-2024 fiscal year. The legislature added additional provisions around both California values and incentivizing good jobs. She inquired how will GO-Biz implement these provisions. Regarding subsection (E), for allocation periods beginning with the 2023-2024, GO-Biz “may” consider other factors including but not limited to the taxpayer’s willingness to relocate jobs into California from a state that has enacted a law that either: voids or repeals anti-discrimination protection based on gender, authorizes or requires discrimination against same-sex couples, gender, identity orientation, etc., or interferes with reproductive rights. She asked how CalCompetes is thinking about taking this into account because she does not understand the point system or how such factors are calculated and considered in the award proposals and decisions. She inquired if a California company is committed to this state and wants to expand in this state, how are they compared to a company who is in Texas and is willing to come to California. She asked how CalCompetes will weigh those things in the application.

Deputy Director Dosick replied that GO-Biz and the administration were thrilled to work with legislators to incorporate these provisions into the CalCompetes statute last year. He indicated this July’s application period will be the first time CalCompetes may ask these questions as the provisions would not go into effect until the start of the 2023-24 fiscal year. Mr. Dosick explained that they are in the process of updating the online application to incorporate these questions almost verbatim from statute so that companies will have the opportunity to share that information. First and foremost, CalCompetes will obtain that information up front rather than that information coming out later in the application process. We will know early on that this is a factor for these companies. With the addition of the new factors, the program now has 15 statutory criteria with one overall, arching criterion, which is that GO-Biz shall evaluate the extent to which the credit will influence the applicant’s ability or willingness to create new full-time jobs that would otherwise not be created by the applicant or another California business. GO-Biz wants to ensure that the CalCompetes program remains a true incentive and not a subsidy; to incentivize the job creation that otherwise would not happen if not for the CalCompetes Tax Credit. He explained that once they pass that threshold question, they look at all the other evaluation



questions and have a holistic review. He noted that over the years, the program has seen a myriad of businesses from every part of the state and numerous sectors. To understand this process is to compare apples, oranges, and kumquats. He expressed that he hopes CalCompetes will have the problem Ms. Janis is envisioning where we have a large employer proposing to grow and expand in California and a large employer from outside of California proposing to bring jobs here. Over the last few application rounds, CalCompetes has not brought forward many applications because they have not met the existing criteria, let alone the new ones that are coming to play. Many applications have not demonstrated that this credit will be a material factor in the creation of new jobs that no one else would otherwise create in California. By having this language in the statute, it allows CalCompetes to ask the questions in the application and include it as part of the review and to make sure to share that information with the Committee, if it reaches that point. He noted that CalCompetes has always wanted companies from other states to come back to the Golden State, so this provides another tool in the arsenal to evaluate these applications.

Ms. Janis stated she does not really understand, especially in the case of section (F), because it has specific criteria such as committing to treat the workforce fairly, creating quality full-time wage and salary jobs, training, career ladders, apprenticeship, and pre-apprenticeship programs. She mentioned that CalCompetes does not have a minimum wage other than the state minimum and we evaluate whatever information the applicant puts forward. Over the years, especially the few recent years, the criteria around training and apprenticeship are like apples and oranges. Some companies offer a website to look at while others have hands-on classroom training with certifications. She indicated that as a Committee member, she only has information that is provided on the page but she has no idea how any of the applications are scored. She commented that based on a holistic view approach, CalCompetes makes the decision about what to recommend and what not to recommend. She indicated in her years of working on procurement and contracting, a company can get extra points for committing to good wages and benefits, training, and apprenticeships. With a point system, it makes sense for communities and unions to go to employers and tell them to apply for a California Competes Tax Credit because they will get extra credit for these things if they work with them. She asked if CalCompetes will implement regulations or can there be a process where CalCompetes be more specific about what a company can gain by getting a joint labor management letter of support. It would be really helpful if CalCompetes can be more specific, then we would have more wins.

Member Henning expressed that he appreciates a scoring system but as he has seen contracts before him, he would prefer different things to be evaluated. He explained that the economies in Calexico and Inyo are very different than in San Francisco, Los Angeles, or San Diego. It is nice to know how far you get along in the process, but this Committee should take those types of economies into consideration and take into account those individualities because there are some industries like semiconductor companies that might be preferable, and this allows the Committee to weigh the values differently.

Ms. Janis stated that she agreed with Mr. Henning, but the challenge is that the Committee does not get to weigh them. She stated that she wants to go to companies and tell them "here is an advantage for



working with unions or working with community groups,” and then we are going to weigh that in our award.

Chair Myers stated that the legislature has given a relatively lengthy list of things that are beneficial to California such as good wages and benefits, training programs, and attracting companies with California values. The first among all of those, by statute, is companies that are willing to invest and create jobs in low income and high unemployment areas. She explained that when you start with that as the most important criteria in trying to evaluate these companies, you do have to be somewhat subjective if you want to help those companies. To Ms. Janis' point, there is no reason that companies cannot be incentivized to produce a letter in support of their application, but they will not get a specific number of points the way the program is structured but it goes into the body of information that the staff considers. The program has three application periods a year and if you add the grant program on top of that, that is four application periods and that is a lot of work, research, and follow up questions that the staff asks of each of these companies and evaluates that information. We trust the staff to do that work for us and that is why we do not see all of the information. Then, we evaluate the companies that they suggest are worthy of an award and we can support those or not, and we have done both over the years. It is important to maintain that flexibility so that we can find companies that genuinely would not be here, invest, or create jobs in California, and hopefully many of them or some of them at least will be in those economically challenged areas of California so that we can create jobs in a balanced way. She stated that a point system is going to potentially favor more evolved and successful companies that already can make the kinds of investments that Ms. Janis is suggesting. Some of the companies that they support bring a lot of other things to the table and we encourage them to do more of the things like supporting the workforce through expanded training programs and DEI through this process. She explained that it is part science and a little bit of art as we go forward, and that is the way it has been done and hopefully has provided a good mix of companies.

Ms. Janis stated that the legislature indicated in section (G) that they want GO-Biz to ensure the administration of the credit is a model of accountability and transparency. Chair Myers expressed that she is proud that it is. Ms. Janis replied that she does not agree with that. She commented that there is incredible opacity currently. She indicated that in her eight years of being on this Committee, an applicant has been removed from the agenda but there has not been a no vote on an applicant. Chair Myers explained that was equivalent to a no vote, that if a company was proposed but did not receive an award, that decision by the Committee to not move forward with an application is in effect a 'no' vote.

Chair Myers asked Mr. Dosick to explain the accountability process. Ms. Janis asked Mr. Dosick to focus on transparency. Mr. Dosick explained that the CalCompetes statute does require that GO-Biz post on its website the awardee list which includes the name of the company being awarded a credit, project location, nature of the work, the number of jobs they are committing to, the amount of credit they have been awarded, and the amount that is recaptured at the end of the agreement, if any. He stated this is online and you can search this sortable database and see all the companies that have had all or a



portion of their credit taken back, which is fairly unique for a state incentive program of this size in any state of the country. CalCompetes has public meetings where the agreements and recaptures are approved, and the public and Committee members can ask the company questions or make public comments. He agreed with Chair Myers that the CalCompetes program remains a model of transparency and accountability.

Chair Myers asked Mr. Dosick to explain how the FTB makes sure the companies make good on their commitments of hiring and investments. Mr. Dosick shared that before the pandemic hit, Ms. Janis and Member Walters were able to participate in briefings with the FTB where FTB walked through their rigorous books and records review process for all CalCompetes awards. The statute does require FTB to do a books and records review for all awardees, with the exception of the ones that used to qualify under the old small business exemption. He stated that for the most part, FTB has been reviewing every company that has ever been awarded a credit at some point and usually multiple points along the way; validating the information that they provided in the application, reviewing the information that they are submitting as part of their annual compliance, correcting information they received, ensuring the company only claims on their tax return the credit to which they are actually entitled, and in some cases, requiring them to repay any credit they may have claimed previously due to a math error or some other error where they did the calculation wrong and claimed a credit to which they were not entitled.

Ms. Janis agreed that FTB does a great job in verifying the wage amount and the number of jobs, but that is all they are able to do. She stated that FTB is all about quantification and looking at payroll and the like. She asked what about a company that is violating health and safety laws in violation of their contract, or if a company is not providing any training at all, or not following through with any of their commitments other than the wage and the jobs. There is no way for a worker, for a union, for a community group, or for us Committee members to know. She suggested with the new language we can modify our contract language or do something else to quantify additional good job commitments where we can hold the companies accountable. Otherwise, when a company is violating any other aspect beyond the wages there is no way to know.

Chair Myers stated that there are other ways to hold companies accountable, but we are not an accountability organization and we do not have the ability to enforce, investigate, or to do any of the things that some of the other state agencies can. We expect employers to live up to the agreements and that is why we track the ones that we can track through FTB, and we recapture the ones that do not. She expressed that she wishes we would see fewer recaptures and more employers make good on the commitments they make. She stated that sometimes they do not provide the information, so we do not know the reason and it may be the business environment, the business plan did not work out, business failed, or they do not grow as fast as they would like and so we hold them accountable for that. We have seen that companies attempt to make good faith efforts to meet the commitments they set forth and we hold them accountable by tracking it, taking back the money, or do not award them the tax credits if they do not meet those goals. There are other state agencies that can hold companies accountable for other things and they have the power to investigate, regulate, but this program is an



exemplary model of transparency and accountability. She stated that this program is not perfect, but she challenges anyone to find a program that does a better job. We are always looking for ways to improve and get better, but given the resources, the mandates of the program, and the commitment and dedication of the team who work hard year-round, it is untrue to suggest this program does not have transparency and accountability.

Ms. Janis suggested implementing a worker complaint portal or some way to get other information. Chair Myers replied that there are worker complaint portals in other places in the state, but we do not have the capacity to monitor and that is not our mandate. She explained that we do not have the ability to investigate and if a worker files a complaint we are not authorized to find out if that complaint is valid, invalid, or in any way connected to a criterion for award of the tax credit so this is not a feasible path. Ms. Janis replied that she was talking about enforcing the contracts that we have. Chair Myers responded that we do not have the ability to investigate and that if someone made a complaint, she is not sure what ability we have to do about it. Ms. Janis stated that this could be asked for in the next budget cycle. Chair Myers replied not with the budget we currently have.

Ms. Janis asked if we were going to do any regulations on the new language. Mr. Dosick replied that if we are asking the questions in the application verbatim out of the statute, the only point of doing regulations would be duplicative and therefore unnecessary. Deputy Director Nguyen explained that the purpose of regulation is to make specific the generalities of a statute, but this statute is rather specific, so the intention is to ask the questions that are identified by the statute. He stated if there is need for greater specificity because we find some vagueness then we can evaluate it at that point in time, otherwise it appears to be rather specific. It is a policy choice if we decide that we need greater specificity for some reason. Ms. Janis proposed that we consider regulations that would make more specific how this information will be taken into consideration by GO-Biz. Chair Myers acknowledged Ms. Janis' proposal and stated that GO-Biz will take that under advisement.

Chair Myers asked if there were any more questions or comments from the Committee or the public. Hearing none, she moved on to the next discussion item.

2. California Revenue and Taxation Code 23689(k)

Member Janis stated that the way the statute was set up prior to last year's amendment in (k), meant she believed we are subject to the California Public Records Act (PRA) and the information that GO-Biz gets such as the annual reports, email correspondences, staff reports, and all other information is public information subject to the PRA. She has always acted on that basis. She did not learn about (k) until she got an email from Deputy Director Dosick where he had pointed out section (k) applies this other section of the Revenue and Taxation Code that had nothing to do with CalCompetes before, but now, if any representative of the state who shares, even the staff report, is subject to misdemeanor prosecution. She stated that staff reports should be public information. The language in (k) says basically that Section 19542 applies to everything in CalCompetes. At the last meeting she had asked Mr. Dosick if this meant



everything that is not on the CalCompetes website, and he had replied yes with the exception of the few items such as the link to the agenda, link to the contract, and amount of credit. She stated that based on this prior explanation, if she shares the staff report or if workers at one of the facilities wants to know what the company is saying versus what they are doing, and if they send a PRA request, they are told it is secret. She asked who had proposed section (k) and how did it get in there.

Mr. Dosick responded that the Revenue and Taxation Code 19542 that Ms. Janis is referring to is basically FTB's confidentiality code, which states they may not share confidential taxpayer information. The CalCompetes statute prior to last year referenced Section 19542 multiple times. He noted that the language stated "notwithstanding 19542, GO-Biz may" provide this or "notwithstanding 19542, FTB may" do this. Even regarding the LAO's mandated report a few years ago, that statute also stated, "notwithstanding 19542, GO-Biz may share." He explained that it was always implicit in the program and the addition of this language provides clarity and gets rid of ambiguity by making it explicit, the same way that the legislature added the language that required GO-Biz to evaluate whether the credit is a material factor in the company's decision. He indicated that it was always implicit in the criteria but then at the urging of the LAO it was made to be explicit. As far as repercussions for Committee members, he stated that he is not an attorney and cannot give legal advice. He explained that if an employee of a particular company has a question, his answer is always the same, and that is, companies awarded a CalCompetes credit sign a five-year agreement. CalCompetes knows that when businesses are looking in the future, it is like looking in a crystal ball and trying to project what they are going to do over the next five years. The crystal ball gets murky one and a half weeks into the future, let alone the next five years. When employers say this is how many jobs they are going to create, this is what they are going to pay all their employees, this is what they are going to invest, and this is when they are going to do it, sometimes those projections are wrong. Sometimes they are too low, too high, or just right. He indicated that companies do not get penalized in CalCompetes for missing mid-agreement milestones. They have a five-year agreement that allows them to play catch up during the five years and as long as they achieve all the milestones by the end of year five, they can potentially earn all the credit, but if they do not, then they forfeit whatever credit that they did not earn at the end of the agreement. To penalize a company or to assume they are not doing what they said they were going to do would be an impediment to businesses wanting to participate in this program.

Chair Myers asked Mr. Dosick to share why some of the information that applicants submit would be confidential. Mr. Dosick stated that CalCompetes receives an extraordinary amount of confidential information from applicants as part of the application, which if any were to become public, would put them at an extreme competitive disadvantage with other similar businesses, especially out of state competitors that could see exact classifications and wages and site selection information. Companies are extremely wary even discussing this information with us. From time to time, a company submits an application, and it might say "Project Kumquat" as the name of the business, and we would ask what the name of the company is and get a response that they are not at liberty to say. He stated that he would have to have conversations with these companies and explain to them that this is what we do to protect



the information provided so that they can give us the information that we need to be able to make an assessment. Even with these provisions, companies are sometimes reticent to open themselves up to increased risk from their competitors who might be able to use this information against them.

Ms. Janis stated that she has litigated this issue in California, and she knows a lot about this under the PRA. There is a trade secret provision there which also requires a balancing of factors. In a couple of the cases that she has litigated, Los Angeles' agencies included an incentive to commit to wages, benefits, and training and that is included in the contract. When we requested that information, they claimed that is a trade secret which is the same argument that Mr. Dosick made. She indicated that they have litigated and gone all the way up and courts have said in every case, that information about job commitments, wages, benefits, and that kind of information is not a trade secret in the state of California because they are applying for a contract and public money. The California labor code requires a company to make all their wages and benefits information public and allow employees to share that information. She expressed that the line has gone so far, when we are awarding hundreds of millions of dollars and nothing companies do is known other than what is posted on the website. If we did not make CalCompetes subject to 19542, then it would be publicly available under the PRA.

Member Miller stated that the discussion may be at cross-purposes because the protection is around tax confidentiality, so it does not relate to trade secrets or PRA. It is a matter of perspective, but the question is if this is confidential tax information, and a company is providing it for the purpose of taxes then it fits and that is how FTB is able to recapture these credits when they do not meet the requirements. The purpose of this is to protect taxpayer confidentiality and not necessarily only trade secrets. Ms. Janis clarified that she was not talking about any information that goes to FTB but rather the information that GO-Biz gets like the annual reports.

Chair Myers asked if Ms. Janis had a specific proposal for this item. Ms. Janis replied that she was just trying to understand it and suggested that the statute would probably have to be changed for this to be fixed. She thinks the staff reports and annual reports should be publicly available. She shared that she was very disturbed that she might be prosecuted for sharing the staff report with interested parties and community members around the facility. That was probably an unintended consequence of this and that is the reason why she brought it up.

Chair Myers thanked Ms. Janis for her perspective and acknowledged that this is complicated.

Mr. Dosick stated the first public comment is Tom Hintze with UAW.

Mr. Hintze reintroduced himself on behalf of UAW. He stated that they believe that California's taxpayer money that is being used to attract, create, and retain high value employees in California should have transparency so that companies can be accountable to workers and give workers the confidence that the state is distributing their taxpayer money fairly. They support improving transparency with public and concrete ways so that workers know who is receiving their hard earn



taxpayer dollars and what benefits they are getting from the companies in return. He wanted to make a note on the previous discussion item, of which they believe workforce standards and Community Benefits Agreements should be attached to all California incentives including CalCompetes, and that workers and the community should have the information that they need to hold businesses accountable to the agreements that they make.

Mr. Dosick stated that Luke Rebecchi also wished to make a public comment.

Luke Rebecchi introduced himself on behalf of international Sheet Metal Air Railroad and Transportation (SMART) workers. He stated that at the last meeting, another representative of their organization presented on California Competes Tax Credit recipient, Kingspan Insulated Panels, Inc. (Kingspan.) He stated that he will present information that raises substantial questions about whether Kingspan is following through with the commitments that they made to the people of California. He noted they submitted a PRA request for the initial application and subsequent applications, to corroborate what the workers were risking telling us and what the company was reporting to the state. The response cited this statute, and they were denied all information. He expressed his concern about the secrecy, and they do not believe it is a gray area but rather black and white at this point and that information about these tax credits is not available to the public. We present from the angle of someone who is working with people who are supposed to be benefiting from these tax credit agreements. Workers are initially happy to hear that their employer has committed to their workplace, to expand, to pay good wages, but then are looking around and not seeing that. SMART recognizes that the statute was passed and there is no way around it. He suggested that there is an opportunity for greater involvement of workers in this process and to verify what is going on onsite. Their understanding is that Committee members do have the ability to request information that allows them to do their jobs which includes approving agreements and monitoring compliance with agreements, and when things are not followed through, revoking monies that were promised for certain actions. He hopes that the state and the agency is open to that sort of approach moving forward where they can learn things from the people who are supposed to be benefiting from these agreements and they can share them and ensure that companies that have signed these agreements are held to their word.

Mr. Dosick noted that Mr. Rebecchi's comments went from G.2 to G.3 in the process. Chair Myers asked if there were any more questions or comments from the Committee or the public. Hearing none, she moved on to the next discussion item.

3. Kingspan Insulated Panels, Inc.

Chair Myers noted this item was presented at the last meeting. She asked Deputy Director Dosick to update us on the status of the agreement. Mr. Dosick stated that Kingspan was awarded a California Competes Tax Credit in 2019 and 2023 is the last year of their agreement. He reminded this is all public information available on CalCompetes' website. He explained that in the next year or so, if Kingspan



achieves all of its milestones then they will not appear before this Committee. If Kingspan does not achieve all of its milestones or when FTB does a books and records review, just as it does for any CalCompetes recipient, FTB will validate or verify whether or not Kingspan achieved the milestones. If Kingspan does not achieve the milestones, then GO-Biz would bring the matter to this Committee and recommend a full or partial recapture depending on what they report and what FTB finds.

Chair Myers asked for public comment. Mr. Dosick introduced Luke Rebecchi.

Mr. Rebecchi reintroduced himself and reminded everyone that SMART was present at the last meeting to talk about Kingspan. He stated that Kingspan signed a five-year tax credit agreement in 2019, which required it to increase employment from 71 to 114 employees by the end of 2023. He indicated that SMART has been organizing with workers at Kingspan to improve their working conditions and in working with them has learned a number of facts which raises questions about Kingspan's compliance with its agreement. Kingspan has used over 1,600 temporary workers between 2017 and 2022. This figure comes from their settlement discussions in the lawsuit filed in 2021 against Kingspan, of which Kingspan has agreed are accurate numbers. Over that same time, they had 132 direct employees. He expressed that SMART realizes that Kingspan has five years to hit those metrics as part of the terms of its agreement but wanted to emphasize the importance of worker involvement towards accomplishing the objectives of this committee.

Mr. Rebecchi displayed a photo to the Committee members and indicated the photo is of the Kingspan facility with a large "now hiring" sign hanging outside of the factory, which was posted two weeks after a SMART representative presented at the last Committee meeting. He stated it is possible that these were planned hires but highlighted that the timing of it is awfully suspicious. Building in an avenue for worker involvement helps catch companies who are not living up to their words, and it allows the opportunity to hold these companies accountable and remind them that they made these commitments and to hire the people that they said they would.

Mr. Rebecchi noted that clause 5(a) of the agreement which states that the taxpayer will, at all times, lawfully conduct its business in compliance with all applicable federal, state, and local laws, regulations, and rules. He shared that there was an unfair labor practice that was filed against Kingspan and all of its subsidiaries in the U.S. in November of 2021. Kingspan had a provision in their health and welfare funds plan statement that excluded workers covered from a collective bargaining agreement from accessing those benefits. This is a straightforward unfair labor practice that is illegal under the federal labor law. He indicated SMART filed unfair labor practices and the general counsel for the National Labor Relations Board filed the complaints. The company agreed to settle rather than going to trial and was granted the relief that was requested from the general counsel which included notice posting at all of its facilities, removing that language from all of its health and welfare plan statements, rescinding that plan document, and notifying all of its employees who are covered by it including at Kingspan in California. There was also a wage and hour lawsuit that settled two weeks ago for approximately \$846,000 under which Kingspan was accused of violating minimum wage laws, overtime laws, rest, meal, and break laws,



and providing inaccurate wage statements. In 2022, another Kingspan division in Santa Ana, Kingspan Light+Air, was found to have violated the health and safety code by Cal/OSHA 22 times, including 5 serious violations that are likely to result in serious bodily harm or death if there is an injury and had to pay a \$22,000 fine. This same facility was the subject of citations for California Environmental Protection Agency for excessive pollution in its storm water runoff and they operate under a consent decree with a local water environmental protection organization. This is all under the larger Kingspan parent group. All of this brings into question whether Kingspan is in compliance with section 5(a). Based on the comments earlier about the roles and enforcement the Committee has, workers are out there doing it and have proven and demonstrated that the employers that they are employed by do not always follow the law. They are not asking for resource intensive investigations, and they are prepared to do that work and have done that work. He expressed that they believe there should be an avenue for the Committee to hear these sorts of things and to hold companies accountable when it is happening.

Member Janis commented that earlier in the meeting, there was a discussion about rescinding two credits because of breach of contract. She asked if we get information showing that the company broke the law, if this could be considered a violation of 5(a) and therefore a breach of contract. Deputy Director Nguyen replied that we can revisit but he wanted to answer some of it today. He explained that the biggest challenge is the evidentiary standard, which he reminded that CalCompetes does not have investigators or auditors and we do not have staff assigned for those roles. It would be difficult to make an assessment on legal violations without that background and we do not have that responsibility by statute. He acknowledged the breaches that Ms. Janis mentioned earlier are actually identified in the statute and are very clear. Lack of communication with CalCompetes constitutes a material violation of the contract so those types of breach of contract issues are brought before the Committee so the tax credit can be recaptured.

Ms. Janis asked what the purpose is of 5(a) if there is a documented violation of the law by another agency. That would be pretty clear evidence that they breached "at all times, lawfully conduct its business in compliance with all." Mr. Nguyen responded that there would have to be a material violation, and it would have to be assessed if the violation goes to the heart of the contract. These contracts are designed to promote job growth in California. Various OSHA violation levels would have to be assessed on an individualized basis and whether that rises to the level of material breach of the contract. He noted that we are somewhat handicapped in our ability to do that because we do not have the resources or expertise for that. If there is something so blatant then we can use that and we have that provision there for that circumstance. He indicated that OSHA violations are very difficult to evaluate, and it is not a cut and dry determination that instantly constitutes a breach of contract.

Ms. Janis stated that when someone gets sick or dies, OSHA violations are very serious. Mr. Nguyen acknowledged that some violations can be very serious, but it is also dependent on the circumstances. He stated that he did a background on OSHA and OSHA's website sets forth the different violations. For violations under a certain amount, they do not even list them. Fines under \$20,000 are below the standard, and the threshold is around \$40,000 so OSHA does not even bother posting those on its



website. Reasonable minds can differ as to how critical and significant a violation is depending on the size of the company and the circumstances. Ms. Janis stated having the ability to accept documentation that a company is violating the law and breaching their contract could be the minimum we can do. She understands the idea of material violation but that is basically a catch all for excusing everything and any type of bad conduct. Worker safety, minimum wage, or the right to organize, these are serious matters.

Mr. Nguyen stated that he does not know if we have the resources or ability to make these kinds of evaluations. Reviewing OSHA violations and trying to make a determination if it rises to the level of material breach of the contract would really expand the amount of work the CalCompetes team would be responsible for. If a person got injured or someone dies, we have to consider how neglectful was the company, or if there was a history of warnings before the death happened. These are very heavy assessments and frankly far beyond CalCompetes' limited resources and expertise. He noted that this raises concerns and limitations of what this Committee and this agency can do and that is why we have OSHA and other state agencies who are experts to do these kinds of assessments because that is not our expertise.

Ms. Janis asked what the point is of having that language in our contract if we do not enforce it. Mr. Nguyen replied we have not used it yet, and perhaps someday when the violations are so significant and the evidence is so clear, then we may bring that to the board.

Chair Myers stated that she had a flight to catch and asked Ms. Miller to assume the role of Chair to finish the meeting and excused herself.

Ms. Janis stated that it would be good for us to create the opportunity for workers, unions, and communities who have information about breaches of the law to be able to submit that and for us to consider it.

Member Walters asked if an employer falsifies something and there was a whistleblower who came up later and exposed that, is there a mechanism for that. Mr. Nguyen replied the California State Auditor's office would accept whistleblower complaints and things of that nature. The State Personnel Board also has a whistleblower process if an employee is adversely impacted by whistleblowing. Those are 2 state agencies that have whistleblower responsibility. He asked Mr. Walters if his question was more directed at what we can do or how we would deal with it. Acting Chair Miller clarified that he was asking about an act of fraud. Ms. Miller elaborated that there are two looming questions on how whistleblower information would be shared and what would happen if there were a finding of fraud. She suggested including FTB legal as well. Mr. Nguyen stated that FTB would be the proper resource because they can determine if there was in fact fraud. If FTB said this company has been lying about everything, then this might rise to the level where we would bring it to the Committee. Ms. Miller suggested we ask FTB legal to provide something in writing on what happens in cases of fraud because they have whole statutes committed to that tax policy.



Member Henning stated that he agreed with Ms. Janis and is heartened to see how welcoming this Committee has been to union representation. There has not been a provision that has come in front of the Committee where we have not had a union representative to come and speak to that provision. That is not typical in his experience, even though he has overseen several different boards and commissions particularly focused on union rights and workers' rights. He acknowledged Ms. Janis' motivation to go above and beyond for a higher standard, and he appreciates the welcomeness the Committee has shown to those who come and comment. He wanted to take a moment to realize how much consideration we do get from the unions' side of things. Ms. Miller thanked and acknowledged Mr. Dosick and the CalCompetes team for all the hard work behind the scenes. Ms. Janis stated that she agreed with Mr. Henning that this Committee is very welcoming and that is a huge factor, and she presses hard on these issues because there is injustice, poverty, and things that we are trying to address with the credits and the rest of our work. She expressed her gratefulness for the CalCompetes team's hard work and the openness to have these conversations and appreciated having these items agendaized today.

Ms. Miller thanked the CalCompetes team. She called for any further questions or comments regarding item G-3. Deputy Director Dosick confirmed there were no additional public comments.

H. Public Comment

Acting Chair Miller asked if there were any more questions or comments from the Committee or the public. Deputy Director Dosick confirmed there were no public comments.

I. Adjournment

Acting Chair Miller adjourned the meeting at 3:08pm.