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ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4048

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED JUNE 22, 2009

Sponsored by:

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**Assemblyman Ramos, Assemblywoman Rodriguez, Senators Lesniak, Ruiz
and Whelan**

SYNOPSIS

"New Jersey Economic Stimulus Act of 2009"; appropriates \$15 million to
"New Jersey Affordable Housing Trust Fund."

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Budget Committee.

(Sponsorship Updated As Of: 6/26/2009)

1 AN ACT concerning economic development, job creation, economic
2 growth, affordable housing, urban transit hub tax credits,
3 expanding capacity and facilities at our institutions of higher
4 education, bonding in certain planning areas, and exempting
5 certain taxes and energy charges of certain manufacturing
6 facilities; authorizing certain taxes and fees to fund
7 redevelopment; amending and supplementing various sections of
8 the statutory law; and making an appropriation.

9

10 **BE IT ENACTED** by the Senate and General Assembly of the State
11 of New Jersey:

12

13 1. (New section) This act shall be known and may be cited as
14 the “New Jersey Economic Stimulus Act of 2009.”

15

16 2. (New section) The Legislature finds and declares:

17 a. The State of New Jersey is confronting a fiscal and economic
18 crisis more severe than any experienced since the Great Depression.
19 Counties and municipalities are likewise witnessing dramatic
20 reductions in local revenues as a consequence of the global
21 economic recession. As part of an ongoing, coordinated attempt to
22 spur economic improvement and reverse this deflationary cycle, the
23 Legislature and the Governor recently enacted a number of laws
24 designed to minimize the impact of current conditions on New
25 Jersey businesses and residents, including legislation providing
26 incentives to create jobs and make business investments in this
27 State.

28 b. America has seen two economic changes since the birth of
29 our nation over two hundred years ago. The initial change from an
30 agrarian based economy to an industrial based economy in the
31 revolution of the mid to late 1800s caused a realignment of our
32 culture and population and brought prosperity to millions of our
33 hardworking citizens. Much more recently, during those years
34 culminating in the end of the 20th century, the rise of technology
35 and financial services was our second change and increased that
36 prosperity many fold.

37 c. As a consequence of the current world-wide financial crisis,
38 opportunities for New Jersey residents to achieve prosperity have
39 now shrunk. Many of our citizens are facing economic hardships
40 not seen since the Great Depression. The financial crisis has
41 diminished the ability of the private sector to create economic
42 development on its own. The worldwide drop in available capital
43 along with a self-fulfilling drop in consumer confidence has created
44 a downward spiral that can be overcome with the assistance of a

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 partnership – a public-private partnership that targets tax cuts to
2 drive economic development and job creation.

3 d. The poor economic climate continues to pose particular
4 challenges for private sector entities desiring to engage in job
5 creation and economic development activities. In order to spur
6 economic growth and improve the quality of life for all New Jersey
7 residents, it is appropriate for the Legislature to revisit, modify, and
8 supplement several of the current statutes governing economic
9 development and related activities in this State, including but not
10 limited to job creation, economic growth, tax credits, state and local
11 taxation of manufacturing and other activities, higher education,
12 redevelopment, and affordable housing. Each of the facets of
13 P.L. , c. (C.) (pending before the Legislature as this bill)
14 represents a direct response to the unique economic development
15 challenges currently facing the State and local units. It is the belief
16 of the Legislature that each of the individual components of P.L. ,
17 c. (C.) (pending before the Legislature as this bill) will serve to
18 combat one or more aspects of the current economic crisis and that
19 these complementary components will promote economic
20 development and job creation activities immediately upon
21 enactment.

22 e. Current economic conditions compel bold and timely action
23 to create a third economic change that will enhance our prosperity
24 and build confidence in our future. That prosperity must be
25 extended to all areas of New Jersey, urban, suburban, and rural, and
26 include all sectors of the State's economy.

27 f. Through the use of tax increment financing, tax credits,
28 development fee suspensions, and dedicated economic development
29 revenues, along with a more efficient redevelopment process, New
30 Jersey will be able to restore its economy to economic health and
31 create good-paying jobs for its residents; assist the private
32 development of affordable housing; assist institutions of higher
33 education to develop needed classrooms, laboratories, dormitory
34 rooms, and other educational facilities; and generate revenues for
35 necessary State and local governmental services.

36
37 3. (New section) As used in sections 3 through 18 of P.L. , c.
38 (C.) (pending before the Legislature as this bill):

39 "Applicant" means a developer proposing to enter into a
40 redevelopment incentive grant agreement.

41 "Authority" means the New Jersey Economic Development
42 Authority established under section 4 of P.L.1974, c.80 (C.34:1B-
43 4).

44 "Developer" means any person who enters or proposes to enter
45 into a redevelopment incentive grant agreement pursuant to the
46 provisions of section 9 of P.L. , c. (C.) (pending before the
47 Legislature as this bill). A developer also may be a municipal

1 government or a redevelopment agency as defined in section 3 of
2 P.L.1992, c.79 (C.40A:12A-3).

3 "Director" means the Director of the Division of Taxation in the
4 Department of the Treasury.

5 "Eligible revenue" means the property tax increment and any
6 other incremental revenues set forth in section 11 of P.L. , c.
7 (C.) (pending before the Legislature as this bill).

8 "Incentive grant" means reimbursement of all or a portion of
9 project financing gap of a redevelopment project through the State
10 or a local Economic Redevelopment and Growth Grant program
11 pursuant to section 4 or section 5 P.L. , c. (C.) (pending
12 before the Legislature as this bill).

13 "Project area" means land or lands under common ownership or
14 control including through a redevelopment agreement with a
15 municipality or as otherwise established by a municipality.

16 "Project financing gap" means the part of the total
17 redevelopment project cost, including return on investment, that
18 remains to be financed after all other sources of capital have been
19 accounted for, including, but not limited to, developer contributed
20 capital, which shall not be less than 20 percent of the total project
21 cost, and investor or financial entity capital or loans for which the
22 developer, after making all good faith efforts to raise additional
23 capital, certifies that additional capital cannot be raised from other
24 sources.

25 "Project revenue" means all rents, fees, sales, and payments
26 generated by a project, less taxes or other government payments.

27 "Property tax increment" means the amount obtained by:

28 (1) multiplying the general tax rate levied each year by the
29 taxable value of all the property assessed within a project area in
30 the same year, excluding any special assessments; and

31 (2) multiplying that product by a fraction having a numerator
32 equal to the taxable value of all the property assessed within the
33 project area, minus the property tax increment base, and having a
34 denominator equal to the taxable value of all property assessed
35 within the project area.

36 For the purpose of this definition, "property tax increment base"
37 means the aggregate taxable value of all property assessed which is
38 located within the redevelopment project area as of October 1st of
39 the year preceding the year in which the redevelopment incentive
40 grant agreement is authorized.

41 "Qualifying economic redevelopment and growth grant incentive
42 area" means Planning Area 1 (Metropolitan), Planning Area 2
43 (Suburban), or a center as designated by the State Planning
44 Commission; a transit village, as determined by the Commissioner
45 of Transportation; and federally owned land approved for closure
46 under a federal Base Realignment Closing Commission action.

1 "Redevelopment incentive grant agreement" means an agreement
2 between, (1) the State and the New Jersey Economic Development
3 Authority and a developer, or (2) a municipality and a developer,
4 under which, in exchange for the proceeds of an incentive grant, the
5 developer agrees to perform any work or undertaking necessary for
6 a redevelopment project, including the clearance, development or
7 redevelopment, construction, or rehabilitation of any structure or
8 improvement of commercial, industrial, residential, or public
9 structures or improvements within a qualifying economic
10 redevelopment and growth grant incentive area or a transit village.

11 "Redevelopment project" means a specific work or improvement,
12 including lands, buildings, improvements, real and personal
13 property or any interest therein, including lands under water,
14 riparian rights, space rights and air rights, acquired, owned,
15 developed or redeveloped, constructed, reconstructed, rehabilitated
16 or improved, undertaken by a developer within a project area.

17 "Redevelopment utility" means a self-liquidating fund created by
18 a municipality pursuant to section 12 of P.L. , c. (C.)
19 (pending before the Legislature as this bill) to account for revenues
20 collected and incentive grants paid pursuant to section 11 of P.L. ,
21 c. (C.) (pending before the Legislature as this bill), or other
22 revenues dedicated to a redevelopment project.

23 "Revenue increment base" means the amounts of all eligible
24 revenues from sources within the redevelopment project area in the
25 calendar year preceding the year in which the redevelopment
26 incentive grant agreement is executed, as certified by the State
27 Treasurer for State revenues, and the chief financial officer of the
28 municipality for municipal revenues.

29 "Transit village" means a community with a bus, train, light rail,
30 or ferry station that has developed a plan to achieve its economic
31 development and revitalization goals and has been designated by
32 the New Jersey Department of Transportation as a transit village.

33
34 4. (New section) a. The governing body of a municipality
35 wherein is located a qualifying economic redevelopment and
36 growth grant incentive area may adopt an ordinance to establish a
37 local Economic Redevelopment and Growth Grant program for the
38 purpose of encouraging redevelopment projects in that area through
39 the provision of incentive grants to reimburse developers for all or a
40 portion of the project financing gap for such projects. No local
41 Economic Redevelopment and Growth Grant program shall take
42 effect until the Local Finance Board approves the ordinance.

43 b. A developer that submits an application for a local incentive
44 grant shall indicate on the application whether it is also applying for
45 a State incentive grant. An application by a developer applying for
46 a local incentive grant only shall not require approval by the
47 authority. A municipality or its redevelopment agency only may

1 apply for local incentive grants for: (1) the construction of
2 infrastructure improvements in the public right-of-way, or (2)
3 publicly owned facilities.

4 c. No local incentive grant shall be finally approved by a
5 municipality until approved by the Local Finance Board.

6 d. In deciding whether or not to approve a local incentive grant
7 agreement the Local Finance Board shall consider the following
8 factors:

9 (1) the economic feasibility of the redevelopment project;

10 (2) the extent of economic and related social distress in the
11 municipality and the area to be affected by the redevelopment
12 project;

13 (3) the degree to which the redevelopment project will advance
14 State, regional, and local development and planning strategies;

15 (4) the likelihood that the redevelopment project shall, upon
16 completion, be capable of generating new tax revenue in an amount
17 in excess of the amount necessary to reimburse the developer for
18 project costs incurred as provided in the redevelopment incentive
19 grant agreement;

20 (5) the relationship of the redevelopment project to a
21 comprehensive local development strategy, including other major
22 projects undertaken within the municipality;

23 (6) the need for the redevelopment incentive grant agreement to
24 the viability of the redevelopment project;

25 (7) compliance with the provisions of P.L. , c. (C.)
26 (pending before the Legislature as this bill); and

27 (8) the degree to which the redevelopment project enhances and
28 promotes job creation and economic development.

29

30 5. (New section) a. The New Jersey Economic Development
31 Authority, in consultation with the State Treasurer, shall establish
32 an Economic Redevelopment and Growth Grant program for the
33 purpose of encouraging redevelopment projects in qualifying
34 economic redevelopment and growth grant incentive areas that do
35 not qualify as such areas solely by virtue of being a transit village,
36 through the provision of incentive grants to reimburse developers
37 for certain project financing gap costs.

38 b. (1) A developer that submits an application for a State
39 incentive grant shall indicate on the application whether it is also
40 applying for a local incentive grant.

41 (2) When an applicant indicates it is also applying for a local
42 incentive grant, the authority shall forward a copy of the application
43 to the municipality wherein the redevelopment project is to be
44 located for approval by municipal ordinance.

45 c. An application for a State incentive grant shall be reviewed
46 and approved by the authority and by the municipality by
47 ordinance.

1 6. (New section) a. Up to the limits established in subsection b.
2 of this section and in accordance with a redevelopment incentive
3 grant agreement, the State Treasurer shall pay to the developer
4 incremental State revenues directly realized from businesses
5 operating on the redevelopment project premises from the following
6 taxes: the Corporation Business Tax Act (1945), P.L.1945, c.162
7 (C.54:10A-1 et seq.), the tax imposed on marine insurance
8 companies pursuant to R.S.54:16-1 et seq., the tax imposed on
9 insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et
10 seq.), the public utility franchise tax, public utilities gross receipts
11 tax and public utility excise tax imposed on sewerage and water
12 corporations pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), the
13 tax derived from net profits from business, a distributive share of
14 partnership income, or a pro rata share of S corporation income
15 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
16 seq., the tax derived from a business at the site of a redevelopment
17 project that is required to collect the tax pursuant to the "Sales and
18 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), the tax imposed
19 pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) from the purchase
20 of materials used for the remediation, the construction of new
21 structures, or the construction of new residences at the site of a
22 redevelopment project, the hotel and motel occupancy fee imposed
23 pursuant to section 1 of P.L.2003, c.114 (C.54:32D-1), or the
24 portion of the fee imposed pursuant to section 3 of P.L.1968, c.49
25 (C.46:15-7) derived from the sale of real property at the site of the
26 redevelopment project and paid to the State Treasurer for use by the
27 State, that is not credited to the "Shore Protection Fund" or the
28 "Neighborhood Preservation Nonlapsing Revolving Fund" ("New
29 Jersey Affordable Housing Trust Fund") pursuant to section 4 of
30 P.L.1968, c.49 (C.46:15-8).

31 b. Up to 75 percent of the projected annual incremental revenues
32 may be pledged towards the State portion of an incentive grant.

33 c. All administrative costs associated with the incentive grant
34 shall be assessed to the applicant and be retained by the State
35 Treasurer from the annual incentive grant payments.

36 d. The incremental revenue for the revenues listed in subsection
37 a. of this section shall be calculated as the difference between the
38 amount collected in any fiscal year from any eligible revenue
39 source included in the local redevelopment incentive grant
40 agreement, less the revenue increment base for that eligible
41 revenue.

42 e. The municipality is authorized to collect any and all
43 information necessary to facilitate grants under this program and
44 remit that information, as may be required from time to time, in
45 order to assist in the calculation of incremental revenue.

1 7. (New section) a. Up to the limits established in subsection b.
2 of this section, and in accordance with a redevelopment incentive
3 grant agreement, the municipality shall pay to the developer
4 incremental eligible revenues directly realized from activities or
5 business operations on the redevelopment project premises.

6 b. Up to 75 percent of the incremental local revenues collected
7 pursuant to subsection d. of section 11 of P.L. , c. (C.)
8 (pending before the Legislature as this bill) may be pledged towards
9 the municipal portion, if any, of an incentive grant.

10 c. All administrative costs associated with the local incentive
11 grant shall be assessed to the applicant and be retained by the
12 municipality from its annual payments to the developer.

13

14 8. (New section) a. (1) The New Jersey Economic Development
15 Authority, in consultation with the State Treasurer, shall promulgate
16 an incentive grant application form and procedure for the Economic
17 Redevelopment and Growth Grant program.

18 (2) (a) The Local Finance Board, in consultation with the New
19 Jersey Economic Development Authority, shall develop a minimum
20 standard incentive grant application form for municipal Economic
21 Redevelopment and Growth Grant programs.

22 (b) Through regulation, the Economic Development Authority
23 shall establish standards for redevelopment projects seeking State or
24 local incentive grants based on the green building manual prepared
25 by the Commissioner of Community Affairs pursuant to section 1 of
26 P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable
27 energy, energy-efficient technology, and non-renewable resources
28 in order to reduce environmental degradation and encourage long-
29 term cost reduction.

30 b. Within each incentive grant application, a developer shall
31 certify information concerning:

32 (1) the status of control of the entire redevelopment project site;

33 (2) all required State and federal government permits that have
34 been issued for the redevelopment project, or will be issued pending
35 resolution of financing issues;

36 (3) local planning and zoning board approvals, as required, for
37 the redevelopment project;

38 (4) estimates of the revenue increment base and project the
39 eligible revenues for the project, and the assumptions upon which
40 those estimates are made.

41 c. (1) With regard to State tax revenues proposed to be pledged
42 for an incentive grant the authority and the State Treasurer shall
43 review the redevelopment project costs, evaluate and validate the
44 project financing gap estimated by the developer, and conduct a
45 State fiscal impact analysis to ensure that the overall public
46 assistance provided to the project will result in net benefits to the
47 State.

1 (2) With regard to local incremental revenues proposed to be
2 pledged for an incentive grant the authority and the Local Finance
3 Board shall review the redevelopment project costs, evaluate and
4 validate the financing gap projected by the developer, and conduct a
5 local fiscal impact analysis to ensure that the overall public
6 assistance provided to the project will result in net benefits to the
7 municipality wherein the redevelopment project is located.

8 (3) The authority, State Treasurer, and Local Finance Board may
9 act cooperatively to administer and review applications, and shall
10 consult with the Office of State Planning on matters concerning
11 State, regional, and local development and planning strategies.

12 (4) The costs of the aforementioned reviews shall be assessed to
13 the applicant as an application fee.

14

15 9. (New section) a. The authority is authorized to enter into a
16 redevelopment incentive grant agreement with a developer for any
17 redevelopment project located within a qualifying economic
18 redevelopment and growth grant incentive area that does not qualify
19 as such area solely by virtue of being a transit village.

20 b. The decision whether or not to enter into a redevelopment
21 incentive grant agreement is solely within the discretion of the
22 authority and the State Treasurer, provided that they both agree to
23 enter into agreement.

24 c. The Chief Executive Officer of the New Jersey Economic
25 Development Authority, in consultation with the State Treasurer
26 shall negotiate the terms and conditions of any redevelopment
27 incentive grant agreement on behalf of the State.

28 d. The redevelopment incentive grant agreement shall specify
29 the amount of the incentive grant to be awarded the developer, the
30 frequency of payments, and the length of time, which shall not
31 exceed 20 years, during which that reimbursement shall be granted.
32 In no event shall the combined amount of the reimbursements under
33 redevelopment incentive grant agreements with the State or
34 municipality exceed 20 percent of the total cost of the project,
35 exclusive of publicly-owned infrastructure.

36 e. The authority and the State Treasurer may enter into a
37 redevelopment incentive grant agreement only if they make a
38 finding that the State revenues to be realized from the
39 redevelopment project will be in excess of the amount necessary to
40 reimburse the developer for its project financing gap. This finding
41 may be made by an estimation based upon the professional
42 judgment of the Chief Executive Officer of the New Jersey
43 Economic Development Authority and the State Treasurer.

44 f. In deciding whether or not to recommend entering into a
45 redevelopment incentive grant agreement and in negotiating a
46 redevelopment agreement with a developer, the Chief Executive

1 Officer of the New Jersey Economic Development Authority shall
2 consider the following factors:

3 (1) the economic feasibility of the redevelopment project;

4 (2) the extent of economic and related social distress in the
5 municipality and the area to be affected by the redevelopment
6 project;

7 (3) the degree to which the redevelopment project will advance
8 State, regional and local development and planning strategies;

9 (4) the likelihood that the redevelopment project shall, upon
10 completion, be capable of generating new tax revenue in an amount
11 in excess of the amount necessary to reimburse the developer for
12 project costs incurred as provided in the redevelopment incentive
13 grant agreement;

14 (5) the relationship of the redevelopment project to a
15 comprehensive local development strategy, including other major
16 projects undertaken within the municipality;

17 (6) the need of the redevelopment incentive grant agreement to
18 the viability of the redevelopment project; and

19 (7) the degree to which the redevelopment project enhances and
20 promotes job creation and economic development.

21 g. (1) A developer that has entered into a redevelopment
22 incentive grant agreement with the authority and the State Treasurer
23 pursuant to this section may, upon notice to and consent of the
24 authority and the State Treasurer, pledge and assign as security for
25 any loan, any or all of its right, title and interest in and to such
26 agreements and in the incentive grants payable thereunder, and the
27 right to receive same, along with the rights and remedies provided
28 to the developer under such agreement. Any such assignment shall
29 be an absolute assignment for all purposes, including the federal
30 bankruptcy code.

31 (2) Any pledge of incentive grants made by the developer shall
32 be valid and binding from the time when the pledge is made and
33 filed in the records of the authority. The incentive grants so
34 pledged and thereafter received by the developer shall immediately
35 be subject to the lien of the pledge without any physical delivery
36 thereof or further act, and the lien of any pledge shall be valid and
37 binding as against all parties having claims of any kind in tort,
38 contract, or otherwise against the developer irrespective of whether
39 the parties have notice thereof. Neither the redevelopment
40 incentive grant agreement nor any other instrument by which a
41 pledge under this section is created need be filed or recorded except
42 with the authority.

43

44 10. (New section) The New Jersey Economic Development
45 Authority, or any other State agency, may provide assistance to a
46 developer in order to enhance its credit for the purpose of securing
47 private project financing on more favorable terms.

- 1 11. (New section) a. The governing body of a municipality is
2 authorized to enter into a redevelopment incentive grant agreement
3 with a developer, which shall not be effective until adopted by
4 ordinance, for any redevelopment project located within a
5 qualifying economic redevelopment and growth grant incentive
6 area.
- 7 b. The redevelopment incentive grant agreement shall specify
8 the amount of the incentive grant to be awarded the developer, the
9 frequency of payments, and the length of time, which shall not
10 exceed 20 years, during which that reimbursement shall be granted.
11 In no event shall the combined amount of the reimbursements under
12 redevelopment incentive grant agreements with the State or
13 municipality exceed 20 percent of the total cost of the project.
- 14 c. The municipality may enter into a redevelopment incentive
15 grant agreement only if the chief financial officer of the
16 municipality makes a finding that the incremental revenues to be
17 realized from the redevelopment project will be in excess of the
18 amount necessary to reimburse the developer for its project
19 financing gap. Such finding shall be based upon appropriate
20 documentation and calculations supporting the decision.
- 21 d. Within a qualifying economic redevelopment and growth
22 grant incentive area a municipality that has entered into a local
23 redevelopment incentive grant agreement may pledge eligible
24 revenues its is authorized to collect as follows:
- 25 (1) incremental payments in lieu of taxes, with respect to
26 property located in the district, made pursuant to the "Five-Year
27 Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et
28 seq.), or the "Long Term Tax Exemption Law," P.L.1991, c.431
29 (C.40A:20-1 et al.);
- 30 (2) incremental revenues collected from payroll taxes, with
31 respect to business activities carried on within the area, pursuant to
32 section 15 of P.L.1970, c.326 (C.40:48C-15);
- 33 (3) incremental revenue from lease payments made to the
34 municipality, the developer, or the developer's successors with
35 respect to property located in the area;
- 36 (4) incremental revenue collected from parking taxes derived
37 from parking facilities located within the area pursuant to section 7
38 of P.L.1970, c.326 (C.40:48C-7);
- 39 (5) incremental admissions and sales taxes derived from the
40 operation of a public facility within the area pursuant to section 1 of
41 P.L.2007, c.302 (C.40:48G-1);
- 42 (6) (a) incremental sales and excise taxes which are derived from
43 activities within the area and which are rebated to or retained by the
44 municipality pursuant to the "New Jersey Urban Enterprise Zones
45 Act," P.L.1983, c.303 (C.52:27H-60 et seq.) or any other law
46 providing for such rebate or retention;

1 (b) within Planning Area 1 (Metropolitan) under the State
2 Development and Redevelopment Plan adopted pursuant to the
3 "State Planning Act," sections 1 through 12 of P.L.1985, c.398
4 (C.52:18A-196 et seq.), a municipality may impose the entire State
5 sales tax on business activities within a redevelopment project
6 located in an urban enterprise zone that would ordinarily be entitled
7 to collect reduced rate revenues under section 21 of P.L.1983, c.303
8 (C.52:27H-80), and pledge the excess revenues to a local
9 redevelopment incentive grant agreement;

10 (7) incremental parking revenue collected, pursuant to section 7
11 of P.L.1970, c.326 (C.40:48C-7), from public parking facilities built
12 as part of a redevelopment project, except for public parking
13 facilities owned by parking authorities pursuant to the "Parking
14 Authority Law," P.L.1948, c.198 (C.40:11A-1 et seq.);

15 (8) incremental revenues collected, pursuant to section 3 of
16 P.L.2003, c.114 (C.40:48F-1), P.L.1981, c.77 (C.40:48E-1 et seq.),
17 or P.L.1947, c.71 (C.40:48-8.15 et seq.), from hotel and motel
18 taxes;

19 (9) upon approval by the Local Finance Board, other incremental
20 municipal revenues that may become available;

21 (10) the property tax increment.

22 The incremental revenue for the revenues listed in this
23 subsection, when applicable, shall be calculated as the difference
24 between the amount collected in any fiscal year from any eligible
25 revenue source included in the local redevelopment incentive grant
26 agreement, less the revenue increment base for that eligible
27 revenue.

28 e. (1) In calculating the general tax rate of a municipality each
29 year, the aggregate amount of the incremental ratable value over the
30 property tax increment base in the redevelopment project area that
31 is pledged as part of a redevelopment incentive grant agreement
32 shall be excluded from the ratable base of a municipality.

33 (2) The amount of property tax increment not pledged toward a
34 redevelopment incentive grant agreement shall be allocated
35 pursuant to the normal tax rate distribution.

36 The full incremental value of a project area shall be included in
37 the value used for county and regional school tax apportionment
38 until such time that the Director of the Division of Taxation in the
39 Department of the Treasury can certify that property tax
40 management systems are capable of handling the technical and legal
41 requirements of treating parcels in areas of redevelopment as
42 exempt from county and regional school apportionment.

43 f. In addition to the incremental revenues that may be pledged in
44 subsection d. of this section, any amount of tax proceeds collected
45 from the tax on the rental of motor vehicles pursuant to section 20
46 of P.L. , c. (C.) (pending before the Legislature as this bill),
47 may be included in a redevelopment incentive grant agreement with

1 a developer, regardless of whether or not the redevelopment project
2 area is within or outside of the designated industrial zone from
3 which the tax on the rental of motor vehicles is collected.

4 g. (1) A developer that has entered into a redevelopment
5 incentive grant agreement with a municipality pursuant to this
6 section may, upon notice to and consent of the municipality, pledge
7 and assign as security for any loan, any or all of its right, title and
8 interest in and to such agreements and in the incentive grants
9 payable thereunder, and the right to receive same, along with the
10 rights and remedies provided to the developer under such
11 agreement. Any such assignment shall be an absolute assignment
12 for all purposes, including the federal bankruptcy code.

13 (2) Any pledge of incentive grants made by the developer shall
14 be valid and binding from the time when the pledge is made and
15 filed in the office of the municipal clerk. The incentive grants so
16 pledged and thereafter received by the developer shall immediately
17 be subject to the lien of the pledge without any physical delivery
18 thereof or further act, and the lien of any pledge shall be valid and
19 binding as against all parties having claims of any kind in tort,
20 contract, or otherwise against the developer irrespective of whether
21 the parties have notice thereof. Neither the redevelopment
22 incentive grant agreement nor any other instrument by which a
23 pledge under this section is created need be filed or recorded except
24 with the municipality.

25
26 12. (New section) a. A municipality may adopt an ordinance
27 creating a municipal redevelopment utility under the name and style
28 of "the _____ redevelopment utility," with all or any
29 significant part of the name of the municipality inserted. The
30 redevelopment utility shall be a municipal public utility for the
31 purposes of Title 40A of the New Jersey Statutes.

32 b. The purpose of every redevelopment utility shall be to receive
33 revenues collected pursuant to section 11 of P.L. , c. (C.)
34 (pending before the Legislature as this bill) and to use those
35 revenues as payment of incentive grants, and for other local
36 purposes that may be approved by the Local Finance Board, as that
37 board deems necessary or useful.

38 c. If a municipality does not create a municipal redevelopment
39 utility, then any revenues collected pursuant to section 11 of P.L. ,
40 c. (C.) (pending before the Legislature as this bill) and any
41 grants received to pay incentive grants shall be treated as riders in
42 the municipal budget pursuant to N.J.S.40A:4-36.

43
44 13. (New section) Sections 11 through 41 of P.L.2001, c.310
45 (C.52:27D-459 through C.52:27D-489) shall be inoperative and
46 without effect for applications submitted after the effective date of
47 P.L. , c. (pending before the Legislature as this bill); provided,

1 however, those sections shall remain in effect for revenue allocation
2 districts for which financing has been approved prior to the
3 effective date of P.L. , c. (pending before the Legislature as this
4 bill). Any revenue allocation district that has been approved prior
5 to the effective date of P.L. , c. (pending before the Legislature
6 as this bill), but for which financing has not been approved prior to
7 that date, shall fall under the provisions of sections 3 through 18 of
8 P.L. , c. (C.) (pending before the Legislature as this bill).

9
10 14. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read
11 as follows:

12 5. The authority shall have the following powers:

13 a. To adopt bylaws for the regulation of its affairs and the
14 conduct of its business;

15 b. To adopt and have a seal and to alter the same at pleasure;

16 c. To sue and be sued;

17 d. To acquire in the name of the authority by purchase or
18 otherwise, on such terms and conditions and such manner as it may
19 deem proper, or by the exercise of the power of eminent domain in
20 the manner provided by the "Eminent Domain Act of 1971,"
21 P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or
22 other property which it may determine is reasonably necessary for
23 any project; provided, however, that the authority in connection
24 with any project shall not take by exercise of the power of eminent
25 domain any real property except upon consent thereto given by
26 resolution of the governing body of the municipality in which such
27 real property is located; and provided further that the authority shall
28 be limited in its exercise of the power of eminent domain in
29 connection with any project to municipalities receiving State aid
30 under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to
31 municipalities which had a population, according to the latest
32 federal decennial census, in excess of 10,000;

33 e. To enter into contracts with a person upon such terms and
34 conditions as the authority shall determine to be reasonable,
35 including, but not limited to, reimbursement for the planning,
36 designing, financing, construction, reconstruction, improvement,
37 equipping, furnishing, operation and maintenance of the project and
38 to pay or compromise any claims arising therefrom;

39 f. To establish and maintain reserve and insurance funds with
40 respect to the financing of the project or the school facilities project
41 and any project financed pursuant to the "Municipal Rehabilitation
42 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et
43 al.);

44 g. To sell, convey or lease to any person all or any portion of a
45 project for such consideration and upon such terms as the authority
46 may determine to be reasonable;

- 1 h. To mortgage, pledge or assign or otherwise encumber all or
2 any portion of a project, or revenues, whenever it shall find such
3 action to be in furtherance of the purposes of this act, P.L.2000,
4 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
5 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
6 **[and]** P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3
7 through 18 of P.L. , c. (C.) (pending before the Legislature
8 as this bill);
- 9 i. To grant options to purchase or renew a lease for any of its
10 projects on such terms as the authority may determine to be
11 reasonable;
- 12 j. To contract for and to accept any gifts or grants or loans of
13 funds or property or financial or other aid in any form from the
14 United States of America or any agency or instrumentality thereof,
15 or from the State or any agency, instrumentality or political
16 subdivision thereof, or from any other source and to comply,
17 subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.),
18 section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72
19 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic
20 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), and
21 P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and
22 conditions thereof;
- 23 k. In connection with any application for assistance under
24 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401
25 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
26 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
27 (C.52:27BBB-1 et al.), or P.L.2007, c.137 (C.52:18A-235 et al.) or
28 commitments therefor, to require and collect such fees and charges
29 as the authority shall determine to be reasonable;
- 30 l. To adopt, amend and repeal regulations to carry out the
31 provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of
32 P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.),
33 the "Municipal Rehabilitation and Economic Recovery Act,"
34 P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007, c.137
35 (C.52:18A-235 et al.);
- 36 m. To acquire, purchase, manage and operate, hold and dispose
37 of real and personal property or interests therein, take assignments
38 of rentals and leases and make and enter into all contracts, leases,
39 agreements and arrangements necessary or incidental to the
40 performance of its duties;
- 41 n. To purchase, acquire and take assignments of notes,
42 mortgages and other forms of security and evidences of
43 indebtedness;
- 44 o. To purchase, acquire, attach, seize, accept or take title to any
45 project or school facilities project by conveyance or by foreclosure,
46 and sell, lease, manage or operate any project or school facilities
47 project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1

1 et al.), the "Municipal Rehabilitation and Economic Recovery Act,"
2 P.L.2002, c.43 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137
3 (C.52:18A-235 et al.), and sections 3 through 18 of P.L. , c.
4 (C.) (pending before the Legislature as this bill);

5 p. To borrow money and to issue bonds of the authority and to
6 provide for the rights of the holders thereof, as provided in
7 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401
8 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
9 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
10 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137 (C.52:18A-235 et
11 al.), and sections 3 through 18 of P.L. , c. (C.) (pending
12 before the Legislature as this bill);

13 q. To extend credit or make loans to any person for the
14 planning, designing, acquiring, constructing, reconstructing,
15 improving, equipping and furnishing of a project or school facilities
16 project, which credits or loans may be secured by loan and security
17 agreements, mortgages, leases and any other instruments, upon such
18 terms and conditions as the authority shall deem reasonable,
19 including provision for the establishment and maintenance of
20 reserve and insurance funds, and to require the inclusion in any
21 mortgage, lease, contract, loan and security agreement or other
22 instrument, of such provisions for the construction, use, operation
23 and maintenance and financing of a project or school facilities
24 project as the authority may deem necessary or desirable;

25 r. To guarantee up to 90% of the amount of a loan to a person,
26 if the proceeds of the loan are to be applied to the purchase and
27 installation, in a building devoted to industrial or commercial
28 purposes, or in an office building, of an energy improvement
29 system;

30 s. To employ consulting engineers, architects, attorneys, real
31 estate counselors, appraisers, and such other consultants and
32 employees as may be required in the judgment of the redevelopment
33 utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et
34 seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72
35 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic
36 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) **[and]**
37 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
38 P.L. , c. (C.) (pending before the Legislature as this bill),
39 and to fix and pay their compensation from funds available to the
40 redevelopment utility therefor, all without regard to the provisions
41 of Title 11A of the New Jersey Statutes;

42 t. To do and perform any acts and things authorized by
43 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401
44 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
45 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
46 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137 (C.52:18A-235 et
47 al.), and sections 3 through 18 of P.L. , c. (C.) (pending

- 1 before the Legislature as this bill), under, through or by means of its
2 own officers, agents and employees, or by contract with any person;
- 3 u. To procure insurance against any losses in connection with
4 its property, operations or assets in such amounts and from such
5 insurers as it deems desirable;
- 6 v. To do any and all things necessary or convenient to carry out
7 its purposes and exercise the powers given and granted in P.L.1974,
8 c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-
9 4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
10 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
11 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137 (C.52:18A-235 et
12 al.), and sections 3 through 18 of P.L. , c. (C.) (pending
13 before the Legislature as this bill);
- 14 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
15 maintain or repair or provide for the construction, reconstruction,
16 improvement, alteration, equipping or maintenance or repair of any
17 development property and lot, award and enter into construction
18 contracts, purchase orders and other contracts with respect thereto,
19 upon such terms and conditions as the authority shall determine to
20 be reasonable, including, but not limited to, reimbursement for the
21 planning, designing, financing, construction, reconstruction,
22 improvement, equipping, furnishing, operation and maintenance of
23 any such development property and the settlement of any claims
24 arising therefrom and the establishment and maintenance of reserve
25 funds with respect to the financing of such development property;
- 26 x. When authorized by the governing body of a municipality
27 exercising jurisdiction over an urban growth zone, to construct,
28 cause to be constructed or to provide financial assistance to projects
29 in an urban growth zone which shall be exempt from the terms and
30 requirements of the land use ordinances and regulations, including,
31 but not limited to, the master plan and zoning ordinances, of such
32 municipality;
- 33 y. To enter into business employment incentive agreements as
34 provided in the "Business Employment Incentive Program Act,"
35 P.L.1996, c.26 (C.34:1B-124 et al.);
- 36 z. To enter into agreements or contracts, execute instruments,
37 and do and perform all acts or things necessary, convenient or
38 desirable for the purposes of the redevelopment utility to carry out
39 any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-
40 1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007, c.137
41 (C.52:18A-235 et al.), including, but not limited to, entering into
42 contracts with the State Treasurer, the Commissioner of Education,
43 districts, the New Jersey Schools Development Authority, and any
44 other entity which may be required in order to carry out the
45 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), **[and]** P.L.2007,
46 c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L. , c.
47 (C.) (pending before the Legislature as this bill);

- 1 aa. (Deleted by amendment, P.L.2007, c.137);
- 2 bb. To make and contract to make loans to local units to finance
3 the cost of school facilities projects and to acquire and contract to
4 acquire bonds, notes or other obligations issued or to be issued by
5 local units to evidence the loans, all in accordance with the
6 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,
7 c.137 (C.52:18A-235 et al.);
- 8 cc. Subject to any agreement with holders of its bonds issued to
9 finance a project or school facilities project, obtain as security or to
10 provide liquidity for payment of all or any part of the principal of
11 and interest and premium on the bonds of the authority or for the
12 purchase upon tender or otherwise of the bonds, lines of credit,
13 letters of credit, reimbursement agreements, interest rate exchange
14 agreements, currency exchange agreements, interest rate floors or
15 caps, options, puts or calls to hedge payment, currency, rate, spread
16 or similar exposure or similar agreements, float agreements,
17 forward agreements, insurance contract, surety bond, commitment
18 to purchase or sell bonds, purchase or sale agreement, or
19 commitments or other contracts or agreements, and other security
20 agreements or instruments in any amounts and upon any terms as
21 the authority may determine and pay any fees and expenses required
22 in connection therewith;
- 23 dd. To charge to and collect from local units, the State and any
24 other person, any fees and charges in connection with the
25 authority's actions undertaken with respect to school facilities
26 projects, including, but not limited to, fees and charges for the
27 authority's administrative, organization, insurance, operating and
28 other expenses incident to the financing of school facilities projects;
- 29 ee. To make loans to refinance solid waste facility bonds
30 through the issuance of bonds or other obligations and the execution
31 of any agreements with counties or public authorities to effect the
32 refunding or rescheduling of solid waste facility bonds, or otherwise
33 provide for the payment of all or a portion of any series of solid
34 waste facility bonds. Any county or public authority refunding or
35 rescheduling its solid waste facility bonds pursuant to this
36 subsection shall provide for the payment of not less than fifty
37 percent of the aggregate debt service for the refunded or
38 rescheduled debt of the particular county or public authority for the
39 duration of the loan; except that, whenever the solid waste facility
40 bonds to be refinanced were issued by a public authority and the
41 county solid waste facility was utilized as a regional county solid
42 waste facility, as designated in the respective adopted district solid
43 waste management plans of the participating counties as approved
44 by the department prior to November 10, 1997, and the utilization
45 of the facility was established pursuant to tonnage obligations set
46 forth in their respective interdistrict agreements, the public
47 authority refunding or rescheduling its solid waste facility bonds

1 pursuant to this subsection shall provide for the payment of a
2 percentage of the aggregate debt service for the refunded or
3 rescheduled debt of the public authority not to exceed the
4 percentage of the specified tonnage obligation of the host county for
5 the duration of the loan. Whenever the solid waste facility bonds
6 are the obligation of a public authority, the relevant county shall
7 execute a deficiency agreement with the authority, which shall
8 provide that the county pledges to cover any shortfall and to pay
9 deficiencies in scheduled repayment obligations of the public
10 authority. All costs associated with the issuance of bonds pursuant
11 to this subsection may be paid by the authority from the proceeds of
12 these bonds. Any county or public authority is hereby authorized to
13 enter into any agreement with the authority necessary, desirable or
14 convenient to effectuate the provisions of this subsection.

15 The authority shall not issue bonds or other obligations to effect
16 the refunding or rescheduling of solid waste facility bonds after
17 December 31, 2002. The authority may refund its own bonds issued
18 for the purposes herein at any time;

19 ff. To pool loans for any local government units that are
20 refunding bonds and do and perform any and all acts or things
21 necessary, convenient or desirable for the purpose of the authority
22 to achieve more favorable interest rates and terms for those local
23 governmental units;

24 gg. To finance projects approved by the board, provide staff
25 support to the board, oversee and monitor progress on the part of
26 the board in carrying out the revitalization, economic development
27 and restoration projects authorized pursuant to the "Municipal
28 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
29 (C.52:27BBB-1 et al.) and otherwise fulfilling its responsibilities
30 pursuant thereto;

31 hh. To offer financial assistance to qualified film production
32 companies as provided in the "New Jersey Film Production
33 Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.); and

34 ii. To finance or develop private or public parking facilities or
35 structures, which may include the use of solar photovoltaic
36 equipment, in municipalities qualified to receive State aid pursuant
37 to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and
38 municipalities that contain areas designated pursuant to P.L.1985,
39 c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan),
40 Planning Area 2 (Suburban), or a town center, and to provide
41 appropriate assistance, including but not limited to, extensions of
42 credit, loans, and guarantees, to municipalities qualified to receive
43 State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-
44 178 et seq.) and municipalities that contain areas designated
45 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning
46 Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town
47 center, and their agencies and instrumentalities or to private entities

1 whose projects are located in those municipalities, in order to
2 facilitate the financing and development of parking facilities or
3 structures in such municipalities. The authority may serve as the
4 issuing agent of bonds to finance the undertaking of a project for
5 the purposes of this subsection.

6 (cf: P.L.2009, c.57, s.2)

7

8 15. N.J.S.40A:1-1 is amended to read as follows:

9 40A:1-1. The following words, as used in this title, shall have
10 the following meanings unless the context clearly indicates a
11 different meaning:

12 "budget" means the budget of a local unit;

13 "cash basis budget" means a budget prepared in accordance with
14 the "Local Budget Law";

15 "clerk" means the clerk of a municipality or of a board of chosen
16 freeholders;

17 "director" means the Director of the Division of Local
18 Government Services in the Department of Community Affairs;

19 "fiscal year" means the period for which a local unit adopts a
20 budget, as required pursuant to the "Local Budget Law,"
21 N.J.S.40A:4-1 et seq., and shall be the calendar year beginning on
22 January 1 and ending on December 31, unless the local unit is a
23 municipality in which the fiscal year has been changed to the State
24 fiscal year, pursuant to section 2 or 3 of P.L.1991, c.75 (C.40A:4-
25 3.1 or C.40A:4-3.2), in which case, "fiscal year" shall mean the
26 State fiscal year or the transition year, as appropriate;

27 "full membership of a governing body" means the number of
28 members of the body when all the seats are filled;

29 "local finance board" means the Local Finance Board in the
30 Division of Local Government Services in the Department of
31 Community Affairs;

32 "local unit" means a county or municipality;

33 "municipal public utility" means any water, sewer, electric power
34 or gas system, or any combination thereof, or any public parking
35 system, redevelopment, or any other utility, enterprise or purpose
36 authorized to be undertaken by a local unit from which it may
37 receive fees, rents, or other charges, and with respect to
38 redevelopment utilities, incremental revenues authorized pursuant
39 to section 11 of P.L. , c. (C.) (pending before the Legislature
40 as this bill);

41 "State fiscal year" means the period commencing on July 1 and
42 ending on June 30 in any municipality in which the fiscal year has
43 been changed pursuant to section 2 or 3 of P.L.1991, c.75 (C.40A:4-
44 3.1 or C.40A:4-3.2);

45 "transition year" means the period beginning on January 1 and
46 ending on June 30 in the calendar year during which the change in a
47 municipality's fiscal year takes effect, as authorized under the

1 provisions of section 2 or 3 of P.L.1991, c.75 (C.40A:4-3.1 or
2 C.40A:4-3.2).
3 (cf: P.L.1991, c.75, s.1)
4

5 16. N.J.S.40A:2-45 is amended to read as follows:

6 40A:2-45. Any municipal public utility shall be deemed to be a
7 self-liquidating purpose if the cash receipts from fees, rents or other
8 charges, and for redevelopment utilities, taxes other than taxes
9 assessed on real property, in a fiscal year are sufficient to meet
10 operating and maintenance costs (exclusive of depreciation and
11 obsolescence) and interest and debt redemption charges payable or
12 accruing in such year without recourse to general taxation or the
13 deficit, if any, anticipated in the dedicated utility assessment
14 budget. There may be included in such cash receipts any fees, rents
15 and other charges collected from other departments or utilities of
16 the local unit at a rate not in excess of the fees, rents or other
17 charges to other consumers, customers or users, or if there be no
18 other consumers, customers or users properly comparable, then not
19 in excess of the comparable fees, rents and other charges of
20 privately owned or operated utilities or enterprises. Any municipal
21 public utility may include interest on investments and deposits and
22 appropriated surplus as revenues, in addition to the other revenues
23 authorized by this section, in a determination of whether that
24 municipal public utility shall be deemed to be a self-liquidating
25 purpose.

26 (cf: P.L.1996, c.76, s.1)
27

28 17. Section 31 of P.L.2001, c.310 (C.52:27D-479) is amended to
29 read as follows:

30 31. a. In calculating the general tax rate levied each year, the
31 aggregate amount of the ratable increments of the revenue
32 allocation districts that have been pledged to bondholders or are
33 otherwise required by the district agent for the development of the
34 plan shall not be considered a part of the total taxable value of land
35 and improvements within the municipality.

36 b. In calculating the net valuation on which school district taxes
37 and county taxes are apportioned, the aggregate amount of the
38 ratable increments in the revenue allocation district shall be
39 excluded.

40 c. For purposes of this section, "ratable increment" means the
41 taxable value of all property assessed within a revenue allocation
42 district for the tax year, minus the property tax increment base.

43 (cf: P.L.2001, c.310, s.31)
44

45 18. (New section) The Local Finance Board in the Department
46 of Community Affairs, the State Treasurer, and the Economic
47 Development Authority may adopt implementation guidelines or

1 directives, and adopt such administrative rules, pursuant to the
2 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
3 seq.), as are necessary for the implementation of those agencies'
4 respective responsibilities under sections 3 through 18 of P.L. , c.
5 (C.) (pending before the Legislature as this bill), except that
6 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
7 seq.) to the contrary, the Local Finance Board, the State Treasurer,
8 and the Economic Development Authority may adopt, immediately
9 upon filing with the Office of Administrative Law, such rules and
10 regulations as they deem necessary to implement the provisions of
11 sections 3 through 18 of P.L. , c. (C.) (pending before the
12 Legislature as this bill) which shall be effective for a period not to
13 exceed 12 months and shall thereafter be amended, adopted, or re-
14 adopted in accordance with the provisions of P.L.1968, c.410
15 (C.52:14B-1 et seq.).

16

17 19. (New section) The Legislature finds that there exist in
18 certain municipalities certain industrial, port, and airport areas
19 which warrant redevelopment but do not presently generate
20 adequate funding sources with which to stimulate such activities.
21 As a result, municipal revenues derived from other areas in the
22 municipality have for many years been diverted to such areas in
23 order to induce redevelopment at such locations. In addition, the
24 worldwide financial credit crisis has created an environment in
25 which private financial activity in certain cities has been curtailed,
26 resulting in decreased revenue collections that have necessitated
27 severe cuts in local budgets for services. The Legislature declares
28 that it is therefore an appropriate and necessary public purpose to
29 provide a new source of funding, derived from a tax on the rental of
30 motor vehicles within designated industrial zones, to finance
31 various redevelopment activities occurring within those
32 municipalities.

33

34 20. (New section) a. A municipality having a population in
35 excess of 100,000 and within which is located a commercial airport
36 which provides for a minimum of 10 regularly scheduled
37 commercial airplane flights per day, or a municipality in which any
38 portion of such an airport is located, by ordinance, may impose a
39 tax on the rental of motor vehicles on such rental transactions that
40 occur within a designated industrial zone of the municipality. Such
41 tax shall be imposed on the person, corporation, or other legal entity
42 that is permitted the use of a motor vehicle that it does not own for
43 a period of time that is less than one year, in exchange for the
44 payment of a fee, and shall be collected on behalf of the
45 municipality by the person collecting such rental fee, in accordance
46 with such procedures as shall be established in the ordinance
47 imposing the tax.

1 The local motor vehicle rental tax rate imposed under an
2 ordinance adopted pursuant to this section shall not exceed five
3 percent of the total amount of the fee charged for the rental of the
4 motor vehicle, excluding any taxes and surcharges. After the
5 adoption of an ordinance, a municipality may subsequently amend
6 the ordinance from time to time to adjust the boundaries of the
7 industrial zone or, subject to the provisions of section 26 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill), to modify
9 the tax rate; however, the modified rate shall not exceed five
10 percent of the total amount of the fee charged for the rental of the
11 motor vehicle, excluding any taxes and surcharges.

12 An ordinance establishing a local motor vehicle rental tax, or
13 modifying the rate of that tax, shall take effect on the first day of
14 the month immediately following the date on which the ordinance
15 becomes legally in force and effect.

16 b. As used in this section:

17 "Eligible purposes" means (1) the payment or reimbursement of
18 costs of any "redevelopment project" or other undertaking in
19 furtherance of a "redevelopment plan" in any "area in need of
20 redevelopment" or "area in need of rehabilitation" within the
21 municipality (including, but not limited to, redevelopment projects
22 and undertakings located within the industrial zone), as such terms
23 are defined in the "Local Redevelopment and Housing Law",
24 P.L.1992, c.79 (C.40A:12A-1 et al.), (2) the making of municipal
25 subsidies or contributions as authorized by P.L.1992, c.79, (3) the
26 payment or reimbursement, within or relating to any urban
27 enterprise zone located within the municipality, of such costs as are
28 enumerated in the definition of "project" as contained in subsection
29 c. of section 29 of P.L.1983, c.303 (C.52:27H-88), without
30 reference to the zone assistance fund or the zone development
31 corporation, (4) the payment of bonds issued for any of the
32 foregoing purposes, (5) planning, evaluation, negotiation, and other
33 preliminary expenses relating to any of the foregoing purposes, and
34 (6) costs of administration and enforcement, including costs and
35 expenses of the municipality incurred in collecting the tax.

36 "Industrial zone" means such portion or portions of the
37 municipality, which may be identified by reference to zoning
38 districts, census tracks, or both, not exceeding in the aggregate 50
39 percent of the territory of the municipality, as is determined by the
40 municipality to be an area having, or intended to have,
41 predominantly industrial, port, airport, and related uses.

42 "Motor vehicle" means any automobile, truck, van, bus, or
43 similar conveyance that is intended primarily for passenger (as
44 distinct from cargo) use, and meeting the requirements of the State
45 for operation on public roads.

46 "Rental of motor vehicle" means any contract or agreement by
47 which a person, corporation, or other legal entity is permitted the

1 use of a motor vehicle that it does not own for a period of time that
2 is less than one year in exchange for the payment of a fee. A rental
3 transaction is deemed to occur at the location at which such person,
4 corporation, or other legal entity takes possession of the motor
5 vehicle.

6 "Rental tax account" means the dedicated trust account
7 established by a municipality pursuant to subsection c. of this
8 section.

9 "Tax proceeds" means amounts collected pursuant to any tax
10 imposed pursuant to sections 19 through 27 of P.L. , c. (C.)
11 (pending before the Legislature as this bill).

12 c. The Director of the Division of Taxation in the Department of
13 the Treasury may require, by regulation, that all taxes collected
14 pursuant to sections 19 through 27 of P.L. , c. (C.) (pending
15 before the Legislature as this bill) be collected in the same manner
16 as surcharges are collected under section 28 of P.L. , c. (C.)
17 (pending before the Legislature as this bill). Revenues that are
18 collected and distributed back to the municipality shall be deposited
19 into a trust account established by the municipality and dedicated
20 exclusively to the purpose of funding one or more eligible purposes.
21 In the case of any assignment pursuant to section 23 of P.L. , c.
22 (C.) (pending before the Legislature as this bill), the terms of
23 such assignment shall include the agreement of the municipality to
24 enforce collection of the taxes in such manner as provided therein,
25 and may provide for direct payment of all or a portion of the tax
26 proceeds to a bond trustee. In addition to tax proceeds, there shall
27 be deposited into the rental tax account such other moneys as may,
28 from time to time, be directed by law to be deposited therein.

29
30 21. (New section) a. All tax proceeds required to be collected
31 by the municipality pursuant to sections 19 through 27 of P.L. , c.
32 (C.) (pending before the Legislature as this bill) shall be
33 anticipated as dedicated revenues and appropriated to such
34 dedicated purposes in the municipal budget pursuant to
35 N.J.S.40A:4-39.

36 b. Except to the extent tax proceeds are assigned to a bond
37 trustee pursuant to section 23 of P.L. , c. (C.) (pending
38 before the Legislature as this bill), all tax proceeds shall, promptly
39 upon receipt by the chief financial officer, be deposited into the
40 rental tax account. There may also be deposited into the rental tax
41 account, or with the bond trustee, such additional amounts as may
42 from time to time be appropriated for such purpose by the
43 municipality, and the proceeds of any bonds issued pursuant to
44 P.L. , c. (C.) (pending before the Legislature as this bill)
45 may also be deposited into the rental tax account.

1 22. (New section) a. Any person having the obligation to collect
2 any tax imposed under sections 19 through 27 of P.L. , c.
3 (C.) (pending before the Legislature as this bill) who fails,
4 neglects, or refuses to make any report required by the Director of
5 the Division of Taxation in the Department of the Treasury or by an
6 ordinance adopted pursuant to sections 19 through 27 of P.L. , c.
7 (C.) (pending before the Legislature as this bill), any such
8 person who refuses to permit an officer or agent designed by the
9 director or by the municipality to examine his books, records, and
10 paper, and any such person who knowingly makes any incomplete,
11 false, or fraudulent report, or who attempts to do anything
12 whatsoever to avoid the full disclosure of the amount due under the
13 ordinance to avoid the payment of the whole or any part hereof, is a
14 disorderly person.

15 b. The failure of any person to receive or procure the forms
16 required for making reports required by the director or by an
17 ordinance adopted pursuant to section 20 of P.L. , c. (C.)
18 (pending before the Legislature as this bill) shall not excuse him
19 from making those reports.
20

21 23. (New section) An ordinance imposing a tax pursuant to
22 sections 19 through 27 of P.L. , c. (C.) (pending before the
23 Legislature as this bill) may authorize the municipality to assign all
24 or any portion or percentage of the proceeds thereof directly to the
25 trustee for any bonds issued pursuant to section 24 of P.L. , c.
26 (C.) (pending before the Legislature as this bill), as payment or
27 security for the bonds. Notwithstanding any law to the contrary, the
28 assignment shall be an absolute assignment of all of the
29 municipality's right, title and interest in the tax proceeds, or portion
30 or percentage thereof. Tax proceeds assigned to the trustee
31 pursuant to this section shall be paid directly by the municipality's
32 chief financial officer to the trustee, and accordingly such assigned
33 tax proceeds shall not be included in the general funds of the
34 municipality, or shall they be subject to any laws regarding the
35 receipt, deposit, investment, or appropriation of public funds; and
36 they shall retain such status notwithstanding enforcement of the
37 payment by the municipality or assignee.
38

39 24. (New section) a. A municipality that has imposed a tax
40 pursuant to section 20 of P.L. , c. (C.) (pending before the
41 Legislature as this bill) may issue bonds to finance eligible purposes
42 listed in subsection b. of section 20 of P.L. , c. (C.) (pending
43 before the Legislature as this bill), in accordance with provisions
44 governing the issuance of bonds under the "Local Redevelopment
45 and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.). A
46 resolution authorizing such bonds shall either identify a particular
47 eligible purpose or purposes toward which the bond proceeds shall

1 be applied and the respective amounts allocable to each such
2 eligible purpose, or may provide that such bond proceeds may be
3 applied to all of the eligible purposes described in subsection b. of
4 section 20 of P.L. , c. (C.) (pending before the Legislature
5 as this bill). Bond proceeds shall be deposited in the rental tax
6 account as provided in subsection c. of section 20 of P.L. , c.
7 (C.) (pending before the Legislature as this bill). Any bond
8 authorization issued under this section shall be subject to the
9 approval of the Local Finance Board.

10 b. Notwithstanding the provisions of subsection g. of section 37
11 of P.L.1992, c.79 (C.40A:12A-37), the bonds issued pursuant to this
12 section shall be issued as non-recourse obligations, and unless
13 otherwise provided for by separate action of the municipality to
14 guarantee such bonds or otherwise provide for a pledge of the
15 municipality's full faith and credit, shall not, except for such action,
16 be considered to be direct and general obligations of the
17 municipality, and, absent such action, the municipality shall not be
18 obligated to levy and collect a property tax sufficient in an amount
19 to pay the principal and interest on the bonds when the same
20 become due and payable. The provisions of the "Local Government
21 Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.)
22 shall not apply to any bonds issued or authorized pursuant to this
23 section and those bonds shall not be considered gross debt of the
24 municipality on any debt statement filed in accordance with the
25 "Local Bond Law," N.J.S.40A:2-1 et seq., and the provisions of
26 chapter 27 of Title 52 of the Revised Statutes shall not apply to
27 such bonds.

28 c. The expenditure of the proceeds from the sale of the bonds
29 shall not require compliance with public bidding laws, including the
30 "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et
31 seq.), or any other statute under which an entity other than the
32 municipality, or any other public entity otherwise subject to such
33 law, shall undertake the economic development costs. The use of
34 these funds shall be subject to public accountability and oversight
35 by the municipality.

36 d. In order to provide additional security to bonds issued under
37 this section, the municipality may provide for an extension of the
38 municipality's full faith and credit. To the extent that the
39 municipality provides for a full faith and credit guaranty of any
40 bonds, but determines not to authorize the issuance of bonds or
41 notes to provide the funding source thereof, it may do so by
42 resolution approved by a majority of the full governing body. To
43 the extent that bonds or notes are authorized to fund such guaranty,
44 such bonds or notes shall be authorized pursuant to the provisions
45 of the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall be
46 deductible from the gross debt of the municipality until such time as

1 bonds or notes are actually issued, and only up to the amount
2 actually issued, to fund such guaranty.

3
4 25. (New section) All bonds issued pursuant to section 24 of
5 P.L. , c. (C.) (pending before the Legislature as this bill) are
6 hereby declared to be issued by a political subdivision of this State
7 and for an essential public and governmental purpose and the
8 bonds, and the interest thereon and the income there from, and all
9 facility charges, funds, revenues, and other moneys pledged or
10 available to pay or secure the payment of the bonds, or interest
11 thereon, shall at all times be exempt from taxation except for
12 transfer inheritance and estate taxes.

13
14 26. (New section) The State of New Jersey does hereby pledge
15 to, and covenant and agree with, the holders of any bonds issued
16 pursuant to section 24 of P.L. , c. (C.) (pending before the
17 Legislature as this bill) that the State will not limit or alter the terms
18 of any agreement, ordinance, or resolution made in connection with
19 the security for, and the issuance and sale of, any bonds, so as to in
20 any way impair the rights or remedies of such holders, and will not
21 modify in any way the exemption from taxation provided for in
22 section 25 of P.L. , c. (C.) (pending before the Legislature
23 as this bill) until the bonds, together with interest thereon, with
24 interest on any unpaid installments of interest, and all costs and
25 expenses in connection with any action or proceeding by or on
26 behalf of such holders, are fully met and discharged.

27
28 27. (New section) After issuance, pursuant to sections 19
29 through 26 of P.L. , c. (C.) (pending before the Legislature
30 as this bill), all bonds, notes, or other obligations shall be
31 conclusively presumed to be fully authorized and issued by all
32 courts and officers of this State, and any person shall be estopped
33 from questioning their sale, execution, or delivery.

34
35 28. (New section) a. As used in this section:
36 "Admission charge" means the amount paid for admission,
37 including any service charge and any charge for entertainment at a
38 place of amusement, including but not limited to a dramatic or
39 musical arts admission charge as defined pursuant to subsection (r)
40 of section 2 of P.L.1966, c.30 (C.54:32B-2); and

41 "Major place of amusement" means a place of amusement as that
42 term is defined in subsection (t) of section 2 of P.L.1966, c.30
43 (C.54:32B-2), other than a motion picture theater, and other than an
44 amusement park as defined in section 1 of P.L.1992, c.118 (C.5:3-
45 55), at which admission charges are regularly paid, which place of
46 amusement is not owned by the State or an independent State
47 authority, or is not located on property that is owned by the State,

1 and which contains fixed seats for at least 7,000 patrons. For the
2 purposes of this definition, a county improvement authority is not
3 an independent State authority.

4 b. (1) The governing body of a municipality that is a city of the
5 second class and in which there is located a major place of
6 amusement, except for a municipality subject to the "Municipal
7 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
8 (C.52:27BBB-1 et al.), may adopt an ordinance imposing a
9 surcharge of an amount up to \$2 on each admission charge that is
10 subject to the New Jersey sales tax pursuant to paragraph (1) of
11 subsection (e) of section 3 of P.L.1966, c.30 (C.54:32B-3), and that
12 is not otherwise exempt from that tax, collected by each major place
13 of amusement in the municipality for admission thereto, which
14 surcharge shall be paid by the customer from whom the sales tax is
15 due pursuant to section 3 of P.L.1966, c.30 (C.54:32B-3). A
16 surcharge imposed under an ordinance adopted pursuant to this
17 paragraph shall be in addition to any other tax or fee imposed
18 pursuant to statute or local ordinance or resolution by any
19 governmental entity upon the admission charge. A surcharge
20 imposed under an ordinance adopted pursuant to this paragraph
21 shall be separately stated on any bill, receipt, invoice or similar
22 document provided to the patron, but shall not be considered part of
23 the sale price for purpose of determining tax pursuant to P.L.1966,
24 c.30 (C.54:32B-1 et seq.).

25 (2) The governing body of a municipality that is a city of the
26 second class in which there is located a major place of amusement,
27 except for a municipality subject to the "Municipal Rehabilitation
28 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et
29 al.), may adopt an ordinance imposing a surcharge of an amount up
30 to \$2 on parking for the major place of amusement. A parking
31 surcharge imposed under an ordinance adopted pursuant to this
32 paragraph shall be in addition to any other tax or fee imposed
33 pursuant to statute or local ordinance or resolution by any
34 governmental entity upon the parking charge. A surcharge imposed
35 under an ordinance adopted pursuant to this paragraph shall be
36 separately stated on any bill, receipt, invoice or similar document
37 provided to the patron, if any, but shall not be considered part of the
38 sale price for purpose of determining tax pursuant to P.L.1966, c.30
39 (C.54:32B-1 et seq.).

40 c. A copy of an ordinance adopted pursuant to this section shall
41 be transmitted upon adoption or amendment to the State Treasurer
42 along with a list of the names and locations of major places of
43 amusement in the municipality. An ordinance so adopted or any
44 amendment thereto shall provide that the surcharge provisions of
45 the ordinance or any amendment to the surcharge provisions shall
46 take effect on the first day of the first full month occurring 30 days
47 after the date of transmittal to the State Treasurer. Any ordinance

1 adopted pursuant to this section shall contain the following
2 provisions:

3 (1) A vendor shall not assume or absorb the surcharge imposed
4 by the ordinance;

5 (2) A vendor shall not in any manner advertise or hold out to any
6 person or to the public in general, in any manner, directly or
7 indirectly, that the surcharge will be assumed or absorbed by the
8 vendor, that the surcharge will not be separately charged and stated
9 to the customer, or that the surcharge will be refunded to the
10 customer;

11 (3) Each assumption or absorption by a vendor of the surcharge
12 shall be deemed a separate offense and each representation or
13 advertisement by a vendor for each day the representation or
14 advertisement continues shall be deemed a separate offense; and

15 (4) Penalties as fixed in the ordinance, for violation of the
16 foregoing provisions.

17 d. (1) A surcharge imposed pursuant to a municipal ordinance
18 adopted under the provisions of this section shall be collected on
19 behalf of the municipality by the person collecting the admission
20 charge or parking fee from the customer.

21 (2) Each person required to collect a surcharge imposed by the
22 ordinance shall be personally liable for the surcharge imposed,
23 collected or required to be collected hereunder. Any such person
24 shall have the same right in respect to collecting the surcharge from
25 a customer as if the surcharge were a part of the admission charge
26 and payable at the same time; provided, however, that the chief
27 fiscal officer of the municipality shall be joined as a party in any
28 action or proceeding brought to collect the surcharge.

29 e. (1) A person required to collect a surcharge imposed pursuant
30 to the provisions of this section shall, on or before the dates
31 required pursuant to section 17 of P.L.1966, c.30 (C.54:32B-17),
32 forward to the Director of the Division of Taxation in the
33 Department of the Treasury the surcharge collected in the preceding
34 month and make and file a return for the preceding month with the
35 director on any form and containing any information as the director
36 shall prescribe as necessary to determine liability for the surcharge
37 in the preceding month during which the person was required to
38 collect the surcharge.

39 (2) The director may permit or require returns to be made
40 covering other periods and upon any dates as the director may
41 specify. In addition, the director may require payments of
42 surcharge liability at any intervals and based upon any
43 classifications as the director may designate. In prescribing any
44 other periods to be covered by the return or intervals or
45 classifications for payment of surcharge liability, the director may
46 take into account the dollar volume of surcharge involved as well as

1 the need for ensuring the prompt and orderly collection of the
2 surcharge imposed.

3 (3) The director may require amended returns to be filed within
4 20 days after notice and to contain the information specified in the
5 notice.

6 f. (1) The Director of the Division of Taxation in the
7 Department of the Treasury shall collect and administer the
8 surcharges; in so doing, the director shall have all the powers
9 granted pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.).
10 Surcharges imposed pursuant to the provisions of this section shall
11 be governed by the provisions of the State Uniform Tax Procedure
12 Law, R.S.54:48-1 et seq.

13 (2) The director shall determine and certify to the State Treasurer
14 on a quarterly or more frequent basis, as prescribed by the State
15 Treasurer, the amount of revenues collected in each municipality
16 pursuant to this section.

17 (3) The State Treasurer, upon the certification of the director and
18 upon the warrant of the State Comptroller, shall pay and distribute
19 on a quarterly or more frequent basis, as prescribed by the State
20 Treasurer, to each municipality the amount of revenues determined
21 and certified under this subsection.

22 (4) The revenue received by a municipality shall be appropriated
23 as a special item of local revenue subject to the prior written
24 approval by the Director of the Division of Local Government
25 Services in the Department of Community Affairs, and shall be
26 offset with a local unit appropriation of an equal amount for
27 economic development purposes.

28 g. The director may, pursuant to the provisions of the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.), make, adopt, amend, or repeal such rules and regulations as
31 the director finds necessary to carry out the provisions of this
32 section.

33

34 29. Section 1 of P.L.1997, c.334 (C.34:1B-7.42a) is amended to
35 read as follows:

36 1. a. The New Jersey Economic Development Authority shall
37 establish within the New Jersey Emerging Technology and
38 Biotechnology Financial Assistance Program established pursuant
39 to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business
40 tax benefit certificate transfer program to allow new or expanding
41 emerging technology and biotechnology companies in this State
42 with unused amounts of research and development tax credits
43 otherwise allowable which cannot be applied for the credit's tax
44 year due to the limitations of subsection b. of section 1 of P.L.1993,
45 c.175 (C.54:10A-5.24) and unused net operating loss carryover
46 pursuant to subparagraph (B) of paragraph (6) of subsection (k) of
47 section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax

1 benefits for use by other corporation business taxpayers in this
2 State, provided that the taxpayer receiving the surrendered tax
3 benefits is not affiliated with a corporation that is surrendering its
4 tax benefits under the program established under P.L.1997, c.334.
5 For the purposes of this section, the test of affiliation is whether the
6 same entity directly or indirectly owns or controls 5% or more of
7 the voting rights or 5% or more of the value of all classes of stock
8 of both the taxpayer receiving the benefits and a corporation that is
9 surrendering the benefits. The tax benefits may be used on the
10 corporation business tax returns to be filed by those taxpayers in
11 exchange for private financial assistance to be provided by the
12 corporation business taxpayer that is the recipient of the corporation
13 business tax benefit certificate to assist in the funding of costs
14 incurred by the new or expanding emerging technology and
15 biotechnology company.

16 b. The authority, in cooperation with the Division of Taxation
17 in the Department of the Treasury, shall review and approve
18 applications by new or expanding emerging technology and
19 biotechnology companies in this State with unused but otherwise
20 allowable carryover of research and development tax credits
21 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and
22 unused but otherwise allowable net operating loss carryover
23 pursuant to paragraph (6) of subsection (k) of section 4 of P.L.1945,
24 c.162 (C.54:10A-4), to surrender those tax benefits in exchange for
25 private financial assistance to be made by the corporation business
26 taxpayer that is the recipient of the corporation business tax benefit
27 certificate in an amount equal to at least ~~75%~~ 80% of the amount
28 of the surrendered tax benefit. Provided that the amount of the
29 surrendered tax benefit for a surrendered research and development
30 tax credit carryover is the amount of the credit, and provided that
31 the amount of the surrendered tax benefit for a surrendered net
32 operating loss carryover is the amount of the loss multiplied by the
33 new or expanding emerging technology or biotechnology company's
34 anticipated allocation factor, as determined pursuant to section 6 of
35 P.L.1945, c.162 (C.54:10A-6) for the tax year in which the benefit
36 is transferred and subsequently multiplied by the corporation
37 business tax rate provided pursuant to subsection (c) of section 5 of
38 P.L.1945, c.162 (C.54:10A-5). The authority shall be authorized to
39 approve the transfer of no more than ~~50,000,000~~ of tax benefits
40 over State fiscal year 2000, \$40,000,000 of tax benefits over each
41 State fiscal year 2001 through 2004, and ~~60,000,000~~ of
42 tax benefits in a State fiscal year ~~2005 and each State fiscal year~~
43 ~~thereafter~~. If the total amount of transferable tax benefits
44 requested to be surrendered by approved applicants exceeds
45 ~~50,000,000 for State fiscal year 2000, \$40,000,000 for each State~~
46 ~~fiscal year 2001 through 2004, or \$60,000,00~~ 60,000,000 for a
47 ~~State fiscal year 2005 and for each State fiscal year thereafter~~, the

1 authority, in cooperation with the Division of Taxation in the
2 Department of the Treasury, shall not be authorized to approve the
3 transfer of more than ~~[\$50,000,000 for State fiscal year 2000, more~~
4 ~~than \$40,000,000 for each State fiscal 2001 through 2004, or~~
5 ~~\$60,000,00]~~ \$60,000,000 for that State fiscal year ~~[2005 and for~~
6 ~~each State fiscal year thereafter]~~ and shall allocate the transfer of
7 tax benefits by approved companies using the following method:

8 (1) an eligible applicant with \$250,000 or less of transferable
9 tax benefits shall be authorized to surrender the entire amount of its
10 transferable tax benefits;

11 (2) an eligible applicant with more than \$250,000 of transferable
12 tax benefits shall be authorized to surrender a minimum of
13 \$250,000 of its transferable tax benefits;

14 (3) ~~[an eligible applicant with more than \$250,000 of~~
15 ~~transferable tax benefits that was approved to surrender tax benefits~~
16 ~~in the prior fiscal year shall be authorized to surrender a minimum~~
17 ~~of 50% of the transferable tax benefits surrendered in the prior~~
18 ~~fiscal year or \$250,000 whichever is greater, provided that the~~
19 ~~amount of transferable tax benefits authorized shall not exceed the~~
20 ~~applicant's transferable tax benefits for the current fiscal year;]~~
21 (Deleted by amendment, P.L. _____, c. _____.) (pending before the
22 Legislature as this bill)

23 (4) an eligible applicant with more than \$250,000 shall also be
24 authorized to surrender additional transferable tax benefits
25 determined by multiplying the applicant's transferable tax benefits
26 less the minimum transferable tax benefits that company is
27 authorized to surrender under paragraph (2) ~~[or (3)]~~ of this
28 subsection by a fraction, the numerator of which is the total amount
29 of transferable tax benefits that the authority is authorized to
30 approve less the total amount of transferable tax benefit approved
31 under paragraphs (1), (2), ~~[(3)]~~ and (5) of this subsection and the
32 denominator of which is the total amount of transferable tax
33 benefits requested to be surrendered by all eligible applicants less
34 the total amount of transferable tax benefits approved under
35 paragraphs (1), (2), ~~[(3)]~~ and (5) of this subsection;

36 (5) The authority shall establish the boundaries for three
37 innovation zones to be geographically distributed in the northern,
38 central, and southern portions of this State. Of the \$60,000,000 of
39 transferable tax benefits authorized for each State fiscal year,
40 ~~[\$5,000,000 shall be allocated for the surrender of transferable tax~~
41 ~~benefits exclusively by eligible companies that operate within the~~
42 ~~boundaries of the innovation zones during State fiscal year 2005,~~
43 ~~and]~~ \$10,000,000 shall be ~~[so]~~ allocated ~~[for State fiscal year 2006~~
44 ~~and for each State fiscal year thereafter]~~ for the surrender of
45 transferable tax benefits exclusively by new and expanding
46 emerging technology and biotechnology companies that operate

1 within the boundaries of the innovation zones, except that any
2 portion of the \$10,000,000 that is not so approved shall be available
3 for that State fiscal year for the surrender of transferable tax
4 benefits by new and expanding emerging technology and
5 biotechnology companies that do not operate within the boundaries
6 of an innovation zone.

7 If the total amount of transferable tax benefits that would be
8 authorized using the above method exceeds ~~[\$50,000,000 for State~~
9 ~~fiscal year 2000, \$40,000,000 for each State fiscal year 2001~~
10 ~~through 2004, or \$60,000,00]~~ \$60,000,000 for a State fiscal year
11 ~~【2005 and for each State fiscal year thereafter】~~, then the authority,
12 in cooperation with the Division of Taxation in the Department of
13 the Treasury, shall limit the total amount of tax benefits authorized
14 to be transferred to ~~[\$50,000,000 for State fiscal year 2000,~~
15 ~~\$40,000,000 for each State fiscal year 2001 through 2004, or~~
16 ~~\$60,000,00]~~ \$60,000,000 ~~【for State fiscal year 2005 and for each~~
17 ~~State fiscal year thereafter】~~ by applying the above method on an
18 apportioned basis.

19 For purposes of this section transferable tax benefits include an
20 eligible applicant's unused but otherwise allowable carryover of net
21 operating losses multiplied by the applicant's anticipated allocation
22 factor as determined pursuant to section 6 of P.L. 1945, c.162
23 (C.54:10A-6) for the tax year in which the benefit is transferred and
24 subsequently multiplied by the corporation business tax rate as
25 provided in subsection (c) of section 5 of P.L.1945, c.162
26 (C.54:10A-5) plus the total amount of the applicant's unused but
27 otherwise allowable carryover of research and development tax
28 credits. An eligible applicant's transferable tax benefits shall be
29 limited to net operating losses and research and development tax
30 credits that the applicant requests to surrender in its application to
31 the authority and shall not, in total, exceed the maximum amount of
32 tax benefits that the applicant is eligible to surrender.

33 No application for a corporation business tax benefit transfer
34 certificate shall be approved in which the new or expanding
35 emerging technology or biotechnology company (1) has
36 demonstrated positive net operating income in any of the two
37 previous full years of ongoing operations as determined on its
38 financial statements issued according to generally accepted
39 accounting standards endorsed by the Financial Accounting
40 Standards Board; or (2) is directly or indirectly at least 50 percent
41 owned or controlled by another corporation that has demonstrated
42 positive net operating income in any of the two previous full years
43 of ongoing operations as determined on its financial statements
44 issued according to generally accepted accounting standards
45 endorsed by the Financial Accounting Standards Board or is part of
46 a consolidated group of affiliated corporations, as filed for federal
47 income tax purposes, that in the aggregate has demonstrated

1 positive net operating income in any of the two previous full years
2 of ongoing operations as determined on its combined financial
3 statements issued according to generally accepted accounting
4 standards endorsed by the Financial Accounting Standards Board.

5 The maximum lifetime value of surrendered tax benefits that a
6 corporation shall be permitted to surrender pursuant to the program
7 is ~~[\$10,000,000]~~ \$15,000,000. Applications must be received
8 ~~[within 30 days from enactment of P.L.1999, c.140 (C.34:1B-7.42b~~
9 ~~et al.) for State fiscal year 2000 and]~~ on or before June 30 ~~[for]~~ of
10 each ~~[subsequent]~~ State fiscal year.

11 ~~[The private financial assistance shall be used to fund expenses~~
12 ~~incurred in connection with the operation of the new or expanding~~
13 ~~emerging technology or biotechnology company in the State,~~
14 ~~including but not limited to the expenses of fixed assets, such as the~~
15 ~~construction and acquisition and development of real estate,~~
16 ~~materials, start-up, tenant fit-out, working capital, salaries, research~~
17 ~~and development expenditures and any other expenses determined~~
18 ~~by the authority to be necessary to carry out the purposes of the~~
19 ~~New Jersey Emerging Technology and Biotechnology Financial~~
20 ~~Assistance Program.]~~

21 The authority, in consultation with the Division of Taxation,
22 shall establish rules for the recapture of all, or a portion of, the
23 amount of a grant of a corporation business tax benefit certificate
24 from the new or expanding emerging technology and biotechnology
25 company having surrendered tax benefits pursuant to this section in
26 the event the taxpayer fails to use the private financial assistance
27 received for the surrender of tax benefits as required by this
28 subsection or fails to maintain a headquarters or a base of operation
29 in this State during the five years following receipt of the private
30 financial assistance; except if the failure to maintain a headquarters
31 or a base of operation in this State is due to the liquidation of the
32 new or expanding emerging technology and biotechnology
33 company.

34 c. The authority, in cooperation with the Division of Taxation
35 in the Department of the Treasury, shall review and approve
36 applications by taxpayers under the Corporation Business Tax Act
37 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire
38 surrendered tax benefits approved pursuant to subsection b. of this
39 section which shall be issued in the form of corporation business
40 tax benefit transfer certificates, in exchange for private financial
41 assistance to be made by the taxpayer in an amount equal to at least
42 ~~[75%]~~ 80% of the amount of the surrendered tax benefit of an
43 emerging technology or biotechnology company in the State. A
44 corporation business tax benefit transfer certificate shall not be
45 issued unless the applicant certifies that as of the date of the
46 exchange of the corporation business tax benefit certificate it is
47 operating as a new or expanding emerging technology or

1 biotechnology company and has no current intention to cease
2 operating as a new or expanding emerging technology or
3 biotechnology company.

4 The private financial assistance shall assist in funding expenses
5 incurred in connection with the operation of the new or expanding
6 emerging technology or biotechnology company in the State,
7 including but not limited to the expenses of fixed assets, such as the
8 construction and acquisition and development of real estate,
9 materials, start-up, tenant fit-out, working capital, salaries, research
10 and development expenditures and any other expenses determined
11 by the authority to be necessary to carry out the purposes of the
12 New Jersey Emerging Technology and Biotechnology Financial
13 Assistance Program.

14 The authority shall require a corporation business taxpayer that
15 acquires a corporation business tax benefit certificate to enter into a
16 written agreement with the new or expanding emerging technology
17 or biotechnology company concerning the terms and conditions of
18 the private financial assistance made in exchange for the certificate.
19 The written agreement may contain terms concerning the
20 maintenance by the new or expanding emerging technology or
21 biotechnology company of a headquarters or a base of operation in
22 this State.

23 d. [The authority shall coordinate the applications for
24 surrender and acquisition of unused but otherwise allowable tax
25 benefits pursuant to this section in a manner that can best stimulate
26 and encourage the extension of private financial assistance to new
27 and expanding emerging technology and biotechnology companies
28 in this State. The applications shall be submitted and the authority
29 shall approve or disapprove the applications.

30 The authority shall, in consultation with the New Jersey
31 Commerce and Economic Growth Commission, the New Jersey
32 Commission on Science and Technology and any institution of
33 higher education in New Jersey, develop criteria for the approval or
34 disapproval of applications. Such criteria shall include, but need
35 not be limited to, an evaluation of the new or expanding emerging
36 technology or biotechnology company's actual or potential scientific
37 and technological viability, a determination that the new or
38 expanding emerging technology or biotechnology company's
39 principal products or services are sufficiently innovative to provide
40 a competitive advantage, a determination that the proposed financial
41 assistance will result in significant growth in permanent, full-time
42 employment in the State, a determination made by the authority that
43 the new or expanding emerging technology or biotechnology
44 company does not have sufficient resources to operate in the short
45 term or cannot secure financial assistance from venture capital,
46 stock issuance, product sales revenue, a parent corporation or other
47 affiliates, bank or any other method of obtaining capital, and a

1 determination that the financial assistance provided pursuant to this
2 act demonstrates the prospect of a significant positive change in the
3 applicant's net income. The authority shall establish the weight of
4 importance to be given each criterion utilized in its application
5 approval process. No application for surrender and acquisition of
6 unused but otherwise allowable tax benefits pursuant to this section
7 shall be approved in which the new or expanding technology or
8 biotechnology company (1) has demonstrated positive net income in
9 any of the two previous full years of ongoing operations as
10 determined on its financial statements; or (2) has demonstrated a
11 ratio in excess of 110% or greater of operating revenues divided by
12 operating expenses in any of the two previous full years of
13 operations as determined on its financial statements; or (3) is
14 directly or indirectly at least 50% owned or controlled by another
15 corporation that has demonstrated positive net income in any of the
16 two previous full years of ongoing operations as determined on its
17 financial statements or is part of a consolidated group of affiliated
18 corporations, as filed for federal income tax purposes, that in the
19 aggregate has demonstrated positive net income in any of the two
20 previous full years of ongoing operations as determined on its
21 combined financial statements.

22 Once an application has been approved, the applicant shall be
23 permitted to surrender, subject to the limitations set forth in
24 subsection b. of this section and the net operating loss carryover and
25 research and development tax credit carryover time periods
26 pursuant to subparagraph (B) of paragraph (6) of subsection (k) of
27 section 4 of P.L.1945, c.162 (C.54:10A-4) and subsection b. of
28 section 1 of P.L.1993, c.175 (C.54:10A-5.24), the surrendered tax
29 benefits that are requested in the application regardless of whether
30 the applicant continues to meet the eligibility criteria set forth in the
31 act in subsequent years.

32 The authority shall require a corporation business taxpayer that
33 acquires a corporation business tax benefit certificate to enter into a
34 written agreement with the new or expanding emerging technology
35 or biotechnology company concerning the terms and conditions of
36 the private financial assistance made in exchange for the certificate.
37 The written agreement may contain terms concerning the
38 maintenance by the new or expanding emerging technology or
39 biotechnology company of a headquarters or a base of operation in
40 this State.】 (Deleted by amendment, P.L. , c. .) (pending
41 before the Legislature as this bill)
42 (cf: P.L.2004, c.65, s.18)

43
44 30. Section 1 of P.L.1999, c.140 (C.34:1B-7.42b) is amended to
45 read as follows:

46 1. As used in P.L.1997, c.334 (C.34:1B-7.42a et al.):

1 “Authority” means the New Jersey Economic Development
2 Authority established pursuant to section 4 of P.L.1974, c.80
3 (C.34:1B-4)[;].

4 “Biotechnology” means the continually expanding body of
5 fundamental knowledge about the functioning of biological systems
6 from the macro level to the molecular and sub-atomic levels, as
7 well as novel products, services, technologies and sub-technologies
8 developed as a result of insights gained from research advances that
9 add to that body of fundamental knowledge[;].

10 “Biotechnology company” means an emerging corporation that
11 has its headquarters or base of operations in this State; that owns,
12 has filed for, or has a valid license to use protected, proprietary
13 intellectual property; and that is engaged in the research,
14 development, production, or provision of biotechnology for the
15 purpose of developing or providing products or processes for
16 specific commercial or public purposes, including but not limited
17 to, medical, pharmaceutical, nutritional, and other health-related
18 purposes, agricultural purposes, and environmental purposes, or a
19 person whose headquarters or base of operations is located in this
20 State, engaged in providing services or products necessary for such
21 research, development, production, or provision[;].

22 “Full-time employee” means a person employed by a new or
23 expanding emerging technology or biotechnology company for
24 consideration for at least 35 hours a week, or who renders any other
25 standard of service generally accepted by custom or practice as full-
26 time employment and whose wages are subject to withholding as
27 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
28 et seq., or who is a partner of a new or expanding emerging
29 technology or biotechnology company who works for the
30 partnership for at least 35 hours a week, or who renders any other
31 standard of service generally accepted by custom or practice as full-
32 time employment, and whose distributive share of income, gain,
33 loss, or deduction, or whose guaranteed payments, or any
34 combination thereof, is subject to the payment of estimated taxes, as
35 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
36 et seq. To qualify as a “full-time employee,” an employee shall
37 also receive from the new or expanding emerging technology or
38 biotechnology company health benefits under a group health plan as
39 defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health
40 benefits plan as defined under section 1 of P.L.1992, c.162
41 (C.17B:27A-17), or a policy or contract of health insurance
42 covering more than one person issued pursuant to Article 2 of
43 chapter 27 of Title 17B of the New Jersey Statutes. “Full-time
44 employee” shall not include any person who works as an
45 independent contractor or on a consulting basis for the new or
46 expanding emerging technology or biotechnology company.

1 “New or expanding” means a technology or biotechnology
2 company that at the end of the calendar year prior to the year in
3 which the company files an application for surrender of unused but
4 otherwise allowable tax benefits under P.L.1997, c.334 (C.34:1B-
5 7.42a et al.), on the date on which the application is submitted, and
6 on the date on which the company receives the corporation business
7 tax benefit certificate, has fewer than 225 employees in the United
8 States of America [, of whom 75% are New Jersey-based
9 employees filling a position or job in this State]; [and] but that has
10 at least one full-time employee working in this State if the company
11 has been incorporated for less than three years, that has at least five
12 full-time employees working in this State if the company has been
13 incorporated for more than three years but less than five years, and
14 that has at least 10 full-time employees working in this State if the
15 company has been incorporated for more than five years.

16 “Technology company” means an emerging corporation that has
17 its headquarters or base of operations in this State; that owns, has
18 filed for, or has a valid license to use protected, proprietary
19 intellectual property; and that employs some combination of the
20 following: highly educated or trained managers and workers, or
21 both, employed in this State who use sophisticated scientific
22 research service or production equipment, processes or knowledge
23 to discover, develop, test, transfer or manufacture a product or
24 service.

25 (cf: P.L.1999, c.140, s.1)

26

27 31. Section 2 of P.L.2007, c.346 (C.34:1B-208) is amended to
28 read as follows:

29 2. As used in this act:

30 “Affiliate” means an entity that directly or indirectly controls, is
31 under common control with, or is controlled by the business.
32 Control exists in all cases in which the entity is a member of a
33 controlled group of corporations as defined pursuant to section 1563
34 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the
35 entity is an organization in a group of organizations under common
36 control as defined pursuant to subsections (b) or (c) of section 414
37 of the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
38 may establish by clear and convincing evidence, as determined by
39 the Director of the Division of Taxation in the Department of the
40 Treasury, that control exists in situations involving lesser
41 percentages of ownership than required by those statutes. An
42 affiliate of a business may contribute to meeting either the qualified
43 investment or full-time employee requirements of a business that
44 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
45 209).

46 “Authority” means the New Jersey Economic Development
47 Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

1 “Business” means a corporation that is subject to the tax imposed
2 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a
3 corporation that is subject to the tax imposed pursuant to sections 2
4 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of
5 P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership,
6 an S corporation, or a limited liability corporation. A business shall
7 include an affiliate of the business if that business applies for a
8 credit based upon any capital investment made by or full-time
9 employees of an affiliate.

10 “Capital investment” in a qualified business facility means
11 expenses incurred after, but before the end of the eighth year after,
12 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for:
13 **[(i)]** a. the site preparation and construction, repair, renovation,
14 improvement, equipping, or furnishing of a building, structure,
15 facility or improvement to real property; and **[(ii)]** b. obtaining and
16 installing furnishings and machinery, apparatus or equipment for
17 the operation of a business in a building, structure, facility or
18 improvement to real property.

19 **["Commission" means the New Jersey Commerce Commission.]**

20 “Eligible municipality” means a municipality: (1) which
21 qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et
22 seq.) or which was continued to be a qualified municipality
23 thereunder pursuant to P.L.2007, c.111; and (2) in which 30 percent
24 or more of the value of real property **[is]** was exempt from local
25 property taxation during tax year 2006. The percentage of exempt
26 property shall be calculated by dividing the total exempt value by
27 the sum of the net valuation which is taxable and that which is tax
28 exempt.

29 “Full-time employee” means a person employed by the business
30 for consideration for at least 35 hours a week, or who renders any
31 other standard of service generally accepted by custom or practice
32 as full-time employment, or a person who is employed by a
33 professional employer organization pursuant to an employee leasing
34 agreement between the business and the professional employer
35 organization, in accordance with P.L.2001, c.260 (C.34:8-67 et
36 seq.) for at least 35 hours a week, or who renders any other standard
37 of service generally accepted by custom or practice as full-time
38 employment, and whose wages are subject to withholding as
39 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
40 et seq. or an employee who is a resident of another State but whose
41 income is not subject to the “New Jersey Gross Income Tax Act,”
42 N.J.S.54A:1-1 et seq. or who is a partner of a business who works
43 for the partnership for at least 35 hours a week, or who renders any
44 other standard of service generally accepted by custom or practice
45 as full-time employment, and whose distributive share of income,
46 gain, loss, or deduction, or whose guaranteed payments, or any
47 combination thereof, is subject to the payment of estimated taxes, as

1 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
2 et seq. “Full-time employee” shall not include any person who
3 works as an independent contractor or on a consulting basis for the
4 business.

5 “Partnership” means an entity classified as a partnership for
6 federal income tax purposes.

7 “Professional employer organization” means an employee
8 leasing company registered with the Department of Labor and
9 Workforce Development pursuant to P.L.2001, c.260 (C.34:8-67 et
10 seq.).

11 “Qualified business facility” means any building, complex of
12 buildings or structural components of buildings, and all machinery
13 and equipment located within a designated urban transit hub in an
14 eligible municipality, used in connection with the operation of a
15 business.

16 “Residential unit” means a residential dwelling unit such as a
17 rental apartment, a condominium or cooperative unit, a hotel room,
18 or a dormitory room.

19 “Urban transit hub” means:

20 a. property located within a 1/2 mile radius surrounding the mid
21 point of a New Jersey Transit Corporation, Port Authority Transit
22 Corporation or Port Authority Trans-Hudson Corporation rail
23 station platform area, including all light rail stations, and property
24 located within a one mile radius of the mid point of the platform
25 area of such a rail station if the property is in a qualified
26 municipality under the “Municipal Rehabilitation and Economic
27 Recovery Act,” P.L.2002, c.43 (C.52:27BBB-1 et seq.);

28 b. property located within a 1/2 mile radius surrounding the mid
29 point of one of up to two underground light rail stations' platform
30 areas that are most proximate to an interstate rail station;

31 c. property adjacent to, or connected by rail spur to, a freight rail
32 line if the business utilizes that freight line for loading and
33 unloading freight cars on trains;

34 which property shall have been specifically delineated by the
35 【commission】 authority pursuant to subsection e. of section 3 of
36 P.L.2007, c.346 (C.34:1B-209).

37 A property which is partially included within the radius shall
38 only be considered part of the hub if over 50 percent of its land area
39 falls within the radius. “Rail station” shall not include any rail
40 station located at an international airport.

41 (cf: P.L.2007, c.346, s.2)

42

43 32. Section 3 of P.L.2007, c.346 (C.34:1B-209) is amended to
44 read as follows:

45 3. a. (1) A business, upon application to and approval from the
46 【New Jersey Commerce Commission】 authority, shall be allowed a
47 credit of 100 percent of its capital investment, made after the

1 effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) but prior to
2 its submission of documentation pursuant to subsection c. of this
3 section, in a qualified business facility within an eligible
4 municipality, pursuant to the restrictions and requirements of this
5 section. To be eligible for any tax credits authorized under this
6 section, a business shall demonstrate to the authority, at the time of
7 application, that the State's financial support of the proposed capital
8 investment in a qualified business facility will yield a net positive
9 benefit to both the State and the eligible municipality. The value of
10 all credits approved by the authority pursuant to P.L.2007, c.346
11 (C.34:1B-207 et seq.) shall not exceed \$1,500,000,000.

12 (2) A business, other than a tenant eligible pursuant to paragraph
13 (3) of this subsection, shall make or acquire capital investments
14 totaling not less than ~~[\$75,000,000]~~ \$50,000,000 in a qualified
15 business facility, at which the business shall employ not fewer than
16 250 full-time employees to be eligible for a credit under this
17 section. A business that acquires a qualified business facility shall
18 also be deemed to have acquired the capital investment made or
19 acquired by the seller.

20 (3) A business that is a tenant in a qualified business facility, the
21 owner of which has made or acquired capital investments in the
22 facility totaling not less than ~~[\$75,000,000]~~ \$50,000,000, shall
23 occupy a leased area of the qualified business facility that
24 represents at least ~~[\$25,000,000]~~ \$17,500,000 of the capital
25 investment in the facility at which the tenant business and up to two
26 other tenants in the qualified business facility shall employ not
27 fewer than 250 full-time employees in the aggregate to be eligible
28 for a credit under this section. The amount of capital investment in
29 a facility that a leased area represents shall be equal to that
30 percentage of the owner's total capital investment in the facility that
31 the percentage of net leasable area leased by the tenant is of the
32 total net leasable area of the qualified business facility. Capital
33 investments made by a tenant shall be deemed to be included in the
34 calculation of the capital investment made or acquired by the
35 owner, but only to the extent necessary to meet the owner's
36 minimum capital investment of \$50,000,000. Capital investments
37 made by a tenant and not allocated to meet the owner's minimum
38 capital investment threshold of \$50,000,000 shall be added to the
39 amount of capital investment represented by the tenant's leased area
40 in the qualified business facility.

41 (4) A business shall not be allowed tax credits under this section
42 if the business participates in a business employment incentive
43 grant relating to the same capital and employees that qualify the
44 business for this credit, or if the business receives assistance
45 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.)~~], or if the business~~
46 ~~is a licensee as defined pursuant to section 33 of P.L.1977, c.110~~
47 ~~(C.5:12-33)]~~. A business that is allowed a tax credit under this

1 section shall not be eligible for incentives authorized pursuant to
2 P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall not qualify
3 for a tax credit under this section, based upon capital investment
4 and employment of full-time employees, if that capital investment
5 or employment was the basis for which a grant was provided to the
6 business pursuant to the “InvestNJ Business Grant Program Act,”
7 P.L.2008, c.112 (C.34:1B-237 et seq.).

8 (5) Full-time employment for an accounting or privilege period
9 shall be determined as the average of the monthly full-time
10 employment for the period.

11 (6) The capital investment of the owner of a qualified business
12 facility is that percentage of the capital investment made or
13 acquired by the owner of the building that the percentage of net
14 leasable area of the qualified business facility not leased to tenants
15 is of the total net leasable area of the qualified business facility.

16 b. A business shall apply for the credit within five years after
17 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and a
18 business shall submit its documentation for approval of its credit
19 amount within eight years after the effective date of P.L.2007, c.346
20 (C.34:1B-207 et seq.).

21 c. (1) The amount of credit allowed shall, except as otherwise
22 provided, be equal to the capital investment made by the business,
23 or the capital investment represented by the business' leased area, or
24 area owned by the business as a condominium, and shall be taken
25 over a 10-year period, at the rate of one-tenth of the total amount of
26 the business' credit for each tax accounting or privilege period of
27 the business, beginning with the tax period in which the business is
28 first approved by the **[commission]** authority as having met the
29 investment capital and employment qualifications, subject to any
30 reduction or disqualification as provided by subsection d. of this
31 section as determined by annual review by the **[commission]**
32 authority. In conducting its annual review, the **[commission]**
33 authority may require a business to submit any information
34 determined by the **[commission]** authority to be necessary and
35 relevant to its review.

36 The credit amount for any tax period ending after the date eight
37 years after the effective date of P.L.2007, c.346 (C.34:1B-207 et
38 seq.) during which the documentation of a business' credit amount
39 remains unapproved shall be forfeited, although credit amounts for
40 the remainder of the years of the 10-year credit period shall remain
41 available to it.

42 The amount of credit allowed for a tax period to a business that
43 is a tenant in a qualified business facility shall not exceed the
44 business' total lease payments for occupancy of the qualified
45 business facility for the tax period.

46 (2) A business that is a partnership shall not be allowed a credit
47 under this section directly, but the amount of credit of an owner of a

1 business shall be determined by allocating to each owner of the
2 partnership that proportion of the credit of the business that is equal
3 to the owner of the partnership's share, whether or not distributed,
4 of the total distributive income or gain of the partnership for its tax
5 period ending within or with the owner's tax period, or that
6 proportion that is allocated by an agreement, if any, among the
7 owners of the partnership that has been provided to the Director of
8 the Division of Taxation in the Department of the Treasury by such
9 time and accompanied by such additional information as the
10 director may require.

11 (3) The amount of credit allowed may be applied against the tax
12 liability otherwise due pursuant to section 5 of P.L.1945, c.162
13 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132
14 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950,
15 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5 **[**, or pursuant to
16 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.**]**.

17 d. (1) If, in any tax period, fewer than 200 full-time employees
18 of the business at the qualified business facility are employed in
19 new full-time positions, the amount of the credit otherwise
20 determined pursuant to final calculation of the award of tax credits
21 pursuant to subsection c. of this section shall be reduced by 20
22 percent for that tax period and each subsequent tax period until the
23 first period for which documentation demonstrating the restoration
24 of the 200 full-time employees employed in new full-time positions
25 at the qualified business facility has been reviewed and approved by
26 the **[commission]** authority, for which tax period and each
27 subsequent tax period the full amount of the credit shall be
28 allowed**[**; provided, however, that there shall be no reduction if a
29 business relocates to an urban transit hub from another location or
30 locations in the same municipality**]** ; provided, however, that for
31 businesses applying before January 1, 2010, there shall be no
32 reduction if a business relocates to an urban transit hub from
33 another location or other locations in the same municipality. For
34 the purposes of this paragraph, a “new full-time position” means a
35 position created by the business at the qualified business facility
36 that did not previously exist in this State.

37 (2) If, in any tax period, the business reduces the total number of
38 full-time employees in its Statewide workforce by more than **[10]**
39 20 percent from the number of full-time employees in its Statewide
40 workforce in the last tax accounting or privilege period **[prior to the**
41 effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), or in the
42 last tax accounting or privilege period**]** prior to the credit amount
43 approval under this section, **[whichever is greater,]** then the
44 business shall forfeit its credit amount for that tax period and each
45 subsequent tax period, until the first tax period for which
46 documentation demonstrating the restoration of the business'
47 Statewide workforce to the threshold levels required by this

1 paragraph has been reviewed and approved by the [commission]
2 authority, for which tax period and each subsequent tax period the
3 full amount of the credit shall be allowed.

4 (3) If, in any tax period, the number of full-time employees
5 employed by the business at the qualified business facility located
6 in an urban transit hub within an eligible municipality drops below
7 250 then the business shall forfeit its credit amount for that tax
8 period and each subsequent tax period, until the first tax period for
9 which documentation demonstrating the restoration of the number
10 of full-time employees employed by the business at the qualified
11 business facility to 250 has been reviewed and approved by the
12 [commission] authority, for which tax period and each subsequent
13 tax period the full amount of the credit shall be allowed.

14 (4) (i) If the qualified business facility is sold in whole or in part
15 during the 10-year eligibility period the new owner shall not acquire
16 the capital investment of the seller and the seller shall forfeit all
17 credits for the tax period in which the sale occurs and all subsequent
18 tax periods, provided however that any credits of tenants shall
19 remain unaffected.

20 (ii) If a tenant subleases its tenancy in whole or in part during the
21 10-year eligibility period the new tenant shall not acquire the credit
22 of the sublessor, and the sublessor tenant shall forfeit all credits for
23 the tax period of its sublease and all subsequent tax periods.

24 e. (1) The Executive Director of the New Jersey [Commerce
25 Commission] Economic Development Authority, in consultation
26 with the Director of the Division of Taxation in the Department of
27 the Treasury, shall adopt rules in accordance with the
28 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
29 seq.) as are necessary to implement this act, including but not
30 limited to: examples of and the determination of capital investment;
31 the enumeration of eligible municipalities; specific delineation of
32 urban transit hubs; the determination of the limits, if any, on the
33 expense or type of furnishings that may constitute capital
34 improvements; the promulgation of procedures and forms necessary
35 to apply for a credit; and provisions for credit applicants to be
36 charged an initial application fee, and ongoing service fees, to cover
37 the administrative costs related to the credit.

38 (2) Through regulation, the Economic Development Authority
39 shall establish standards based on the green building manual
40 prepared by the Commissioner of Community Affairs pursuant to
41 section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of
42 renewable energy, energy-efficient technology, and non-renewable
43 resources in order to reduce environmental degradation and
44 encourage long-term cost reduction.

45 (cf: P.L.2007, c.346, s.3)

1 33. (New section) A business may apply to the Director of the
2 Division of Taxation in the Department of the Treasury and the
3 executive director of the authority for a tax credit transfer
4 certificate, covering one or more years, in lieu of the business being
5 allowed any amount of the credit against the tax liability of the
6 business. The tax credit transfer certificate, upon receipt thereof by
7 the business from the director and the executive director of the
8 authority, may be sold or assigned, in full or in part, to any other
9 person that may have a tax liability pursuant to section 5 of
10 P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of
11 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1
12 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.
13 The certificate provided to the business shall include a statement
14 waiving the business's right to claim that amount of the credit
15 against the taxes that the business has elected to sell or assign. The
16 sale or assignment of any amount of a tax credit transfer certificate
17 allowed under this section shall not be exchanged for consideration
18 received by the business of less than 75 percent of the transferred
19 credit amount. Any amount of a tax credit transfer certificate used
20 by a purchaser or assignee against a tax liability shall be subject to
21 the same limitations and conditions that apply to the use of the
22 credit by the business that originally applied for and was allowed
23 the credit.

24
25 34. (New section) As used in sections 34 and 35 of P.L. , c.
26 (C.) (pending before the Legislature as this bill), the terms
27 “affiliate,” “authority,” “capital investment,” “eligible
28 municipality,” “partnership,” “residential unit,” and “urban transit
29 hub” shall have the same meanings as ascribed thereto in the
30 “Urban Transit Hub Tax Credit Act,” P.L.2007, c.346 (C.34:1B-207
31 et seq.), as amended by P.L. , c. (C.) (pending before the
32 Legislature as this bill), except that all references therein to
33 “business” and “qualified business facility” shall be deemed to refer
34 respectively to “developer” and “qualified residential project,” as
35 such terms are defined in this section. In addition, as used in
36 sections 34 and 35 of P.L. , c. (C.) (pending before the
37 Legislature as this bill):

38 “Developer” shall have the same meaning as “business,” as such
39 term is defined in the “Urban Transit Hub Tax Credit Act,”
40 P.L.2007, c.346 (C.34:1B-207 et seq.), as amended by P.L. , c.
41 (C.) (pending before the Legislature as this bill).

42 “Qualified residential project” means any building, complex of
43 buildings or structural components of buildings, including a mixed
44 use project, consisting predominantly of residential units, located in
45 an urban transit hub within an eligible municipality.

1 35. (New section) a. (1) A developer, upon application to and
2 approval from the authority, shall be allowed a credit of up to 20
3 percent of its capital investment, made after the effective date of
4 P.L. , c. (C.) (pending before the Legislature as this bill) but
5 prior to its submission of documentation pursuant to subsection c.
6 of this section, in a qualified residential project, pursuant to the
7 restrictions and requirements of this section. To be eligible for any
8 tax credits authorized under this section, a developer shall
9 demonstrate to the authority, through a project pro forma analysis at
10 the time of application, that the qualified residential project is likely
11 to be realized with the provision of tax credits at the level requested
12 but is not likely to be accomplished by private enterprise without
13 the tax credits. The value of all credits approved by the authority
14 pursuant to P.L. , c. (C.) (pending before the Legislature as
15 this bill) may be up to \$150,000,000, except as may be increased by
16 the authority as set forth below; provided, however, that the
17 combined value of all credits approved by the authority pursuant to
18 both P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L. , c. (C.)
19 (pending before the Legislature as this bill) shall not exceed
20 \$1,500,000,000. The authority shall monitor application and
21 allocation activity under P.L.2007, c.346 (C.34:1B-207 et seq.), and
22 if sufficient credits are available after taking into account allocation
23 under P.L.2007, c.346 (C.34:1B-207 et seq.) to those qualified
24 business facilities for which applications have been filed or for
25 which applications are reasonably anticipated, and if the executive
26 director judges certain qualified residential projects to be
27 meritorious, the aforementioned \$150,000,000 cap may, in the
28 discretion of the executive director, be exceeded for allocation to
29 qualified residential projects in such amounts as the executive
30 director deems reasonable, justified, and appropriate. In allocating
31 all credits to qualified residential projects under this section, the
32 executive director shall take into account, together with other
33 factors deemed relevant by the executive director: input from the
34 municipality in which the project is to be located, whether the
35 project furthers specific State or municipal planning and
36 development objectives, or both, and whether the project furthers a
37 public purpose, such as catalyzing urban development or
38 maximizing the value of vacant, dilapidated, outmoded,
39 government-owned, or underutilized property, or both.

40 (2) A developer shall make or acquire capital investments
41 totaling not less than \$50,000,000 in a qualified residential project
42 to be eligible for a credit under this section. A developer that
43 acquires a qualified residential project shall also be deemed to have
44 acquired the capital investment made or acquired by the seller.

45 (3) The capital investment requirement may be met by the
46 developer or by one or more of its affiliates.

1 b. A developer shall apply for the credit within five years after
2 the effective date of P.L. , c. (C.) (pending before the
3 Legislature as this bill), and a developer shall submit its
4 documentation for approval of its credit amount within eight years
5 after the effective date of P.L. , c. (C.) (pending before the
6 Legislature as this bill).

7 c. The credit shall be administered in accordance with the
8 provisions of paragraphs (c) and (e) of section 3 of P.L.2007, c.346
9 (C.34:1B-209), as amended by section 32 of P.L. , c. (C.)
10 (pending before the Legislature as this bill), and section 33 of P.L.
11 , c. (C.) (pending before the Legislature as this bill), except
12 that (1) all references therein to “business” and “qualified business
13 facility” shall be deemed to refer respectively to “developer” and
14 “qualified residential project,” as such terms are defined in section
15 34 of P.L. , c. (C.) (pending before the Legislature as this
16 bill) and (2) all references therein to credits claimed by tenants and
17 to reductions or disqualifications in credits as determined by annual
18 review of the authority shall be disregarded.

19
20 36. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to
21 read as follows:

22 33. The Legislature finds and declares:

23 a. The collection of development fees from builders of
24 residential and non-residential properties has been authorized by the
25 court through the powers delegated to the Council on Affordable
26 Housing established pursuant to the "Fair Housing Act," P.L.1985,
27 c.222 (C.52:27D-301 et al.).

28 b. New Jersey's land resources are becoming more scarce,
29 while its redevelopment needs are increasing. In order to balance
30 the needs of developing and redeveloping communities, a
31 reasonable method of providing for the housing needs of low and
32 moderate income and middle income households, without
33 mandating the inclusion of housing in every non-residential project,
34 must be established.

35 c. A Statewide non-residential development fee program which
36 permits municipalities under the council's jurisdiction to retain
37 these fees for use in the municipality will provide a fair and
38 balanced funding method to address the State's affordable housing
39 needs, while providing an incentive to all municipalities to seek
40 substantive certification from the council.

41 d. Whereas pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),
42 organizations are directed to invest in the Casino Reinvestment
43 Development Authority to ensure that the development of housing
44 for families of low and moderate income shall be provided. The
45 Casino Reinvestment Development Authority, in consultation with
46 the council, shall work to effectuate the purpose and intent of
47 P.L.1985, c.222 (C.52:27D-301 et al.).

1 e. The "Statewide Non-Residential Development Fee Act,"
2 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through
3 C.40:55D-8.7), prohibits municipalities from imposing their own
4 fees to fund affordable housing on non-residential development, and
5 P.L. , c. (C.) (pending before the Legislature as this bill) is not
6 intended to alter this underlying policy.

7 f. The negative impact of a State policy that over-relies on a
8 municipal fee structure and of State programs that require a
9 municipality to impose fees and charges on developers must be
10 balanced against any public good expected from such regulation. It
11 is undisputable that the charging of fees at high levels dissuades
12 commerce from locating within a State or municipality or locality
13 and halts non-residential and residential development, and these ill
14 effects directly increase the overall costs of housing, and could
15 impede the constitutional obligation to provide for a realistic
16 opportunity for housing for families at all income levels.

17 (cf: P.L.2008, c.46, s.33)

18
19 37. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to
20 read as follows:

21 37. a. The provisions of this subsection shall not apply to a
22 financial or other contribution that a developer made or committed
23 itself to make prior to the effective date of sections 32 through 38 of
24 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7). The
25 provisions of [sections 32 through 38 of] P.L.2008, c.46
26 [(C.40:55D-8.1 through C.40:55D-8.7)] that would permit the
27 imposition of a fee upon a developer of non-residential property
28 shall not apply to:

29 (1) Non-residential property for which a [certificate of
30 occupancy has been issued] site plan has received either
31 preliminary approval, pursuant to section 34 of P.L.1975, c.291
32 (C.40:55D-46), or final approval, pursuant to section 38 of
33 P.L.1975, c.291 (C.40:55D-50), prior to [the effective date of
34 P.L.2008, c.46 (C.52:27D-329.1 et al.)] July 1, 2010; provided that
35 a permit for the construction of the building has been issued by the
36 local enforcing agency having jurisdiction, in accordance with
37 section 13 of P.L.1975, c.217 (C.52:27D-131), prior to January 1,
38 2013; or

39 (2) A non-residential planned development which has received
40 approval of a general development plan pursuant to section 5 of
41 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
42 for which the developer has entered into a developer's agreement
43 pursuant to a development approval granted pursuant to P.L.1975,
44 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
45 into a redevelopment agreement pursuant to P.L.1992, c.79
46 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
47 (C.52:27D-329.1 et al.); provided, however, that the general

1 development plan, developer's agreement, redevelopment
2 agreement, or any development agreement pursuant to the
3 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
4 provides that the developer or redeveloper pay a fee for affordable
5 housing of at least one percent of the equalized assessed value of
6 the improvements which are the subject of the development plan,
7 developer's agreement, or redevelopment agreement;

8 (3) A non-residential project that, prior to July 1, 2010, has been
9 referred to a planning board by the State, a governing body, or other
10 public agency for review pursuant to section 22 of P.L.1975, c.291
11 (C.40:55D-31); provided that a permit for the construction of the
12 building has been issued by the local enforcing agency having
13 jurisdiction, in accordance with section 13 of P.L.1975, c.217
14 (C.52:27D-131), prior to January 1, 2013;

15 (4) A non-residential property for which a site plan application
16 has received approval by the New Jersey Meadowlands
17 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
18 14) prior to July 1, 2010; provided that a permit for the construction
19 of the building has been issued by the local enforcing agency
20 having jurisdiction, in accordance with section 13 of P.L.1975,
21 c.217 (C.52:27D-131), prior to January 1, 2013.

22 (5) Individual buildings within a nonresidential phased
23 development that received either preliminary or final approval prior
24 to July 1, 2010, provided that a permit for the construction of the
25 building has been issued by prior to January 1, 2013.

26 b. A developer may challenge non-residential development fees
27 imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by
28 filing a challenge with the Director of the Division of Taxation.
29 Pending a review and determination by the director, which shall be
30 made within 45 days of receipt of the challenge, collected fees shall
31 be placed in an interest bearing escrow account by the municipality
32 or by the State, as the case may be. Appeals from a determination
33 of the director may be made to the tax court in accordance with the
34 provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et
35 seq., within 90 days after the date of such determination. Interest
36 earned on amounts escrowed shall be credited to the prevailing
37 party.

38 c. Whenever non-residential development is situated on real
39 property that has been previously developed with a building,
40 structure, or other improvement, the non-residential development
41 fee shall be equal to two and a half (2.5) percent of the equalized
42 assessed value of the land and improvements on the property where
43 the non-residential development is situated at the time the final
44 certificate of occupancy is issued, less the equalized assessed value
45 of the land and improvements on the property where the non-
46 residential development is situated, as determined by the tax
47 assessor of the municipality at the time the developer or owner,

1 including any previous owners, first sought approval for a
2 construction permit, including, but not limited to, demolition
3 permits, pursuant to the State Uniform Construction Code, or
4 approval under the "Municipal Land Use Law," P.L.1975, c.291
5 (C.40:55D-1 et seq.). If the calculation required under this section
6 results in a negative number, the non-residential development fee
7 shall be zero.

8 Whenever the developer of a non-residential development has
9 made or committed itself to make a financial or other contribution
10 relating to the provision of housing affordable to low and moderate
11 income households prior to the enactment of P.L.2008, c.46
12 (C.52:27D-329.1 et al.), the non-residential development fee shall
13 be reduced by the amount of the financial contribution and the fair
14 market value of any other contribution made by or committed to be
15 made by the developer. For purposes of this section, a developer is
16 considered to have made or committed itself to make a financial or
17 other contribution, if and only if: (1) the contribution has been
18 transferred, including but not limited to when the funds have
19 already been received by the municipality; (2) the developer has
20 obligated itself to make a contribution as set forth in a written
21 agreement with the municipality, such as a developer's agreement;
22 or (3) the developer's obligation to make a contribution is set forth
23 as a condition in a land use approval issued by a municipal land use
24 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
25 (C.40:55D-1 et seq.).

26 d. Unless otherwise provided for by law, no municipality shall
27 be required to return a financial or any other contribution made by
28 or committed to be made by the developer of a non-residential
29 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
30 329.1 et al.) relating to the provision of housing affordable to low
31 and moderate income households, provided that the developer does
32 not obtain an amended, modified, or new municipal land use
33 approval with a substantial change in the non-residential
34 development. If the developer obtains an amended, modified, or
35 new land use approval for non-residential development, the
36 municipality, person, or entity shall be required to return to the
37 developer any funds or other contribution provided by the developer
38 for the provision of housing affordable to low and moderate income
39 households and the developer shall not be entitled to a reduction in
40 the affordable housing development fee based upon that
41 contribution.

42 e. The provisions of sections 32 through 38 of P.L.2008, c.46
43 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any
44 manner as affecting the method or timing of assessing real property
45 for property taxation purposes. The payment of a non-residential
46 development fee shall not increase the equalized assessed value of

1 any property.
2 (cf: P.L.2008, c.46, s.37)

3
4 38. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to
5 read as follows:

6 20. There is established in the Department of Community
7 Affairs a separate trust fund, to be used for the exclusive purposes
8 as provided in this section, and which shall be known as the "New
9 Jersey Affordable Housing Trust Fund." The fund shall be a non-
10 lapsing, revolving trust fund, and all monies deposited or received
11 for purposes of the fund shall be accounted for separately, by source
12 and amount, and remain in the fund until appropriated for such
13 purposes. The fund shall be the repository of all State funds
14 appropriated for affordable housing purposes, including, but not
15 limited to, the proceeds from the receipts of the additional fee
16 collected pursuant to paragraph (2) of subsection a. of section 3 of
17 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the
18 Statewide non-residential development fees collected pursuant to
19 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or
20 reverting from municipal development trust funds, or other monies
21 as may be dedicated, earmarked, or appropriated by the Legislature
22 for the purposes of the fund. All references in any law, order, rule,
23 regulation, contract, loan, document, or otherwise, to the
24 "Neighborhood Preservation Nonlapsing Revolving Fund" shall
25 mean the "New Jersey Affordable Housing Trust Fund." The
26 department shall be permitted to utilize annually up to 7.5 percent
27 of the monies available in the fund for the payment of any
28 necessary administrative costs related to the administration of the
29 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), the
30 State Housing Commission, or any costs related to administration of
31 P.L.2008, c.46 (C.52:27D-329.1 et al.).

32 a. Except as permitted pursuant to subsection g. of this section,
33 and by section 41 of P.L. , c. (C.) (pending before the
34 Legislature as this bill), the commissioner shall award grants or
35 loans from this fund for housing projects and programs in
36 municipalities whose housing elements have received substantive
37 certification from the council, in municipalities receiving State aid
38 pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), in municipalities
39 subject to builder's remedy as defined in section 28 of P.L.1985,
40 c.222 (C.52:27D-328) or in receiving municipalities in cases where
41 the council has approved a regional contribution agreement and a
42 project plan developed by the receiving municipality.

43 Of those monies deposited into the "New Jersey Affordable
44 Housing Trust Fund" that are derived from municipal development
45 fee trust funds, or from available collections of Statewide non-
46 residential development fees, a priority for funding shall be

1 established for projects in municipalities that have petitioned the
2 council for substantive certification.

3 Programs and projects in any municipality shall be funded only
4 after receipt by the commissioner of a written statement in support
5 of the program or project from the municipal governing body.

6 b. The commissioner shall establish rules and regulations
7 governing the qualifications of applicants, the application
8 procedures, and the criteria for awarding grants and loans and the
9 standards for establishing the amount, terms and conditions of each
10 grant or loan.

11 c. For any period which the council may approve, the
12 commissioner may assist affordable housing programs which are
13 not located in municipalities whose housing elements have been
14 granted substantive certification or which are not in furtherance of a
15 regional contribution agreement; provided that the affordable
16 housing program will meet all or part of a municipal low and
17 moderate income housing obligation.

18 d. Amounts deposited in the "New Jersey Affordable Housing
19 Trust Fund" shall be targeted to regions based on the region's
20 percentage of the State's low and moderate income housing need as
21 determined by the council. Amounts in the fund shall be applied for
22 the following purposes in designated neighborhoods:

23 (1) Rehabilitation of substandard housing units occupied or to
24 be occupied by low and moderate income households;

25 (2) Creation of accessory apartments to be occupied by low and
26 moderate income households;

27 (3) Conversion of non-residential space to residential purposes;
28 provided a substantial percentage of the resulting housing units are
29 to be occupied by low and moderate income households;

30 (4) Acquisition of real property, demolition and removal of
31 buildings, or construction of new housing that will be occupied by
32 low and moderate income households, or any combination thereof;

33 (5) Grants of assistance to eligible municipalities for costs of
34 necessary studies, surveys, plans and permits; engineering,
35 architectural and other technical services; costs of land acquisition
36 and any buildings thereon; and costs of site preparation, demolition
37 and infrastructure development for projects undertaken pursuant to
38 an approved regional contribution agreement;

39 (6) Assistance to a local housing authority, nonprofit or limited
40 dividend housing corporation or association or a qualified entity
41 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for
42 rehabilitation or restoration of housing units which it administers
43 which: (a) are unusable or in a serious state of disrepair; (b) can be
44 restored in an economically feasible and sound manner; and (c) can
45 be retained in a safe, decent and sanitary manner, upon completion
46 of rehabilitation or restoration; and

1 (7) Other housing programs for low and moderate income
2 housing, including, without limitation, (a) infrastructure projects
3 directly facilitating the construction of low and moderate income
4 housing not to exceed a reasonable percentage of the construction
5 costs of the low and moderate income housing to be provided and
6 (b) alteration of dwelling units occupied or to be occupied by
7 households of low or moderate income and the common areas of the
8 premises in which they are located in order to make them accessible
9 to handicapped persons.

10 e. Any grant or loan agreement entered into pursuant to this
11 section shall incorporate contractual guarantees and procedures by
12 which the division will ensure that any unit of housing provided for
13 low and moderate income households shall continue to be occupied
14 by low and moderate income households for at least 20 years
15 following the award of the loan or grant, except that the division
16 may approve a guarantee for a period of less than 20 years where
17 necessary to ensure project feasibility.

18 f. Notwithstanding the provisions of any other law, rule or
19 regulation to the contrary, in making grants or loans under this
20 section, the department shall not require that tenants be certified as
21 low or moderate income or that contractual guarantees or deed
22 restrictions be in place to ensure continued low and moderate
23 income occupancy as a condition of providing housing assistance
24 from any program administered by the department, when that
25 assistance is provided for a project of moderate rehabilitation if the
26 project (1) contains 30 or fewer rental units and (2) is located in a
27 census tract in which the median household income is 60 percent or
28 less of the median income for the housing region in which the
29 census tract is located, as determined for a three person household
30 by the council in accordance with the latest federal decennial
31 census. A list of eligible census tracts shall be maintained by the
32 department and shall be adjusted upon publication of median
33 income figures by census tract after each federal decennial census.

34 g. In addition to other grants or loans awarded pursuant to this
35 section, and without regard to any limitations on such grants or
36 loans for any other purposes herein imposed, the commissioner
37 shall annually allocate such amounts as may be necessary in the
38 commissioner's discretion, and in accordance with section 3 of
39 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
40 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
41 287.1 et al.). Such rental assistance grants shall be deemed
42 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
43 301 et al.), in order to meet the housing needs of certain low income
44 households who may not be eligible to occupy other housing
45 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

46 h. The department and the State Treasurer shall submit the
47 "New Jersey Affordable Housing Trust Fund" for an audit annually

1 by the State Auditor or State Comptroller, at the discretion of the
2 Treasurer. In addition, the department shall prepare an annual
3 report for each fiscal year, and submit it by November 30th of each
4 year to the Governor and the Legislature, and the Joint Committee
5 on Housing Affordability, or its successor, and post the information
6 to its web site, of all activity of the fund, including details of the
7 grants and loans by number of units, number and income ranges of
8 recipients of grants or loans, location of the housing renovated or
9 constructed using monies from the fund, the number of units upon
10 which affordability controls were placed, and the length of those
11 controls. The report also shall include details pertaining to those
12 monies allocated from the fund for use by the State rental assistance
13 program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3)
14 and subsection g. of this section.

15 i. The commissioner may award or grant the amount of any
16 appropriation deposited in the "New Jersey Affordable Housing
17 Trust Fund" pursuant to section 41 of P.L. , c. (C.) (pending
18 before the Legislature as this bill) to municipalities pursuant to the
19 provisions of section 39 of P.L. , c. (C.) (pending before the
20 Legislature as this bill).

21 (cf: P.L.2008, c.46, s.17)

22

23 39. (New section) The provisions of this section shall apply
24 only to those developments for which a fee was imposed pursuant
25 to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through
26 C.40:55D-8.7), known as the "Statewide Non-residential
27 Development Fee Act."

28 a. A developer of a property that received preliminary site plan
29 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),
30 or final approval, pursuant to section 38 of P.L.1975, c.291
31 (C.40:55D-50) prior to July 17, 2008 and that was subject to the
32 payment of a nonresidential development fee prior to the enactment
33 of P.L. , c. (C.) (pending before the Legislature as this bill),
34 shall be entitled to a return of any moneys paid that represent the
35 difference between moneys committed prior to July 17, 2008 and
36 monies paid on or after that date.

37 b. A developer of a non-residential project that, prior to July 17,
38 2008, has been referred to a planning board by the State, a
39 governing body, or other public agency for review pursuant to
40 section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject
41 to the payment of a nonresidential development fee prior to the
42 enactment of P.L. , c. (C.) (pending before the Legislature
43 as this bill), shall be entitled to a return of any moneys paid that
44 represent the difference between monies committee prior to July 17,
45 2008 and moneys paid on or after that date.

46 c. If moneys are required to be returned under subsection a., b.
47 or d. of this section, a claim shall be submitted, in writing, to the

1 same entity to which the moneys were paid, within 120 days of the
2 effective date of P.L. , c. (C.) (pending before the
3 Legislature as this bill). The entity to whom the funds were paid
4 shall promptly review all requests for returns, and the fees paid
5 shall be returned to the claimant within 30 days of receipt of the
6 claim for return.

7 d. A developer of a non-residential project that paid a fee
8 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
9 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008
10 but prior to the effective date of P.L. , c. (pending before the
11 Legislature as this bill), shall be entitled to the return of those
12 monies paid, provided that the provisions of section 37 of P.L.2008,
13 c.46 (C.40:55D-8.6), as amended by P.L. , c. (pending before the
14 Legislature as this bill) do not permit the imposition of a fee upon
15 the developer of that non-residential property.

16 e. Notwithstanding the provisions of subsections a., b., c., and d.
17 of this section, if, on the effective date of P.L. , c. (C.)
18 (pending before the Legislature as this bill), a municipality that has
19 returned all or a portion of non-residential fees in accordance with
20 subsections a. or b. of this section shall be reimbursed from the
21 funds available through the appropriation made into the "New
22 Jersey Affordable Housing Trust Fund" pursuant to section 41 of
23 P.L. , c. (C.) (pending before the Legislature as this bill)
24 within 30 days of the municipality providing written notice to the
25 Council on Affordable Housing.

26

27 40. (New section) The portion of the affordable housing
28 obligation of a municipality attributable to a particular non-
29 residential development shall be reduced or eliminated if:

30 a. the collection of fees under sections 32 through 38 of
31 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) is effectively
32 suspended for a period of time pursuant to that law; and

33 b. the Council on Affordable Housing, in consultation with the
34 Department of Community Affairs, has made a determination
35 within two years of the effective date of P.L. , c. (C.)
36 (pending before the Legislature as this bill), that there are
37 insufficient funds in the "New Jersey Affordable Housing Trust
38 Fund," or through other State or federal housing subsidies available
39 to a municipality to assist in the production of such housing units,
40 in the same amount as would have been collected if not for the
41 suspension thereof, pursuant to sections 32 through 38 of P.L.2008,
42 c.46 (C.40:55D-8.1 through C.40:55D-8.7) by the date of the
43 determination.

44 c. Nothing in P.L. , c. (C.) (pending before the
45 Legislature as this bill) shall be construed to affect the municipal
46 obligation to provide a realistic opportunity for its projected fair
47 share of the regional housing need as determined by the Council on

1 Affordable Housing in accordance with the provisions of the "Fair
2 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

3

4 41. (New section) a. Notwithstanding any law to the contrary,
5 there is appropriated \$15 million to the "New Jersey Affordable
6 Housing Trust Fund," established pursuant to section 20 of
7 P.L.1985, c.222 (C.52:27D-320), to replace the suspended non-
8 residential development fee established under the provisions of the
9 "Statewide Non-Residential Development Fee Act," sections 32
10 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

11 b. (1) Municipalities authorized by the provisions of the
12 "Statewide Non-Residential Development Fee Act," sections 32
13 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7)
14 to directly receive and use development fees are permitted to
15 petition the commissioner for the award of a grant or loan of any
16 portion of the appropriation described in subsection a. of this
17 section. The commissioner shall award grants or loans from the
18 fund to municipalities that incorporated anticipated or existing
19 housing projects and programs funded by a municipal development
20 trust fund in a housing element submitted to the council pursuant to
21 section 7 of P.L.1985, c.222 (C.52:27D-307).

22 (2) The commissioner shall target the award of any grant or loan
23 to municipalities based on the extent that their housing plan relied
24 on housing projects or programs funded in part or in whole by
25 municipal development trust fund revenues.

26

27 42. (New section) a. A public research university or a State
28 college shall submit a long-range facilities plan on projects to be
29 developed to the New Jersey Commission on Higher Education for
30 its review and recommendations. The long range facilities plan
31 shall contain details of any public-private partnerships
32 contemplated or entered into by the public research university or
33 State college pursuant to section 43 of P.L. , c. (C.)
34 (pending before the Legislature as this bill), which shall include
35 details on the sources of dedicated funds that will be used for
36 repayment of loans. The long range facilities plan shall adhere to
37 the green building manual prepared by the Commissioner of
38 Community Affairs pursuant to section 1 of P.L.2007, c.132
39 (C.52:27D-130.6) when practicable. The long range facilities plan
40 shall be amended at least once every five years. The plan shall
41 detail the facilities needs of the institution and the institution's
42 plans to address those needs for the ensuing five years.

43 b. In developing its response to the plan, the commission shall
44 consider the overall facilities needs of the institution, long-term
45 fiscal implications of the plan including the debt burden of the
46 institution, the relation of the facilities plan to the academic and
47 student service programs of the institution, and the extent and cost

1 of any deferred maintenance of the institution. The commission
2 shall issue its response to the plan within one full semester of its
3 receipt.

4 c. An amendment to a long-range facilities plan may be
5 submitted at any time to the commission for its review and
6 recommendations.

7
8 43. (New section) a. A State college or county college may
9 enter into a contract with a private entity, subject to subsection f. of
10 this section, to be referred to as a public-private partnership
11 agreement, that permits the private entity to assume full financial
12 and administrative responsibility for the on-campus construction,
13 reconstruction, repair, alteration, improvement or extension of a
14 building, structure, or facility of the institution, provided that the
15 project is financed in whole by the private entity and that the State
16 or institution of higher education, as applicable, retains full
17 ownership of the land upon which the project is completed.

18 b. A private entity that assumes financial and administrative
19 responsibility for a project pursuant to subsection a. of this section
20 shall not be subject to the procurement and contracting
21 requirements of all statutes applicable to the institution of higher
22 education at which the project is completed, including, but not
23 limited to, the "State College Contracts Law," P.L.1986, c.43
24 (C.18A:64-52 et seq.), and the "County College Contracts Law,"
25 P.L.1982, c.189 (C.18A:64A-25.1 et seq.).

26 c. Each worker employed in the construction, rehabilitation, or
27 building maintenance services of facilities by a private entity that
28 has entered into a public-private partnership agreement with a State
29 or county college pursuant to subsection a. of this section shall be
30 paid not less than the prevailing wage rate for the worker's craft or
31 trade as determined by the Commissioner of Labor and Workforce
32 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
33 and P.L.2005,c.379 (C.34:11-56.58 et seq.).

34 d. (1) All construction projects under a public-private partnership
35 agreement entered into pursuant to this section shall contain a
36 project labor agreement. The project labor agreement shall be
37 subject to the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and
38 shall be in a manner that to the greatest extent possible enhances
39 employment opportunities for individuals residing in the county of
40 the project's location. Further, the general contractor, construction
41 manager, design-build team, or subcontractor for a construction
42 project proposed in accordance with this paragraph shall be
43 registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-
44 56.48 et seq.), and shall be classified by the Division of Property
45 Management and Construction to perform work on a public-private
46 partnership higher education project. All construction projects
47 proposed in accordance with this paragraph shall be submitted to

1 the New Jersey Economic Development Authority for its review
2 and approval and, when practicable, are encouraged to adhere to the
3 Leadership in Energy and Environmental Design Green Building
4 Rating System as adopted by the United States Green Building
5 Council.

6 (2) Where no public fund has been established for the financing
7 of a public improvement, the chief financial officer of the public
8 owner shall require the private entity for whom the public
9 improvement is being made to post, or cause to be posted, a bond
10 guaranteeing prompt payment of moneys due to the contractor, his
11 or her subcontractors and to all persons furnishing labor or
12 materials to the contractor or his or her subcontractors in the
13 prosecution of the work on the public improvement.

14 e. A general contractor, construction manager, design-build
15 team, or subcontractor shall be registered pursuant to the provisions
16 of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified
17 by the Division of Property Management and Construction to
18 perform work on a public-private partnership higher education
19 project.

20 f. (1) On or before the first day of the nineteenth month next
21 following enactment of P.L. , c. (pending before the Legislature
22 as this bill), all projects proposed in accordance with this section
23 shall be submitted to the New Jersey Economic Development
24 Authority for its review and approval. The projects are encouraged,
25 when practicable, to adhere to the green building manual prepared
26 by the Commissioner of Community Affairs pursuant to section 1 of
27 P.L.2007, c.132 (C.52:27D-130.6). Any application that is deemed
28 to be incomplete on the first day of the nineteenth month next
29 following enactment of P.L. , c. (pending before the Legislature
30 as this bill) shall not be eligible for consideration.

31 (2) (a) In order for an application to be complete and considered
32 by the authority it shall include, but not limited to: (i) a public-
33 private partnership agreement between the State or county college
34 and the private developer; (ii) a full description of the project; (iii)
35 the estimated costs and financial documentation for the project; (iv)
36 a timetable for completion of the project extending no more than
37 five years after consideration and approval; and (v) any other
38 requirements that the authority deems appropriate or necessary.

39 (b) As part of the estimated costs and financial documentation
40 for the project the application shall contain a long-range
41 maintenance plan and shall specify the expenditures that qualify as
42 an appropriate investment in maintenance. This long-range
43 maintenance plan shall be approved by the authority pursuant to
44 regulations promulgated by the authority that reflect nation building
45 maintenance standards and other appropriate building maintenance
46 benchmarks. All contracts to implement a long-range maintenance
47 plan pursuant to this paragraph shall contain a project labor

1 agreement. The project labor agreement shall be subject to the
2 provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in a
3 manner that to the greatest extent possible enhances employment
4 opportunities for individuals residing in the county of the project's
5 location.

6 (3) The authority shall review all completed applications, request
7 additional information as is needed to make a complete assessment
8 of the project. No project shall be undertaken until final approval
9 has been granted by the authority; provided, however, that the
10 authority shall retain the right to revoke approval if it determines
11 that the project has deviated from the plan submitted pursuant to
12 paragraph (2) of this subsection.

13 (4) The authority may promulgate any rules and regulations
14 necessary to implement this subsection, including provisions for
15 fees to cover administrative costs.

16 Where no public fund has been established for the financing of a
17 public improvement, the chief financial officer of the public owner
18 shall require the private entity for whom the public improvement is
19 being made to post, or cause to be posted, a bond guaranteeing
20 prompt payment of moneys due to the contractor, his or her
21 subcontractors and to all persons furnishing labor or materials to the
22 contractor or his or her subcontractors in the prosecution of the
23 work on the public improvement.

24
25 44. Section 28 of P.L.1986, c.43 (C.18A:64-79) is amended to
26 read as follows:

27 28. A State college may only enter a contract exceeding 36
28 consecutive months for the:

29 a. Supplying of fuel and oil for heating and other purposes and
30 utilities for any term not exceeding in the aggregate five years; or

31 b. Plowing and removal of snow and ice for any term not
32 exceeding in the aggregate five years; or

33 c. Collection and disposal of garbage and refuse for any term
34 not exceeding in the aggregate five years; or

35 d. Purchase, lease or servicing of information technology for
36 any term of not more than five years; or

37 e. Insurance for any term of not more than five years; or

38 f. Leasing or service of automobiles, motor vehicles,
39 machinery and equipment of every nature and kind for any term not
40 exceeding in the aggregate five years; or

41 g. (Deleted by amendment, P.L.2005, c.369).

42 h. Providing of food supplies and services, including food
43 supplies and management contracts for student centers, dining
44 rooms, vending operations, and cafeterias, for a term not exceeding
45 **[five]** 30 years; or

46 i. Performance of work or services or the furnishing of
47 materials or supplies for the purpose of conserving energy in

1 buildings owned by, or operations conducted by, the contracting
2 unit, the entire price of which is to be established as a percentage of
3 the resultant savings in energy costs, for a term not exceeding 10
4 years; provided that a contract is entered into only subject to and in
5 accordance with rules and regulations adopted and guidelines
6 promulgated by the Board of Public Utilities establishing a
7 methodology for computing energy cost savings; or

8 j. Any single project for the construction, reconstruction or
9 rehabilitation of a public building, structure or facility, or a public
10 works project, including the retention of the services of an architect,
11 engineer, construction manager, or other consultant in connection
12 with the project, for the length of time necessary for the completion
13 of the actual construction; or

14 k. The management and operation of bookstores, performing
15 arts centers, residence halls, parking facilities and building
16 operations for a term not exceeding ~~five~~ 30 years; or

17 l. The provision of banking, financial services, and e-
18 commerce services for a term not exceeding five years; or

19 m. The provision of services for maintenance and repair of
20 building systems, including, but not limited to, fire alarms, fire
21 suppression systems, security systems, and heating, ventilation, and
22 air conditioning systems for a term not exceeding five years; or

23 n. Purchase of alternative energy or the purchase or lease of
24 alternative energy services or equipment for conservation or cost
25 saving purposes for a term not exceeding ~~10~~ 30 years.

26 All multiyear leases and contracts entered into pursuant to this
27 section, except contracts and agreements for the provision of work
28 or the supplying of equipment to promote energy conservation and
29 authorized pursuant to subsection i. of this section, shall contain a
30 clause making them subject to the availability and appropriation
31 annually of sufficient funds to meet the extended obligation or
32 contain an annual cancellation clause.

33 (cf: P.L.2005, c.369, s.16)

34

35 45. Section 28 of P.L.1982, c.189 (C.18A:64A-25.28) is
36 amended to read as follows:

37 28. Duration of certain contracts. A county college may only
38 enter into a contract exceeding 24 consecutive months for the:

39 a. Supplying of:

40 (1) Fuel for heating purposes for any term not exceeding in the
41 aggregate three years; or

42 (2) Fuel or oil for use in automobiles, autobuses, motor vehicles
43 or equipment for any term not exceeding in the aggregate three
44 years; or

45 b. Plowing and removal of snow and ice for any term not
46 exceeding in the aggregate three years; or

- 1 c. Collection and disposal of garbage and refuse for any term
2 not exceeding in the aggregate three years; or
- 3 d. Providing goods or services for the use, support or
4 maintenance of proprietary computer hardware, software
5 peripherals and system development for the hardware for any term
6 of not more than five years; or
- 7 e. Insurance, including the purchase of insurance coverages,
8 insurance consultant or administrative services, and including
9 participation in a joint self-insurance fund, risk management
10 programs or related services provided by a county college insurance
11 group, or participation in an insurance fund established by a county
12 pursuant to N.J.S.40A:10-6, for any term of not more than three
13 years; or
- 14 f. Leasing or service of automobiles, motor vehicles, electronic
15 communications equipment, machinery and equipment of every
16 nature and kind for any term not exceeding in the aggregate five
17 years; or
- 18 g. Supplying of any product or rendering of any service by a
19 company providing voice, data, transmission or switching services,
20 for a term not exceeding five years; or
- 21 h. The providing of food supplies and services, including food
22 supplies and management contracts for student centers, dining
23 rooms and cafeterias, for a term not exceeding **[three]** 30 years; or
- 24 i. (Deleted by amendment, P.L.2009, c.4).
- 25 j. Any single project for the construction, reconstruction or
26 rehabilitation of a public building, structure or facility, or a public
27 works project including the retention of the services of an architect
28 or engineer in connection with the project, for the length of time
29 necessary for the completion of the actual construction; or
- 30 k. The management and operation of bookstores for a term not
31 exceeding **[five]** 30 years; or
- 32 l. Custodial or janitorial services for any term not exceeding in
33 the aggregate three years; or
- 34 m. Child care services for a term not exceeding three years; or
- 35 n. Security services for a term not exceeding three years; or
- 36 o. Ground maintenance services for a term not exceeding three
37 years; or
- 38 p. Laundering, dry-cleaning or rental of uniforms for a term not
39 exceeding three years; or
- 40 q. The performance of work or services or the furnishing of
41 materials and supplies for the purpose of producing class I
42 renewable energy, as that term is defined in section 3 of P.L.1999,
43 c.23 (C.48:3-51), at, or adjacent to, buildings owned by, or
44 operations conducted by, the contracting unit, the entire price of
45 which is to be established as a percentage of the resultant savings in
46 energy costs, for a term not to exceed **[15]** 30 years; provided,
47 however, that these contracts shall be entered into only subject to

1 and in accordance with guidelines promulgated by the Board of
2 Public Utilities establishing a methodology for computing energy
3 cost savings and energy generation costs.

4 All multi-year leases and contracts entered into pursuant to this
5 section, except contracts and agreements for the provision of work
6 or the supplying of equipment to promote energy conservation
7 through the production of class I renewable energy and authorized
8 pursuant to subsection q. of this section, and except contracts for
9 insurance coverages, insurance consultant or administrative
10 services, participation or membership in a joint self-insurance fund,
11 risk management programs or related services of a county college
12 insurance group, and participation in an insurance fund established
13 by a county pursuant to N.J.S.40A:10-6 or a joint insurance fund
14 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), shall
15 contain a clause making them subject to the availability and
16 appropriation annually of sufficient funds to meet the extended
17 obligation or contain an annual cancellation clause.

18 (cf: P.L.2009, c.4, s.5)

19
20 46. (New section) The New Jersey Commission on Higher
21 Education shall appoint and convene a network of academics and
22 researchers from New Jersey's public and independent institutions
23 of higher education to propose and develop economic development
24 policies and programs for the higher education community.

25
26 47. (New section) Sections 47 through 49 of P.L. , c.
27 (C.) (pending before the Legislature as this bill) shall be known
28 and may be cited as the "Higher Education Partnership Agreements
29 Act."

30
31 48. (New section) As used in sections 48 and 49 of P.L. , c.
32 (C.) (pending before the Legislature as this bill):

33 "Board" means the Local Finance Board established in the
34 Division of Local Government Services in the Department of
35 Community Affairs.

36 "Bonds" mean bonds, notes or other obligations issued to finance
37 or refinance higher education projects by a municipality, or on
38 behalf of a municipality by a county improvement authority created
39 pursuant to the "county improvement authorities law," P.L.1960,
40 c.183 (C.40:37A-44 et seq.).

41 "Higher education partnership agreement" means an agreement
42 between a municipality and an institution of higher education
43 providing for the issuance of bonds by the municipality, a county
44 improvement authority or a redevelopment entity, and the pledge of
45 payments by the institution of higher education to secure those
46 bonds to finance a higher education project, or part thereof.

1 “Higher education project” means the establishment and
2 construction of higher education buildings and the expansion and
3 construction of additional facilities at, and the acquisition of
4 additional and upgraded equipment for existing higher education
5 buildings, including but not limited to the planning, erecting,
6 purchasing, improving, developing, constructing, reconstructing,
7 extending, rehabilitating, renovating, upgrading, demolishing and
8 equipping of facilities at institutions of higher education.

9 “Institution of higher education” means: Rutgers, The State
10 University; a State college or university established pursuant to
11 chapter 64 of Title 18A of the New Jersey Statutes; the New Jersey
12 Institute of Technology; the University of Medicine and Dentistry
13 of New Jersey; a county college and any other public university or
14 college now or hereafter established or authorized by State law; and
15 any college or university incorporated and located in New Jersey,
16 which by virtue of law or character or license is a nonprofit
17 educational institution authorized to grant academic degrees and
18 which provides a level of education which is equivalent to the
19 education provided by the State's public institutions of higher
20 education, as attested by the receipt of and continuation of regional
21 accreditation by the Middle States Association of Colleges and
22 Schools, and which is eligible to receive State aid under the
23 provisions of the Constitution of the United States and the
24 Constitution of the State of New Jersey, but does not include any
25 educational institution dedicated primarily to the education or
26 training of ministers, priests, rabbis or other professional persons in
27 the field of religion.

28 “Municipality” means the municipal governing body or an entity
29 acting on behalf of the municipality if permitted by the federal
30 Internal Revenue Code of 1986, or, if a redevelopment agency or
31 redevelopment entity is established in the municipality pursuant to
32 P.L.1992, c.79 (C.40A:12A-1 et seq.) and the municipality so
33 provides, the redevelopment agency or entity so established.

34

35 49. (New section) A municipality and an institution of higher
36 education may enter into a higher education partnership agreement
37 for the development of a higher education project. The board shall
38 promulgate rules and regulations, modeled after the procedures and
39 protections set forth in the “Redevelopment Area Bond Financing
40 Law,” sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et
41 seq.), within 120 days following the enactment of sections 47
42 through 49 of P.L. , c. (C.) (pending before the Legislature
43 as this bill) in order to effectuate the purposes of this section.

44

45 50. (New section.) a. Receipts from the sale or use of energy
46 and utility service to or by a postconsumer material manufacturing
47 facility for use or consumption directly and primarily in the

1 production of tangible personal property, other than energy, shall be
2 exempt from the tax imposed under the "Sales and Use Tax Act,"
3 P.L.1966, c.30 (C.54:32B-1 et seq.), during the tax exemption
4 period.

5 b. Notwithstanding the provisions of subsection a. of this
6 section, a seller of energy and utility service shall charge and
7 collect from the purchaser that is a postconsumer material
8 manufacturing facility the tax at the rate then in effect, and the tax
9 shall be refunded to the purchaser by the filing, within 30 days of
10 the close of the calendar quarter in which the sale or use is made or
11 rendered, of a claim with the director for a refund of sales and use
12 taxes paid for energy and utility service, which refund shall be paid
13 within 60 days of the filing of a claim for refund. Proof of claim
14 for refund shall be made by the submission of auditable receipts and
15 such other documentation as the director may require.

16 c. If the owner of a postconsumer material manufacturing
17 facility relocates the facility to a location outside this State during
18 the tax exemption period, the owner of the facility shall pay the
19 director the amount of tax for which an exemption shall have been
20 allowed and refunded in accordance with subsection b. of this
21 section. The State Treasurer shall notify the director of the
22 relocation of a postconsumer material manufacturing facility to a
23 location outside this State, and the director shall issue a tax
24 assessment for the recapture of tax, equal to the amount of tax for
25 which an exemption shall have been allowed and refunded in
26 accordance with subsection b. of this section. The recapture of tax
27 shall be a State tax subject to the State Uniform Tax Procedure
28 Law, R.S.54:48-1 et seq., and shall be deposited in the General
29 Fund.

30 d. For purposes of this section,

31 "Postconsumer material manufacturing facility," means a facility
32 that:

33 (1) received service under an electric public utility rate schedule
34 that applied only to the owner of the facility on January 1, 2004;

35 (2) manufactures products made from "postconsumer material,"
36 as that term is defined in 40 C.F.R. s.247.3; provided however, that
37 not less than 75 percent of the facility's total annual sales dollar
38 volume of such products produced in this State meet the definition
39 of "postconsumer material";

40 (3) completed a "comprehensive energy audit," as that term is
41 defined pursuant to section 2 of P.L.1995, c.180 (C.48:2-21.25), not
42 more than 48 months before but not later than 90 days after the
43 effective date of P.L. , c. (C.) (pending before the
44 Legislature as this bill); and

45 (4) employed, individually or collectively with an affiliated
46 facility, not less than 150 employees in this State on April 1, 2009.

1 "Tax exemption period" means the period on or after January 1,
2 2010 but before January 1, 2017.

3
4 51. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
5 read as follows:

6 67. a. As used in this section:

7 "Base rates" means the rates, including minimum bills, charged
8 for utility commodities or service subject to the board's jurisdiction,
9 other than the rates charged under a utility's levelized energy
10 adjustment clause, hereinafter "LEAC," or levelized gas adjustment
11 clause, hereinafter "LGAC," or equivalent rate provision;

12 "Base year" means the calendar year 1996;

13 "Board" means the Board of Public Utilities;

14 "Manufacturing facility" means a facility:

15 (1) with respect to which the owner of the facility shall have
16 entered into an off-tariff rate agreement with an electric public
17 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24
18 et seq.);

19 (2) that manufactures products made from using "postconsumer
20 material," as that term is defined in section 247.3 of title 40, Code
21 of Federal Regulations, and other recovered material feedstocks that
22 meet the requirements of the Comprehensive Procurement
23 Guideline For Products Containing Recovered Materials as
24 promulgated by the United States Environmental Protection Agency
25 in section 247.1 et seq. of title 40, Code of Federal Regulations,
26 pursuant to the "Resource Conservation and Recovery Act,"
27 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.
28 13101, issued by the President of the United States on September
29 14, 1998, provided that at least 75 percent of the manufacturing
30 facility's total annual sales dollar volume of such products that are
31 produced in New Jersey meet the recycled content standards within
32 such guidelines;

33 (3) for which a "comprehensive energy audit," as that term is
34 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have
35 been undertaken within 90 days after the effective date of P.L.2007,
36 c.94 (C.48:2-21.36 et al.), which audit shall have evaluated cost-
37 effective energy efficiency and conservation measures as part of the
38 efforts to reduce energy costs;

39 (4) that has been in operation in this State for at least 25 years as
40 of the effective date of P.L.2007, c.94 (C.48:2-21.36 et al.); and

41 (5) at which at least 800 employees are employed on the first
42 business or work day after the expiration of such off-tariff rate
43 agreement [.] ;

44 "Postconsumer material manufacturing facility" means a facility
45 that:

46 (1) received service under an electric public utility rate schedule
47 that applied only to the owner of the facility on January 1, 2004;

1 (2) manufactures products made from "postconsumer material,"
2 as that term is defined in 40 C.F.R. s.247.3; provided however, that
3 not less than 75 percent of the facility's total annual sales dollar
4 volume of such products produced in this State meet the definition
5 of "postconsumer material";

6 (3) completed a "comprehensive energy audit," as that term is
7 defined pursuant to section 2 of P.L.1995, c.180 (C.48:2-21.25), not
8 more than 48 months before but not later than 90 days after the
9 effective date of P.L. , c. (C.) (pending before the
10 Legislature as this bill); and

11 (4) employed, individually or collectively with affiliated
12 facilities, not less than 150 employees in this State on April 1,
13 2009;

14 "Sales and use tax" means the sales and use tax liability
15 computed on sales and use of energy and utility service as defined
16 in section 2 of P.L.1966, c.30 (C.54:32B-2);

17 "Utility" means a public utility subject to regulation by the board
18 pursuant to Title 48 of the Revised Statutes; and

19 "Utility service" means the supply, transmission, distribution or
20 transportation of electricity, natural gas or telecommunications
21 services or any combination of such commodities, processes or
22 services.

23 b. No later than 60 days after the date this act is enacted, each
24 electric, gas and telecommunications utility subject to the
25 provisions of this act shall file with the board, and shall
26 simultaneously provide copies to the Director of the Division of the
27 Ratepayer Advocate, revised tariffs and such other supporting
28 schedules, narrative and documentation required by this act, as set
29 forth in this section, to reflect in the utility's rates the changes in tax
30 liability effected pursuant to this act. No later than 90 days after the
31 date of the utility's filing, and after determining that the filing and
32 the rate changes provided for therein are in compliance with the
33 provisions of this act, the board shall approve the utility's filing and
34 associated rates for billing to the utility's customers, effective for
35 utility service rendered on and after January 1, 1998. If the board
36 determines that the utility's filing and the associated rate changes
37 provided for therein are not in compliance with the provisions of
38 this act, the board shall require the utility to amend or otherwise
39 modify its filing to render it in compliance. The board may also
40 permit the rates provided for in the utility's filing to be implemented
41 on an interim basis pending the board's final determination in the
42 event the board, in its discretion, determines that due to the filing's
43 complexity, or for other valid reasons, including but not limited to
44 the enactment of this act after June 30, 1997, additional time is
45 needed for the board to complete its review of the filing. If the
46 rates approved by the board upon its final determination are less
47 than the rates implemented on an interim basis, the difference shall

1 be refunded to the utility's customers with interest computed in
2 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
3 implemented pursuant to this act shall not constitute a fixing of
4 rates pursuant to R.S.48:2-21 and shall not be subject to the hearing
5 requirements set forth in that section.

6 c. As of the effective date of the rate changes implemented
7 pursuant to this act, and except for rates applicable to sales that
8 were or are currently exempt from the unit-based energy taxes
9 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.)
10 and rates applicable to sales to which section 59 of P.L.1997, c.162
11 (C.48:2-21.31) applies, the board shall remove from the base rates
12 of each electric public utility and gas public utility the unit tax rates
13 included therein for the recovery of those unit-based energy taxes,
14 and include therein provision for the recovery of corporation
15 business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
16 seq.), and additionally shall authorize the collection of the sales and
17 use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as
18 follows:

19 (1) The base rates of each gas and electric utility shall be
20 reduced by the amount of the unit-based energy taxes per
21 kilowatthour or per therm included therein.

22 (2) The provision for corporation business tax initially included
23 in the base rates of each gas and electric utility shall be based on the
24 utility's after-tax net income earned in the base year as booked,
25 unless the board determines, in its discretion, that such income as
26 booked is unusually high or low or otherwise unrepresentative of
27 the utility's prospective net income, in which case the utility's base
28 year net income shall be adjusted as determined by the board.

29 To permit the board to make this determination, in addition to
30 including in its filing schedules showing its net income earned in
31 the base year as booked, the utility shall include adjustments to such
32 booked income to eliminate the effect of revenues, expenses and
33 extraordinary or other charges that are non-recurring, atypical, or
34 both, including, but not limited to an adjustment to eliminate the
35 effect of unusually hot or cold weather, and that would otherwise
36 make the utility's base year net income unusually high or low or
37 otherwise unrepresentative of the utility's prospective net income.
38 If the adjustment is being made to eliminate the effect of unusually
39 hot or cold weather, associated revenue and expense adjustments
40 shall also be made. Subject to the board's approval, such adjusted
41 income shall be the basis for the calculation of the initial provision
42 for corporation business tax to be included in the utility's base rates.

43 The utility shall also include a calculation of its rate of return on
44 common equity achieved in the base year, both as booked and as
45 adjusted in accordance with the foregoing. The calculation shall be
46 made employing the methodology set forth in N.J.A.C.14:12-
47 4.2(b)1, and shall separately show the effect of reflecting

1 adjustments to the calculation, if any, that may have been employed
 2 historically in establishing the utility's rate of return on common
 3 equity allowed for ratemaking purposes. The utility's filing shall
 4 also include copies of its audited financial statements for the base
 5 year and associated quarterly and other reports filed with the
 6 Securities and Exchange Commission.

7 To reflect the provision for corporation business tax in base
 8 rates, the demand charges, or charges per kilowatt, decatherm or
 9 million cubic feet; the energy charges, or charges per kilowatthour
 10 or per therm; and the customer charges, or charges other than
 11 demand and energy charges, set forth in each base rate schedule,
 12 and the floor price employed in parity rate schedules, included in
 13 the utility's tariff filed with and approved by the board shall be
 14 increased by amounts determined by multiplying such charges by
 15 the adjustment factor, "A e, g" derived below:

$$16 \quad A_{e, g} = \frac{((I_{e, g}) \times (R_s / (1 - R_e)))}{17 \quad \text{-----}} \\ 18 \quad \quad \quad (B_{r_{e, g}})$$

19 where:

20 "A e, g" means the adjustment factor applicable to electric base
 21 rates (e), gas base rates (g), or both, other than rates applicable to
 22 sales that were exempt from unit-based energy taxes formerly
 23 imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to
 24 which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

25 "I e, g" means the utility's base year after-tax net income from
 26 electric or gas sales, or both, and transportation service subject to
 27 the board's jurisdiction and other operating revenue if such revenue
 28 is reflected in the utility's cost of service for ratemaking purposes,
 29 adjusted as approved by the board;

30 "Br e, g" means the utility's base year revenue from base rates
 31 applicable to electric or gas sales, or both, and transportation
 32 service subject to the board's jurisdiction, but excluding sales that
 33 were exempt from unit-based energy taxes formerly imposed
 34 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
 35 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

36 "Rs" means the corporation business tax rate, expressed as a
 37 decimal;

38 "Rf" means the applicable federal corporation income tax rate
 39 expressed as a decimal; and

40 "Re" equals $R_s + R_f(1 - R_s)$.

41 The utility shall account for the changes in tax liability provided
 42 for by this act effective January 1, 1998. Such accounting shall
 43 include the recording on the utility's income statement and balance
 44 sheet of deferred corporation business tax defined, for book
 45 accounting purposes, as differences in corporation business tax
 46 expense arising from timing differences in the recognition of
 47 revenue and expenses for book and tax purposes.

1 (3) When billed to the utility's customers, the adjusted base rate
2 charges determined pursuant to paragraphs (1), (2), and (4) of this
3 subsection, and the charges determined pursuant to the utility's
4 levelized energy adjustment clause, levelized gas adjustment clause,
5 or both, as determined both upon the effective date of the rate
6 changes authorized by this act and as revised prospectively in
7 accordance with the utility's tariff filed with and approved by the
8 board, and the transitional energy facility assessment unit rate
9 surcharges, hereinafter, "TEFA unit rate surcharges," determined in
10 accordance with subsection d. of this section, shall be increased by
11 an amount determined by multiplying such charges by the sales and
12 use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In
13 addition to the utility's rates for service included in its tariff, for
14 informational purposes the tariff shall include such rates after
15 application of the sales and use tax authorized by this section.

16 (4) The utility's filing with the board to implement the rate
17 changes provided for by this act shall include an analysis,
18 description, and quantification of the effect of the changes in rates
19 and tax payments implemented pursuant to this act on the utility's
20 requirement for cash working capital, and if such requirement is
21 less than the cash working capital allowed for the collection and
22 payment of unit-based energy taxes formerly imposed pursuant to
23 P.L.1940, c.5 (C.54:30A-49 et seq.) in determining the utility's base
24 rates in effect prior to the rate changes implemented pursuant to this
25 act, and to the extent the working capital reduction is not offset by a
26 reduction in net deferred taxes as provided for below, such base
27 rates shall be reduced by the reduction in the utility's revenue
28 requirement associated with the remaining reduction in the working
29 capital requirement not so offset, if any. The reduction in working
30 capital shall be determined by using the same methodology
31 employed in establishing the working capital allowance related to
32 unit-based energy taxes reflected in the utility's base rates in effect
33 prior to the rate changes implemented pursuant to this act. The
34 reduction in the utility's revenue requirement associated with the
35 reduced working capital requirement shall be calculated using the
36 utility's last overall rate of return allowed by the board, including
37 provision for federal income taxes and the corporation business tax
38 implemented pursuant to this act payable on the equity portion of
39 the return, and shall be implemented on the effective date of the rate
40 changes provided for, and in the manner set forth in paragraph (2)
41 of this subsection.

42 If the utility's requirement for cash working capital is increased
43 as a result of the changes in rates and tax payments implemented
44 pursuant to this act, the utility may accrue carrying costs, calculated
45 at its last overall rate of return allowed by the board and applied on
46 a simple annual interest basis without compounding, on the

1 increased working capital requirement and request recovery of such
2 carrying costs in a rate proceeding before the board.

3 The working capital-related base rate changes and carrying cost
4 accruals shall be subject to the board's approval, and shall not be
5 included in the determination of the TEFA unit tax surcharges
6 provided for in subsection d. of this section.

7 The utility's filing with the board to implement the rate changes
8 provided for by this act shall also include an analysis, description
9 and quantification of net deferred taxes. For the purposes of this
10 section, "net deferred taxes" means deferred corporation business
11 taxes, net of federal deferred income taxes, associated with the tax
12 and rate changes implemented pursuant to this act, including
13 deferred corporation business tax recorded in accordance with
14 section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the
15 calendar year in which this act takes effect and for each year of the
16 tax life of the asset giving rise to the deferred corporation business
17 taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

18 If the change in such net deferred taxes projected for the calendar
19 year in which the rate changes implemented pursuant to this act take
20 effect is negative and if the utility's requirement for working capital
21 is reduced as a result of the changes in rates and tax payments
22 implemented pursuant to this act, the working capital-related rate
23 reduction that otherwise would have been implemented pursuant to
24 this subsection shall be treated as set forth in subparagraph (a) or
25 (b) of this paragraph. For the purposes of this act, a change in net
26 deferred taxes is considered negative when it reduces an existing
27 deferred tax liability or creates a deferred tax asset on the utility's
28 balance sheet. An appropriate rate adjustment for the working
29 capital impacts of this act, reflecting all relevant facts and
30 circumstances at the time of the adjustment, shall be made in the
31 year when the earlier of the following events occur:

32 (a) The year in which the reduction in carrying costs assumed
33 for the rate reduction for working capital that would have been
34 made but for this paragraph is no longer required to offset, on a
35 present value basis, the annual carrying costs calculated on the
36 accumulated balance of negative net deferred taxes projected to be
37 recorded by the utility, its successors and assigns, over the tax life
38 of the single asset account giving rise to such net deferred taxes
39 pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4). For the
40 purposes of this subparagraph (a):

41 (i) Carrying costs and present values are to be computed using
42 the weighted average after-tax rate of return approved by the board
43 in the utility's last base rate proceeding.

44 (ii) The accumulated balance of such negative net deferred taxes
45 shall include net deferred taxes associated with all assets and
46 liabilities originally placed in service by the utility and held by the
47 utility or a company affiliated with the utility regardless of whether

1 or not such assets continue to be subject to regulation by the New
2 Jersey Board of Public Utilities.

3 (b) The year in which both an appropriate working capital
4 adjustment and the accumulated balance of negative deferred taxes,
5 as described in (ii) of subparagraph (a) of this paragraph (4), are
6 reflected in the utility's rate base in a rate proceeding before the
7 board. It is the intent of this section to fully compensate utilities on
8 a present value basis, for the carrying costs associated with negative
9 net deferred taxes arising as a result of this act, and to remit to
10 ratepayers any credit due them as a result of any overcompensation
11 as may have occurred due to the treatment of working capital and
12 deferred taxes as set forth herein or in subparagraph (a) of this
13 paragraph (4). At the time the above base rate adjustment is made,
14 an analysis shall be made to determine if such carrying costs have
15 been or will be fully recovered pursuant to the intent of this
16 provision and any additional credit or charge to ratepayers to adjust
17 for ratepayer overpayments or underpayments, if any shall be
18 addressed.

19 If the change in net deferred taxes is positive, the increase shall
20 be added to, or increase, the reduction in the utility's requirement
21 for working capital if the requirement is reduced as a result of the
22 rate and tax payment changes implemented pursuant to this act, or
23 subtracted from the working capital requirement if it is increased,
24 and the resultant net working capital requirement shall be reflected
25 in rates or accrue carrying costs in the same manner as prescribed
26 for changes in the utility's requirement for working capital above.

27 The deferred tax-related rate changes or carrying cost accruals
28 shall be subject to the board's approval and shall not be included in
29 the determination of the TEFA unit rate surcharges provided for in
30 subsection d. of this section.

31 d. (1) Electric and gas utilities shall file, for the board's review
32 and approval, initial TEFA unit rate surcharges determined by
33 deducting from each unit-based energy tax unit tax rate effective
34 January 1, 1997 the following:

35 (a) An amount per kilowatthour or per therm determined by
36 multiplying the total revenue received in the base year from sales to
37 which that unit tax rate would have been applicable by the factor
38 $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed under
39 P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
40 dividing the result by the kilowatthours or therms billed in that unit
41 tax rate class in the base year; and

42 (b) An amount per kilowatthour or per therm determined by
43 dividing the revenue that would have been received in the base year
44 from the inclusion, in the manner prescribed in paragraph (2) of
45 subsection c. of this section, of the corporation business tax in the
46 rates applicable to sales billed in that unit tax rate class by the
47 kilowatthours or therms billed in that rate class. In each case, the

1 determination shall reflect the effect of adjustments that affect the
2 level of sales and revenue, if any, as provided in subsection c. of
3 this section. Of the resultant rate per kilowatthour or per therm, the
4 portion for recovery of the utility's transitional energy facilities
5 assessment liability shall be determined by multiplying such rate by
6 the factor $(1 - R_s)$, where R_s is the corporation business tax rate
7 expressed as a decimal.

8 The TEFA unit rate surcharges shall constitute non-bypassable
9 wires and/or mains charges of the utility, and shall be applied to all
10 sales within the customer classes to which they apply, regardless of
11 whether such customers are purchasing bundled or unbundled
12 services from the utility, but shall not be applied to sales:

13 (i) that were or are currently exempt from unit-based energy
14 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
15 seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31)
16 applies, **[and]**

17 (ii) for a period of seven years commencing on the first day after
18 the expiration of an off-tariff rate agreement, entered into or
19 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-
20 21.24 et seq.), to a manufacturing facility for use or consumption
21 directly and primarily in the production of tangible personal
22 property, other than energy~~].~~ and

23 (iii) for a period of seven years beginning on January 1, 2010, to
24 a postconsumer material manufacturing facility for use or
25 consumption directly and primarily in the production of tangible
26 personal property, other than energy.

27 Notwithstanding the provisions of the exemption provided in
28 **[this]** sub-subparagraph (ii) and sub-subparagraph (iii) of
29 subparagraph (b) of paragraph (1) of subsection d. of this section,
30 the TEFA unit rate surcharge shall be applied to the sales to the
31 owner of the manufacturing facility or the postconsumer material
32 manufacturing facility and the owner shall be refunded an amount
33 equal to the TEFA unit rate surcharge paid by the filing, within 30
34 days following the close of a calendar quarter in which the
35 exemption applies, of a claim with the **[New Jersey]** Director of the
36 Division of Taxation in the Department of the Treasury for a refund
37 of the TEFA unit rate surcharge paid, which refund shall be paid
38 within **[30]** 60 days of the refund claim being filed. Proof of claim
39 for refund shall be made by the submission of such records and
40 other documentation as the **[Director of the Division of Taxation]**
41 director may require. If the owner of the manufacturing facility or
42 the postconsumer material manufacturing facility at any time during
43 the exemption period provided in sub-subparagraph (ii) or sub-
44 subparagraph (iii) of subparagraph (b) of paragraph (1) of
45 subsection d. of this section relocates the manufacturing facility to a
46 location outside of this State, the owner shall pay to the **[Director**
47 **of the Division of Taxation]** director the amount of TEFA unit rate

1 surcharge for which an exemption shall have been allowed and
 2 refund obtained under this section. The State Treasurer shall notify
 3 the director of the relocation of a manufacturing facility or a
 4 postconsumer material manufacturing facility to a location outside
 5 of this State, and the director shall issue a tax assessment for the
 6 recapture of tax, equal to the amount of TEFA unit rate surcharge
 7 for which an exemption shall have been allowed and refund
 8 obtained under this section. The recapture of tax shall be a State
 9 tax subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et
 10 seq., and shall be deposited in the General Fund.

11 If, following the effective date of this act, a customer taking
 12 bundled service from the utility shall elect to obtain its
 13 requirements from another supplier and take transportation or
 14 wheeling service from the utility, the TEFA unit rate surcharge
 15 applicable to the bundled service shall continue to apply to the
 16 transportation or wheeling service. The TEFA components of the
 17 unit rate surcharges determined pursuant to this subsection (the
 18 components of the surcharges remaining after deducting the
 19 provision for corporation business tax included therein) shall be
 20 used to determine the transitional energy facility assessment
 21 liability pursuant to sections 36 through 49 of P.L.1997, c.162
 22 (C.54:30A-100 through C.54:30A-113).

23 (2) Unless reduced pursuant to paragraphs (3) and (4) of this
 24 subsection, the initial TEFA unit rate surcharges are to be reduced
 25 annually on January 1, 1999 through January 1, 2001 by the
 26 following percentages:

27	January 1, 1999,	20%
28	January 1, 2000,	40%
29	January 1, 2001,	60%

30 (3) For each year beginning with calendar year 1998 and ending
 31 with calendar year 2001, the TEFA surcharge adjustment shall be
 32 determined as the difference between:

33 (a) The sum of the estimated, or actual when known, (i) TEFA
 34 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-
 35 107), and sales and use taxes collected and corporation business
 36 taxes booked for the year 1998 by the gas and electric utilities and
 37 other entities subject to the TEFA provisions of this act (the year
 38 1998 liability), and (ii) the TEFA liabilities of those utilities and
 39 entities in all years following the year 1998 through the year in
 40 which a determination is being made pursuant to this subsection
 41 (the determination year); and

42 (b) The sum of (i) the total of each remitter's base year liability,
 43 as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii)
 44 the cumulative TEFA obligation, defined as the sum through the
 45 determination year of the amounts calculated by multiplying, for the
 46 applicable year, the percentage in the second column of the

1 following table:

2	Determination Year	% of
3		Year 1998
4		TEFA
5	-----	
6	1999	80%
7	2000	60%

8 by the Year 1998 TEFA,

9 where the Year 1998 TEFA is calculated as the total of each
 10 remitter's base year liability less the sales and use taxes collected
 11 and the corporation business taxes booked for the privilege period
 12 ending in calendar year 1998 by the gas and electric utilities and
 13 other entities subject to the TEFA provisions of this act. For
 14 purposes of this subsection, the amounts assumed for the
 15 determination year, including the year 1998 liability when first
 16 determined for the purposes of this subsection, shall be estimates
 17 based on nine months of actual data through and including the
 18 month of September, and three months of data forecast for the
 19 months of October through December.

20 (4) If the TEFA surcharge adjustment determined for the
 21 determination year is positive (that is, if the amount determined
 22 pursuant to subparagraph (a) of paragraph (3) of this subsection is
 23 greater than the amount determined pursuant to subparagraph (b) of
 24 paragraph (3) of this subsection), no reduction shall be made in the
 25 reduction in the TEFA unit rate surcharges provided for in
 26 paragraph (2) of this subsection for the year following the
 27 determination year. If the TEFA surcharge adjustment is negative,
 28 the reduction in the TEFA unit rate surcharges that otherwise would
 29 have been implemented on January 1 of the year following the
 30 determination year pursuant to paragraph (2) of this subsection shall
 31 be reduced by an amount (by percentage points) equal to the
 32 percentage the TEFA surcharge adjustment is of the total of the
 33 base year transitional energy facility assessment of all remitters, as
 34 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided
 35 however, that such reduction in the reduction in the TEFA unit rate
 36 surcharges shall not exceed the percentage shown in paragraph (2)
 37 of this subsection for that year; and provided further that in the first
 38 two years, that such reduction shall not exceed 10 percentage points
 39 for each year.

40 (5) (a) The TEFA unit rate surcharges for calendar years 2002
 41 through 2011 shall be the same as the TEFA unit rate surcharges in
 42 effect for calendar year 2001.

43 (b) The TEFA unit rate surcharges in effect for calendar year
 44 2011 shall be reduced on January 1, 2012 and January 1, 2013 by
 45 the following percentages:

46	January 1, 2012	25%
47	January 1, 2013	50%

1 e. The utility's filing with the board to implement the rate
2 changes provided for by this act shall include proof of revenue
3 schedules that show for each rate schedule included in the utility's
4 tariff, aggregated by unit-based energy tax unit tax classes, the
5 number of customers billed under the rate schedule, the billing
6 determinants of such customers (i.e. the kilowatts of billing demand
7 and kilowatthours of electric energy consumed, and the million
8 cubic feet/decatherm subject to gas capacity-related charges and
9 decatherm of gas consumed) and the associated revenue, both as
10 booked in the base year and on a pro forma basis reflecting the rate
11 changes implemented pursuant to this act. The proof of revenue
12 shall additionally show the amount of unit-based energy taxes
13 included in the base year revenue as booked, the unit-based energy
14 taxes that would have been collected at the unit-based energy tax
15 unit tax rates effective January 1, 1997, if different, as well as the
16 corporation business tax, sales and use tax and transitional energy
17 facility assessment revenue that would have been collected or
18 received on a pro forma basis if the rates implemented pursuant to
19 this act had been in effect in the base year.

20 f. The board may, in its discretion, permit the rate changes
21 provided for in this act to be implemented as part of a pending base
22 rate case or other proceeding in which the utility's rates are to be
23 changed, provided that the effective date of the changes is not
24 delayed beyond the date on which the changes would have been
25 implemented under subsection c. of this section. The board may
26 also, pursuant to its powers provided by law, permit or require
27 further modifications in the implementation of this section to
28 address unforeseen consequences arising out of the implementation
29 of this act.

30 g. Customers of the utility who are exempt from the sales and
31 use tax imposed on sales of gas and/or electricity or as a result of
32 rate changes occurring prior to the effective date of this act or for
33 other valid reasons are due a refund of sales or use tax inadvertently
34 imposed on such customers as a result of implementing the rate
35 changes provided for by this act shall file with the State Treasurer
36 to obtain such refunds. The State Treasurer shall promptly notify
37 the utility of customers granted refunds under this provision in
38 order to prevent additional collections of the sales and use tax from
39 such customers.

40 h. Public utilities providing telecommunications service
41 regulated by the board shall file for the board's review and approval
42 revised tariffs that eliminate from the rates applicable to such
43 service the excise tax liability included therein pursuant to
44 P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the
45 corporation business tax calculated using the methodology used in
46 calculating the adjustment factor set forth in paragraph (2) of
47 subsection c. of this section. Subsection d. of this section shall not

1 apply to telecommunication utilities, and telecommunication
2 utilities subject to a plan of regulation other than rate base/rate of
3 return shall additionally not be required to file the rate of return
4 information required by paragraph (2) of subsection c. Such
5 utilities shall, however, include a narrative and/or other
6 documentation as required by the board to support the
7 reasonableness of the after-tax income, which may be adjusted to
8 eliminate the effect of non-recurring or other atypical events, on
9 which the corporate business tax inclusion in rates is based.
10 Telecommunications utilities shall comply with all other applicable
11 provisions of this section.

12 i. (1) The board shall not adjust the rates of a public utility, as
13 provided in subsections c. and d. of this section, for a purchase by a
14 cogenerator of natural gas and the transportation of that gas, that is
15 exempt from sales and use tax pursuant to paragraph (2) of
16 subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46).
17 The board shall not allocate, in any future rate case, any sales and
18 use tax, corporation business tax, or transitional energy facility
19 assessment to rates for this purpose.

20 (2) The board shall adjust the rates, as provided in subsection c.
21 of this section, for a purchase by a cogenerator of any quantity of
22 natural gas and the transportation of that gas that is not exempt from
23 sales and use tax pursuant to paragraph (2) of subsection b. of
24 section 26 of P.L.1997, c.162 (C.54:32B-8.46).

25 (3) For the purposes of this section, "cogenerator" means a
26 person or business entity that owns or operates a cogeneration
27 facility in the State of New Jersey, which facility is a plant,
28 installation or other structure whose primary purpose is the
29 sequential production of electricity and steam or other forms of
30 useful energy which are used for industrial, commercial, heating or
31 cooling purposes, and which is designated by the Federal Energy
32 Regulatory Commission, or its successor, as a "qualifying facility"
33 pursuant to the provisions of the "Public Utility Regulatory Policies
34 Act of 1978," Pub.L.95-617.

35 (cf: P.L.2008, c.32, s.1)

36

37 52. This act shall take effect immediately; however, sections 9
38 and 11 shall remain inoperative until the first day of the third month
39 next following enactment unless the Local Finance Board
40 determines an earlier operative date.