

§§1-13 – C.52:27D-489a to
52:27D-489m
§18 – C.52:27D-489n
Title 40.Chapter 48H. (New)
Municipal Motor Vehicle Rental
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§28 – C.40:48G-2
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34:1B-209.3
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§41 – C.52:27D-320.1
§42 – C.18A:3B-39
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Title 18A. Chapter 72A.
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§52 – Note to §§9&11

P.L. 2009, CHAPTER 90, *approved July 28, 2009*
Assembly Committee Substitute (**Corrected Copy**) for
Assembly, No. 4048

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.

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 Counties and municipalities are likewise witnessing dramatic
2 reductions in local revenues as a consequence of the global
3 economic recession. As part of an ongoing, coordinated attempt to
4 spur economic improvement and reverse this deflationary cycle, the
5 Legislature and the Governor recently enacted a number of laws
6 designed to minimize the impact of current conditions on New
7 Jersey businesses and residents, including legislation providing
8 incentives to create jobs and make business investments in this
9 State.

10 b. America has seen two economic changes since the birth of
11 our nation over two hundred years ago. The initial change from an
12 agrarian based economy to an industrial based economy in the
13 revolution of the mid to late 1800s caused a realignment of our
14 culture and population and brought prosperity to millions of our
15 hardworking citizens. Much more recently, during those years
16 culminating in the end of the 20th century, the rise of technology
17 and financial services was our second change and increased that
18 prosperity many fold.

19 c. As a consequence of the current world-wide financial crisis,
20 opportunities for New Jersey residents to achieve prosperity have
21 now shrunk. Many of our citizens are facing economic hardships
22 not seen since the Great Depression. The financial crisis has
23 diminished the ability of the private sector to create economic
24 development on its own. The worldwide drop in available capital
25 along with a self-fulfilling drop in consumer confidence has created
26 a downward spiral that can be overcome with the assistance of a
27 partnership – a public-private partnership that targets tax cuts to
28 drive economic development and job creation.

29 d. The poor economic climate continues to pose particular
30 challenges for private sector entities desiring to engage in job
31 creation and economic development activities. In order to spur
32 economic growth and improve the quality of life for all New Jersey
33 residents, it is appropriate for the Legislature to revisit, modify, and
34 supplement several of the current statutes governing economic
35 development and related activities in this State, including but not
36 limited to job creation, economic growth, tax credits, state and local
37 taxation of manufacturing and other activities, higher education,
38 redevelopment, and affordable housing. Each of the facets of
39 P.L. , c. (C.) (pending before the Legislature as this bill)
40 represents a direct response to the unique economic development
41 challenges currently facing the State and local units. It is the belief
42 of the Legislature that each of the individual components of P.L. ,
43 c. (C.) (pending before the Legislature as this bill) will serve to
44 combat one or more aspects of the current economic crisis and that
45 these complementary components will promote economic
46 development and job creation activities immediately upon
47 enactment.

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

6 f. Through the use of tax increment financing, tax credits,
7 development fee suspensions, and dedicated economic development
8 revenues, along with a more efficient redevelopment process, New
9 Jersey will be able to restore its economy to economic health and
10 create good-paying jobs for its residents; assist the private
11 development of affordable housing; assist institutions of higher
12 education to develop needed classrooms, laboratories, dormitory
13 rooms, and other educational facilities; and generate revenues for
14 necessary State and local governmental services.

15
16 3. (New section) As used in sections 3 through 18 of P.L. , c.
17 (C.) (pending before the Legislature as this bill):

18 "Applicant" means a developer proposing to enter into a
19 redevelopment incentive grant agreement.

20 "Authority" means the New Jersey Economic Development
21 Authority established under section 4 of P.L.1974, c.80 (C.34:1B-
22 4).

23 "Developer" means any person who enters or proposes to enter
24 into a redevelopment incentive grant agreement pursuant to the
25 provisions of section 9 of P.L. , c. (C.) (pending before the
26 Legislature as this bill). A developer also may be a municipal
27 government or a redevelopment agency as defined in section 3 of
28 P.L.1992, c.79 (C.40A:12A-3).

29 "Director" means the Director of the Division of Taxation in the
30 Department of the Treasury.

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

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

39 "Project area" means land or lands under common ownership or
40 control including through a redevelopment agreement with a
41 municipality or as otherwise established by a municipality.

42 "Project financing gap" means the part of the total
43 redevelopment project cost, including return on investment, that
44 remains to be financed after all other sources of capital have been
45 accounted for, including, but not limited to, developer contributed
46 capital, which shall not be less than 20 percent of the total project
47 cost, and investor or financial entity capital or loans for which the

1 developer, after making all good faith efforts to raise additional
2 capital, certifies that additional capital cannot be raised from other
3 sources.

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

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

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

10 (2) multiplying that product by a fraction having a numerator
11 equal to the taxable value of all the property assessed within the
12 project area, minus the property tax increment base, and having a
13 denominator equal to the taxable value of all property assessed
14 within the project area.

15 For the purpose of this definition, "property tax increment base"
16 means the aggregate taxable value of all property assessed which is
17 located within the redevelopment project area as of October 1st of
18 the year preceding the year in which the redevelopment incentive
19 grant agreement is authorized.

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

26 "Redevelopment incentive grant agreement" means an agreement
27 between, (1) the State and the New Jersey Economic Development
28 Authority and a developer, or (2) a municipality and a developer,
29 under which, in exchange for the proceeds of an incentive grant, the
30 developer agrees to perform any work or undertaking necessary for
31 a redevelopment project, including the clearance, development or
32 redevelopment, construction, or rehabilitation of any structure or
33 improvement of commercial, industrial, residential, or public
34 structures or improvements within a qualifying economic
35 redevelopment and growth grant incentive area or a transit village.

36 "Redevelopment project" means a specific work or improvement,
37 including lands, buildings, improvements, real and personal
38 property or any interest therein, including lands under water,
39 riparian rights, space rights and air rights, acquired, owned,
40 developed or redeveloped, constructed, reconstructed, rehabilitated
41 or improved, undertaken by a developer within a project area.

42 "Redevelopment utility" means a self-liquidating fund created by
43 a municipality pursuant to section 12 of P.L. , c. (C.)
44 (pending before the Legislature as this bill) to account for revenues
45 collected and incentive grants paid pursuant to section 11 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill), or other
47 revenues dedicated to a redevelopment project.

1 "Revenue increment base" means the amounts of all eligible
2 revenues from sources within the redevelopment project area in the
3 calendar year preceding the year in which the redevelopment
4 incentive grant agreement is executed, as certified by the State
5 Treasurer for State revenues, and the chief financial officer of the
6 municipality for municipal revenues.

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

11

12 4. (New section) a. The governing body of a municipality
13 wherein is located a qualifying economic redevelopment and
14 growth grant incentive area may adopt an ordinance to establish a
15 local Economic Redevelopment and Growth Grant program for the
16 purpose of encouraging redevelopment projects in that area through
17 the provision of incentive grants to reimburse developers for all or a
18 portion of the project financing gap for such projects. No local
19 Economic Redevelopment and Growth Grant program shall take
20 effect until the Local Finance Board approves the ordinance.

21 b. A developer that submits an application for a local incentive
22 grant shall indicate on the application whether it is also applying for
23 a State incentive grant. An application by a developer applying for
24 a local incentive grant only shall not require approval by the
25 authority. A municipality or its redevelopment agency only may
26 apply for local incentive grants for: (1) the construction of
27 infrastructure improvements in the public right-of-way, or (2)
28 publicly owned facilities.

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

31 d. In deciding whether or not to approve a local incentive grant
32 agreement the Local Finance Board shall consider the following
33 factors:

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

35 (2) the extent of economic and related social distress in the
36 municipality and the area to be affected by the redevelopment
37 project;

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

40 (4) the likelihood that the redevelopment project shall, upon
41 completion, be capable of generating new tax revenue in an amount
42 in excess of the amount necessary to reimburse the developer for
43 project costs incurred as provided in the redevelopment incentive
44 grant agreement;

45 (5) the relationship of the redevelopment project to a
46 comprehensive local development strategy, including other major
47 projects undertaken within the municipality;

1 (6) the need for the redevelopment incentive grant agreement to
2 the viability of the redevelopment project;

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

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

7

8 5. (New section) a. The New Jersey Economic Development
9 Authority, in consultation with the State Treasurer, shall establish
10 an Economic Redevelopment and Growth Grant program for the
11 purpose of encouraging redevelopment projects in qualifying
12 economic redevelopment and growth grant incentive areas that do
13 not qualify as such areas solely by virtue of being a transit village,
14 through the provision of incentive grants to reimburse developers
15 for certain project financing gap costs.

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

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

23 c. An application for a State incentive grant shall be reviewed
24 and approved by the authority and by the municipality by
25 ordinance.

26

27 6. (New section) a. Up to the limits established in subsection b.
28 of this section and in accordance with a redevelopment incentive
29 grant agreement, the State Treasurer shall pay to the developer
30 incremental State revenues directly realized from businesses
31 operating on the redevelopment project premises from the following
32 taxes: the Corporation Business Tax Act (1945), P.L.1945, c.162
33 (C.54:10A-1 et seq.), the tax imposed on marine insurance
34 companies pursuant to R.S.54:16-1 et seq., the tax imposed on
35 insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et
36 seq.), the public utility franchise tax, public utilities gross receipts
37 tax and public utility excise tax imposed on sewerage and water
38 corporations pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), the
39 tax derived from net profits from business, a distributive share of
40 partnership income, or a pro rata share of S corporation income
41 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
42 seq., the tax derived from a business at the site of a redevelopment
43 project that is required to collect the tax pursuant to the "Sales and
44 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), the tax imposed
45 pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) from the purchase
46 of materials used for the remediation, the construction of new
47 structures, or the construction of new residences at the site of a

1 redevelopment project, the hotel and motel occupancy fee imposed
2 pursuant to section 1 of P.L.2003, c.114 (C.54:32D-1), or the
3 portion of the fee imposed pursuant to section 3 of P.L.1968, c.49
4 (C.46:15-7) derived from the sale of real property at the site of the
5 redevelopment project and paid to the State Treasurer for use by the
6 State, that is not credited to the "Shore Protection Fund" or the
7 "Neighborhood Preservation Nonlapsing Revolving Fund" ("New
8 Jersey Affordable Housing Trust Fund") pursuant to section 4 of
9 P.L.1968, c.49 (C.46:15-8).

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

12 c. All administrative costs associated with the incentive grant
13 shall be assessed to the applicant and be retained by the State
14 Treasurer from the annual incentive grant payments.

15 d. The incremental revenue for the revenues listed in subsection
16 a. of this section shall be calculated as the difference between the
17 amount collected in any fiscal year from any eligible revenue
18 source included in the local redevelopment incentive grant
19 agreement, less the revenue increment base for that eligible
20 revenue.

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

25

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

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

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

38

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

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

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

9 b. Within each incentive grant application, a developer shall
10 certify information concerning:

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

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

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

17 (4) estimates of the revenue increment base and project the
18 eligible revenues for the project, and the assumptions upon which
19 those estimates are made.

20 c. (1) With regard to State tax revenues proposed to be pledged
21 for an incentive grant the authority and the State Treasurer shall
22 review the redevelopment project costs, evaluate and validate the
23 project financing gap estimated by the developer, and conduct a
24 State fiscal impact analysis to ensure that the overall public
25 assistance provided to the project will result in net benefits to the
26 State.

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

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

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

40
41 9. (New section) a. The authority is authorized to enter into a
42 redevelopment incentive grant agreement with a developer for any
43 redevelopment project located within a qualifying economic
44 redevelopment and growth grant incentive area that does not qualify
45 as such area solely by virtue of being a transit village.

46 b. The decision whether or not to enter into a redevelopment
47 incentive grant agreement is solely within the discretion of the

1 authority and the State Treasurer, provided that they both agree to
2 enter into agreement.

3 c. The Chief Executive Officer of the New Jersey Economic
4 Development Authority, in consultation with the State Treasurer
5 shall negotiate the terms and conditions of any redevelopment
6 incentive grant agreement on behalf of the State.

7 d. 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 exclusive of publicly-owned infrastructure.

15 e. The authority and the State Treasurer may enter into a
16 redevelopment incentive grant agreement only if they make a
17 finding that the State revenues to be realized from the
18 redevelopment project will be in excess of the amount necessary to
19 reimburse the developer for its project financing gap. This finding
20 may be made by an estimation based upon the professional
21 judgment of the Chief Executive Officer of the New Jersey
22 Economic Development Authority and the State Treasurer.

23 f. In deciding whether or not to recommend entering into a
24 redevelopment incentive grant agreement and in negotiating a
25 redevelopment agreement with a developer, the Chief Executive
26 Officer of the New Jersey Economic Development Authority shall
27 consider the following factors:

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

29 (2) the extent of economic and related social distress in the
30 municipality and the area to be affected by the redevelopment
31 project;

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

34 (4) the likelihood that the redevelopment project shall, upon
35 completion, be capable of generating new tax revenue in an amount
36 in excess of the amount necessary to reimburse the developer for
37 project costs incurred as provided in the redevelopment incentive
38 grant agreement;

39 (5) the relationship of the redevelopment project to a
40 comprehensive local development strategy, including other major
41 projects undertaken within the municipality;

42 (6) the need of the redevelopment incentive grant agreement to
43 the viability of the redevelopment project; and

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

46 g. (1) A developer that has entered into a redevelopment
47 incentive grant agreement with the authority and the State Treasurer

1 pursuant to this section may, upon notice to and consent of the
2 authority and the State Treasurer, pledge and assign as security for
3 any loan, any or all of its right, title and interest in and to such
4 agreements and in the incentive grants payable thereunder, and the
5 right to receive same, along with the rights and remedies provided
6 to the developer under such agreement. Any such assignment shall
7 be an absolute assignment for all purposes, including the federal
8 bankruptcy code.

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

21

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

26

27 11. (New section) a. The governing body of a municipality is
28 authorized to enter into a redevelopment incentive grant agreement
29 with a developer, which shall not be effective until adopted by
30 ordinance, for any redevelopment project located within a
31 qualifying economic redevelopment and growth grant incentive
32 area.

33 b. The redevelopment incentive grant agreement shall specify
34 the amount of the incentive grant to be awarded the developer, the
35 frequency of payments, and the length of time, which shall not
36 exceed 20 years, during which that reimbursement shall be granted.
37 In no event shall the combined amount of the reimbursements under
38 redevelopment incentive grant agreements with the State or
39 municipality exceed 20 percent of the total cost of the project.

40 c. The municipality may enter into a redevelopment incentive
41 grant agreement only if the chief financial officer of the
42 municipality makes a finding that the incremental revenues to be
43 realized from the redevelopment project will be in excess of the
44 amount necessary to reimburse the developer for its project
45 financing gap. Such finding shall be based upon appropriate
46 documentation and calculations supporting the decision.

- 1 d. Within a qualifying economic redevelopment and growth
2 grant incentive area a municipality that has entered into a local
3 redevelopment incentive grant agreement may pledge eligible
4 revenues its is authorized to collect as follows:
- 5 (1) incremental payments in lieu of taxes, with respect to
6 property located in the district, made pursuant to the "Five-Year
7 Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et
8 seq.), or the "Long Term Tax Exemption Law," P.L.1991, c.431
9 (C.40A:20-1 et al.);
- 10 (2) incremental revenues collected from payroll taxes, with
11 respect to business activities carried on within the area, pursuant to
12 section 15 of P.L.1970, c.326 (C.40:48C-15);
- 13 (3) incremental revenue from lease payments made to the
14 municipality, the developer, or the developer's successors with
15 respect to property located in the area;
- 16 (4) incremental revenue collected from parking taxes derived
17 from parking facilities located within the area pursuant to section 7
18 of P.L.1970, c.326 (C.40:48C-7);
- 19 (5) incremental admissions and sales taxes derived from the
20 operation of a public facility within the area pursuant to section 1 of
21 P.L.2007, c.302 (C.40:48G-1);
- 22 (6) (a) incremental sales and excise taxes which are derived from
23 activities within the area and which are rebated to or retained by the
24 municipality pursuant to the "New Jersey Urban Enterprise Zones
25 Act," P.L.1983, c.303 (C.52:27H-60 et seq.) or any other law
26 providing for such rebate or retention;
- 27 (b) within Planning Area 1 (Metropolitan) under the State
28 Development and Redevelopment Plan adopted pursuant to the
29 "State Planning Act," sections 1 through 12 of P.L.1985, c.398
30 (C.52:18A-196 et seq.), a municipality may impose the entire State
31 sales tax on business activities within a redevelopment project
32 located in an urban enterprise zone that would ordinarily be entitled
33 to collect reduced rate revenues under section 21 of P.L.1983, c.303
34 (C.52:27H-80), and pledge the excess revenues to a local
35 redevelopment incentive grant agreement;
- 36 (7) incremental parking revenue collected, pursuant to section 7
37 of P.L.1970, c.326 (C.40:48C-7), from public parking facilities built
38 as part of a redevelopment project, except for public parking
39 facilities owned by parking authorities pursuant to the "Parking
40 Authority Law," P.L.1948, c.198 (C.40:11A-1 et seq.);
- 41 (8) incremental revenues collected, pursuant to section 3 of
42 P.L.2003, c.114 (C.40:48F-1), P.L.1981, c.77 (C.40:48E-1 et seq.),
43 or P.L.1947, c.71 (C.40:48-8.15 et seq.), from hotel and motel
44 taxes;
- 45 (9) upon approval by the Local Finance Board, other incremental
46 municipal revenues that may become available;
- 47 (10) the property tax increment.

1 The incremental revenue for the revenues listed in this
2 subsection, when applicable, shall be calculated as the difference
3 between the amount collected in any fiscal year from any eligible
4 revenue source included in the local redevelopment incentive grant
5 agreement, less the revenue increment base for that eligible
6 revenue.

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

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

15 The full incremental value of a project area shall be included in
16 the value used for county and regional school tax apportionment
17 until such time that the Director of the Division of Taxation in the
18 Department of the Treasury can certify that property tax
19 management systems are capable of handling the technical and legal
20 requirements of treating parcels in areas of redevelopment as
21 exempt from county and regional school apportionment.

22 f. In addition to the incremental revenues that may be pledged in
23 subsection d. of this section, any amount of tax proceeds collected
24 from the tax on the rental of motor vehicles pursuant to section 20
25 of P.L. , c. (C.) (pending before the Legislature as this bill),
26 may be included in a redevelopment incentive grant agreement with
27 a developer, regardless of whether or not the redevelopment project
28 area is within or outside of the designated industrial zone from
29 which the tax on the rental of motor vehicles is collected.

30 g. (1) A developer that has entered into a redevelopment
31 incentive grant agreement with a municipality pursuant to this
32 section may, upon notice to and consent of the municipality, pledge
33 and assign as security for any loan, any or all of its right, title and
34 interest in and to such agreements and in the incentive grants
35 payable thereunder, and the right to receive same, along with the
36 rights and remedies provided to the developer under such
37 agreement. Any such assignment shall be an absolute assignment
38 for all purposes, including the federal bankruptcy code.

39 (2) Any pledge of incentive grants made by the developer shall
40 be valid and binding from the time when the pledge is made and
41 filed in the office of the municipal clerk. The incentive grants so
42 pledged and thereafter received by the developer shall immediately
43 be subject to the lien of the pledge without any physical delivery
44 thereof or further act, and the lien of any pledge shall be valid and
45 binding as against all parties having claims of any kind in tort,
46 contract, or otherwise against the developer irrespective of whether
47 the parties have notice thereof. Neither the redevelopment

1 incentive grant agreement nor any other instrument by which a
2 pledge under this section is created need be filed or recorded except
3 with the municipality.
4

5 12. (New section) a. A municipality may adopt an ordinance
6 creating a municipal redevelopment utility under the name and style
7 of "the _____ redevelopment utility," with all or any
8 significant part of the name of the municipality inserted. The
9 redevelopment utility shall be a municipal public utility for the
10 purposes of Title 40A of the New Jersey Statutes.

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

17 c. If a municipality does not create a municipal redevelopment
18 utility, then any revenues collected pursuant to section 11 of P.L. _____,
19 c. _____ (C. _____) (pending before the Legislature as this bill) and any
20 grants received to pay incentive grants shall be treated as riders in
21 the municipal budget pursuant to N.J.S.40A:4-36.
22

23 13. (New section) Sections 11 through 41 of P.L.2001, c.310
24 (C.52:27D-459 through C.52:27D-489) shall be inoperative and
25 without effect for applications submitted after the effective date of
26 P.L. _____, c. _____ (pending before the Legislature as this bill); provided,
27 however, those sections shall remain in effect for revenue allocation
28 districts for which financing has been approved prior to the
29 effective date of P.L. _____, c. _____ (pending before the Legislature as this
30 bill). Any revenue allocation district that has been approved prior
31 to the effective date of P.L. _____, c. _____ (pending before the Legislature
32 as this bill), but for which financing has not been approved prior to
33 that date, shall fall under the provisions of sections 3 through 18 of
34 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this bill).
35

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

38 5. The authority shall have the following powers:

39 a. To adopt bylaws for the regulation of its affairs and the
40 conduct of its business;

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

42 c. To sue and be sued;

43 d. To acquire in the name of the authority by purchase or
44 otherwise, on such terms and conditions and such manner as it may
45 deem proper, or by the exercise of the power of eminent domain in
46 the manner provided by the "Eminent Domain Act of 1971,"
47 P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or

1 other property which it may determine is reasonably necessary for
2 any project; provided, however, that the authority in connection
3 with any project shall not take by exercise of the power of eminent
4 domain any real property except upon consent thereto given by
5 resolution of the governing body of the municipality in which such
6 real property is located; and provided further that the authority shall
7 be limited in its exercise of the power of eminent domain in
8 connection with any project to municipalities receiving State aid
9 under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to
10 municipalities which had a population, according to the latest
11 federal decennial census, in excess of 10,000;

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

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

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

26 h. To mortgage, pledge or assign or otherwise encumber all or
27 any portion of a project, or revenues, whenever it shall find such
28 action to be in furtherance of the purposes of this act, P.L.2000,
29 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
30 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
31 **[and]** P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3
32 through 18 of P.L. , c. (C.) (pending before the Legislature
33 as this bill);

34 i. To grant options to purchase or renew a lease for any of its
35 projects on such terms as the authority may determine to be
36 reasonable;

37 j. To contract for and to accept any gifts or grants or loans of
38 funds or property or financial or other aid in any form from the
39 United States of America or any agency or instrumentality thereof,
40 or from the State or any agency, instrumentality or political
41 subdivision thereof, or from any other source and to comply,
42 subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.),
43 section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72
44 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic
45 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), and
46 P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and
47 conditions thereof;

- 1 k. In connection with any application for assistance under
2 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401
3 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
4 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
5 (C.52:27BBB-1 et al.), or P.L.2007, c.137 (C.52:18A-235 et al.) or
6 commitments therefor, to require and collect such fees and charges
7 as the authority shall determine to be reasonable;
- 8 l. To adopt, amend and repeal regulations to carry out the
9 provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of
10 P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.),
11 the "Municipal Rehabilitation and Economic Recovery Act,"
12 P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007, c.137
13 (C.52:18A-235 et al.);
- 14 m. To acquire, purchase, manage and operate, hold and dispose
15 of real and personal property or interests therein, take assignments
16 of rentals and leases and make and enter into all contracts, leases,
17 agreements and arrangements necessary or incidental to the
18 performance of its duties;
- 19 n. To purchase, acquire and take assignments of notes,
20 mortgages and other forms of security and evidences of
21 indebtedness;
- 22 o. To purchase, acquire, attach, seize, accept or take title to any
23 project or school facilities project by conveyance or by foreclosure,
24 and sell, lease, manage or operate any project or school facilities
25 project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1
26 et al.), the "Municipal Rehabilitation and Economic Recovery Act,"
27 P.L.2002, c.43 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137
28 (C.52:18A-235 et al.), and sections 3 through 18 of P.L. , c.
29 (C.) (pending before the Legislature as this bill);
- 30 p. To borrow money and to issue bonds of the authority and to
31 provide for the rights of the holders thereof, as provided in
32 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401
33 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
34 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
35 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137 (C.52:18A-235 et
36 al.), and sections 3 through 18 of P.L. , c. (C.) (pending
37 before the Legislature as this bill);
- 38 q. To extend credit or make loans to any person for the
39 planning, designing, acquiring, constructing, reconstructing,
40 improving, equipping and furnishing of a project or school facilities
41 project, which credits or loans may be secured by loan and security
42 agreements, mortgages, leases and any other instruments, upon such
43 terms and conditions as the authority shall deem reasonable,
44 including provision for the establishment and maintenance of
45 reserve and insurance funds, and to require the inclusion in any
46 mortgage, lease, contract, loan and security agreement or other
47 instrument, of such provisions for the construction, use, operation

- 1 and maintenance and financing of a project or school facilities
2 project as the authority may deem necessary or desirable;
- 3 r. To guarantee up to 90% of the amount of a loan to a person,
4 if the proceeds of the loan are to be applied to the purchase and
5 installation, in a building devoted to industrial or commercial
6 purposes, or in an office building, of an energy improvement
7 system;
- 8 s. To employ consulting engineers, architects, attorneys, real
9 estate counselors, appraisers, and such other consultants and
10 employees as may be required in the judgment of the redevelopment
11 utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et
12 seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72
13 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic
14 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) **[and]**
15 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of
16 P.L. , c. (C.) (pending before the Legislature as this bill),
17 and to fix and pay their compensation from funds available to the
18 redevelopment utility therefor, all without regard to the provisions
19 of Title 11A of the New Jersey Statutes;
- 20 t. To do and perform any acts and things authorized by
21 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401
22 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
23 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
24 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137 (C.52:18A-235 et
25 al.), and sections 3 through 18 of P.L. , c. (C.) (pending
26 before the Legislature as this bill), under, through or by means of its
27 own officers, agents and employees, or by contract with any person;
- 28 u. To procure insurance against any losses in connection with
29 its property, operations or assets in such amounts and from such
30 insurers as it deems desirable;
- 31 v. To do any and all things necessary or convenient to carry out
32 its purposes and exercise the powers given and granted in P.L.1974,
33 c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-
34 4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
35 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
36 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137 (C.52:18A-235 et
37 al.), and sections 3 through 18 of P.L. , c. (C.) (pending
38 before the Legislature as this bill);
- 39 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
40 maintain or repair or provide for the construction, reconstruction,
41 improvement, alteration, equipping or maintenance or repair of any
42 development property and lot, award and enter into construction
43 contracts, purchase orders and other contracts with respect thereto,
44 upon such terms and conditions as the authority shall determine to
45 be reasonable, including, but not limited to, reimbursement for the
46 planning, designing, financing, construction, reconstruction,
47 improvement, equipping, furnishing, operation and maintenance of

1 any such development property and the settlement of any claims
2 arising therefrom and the establishment and maintenance of reserve
3 funds with respect to the financing of such development property;

4 x. When authorized by the governing body of a municipality
5 exercising jurisdiction over an urban growth zone, to construct,
6 cause to be constructed or to provide financial assistance to projects
7 in an urban growth zone which shall be exempt from the terms and
8 requirements of the land use ordinances and regulations, including,
9 but not limited to, the master plan and zoning ordinances, of such
10 municipality;

11 y. To enter into business employment incentive agreements as
12 provided in the "Business Employment Incentive Program Act,"
13 P.L.1996, c.26 (C.34:1B-124 et al.);

14 z. To enter into agreements or contracts, execute instruments,
15 and do and perform all acts or things necessary, convenient or
16 desirable for the purposes of the redevelopment utility to carry out
17 any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-
18 1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007, c.137
19 (C.52:18A-235 et al.), including, but not limited to, entering into
20 contracts with the State Treasurer, the Commissioner of Education,
21 districts, the New Jersey Schools Development Authority, and any
22 other entity which may be required in order to carry out the
23 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), **[and]** P.L.2007,
24 c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L. __, c.
25 (C. __) (pending before the Legislature as this bill);

26 aa. (Deleted by amendment, P.L.2007, c.137);

27 bb. To make and contract to make loans to local units to finance
28 the cost of school facilities projects and to acquire and contract to
29 acquire bonds, notes or other obligations issued or to be issued by
30 local units to evidence the loans, all in accordance with the
31 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,
32 c.137 (C.52:18A-235 et al.);

33 cc. Subject to any agreement with holders of its bonds issued to
34 finance a project or school facilities project, obtain as security or to
35 provide liquidity for payment of all or any part of the principal of
36 and interest and premium on the bonds of the authority or for the
37 purchase upon tender or otherwise of the bonds, lines of credit,
38 letters of credit, reimbursement agreements, interest rate exchange
39 agreements, currency exchange agreements, interest rate floors or
40 caps, options, puts or calls to hedge payment, currency, rate, spread
41 or similar exposure or similar agreements, float agreements,
42 forward agreements, insurance contract, surety bond, commitment
43 to purchase or sell bonds, purchase or sale agreement, or
44 commitments or other contracts or agreements, and other security
45 agreements or instruments in any amounts and upon any terms as
46 the authority may determine and pay any fees and expenses required
47 in connection therewith;

1 dd. To charge to and collect from local units, the State and any
2 other person, any fees and charges in connection with the
3 authority's actions undertaken with respect to school facilities
4 projects, including, but not limited to, fees and charges for the
5 authority's administrative, organization, insurance, operating and
6 other expenses incident to the financing of school facilities projects;

7 ee. To make loans to refinance solid waste facility bonds
8 through the issuance of bonds or other obligations and the execution
9 of any agreements with counties or public authorities to effect the
10 refunding or rescheduling of solid waste facility bonds, or otherwise
11 provide for the payment of all or a portion of any series of solid
12 waste facility bonds. Any county or public authority refunding or
13 rescheduling its solid waste facility bonds pursuant to this
14 subsection shall provide for the payment of not less than fifty
15 percent of the aggregate debt service for the refunded or
16 rescheduled debt of the particular county or public authority for the
17 duration of the loan; except that, whenever the solid waste facility
18 bonds to be refinanced were issued by a public authority and the
19 county solid waste facility was utilized as a regional county solid
20 waste facility, as designated in the respective adopted district solid
21 waste management plans of the participating counties as approved
22 by the department prior to November 10, 1997, and the utilization
23 of the facility was established pursuant to tonnage obligations set
24 forth in their respective interdistrict agreements, the public
25 authority refunding or rescheduling its solid waste facility bonds
26 pursuant to this subsection shall provide for the payment of a
27 percentage of the aggregate debt service for the refunded or
28 rescheduled debt of the public authority not to exceed the
29 percentage of the specified tonnage obligation of the host county for
30 the duration of the loan. Whenever the solid waste facility bonds
31 are the obligation of a public authority, the relevant county shall
32 execute a deficiency agreement with the authority, which shall
33 provide that the county pledges to cover any shortfall and to pay
34 deficiencies in scheduled repayment obligations of the public
35 authority. All costs associated with the issuance of bonds pursuant
36 to this subsection may be paid by the authority from the proceeds of
37 these bonds. Any county or public authority is hereby authorized to
38 enter into any agreement with the authority necessary, desirable or
39 convenient to effectuate the provisions of this subsection.

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

44 ff. To pool loans for any local government units that are
45 refunding bonds and do and perform any and all acts or things
46 necessary, convenient or desirable for the purpose of the authority

1 to achieve more favorable interest rates and terms for those local
2 governmental units;

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

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

13 ii. To finance or develop private or public parking facilities or
14 structures, which may include the use of solar photovoltaic
15 equipment, in municipalities qualified to receive State aid pursuant
16 to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and
17 municipalities that contain areas designated pursuant to P.L.1985,
18 c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan),
19 Planning Area 2 (Suburban), or a town center, and to provide
20 appropriate assistance, including but not limited to, extensions of
21 credit, loans, and guarantees, to municipalities qualified to receive
22 State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-
23 178 et seq.) and municipalities that contain areas designated
24 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning
25 Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town
26 center, and their agencies and instrumentalities or to private entities
27 whose projects are located in those municipalities, in order to
28 facilitate the financing and development of parking facilities or
29 structures in such municipalities. The authority may serve as the
30 issuing agent of bonds to finance the undertaking of a project for
31 the purposes of this subsection.

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

33

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

35 40A:1-1. The following words, as used in this title, shall have
36 the following meanings unless the context clearly indicates a
37 different meaning:

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

39 "cash basis budget" means a budget prepared in accordance with
40 the "Local Budget Law";

41 "clerk" means the clerk of a municipality or of a board of chosen
42 freeholders;

43 "director" means the Director of the Division of Local
44 Government Services in the Department of Community Affairs;

45 "fiscal year" means the period for which a local unit adopts a
46 budget, as required pursuant to the "Local Budget Law,"
47 N.J.S.40A:4-1 et seq., and shall be the calendar year beginning on

1 January 1 and ending on December 31, unless the local unit is a
2 municipality in which the fiscal year has been changed to the State
3 fiscal year, pursuant to section 2 or 3 of P.L.1991, c.75 (C.40A:4-
4 3.1 or C.40A:4-3.2), in which case, "fiscal year" shall mean the
5 State fiscal year or the transition year, as appropriate;

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

8 "local finance board" means the Local Finance Board in the
9 Division of Local Government Services in the Department of
10 Community Affairs;

11 "local unit" means a county or municipality;

12 "municipal public utility" means any water, sewer, electric power
13 or gas system, or any combination thereof, or any public parking
14 system, redevelopment, or any other utility, enterprise or purpose
15 authorized to be undertaken by a local unit from which it may
16 receive fees, rents, or other charges, and with respect to
17 redevelopment utilities, incremental revenues authorized pursuant
18 to section 11 of P.L. , c. (C.) (pending before the Legislature
19 as this bill);

20 "State fiscal year" means the period commencing on July 1 and
21 ending on June 30 in any municipality in which the fiscal year has
22 been changed pursuant to section 2 or 3 of P.L.1991, c.75 (C.40A:4-
23 3.1 or C.40A:4-3.2);

24 "transition year" means the period beginning on January 1 and
25 ending on June 30 in the calendar year during which the change in a
26 municipality's fiscal year takes effect, as authorized under the
27 provisions of section 2 or 3 of P.L.1991, c.75 (C.40A:4-3.1 or
28 C.40A:4-3.2).

29 (cf: P.L.1991, c.75, s.1)

30

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

32 40A:2-45. Any municipal public utility shall be deemed to be a
33 self-liquidating purpose if the cash receipts from fees, rents or other
34 charges, and for redevelopment utilities, taxes other than taxes
35 assessed on real property, in a fiscal year are sufficient to meet
36 operating and maintenance costs (exclusive of depreciation and
37 obsolescence) and interest and debt redemption charges payable or
38 accruing in such year without recourse to general taxation or the
39 deficit, if any, anticipated in the dedicated utility assessment
40 budget. There may be included in such cash receipts any fees, rents
41 and other charges collected from other departments or utilities of
42 the local unit at a rate not in excess of the fees, rents or other
43 charges to other consumers, customers or users, or if there be no
44 other consumers, customers or users properly comparable, then not
45 in excess of the comparable fees, rents and other charges of
46 privately owned or operated utilities or enterprises. Any municipal
47 public utility may include interest on investments and deposits and

1 appropriated surplus as revenues, in addition to the other revenues
2 authorized by this section, in a determination of whether that
3 municipal public utility shall be deemed to be a self-liquidating
4 purpose.

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

6

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

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

15 b. In calculating the net valuation on which school district taxes
16 and county taxes are apportioned, the aggregate amount of the
17 ratable increments in the revenue allocation district shall be
18 excluded.

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

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

23

24 18. (New section) The Local Finance Board in the Department
25 of Community Affairs, the State Treasurer, and the Economic
26 Development Authority may adopt implementation guidelines or
27 directives, and adopt such administrative rules, pursuant to the
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
29 seq.), as are necessary for the implementation of those agencies'
30 respective responsibilities under sections 3 through 18 of P.L. , c.
31 (C.) (pending before the Legislature as this bill), except that
32 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
33 seq.) to the contrary, the Local Finance Board, the State Treasurer,
34 and the Economic Development Authority may adopt, immediately
35 upon filing with the Office of Administrative Law, such rules and
36 regulations as they deem necessary to implement the provisions of
37 sections 3 through 18 of P.L. , c. (C.) (pending before the
38 Legislature as this bill) which shall be effective for a period not to
39 exceed 12 months and shall thereafter be amended, adopted, or re-
40 adopted in accordance with the provisions of P.L.1968, c.410
41 (C.52:14B-1 et seq.).

42

43 19. (New section) The Legislature finds that there exist in
44 certain municipalities certain industrial, port, and airport areas
45 which warrant redevelopment but do not presently generate
46 adequate funding sources with which to stimulate such activities.
47 As a result, municipal revenues derived from other areas in the

1 municipality have for many years been diverted to such areas in
2 order to induce redevelopment at such locations. In addition, the
3 worldwide financial credit crisis has created an environment in
4 which private financial activity in certain cities has been curtailed,
5 resulting in decreased revenue collections that have necessitated
6 severe cuts in local budgets for services. The Legislature declares
7 that it is therefore an appropriate and necessary public purpose to
8 provide a new source of funding, derived from a tax on the rental of
9 motor vehicles within designated industrial zones, to finance
10 various redevelopment activities occurring within those
11 municipalities.

12

13 20. (New section) a. A municipality having a population in
14 excess of 100,000 and within which is located a commercial airport
15 which provides for a minimum of 10 regularly scheduled
16 commercial airplane flights per day, or a municipality in which any
17 portion of such an airport is located, by ordinance, may impose a
18 tax on the rental of motor vehicles on such rental transactions that
19 occur within a designated industrial zone of the municipality. Such
20 tax shall be imposed on the person, corporation, or other legal entity
21 that is permitted the use of a motor vehicle that it does not own for
22 a period of time that is less than one year, in exchange for the
23 payment of a fee, and shall be collected on behalf of the
24 municipality by the person collecting such rental fee, in accordance
25 with such procedures as shall be established in the ordinance
26 imposing the tax.

27 The local motor vehicle rental tax rate imposed under an
28 ordinance adopted pursuant to this section shall not exceed five
29 percent of the total amount of the fee charged for the rental of the
30 motor vehicle, excluding any taxes and surcharges. After the
31 adoption of an ordinance, a municipality may subsequently amend
32 the ordinance from time to time to adjust the boundaries of the
33 industrial zone or, subject to the provisions of section 26 of P.L. ,
34 c. (C.) (pending before the Legislature as this bill), to modify
35 the tax rate; however, the modified rate shall not exceed five
36 percent of the total amount of the fee charged for the rental of the
37 motor vehicle, excluding any taxes and surcharges.

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

42 b. As used in this section:

43 "Eligible purposes" means (1) the payment or reimbursement of
44 costs of any "redevelopment project" or other undertaking in
45 furtherance of a "redevelopment plan" in any "area in need of
46 redevelopment" or "area in need of rehabilitation" within the
47 municipality (including, but not limited to, redevelopment projects

1 and undertakings located within the industrial zone), as such terms
2 are defined in the “Local Redevelopment and Housing Law”,
3 P.L.1992, c.79 (C.40A:12A-1 et al.), (2) the making of municipal
4 subsidies or contributions as authorized by P.L.1992, c.79, (3) the
5 payment or reimbursement, within or relating to any urban
6 enterprise zone located within the municipality, of such costs as are
7 enumerated in the definition of “project” as contained in subsection
8 c. of section 29 of P.L.1983, c.303 (C.52:27H-88), without
9 reference to the zone assistance fund or the zone development
10 corporation, (4) the payment of bonds issued for any of the
11 foregoing purposes, (5) planning, evaluation, negotiation, and other
12 preliminary expenses relating to any of the foregoing purposes, and
13 (6) costs of administration and enforcement, including costs and
14 expenses of the municipality incurred in collecting the tax.

15 “Industrial zone” means such portion or portions of the
16 municipality, which may be identified by reference to zoning
17 districts, census tracks, or both, not exceeding in the aggregate 50
18 percent of the territory of the municipality, as is determined by the
19 municipality to be an area having, or intended to have,
20 predominantly industrial, port, airport, and related uses.

21 “Motor vehicle” means any automobile, truck, van, bus, or
22 similar conveyance that is intended primarily for passenger (as
23 distinct from cargo) use, and meeting the requirements of the State
24 for operation on public roads.

25 “Rental of motor vehicle” means any contract or agreement by
26 which a person, corporation, or other legal entity is permitted the
27 use of a motor vehicle that it does not own for a period of time that
28 is less than one year in exchange for the payment of a fee. A rental
29 transaction is deemed to occur at the location at which such person,
30 corporation, or other legal entity takes possession of the motor
31 vehicle.

32 “Rental tax account” means the dedicated trust account
33 established by a municipality pursuant to subsection c. of this
34 section.

35 “Tax proceeds” means amounts collected pursuant to any tax
36 imposed pursuant to sections 19 through 27 of P.L. , c. (C.)
37 (pending before the Legislature as this bill).

38 c. The Director of the Division of Taxation in the Department of
39 the Treasury may require, by regulation, that all taxes collected
40 pursuant to sections 19 through 27 of P.L. , c. (C.) (pending
41 before the Legislature as this bill) be collected in the same manner
42 as surcharges are collected under section 28 of P.L. , c. (C.)
43 (pending before the Legislature as this bill). Revenues that are
44 collected and distributed back to the municipality shall be deposited
45 into a trust account established by the municipality and dedicated
46 exclusively to the purpose of funding one or more eligible purposes.
47 In the case of any assignment pursuant to section 23 of P.L. , c.

1 (C.) (pending before the Legislature as this bill), the terms of
2 such assignment shall include the agreement of the municipality to
3 enforce collection of the taxes in such manner as provided therein,
4 and may provide for direct payment of all or a portion of the tax
5 proceeds to a bond trustee. In addition to tax proceeds, there shall
6 be deposited into the rental tax account such other moneys as may,
7 from time to time, be directed by law to be deposited therein.
8

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

15 b. Except to the extent tax proceeds are assigned to a bond
16 trustee pursuant to section 23 of P.L. , c. (C.) (pending
17 before the Legislature as this bill), all tax proceeds shall, promptly
18 upon receipt by the chief financial officer, be deposited into the
19 rental tax account. There may also be deposited into the rental tax
20 account, or with the bond trustee, such additional amounts as may
21 from time to time be appropriated for such purpose by the
22 municipality, and the proceeds of any bonds issued pursuant to
23 P.L. , c. (C.) (pending before the Legislature as this bill)
24 may also be deposited into the rental tax account.
25

26 22. (New section) a. Any person having the obligation to collect
27 any tax imposed under sections 19 through 27 of P.L. , c.
28 (C.) (pending before the Legislature as this bill) who fails,
29 neglects, or refuses to make any report required by the Director of
30 the Division of Taxation in the Department of the Treasury or by an
31 ordinance adopted pursuant to sections 19 through 27 of P.L. , c.
32 (C.) (pending before the Legislature as this bill), any such
33 person who refuses to permit an officer or agent designed by the
34 director or by the municipality to examine his books, records, and
35 paper, and any such person who knowingly makes any incomplete,
36 false, or fraudulent report, or who attempts to do anything
37 whatsoever to avoid the full disclosure of the amount due under the
38 ordinance to avoid the payment of the whole or any part hereof, is a
39 disorderly person.

40 b. The failure of any person to receive or procure the forms
41 required for making reports required by the director or by an
42 ordinance adopted pursuant to section 20 of P.L. , c. (C.)
43 (pending before the Legislature as this bill) shall not excuse him
44 from making those reports.
45

46 23. (New section) An ordinance imposing a tax pursuant to
47 sections 19 through 27 of P.L. , c. (C.) (pending before the

1 Legislature as this bill) may authorize the municipality to assign all
2 or any portion or percentage of the proceeds thereof directly to the
3 trustee for any bonds issued pursuant to section 24 of P.L. , c.
4 (C.) (pending before the Legislature as this bill), as payment or
5 security for the bonds. Notwithstanding any law to the contrary, the
6 assignment shall be an absolute assignment of all of the
7 municipality's right, title and interest in the tax proceeds, or portion
8 or percentage thereof. Tax proceeds assigned to the trustee
9 pursuant to this section shall be paid directly by the municipality's
10 chief financial officer to the trustee, and accordingly such assigned
11 tax proceeds shall not be included in the general funds of the
12 municipality, or shall they be subject to any laws regarding the
13 receipt, deposit, investment, or appropriation of public funds; and
14 they shall retain such status notwithstanding enforcement of the
15 payment by the municipality or assignee.

16

17 24. (New section) a. A municipality that has imposed a tax
18 pursuant to section 20 of P.L. , c. (C.) (pending before the
19 Legislature as this bill) may issue bonds to finance eligible purposes
20 listed in subsection b. of section 20 of P.L. , c. (C.) (pending
21 before the Legislature as this bill), in accordance with provisions
22 governing the issuance of bonds under the "Local Redevelopment
23 and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.). A
24 resolution authorizing such bonds shall either identify a particular
25 eligible purpose or purposes toward which the bond proceeds shall
26 be applied and the respective amounts allocable to each such
27 eligible purpose, or may provide that such bond proceeds may be
28 applied to all of the eligible purposes described in subsection b. of
29 section 20 of P.L. , c. (C.) (pending before the Legislature
30 as this bill). Bond proceeds shall be deposited in the rental tax
31 account as provided in subsection c. of section 20 of P.L. , c.
32 (C.) (pending before the Legislature as this bill). Any bond
33 authorization issued under this section shall be subject to the
34 approval of the Local Finance Board.

35 b. Notwithstanding the provisions of subsection g. of section 37
36 of P.L.1992, c.79 (C.40A:12A-37), the bonds issued pursuant to this
37 section shall be issued as non-recourse obligations, and unless
38 otherwise provided for by separate action of the municipality to
39 guarantee such bonds or otherwise provide for a pledge of the
40 municipality's full faith and credit, shall not, except for such action,
41 be considered to be direct and general obligations of the
42 municipality, and, absent such action, the municipality shall not be
43 obligated to levy and collect a property tax sufficient in an amount
44 to pay the principal and interest on the bonds when the same
45 become due and payable. The provisions of the "Local Government
46 Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.)
47 shall not apply to any bonds issued or authorized pursuant to this

1 section and those bonds shall not be considered gross debt of the
2 municipality on any debt statement filed in accordance with the
3 “Local Bond Law,” N.J.S.40A:2-1 et seq., and the provisions of
4 chapter 27 of Title 52 of the Revised Statutes shall not apply to
5 such bonds.

6 c. The expenditure of the proceeds from the sale of the bonds
7 shall not require compliance with public bidding laws, including the
8 “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et
9 seq.), or any other statute under which an entity other than the
10 municipality, or any other public entity otherwise subject to such
11 law, shall undertake the economic development costs. The use of
12 these funds shall be subject to public accountability and oversight
13 by the municipality.

14 d. In order to provide additional security to bonds issued under
15 this section, the municipality may provide for an extension of the
16 municipality’s full faith and credit. To the extent that the
17 municipality provides for a full faith and credit guaranty of any
18 bonds, but determines not to authorize the issuance of bonds or
19 notes to provide the funding source thereof, it may do so by
20 resolution approved by a majority of the full governing body. To
21 the extent that bonds or notes are authorized to fund such guaranty,
22 such bonds or notes shall be authorized pursuant to the provisions
23 of the “Local Bond Law,” N.J.S.40A:2-1 et seq., and shall be
24 deductible from the gross debt of the municipality until such time as
25 bonds or notes are actually issued, and only up to the amount
26 actually issued, to fund such guaranty.

27

28 25. (New section) All bonds issued pursuant to section 24 of
29 P.L. , c. (C.) (pending before the Legislature as this bill) are
30 hereby declared to be issued by a political subdivision of this State
31 and for an essential public and governmental purpose and the
32 bonds, and the interest thereon and the income there from, and all
33 facility charges, funds, revenues, and other moneys pledged or
34 available to pay or secure the payment of the bonds, or interest
35 thereon, shall at all times be exempt from taxation except for
36 transfer inheritance and estate taxes.

37

38 26. (New section) The State of New Jersey does hereby pledge
39 to, and covenant and agree with, the holders of any bonds issued
40 pursuant to section 24 of P.L. , c. (C.) (pending before the
41 Legislature as this bill) that the State will not limit or alter the terms
42 of any agreement, ordinance, or resolution made in connection with
43 the security for, and the issuance and sale of, any bonds, so as to in
44 any way impair the rights or remedies of such holders, and will not
45 modify in any way the exemption from taxation provided for in
46 section 25 of P.L. , c. (C.) (pending before the Legislature
47 as this bill) until the bonds, together with interest thereon, with

1 interest on any unpaid installments of interest, and all costs and
2 expenses in connection with any action or proceeding by or on
3 behalf of such holders, are fully met and discharged.

4
5 27. (New section) After issuance, pursuant to sections 19
6 through 26 of P.L. , c. (C.) (pending before the Legislature
7 as this bill), all bonds, notes, or other obligations shall be
8 conclusively presumed to be fully authorized and issued by all
9 courts and officers of this State, and any person shall be estopped
10 from questioning their sale, execution, or delivery.

11
12 28. (New section) a. As used in this section:

13 "Admission charge" means the amount paid for admission,
14 including any service charge and any charge for entertainment at a
15 place of amusement, including but not limited to a dramatic or
16 musical arts admission charge as defined pursuant to subsection (r)
17 of section 2 of P.L.1966, c.30 (C.54:32B-2); and

18 "Major place of amusement" means a place of amusement as that
19 term is defined in subsection (t) of section 2 of P.L.1966, c.30
20 (C.54:32B-2), other than a motion picture theater, and other than an
21 amusement park as defined in section 1 of P.L.1992, c.118 (C.5:3-
22 55), at which admission charges are regularly paid, which place of
23 amusement is not owned by the State or an independent State
24 authority, or is not located on property that is owned by the State,
25 and which contains fixed seats for at least 7,000 patrons. For the
26 purposes of this definition, a county improvement authority is not
27 an independent State authority.

28 b. (1) The governing body of a municipality that is a city of the
29 second class and in which there is located a major place of
30 amusement, except for a municipality subject to the "Municipal
31 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
32 (C.52:27BBB-1 et al.), may adopt an ordinance imposing a
33 surcharge of an amount up to \$2 on each admission charge that is
34 subject to the New Jersey sales tax pursuant to paragraph (1) of
35 subsection (e) of section 3 of P.L.1966, c.30 (C.54:32B-3), and that
36 is not otherwise exempt from that tax, collected by each major place
37 of amusement in the municipality for admission thereto, which
38 surcharge shall be paid by the customer from whom the sales tax is
39 due pursuant to section 3 of P.L.1966, c.30 (C.54:32B-3). A
40 surcharge imposed under an ordinance adopted pursuant to this
41 paragraph shall be in addition to any other tax or fee imposed
42 pursuant to statute or local ordinance or resolution by any
43 governmental entity upon the admission charge. A surcharge
44 imposed under an ordinance adopted pursuant to this paragraph
45 shall be separately stated on any bill, receipt, invoice or similar
46 document provided to the patron, but shall not be considered part of

1 the sale price for purpose of determining tax pursuant to P.L.1966,
2 c.30 (C.54:32B-1 et seq.).

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

18 c. A copy of an ordinance adopted pursuant to this section shall
19 be transmitted upon adoption or amendment to the State Treasurer
20 along with a list of the names and locations of major places of
21 amusement in the municipality. An ordinance so adopted or any
22 amendment thereto shall provide that the surcharge provisions of
23 the ordinance or any amendment to the surcharge provisions shall
24 take effect on the first day of the first full month occurring 30 days
25 after the date of transmittal to the State Treasurer. Any ordinance
26 adopted pursuant to this section shall contain the following
27 provisions:

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

30 (2) A vendor shall not in any manner advertise or hold out to any
31 person or to the public in general, in any manner, directly or
32 indirectly, that the surcharge will be assumed or absorbed by the
33 vendor, that the surcharge will not be separately charged and stated
34 to the customer, or that the surcharge will be refunded to the
35 customer;

36 (3) Each assumption or absorption by a vendor of the surcharge
37 shall be deemed a separate offense and each representation or
38 advertisement by a vendor for each day the representation or
39 advertisement continues shall be deemed a separate offense; and

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

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

46 (2) Each person required to collect a surcharge imposed by the
47 ordinance shall be personally liable for the surcharge imposed,

1 collected or required to be collected hereunder. Any such person
2 shall have the same right in respect to collecting the surcharge from
3 a customer as if the surcharge were a part of the admission charge
4 and payable at the same time; provided, however, that the chief
5 fiscal officer of the municipality shall be joined as a party in any
6 action or proceeding brought to collect the surcharge.

7 e. (1) A person required to collect a surcharge imposed pursuant
8 to the provisions of this section shall, on or before the dates
9 required pursuant to section 17 of P.L.1966, c.30 (C.54:32B-17),
10 forward to the Director of the Division of Taxation in the
11 Department of the Treasury the surcharge collected in the preceding
12 month and make and file a return for the preceding month with the
13 director on any form and containing any information as the director
14 shall prescribe as necessary to determine liability for the surcharge
15 in the preceding month during which the person was required to
16 collect the surcharge.

17 (2) The director may permit or require returns to be made
18 covering other periods and upon any dates as the director may
19 specify. In addition, the director may require payments of
20 surcharge liability at any intervals and based upon any
21 classifications as the director may designate. In prescribing any
22 other periods to be covered by the return or intervals or
23 classifications for payment of surcharge liability, the director may
24 take into account the dollar volume of surcharge involved as well as
25 the need for ensuring the prompt and orderly collection of the
26 surcharge imposed.

27 (3) The director may require amended returns to be filed within
28 20 days after notice and to contain the information specified in the
29 notice.

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

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

41 (3) The State Treasurer, upon the certification of the director and
42 upon the warrant of the State Comptroller, shall pay and distribute
43 on a quarterly or more frequent basis, as prescribed by the State
44 Treasurer, to each municipality the amount of revenues determined
45 and certified under this subsection.

46 (4) The revenue received by a municipality shall be appropriated
47 as a special item of local revenue subject to the prior written

1 approval by the Director of the Division of Local Government
2 Services in the Department of Community Affairs, and shall be
3 offset with a local unit appropriation of an equal amount for
4 economic development purposes.

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

10

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

13 1. a. The New Jersey Economic Development Authority shall
14 establish within the New Jersey Emerging Technology and
15 Biotechnology Financial Assistance Program established pursuant
16 to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business
17 tax benefit certificate transfer program to allow new or expanding
18 emerging technology and biotechnology companies in this State
19 with unused amounts of research and development tax credits
20 otherwise allowable which cannot be applied for the credit's tax
21 year due to the limitations of subsection b. of section 1 of P.L.1993,
22 c.175 (C.54:10A-5.24) and unused net operating loss carryover
23 pursuant to subparagraph (B) of paragraph (6) of subsection (k) of
24 section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax
25 benefits for use by other corporation business taxpayers in this
26 State, provided that the taxpayer receiving the surrendered tax
27 benefits is not affiliated with a corporation that is surrendering its
28 tax benefits under the program established under P.L.1997, c.334.
29 For the purposes of this section, the test of affiliation is whether the
30 same entity directly or indirectly owns or controls 5% or more of
31 the voting rights or 5% or more of the value of all classes of stock
32 of both the taxpayer receiving the benefits and a corporation that is
33 surrendering the benefits. The tax benefits may be used on the
34 corporation business tax returns to be filed by those taxpayers in
35 exchange for private financial assistance to be provided by the
36 corporation business taxpayer that is the recipient of the corporation
37 business tax benefit certificate to assist in the funding of costs
38 incurred by the new or expanding emerging technology and
39 biotechnology company.

40 b. The authority, in cooperation with the Division of Taxation
41 in the Department of the Treasury, shall review and approve
42 applications by new or expanding emerging technology and
43 biotechnology companies in this State with unused but otherwise
44 allowable carryover of research and development tax credits
45 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and
46 unused but otherwise allowable net operating loss carryover
47 pursuant to paragraph (6) of subsection (k) of section 4 of P.L.1945,

1 c.162 (C.54:10A-4), to surrender those tax benefits in exchange for
2 private financial assistance to be made by the corporation business
3 taxpayer that is the recipient of the corporation business tax benefit
4 certificate in an amount equal to at least ~~【75%】~~ 80% of the amount
5 of the surrendered tax benefit. Provided that the amount of the
6 surrendered tax benefit for a surrendered research and development
7 tax credit carryover is the amount of the credit, and provided that
8 the amount of the surrendered tax benefit for a surrendered net
9 operating loss carryover is the amount of the loss multiplied by the
10 new or expanding emerging technology or biotechnology company's
11 anticipated allocation factor, as determined pursuant to section 6 of
12 P.L.1945, c.162 (C.54:10A-6) for the tax year in which the benefit
13 is transferred and subsequently multiplied by the corporation
14 business tax rate provided pursuant to subsection (c) of section 5 of
15 P.L.1945, c.162 (C.54:10A-5). The authority shall be authorized to
16 approve the transfer of no more than ~~【\$50,000,000 of tax benefits~~
17 ~~over State fiscal year 2000, \$40,000,000 of tax benefits over each~~
18 ~~State fiscal year 2001 through 2004, and】~~ \$60,000,000 ~~【over】~~ of
19 tax benefits in a State fiscal year ~~【2005 and each State fiscal year~~
20 ~~thereafter】~~. If the total amount of transferable tax benefits
21 requested to be surrendered by approved applicants exceeds
22 ~~【\$50,000,000 for State fiscal year 2000, \$40,000,000 for each State~~
23 ~~fiscal year 2001 through 2004, or \$60,000,00】~~ \$60,000,000 for a
24 State fiscal year ~~【2005 and for each State fiscal year thereafter】~~, the
25 authority, in cooperation with the Division of Taxation in the
26 Department of the Treasury, shall not be authorized to approve the
27 transfer of more than ~~【\$50,000,000 for State fiscal year 2000, more~~
28 ~~than \$40,000,000 for each State fiscal 2001 through 2004, or~~
29 ~~\$60,000,00】~~ \$60,000,000 for that State fiscal year ~~【2005 and for~~
30 ~~each State fiscal year thereafter】~~ and shall allocate the transfer of
31 tax benefits by approved companies using the following method:
32 (1) an eligible applicant with \$250,000 or less of transferable
33 tax benefits shall be authorized to surrender the entire amount of its
34 transferable tax benefits;
35 (2) an eligible applicant with more than \$250,000 of transferable
36 tax benefits shall be authorized to surrender a minimum of
37 \$250,000 of its transferable tax benefits;
38 (3) ~~【an eligible applicant with more than \$250,000 of~~
39 ~~transferable tax benefits that was approved to surrender tax benefits~~
40 ~~in the prior fiscal year shall be authorized to surrender a minimum~~
41 ~~of 50% of the transferable tax benefits surrendered in the prior~~
42 ~~fiscal year or \$250,000 whichever is greater, provided that the~~
43 ~~amount of transferable tax benefits authorized shall not exceed the~~
44 ~~applicant's transferable tax benefits for the current fiscal year;】~~
45 (Deleted by amendment, P.L. _____, c. _____.) (pending before the
46 Legislature as this bill)

1 (4) an eligible applicant with more than \$250,000 shall also be
2 authorized to surrender additional transferable tax benefits
3 determined by multiplying the applicant's transferable tax benefits
4 less the minimum transferable tax benefits that company is
5 authorized to surrender under paragraph (2) **【or (3)】** of this
6 subsection by a fraction, the numerator of which is the total amount
7 of transferable tax benefits that the authority is authorized to
8 approve less the total amount of transferable tax benefit approved
9 under paragraphs (1), (2), **【(3)】** and (5) of this subsection and the
10 denominator of which is the total amount of transferable tax
11 benefits requested to be surrendered by all eligible applicants less
12 the total amount of transferable tax benefits approved under
13 paragraphs (1), (2), **【(3)】** and (5) of this subsection;

14 (5) The authority shall establish the boundaries for three
15 innovation zones to be geographically distributed in the northern,
16 central, and southern portions of this State. Of the \$60,000,000 of
17 transferable tax benefits authorized for each State fiscal year,
18 **【\$5,000,000 shall be allocated for the surrender of transferable tax**
19 **benefits exclusively by eligible companies that operate within the**
20 **boundaries of the innovation zones during State fiscal year 2005,**
21 **and】** \$10,000,000 shall be **【so】** allocated **【for State fiscal year 2006**
22 **and for each State fiscal year thereafter】** for the surrender of
23 transferable tax benefits exclusively by new and expanding
24 emerging technology and biotechnology companies that operate
25 within the boundaries of the innovation zones, except that any
26 portion of the \$10,000,000 that is not so approved shall be available
27 for that State fiscal year for the surrender of transferable tax
28 benefits by new and expanding emerging technology and
29 biotechnology companies that do not operate within the boundaries
30 of an innovation zone.

31 If the total amount of transferable tax benefits that would be
32 authorized using the above method exceeds **【\$50,000,000 for State**
33 **fiscal year 2000, \$40,000,000 for each State fiscal year 2001**
34 **through 2004, or \$60,000,00】** \$60,000,000 for a State fiscal year
35 **【2005 and for each State fiscal year thereafter】**, then the authority,
36 in cooperation with the Division of Taxation in the Department of
37 the Treasury, shall limit the total amount of tax benefits authorized
38 to be transferred to **【\$50,000,000 for State fiscal year 2000,**
39 **\$40,000,000 for each State fiscal year 2001 through 2004, or**
40 **\$60,000,00】** \$60,000,000 **【for State fiscal year 2005 and for each**
41 **State fiscal year thereafter】** by applying the above method on an
42 apportioned basis.

43 For purposes of this section transferable tax benefits include an
44 eligible applicant's unused but otherwise allowable carryover of net
45 operating losses multiplied by the applicant's anticipated allocation
46 factor as determined pursuant to section 6 of P.L. 1945, c.162

1 (C.54:10A-6) for the tax year in which the benefit is transferred and
2 subsequently multiplied by the corporation business tax rate as
3 provided in subsection (c) of section 5 of P.L.1945, c.162
4 (C.54:10A-5) plus the total amount of the applicant's unused but
5 otherwise allowable carryover of research and development tax
6 credits. An eligible applicant's transferable tax benefits shall be
7 limited to net operating losses and research and development tax
8 credits that the applicant requests to surrender in its application to
9 the authority and shall not, in total, exceed the maximum amount of
10 tax benefits that the applicant is eligible to surrender.

11 No application for a corporation business tax benefit transfer
12 certificate shall be approved in which the new or expanding
13 emerging technology or biotechnology company (1) has
14 demonstrated positive net operating income in any of the two
15 previous full years of ongoing operations as determined on its
16 financial statements issued according to generally accepted
17 accounting standards endorsed by the Financial Accounting
18 Standards Board; or (2) is directly or indirectly at least 50 percent
19 owned or controlled by another corporation that has demonstrated
20 positive net operating income in any of the two previous full years
21 of ongoing operations as determined on its financial statements
22 issued according to generally accepted accounting standards
23 endorsed by the Financial Accounting Standards Board or is part of
24 a consolidated group of affiliated corporations, as filed for federal
25 income tax purposes, that in the aggregate has demonstrated
26 positive net operating income in any of the two previous full years
27 of ongoing operations as determined on its combined financial
28 statements issued according to generally accepted accounting
29 standards endorsed by the Financial Accounting Standards Board.

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

36 ~~[The private financial assistance shall be used to fund expenses~~
37 ~~incurred in connection with the operation of the new or expanding~~
38 ~~emerging technology or biotechnology company in the State,~~
39 ~~including but not limited to the expenses of fixed assets, such as the~~
40 ~~construction and acquisition and development of real estate,~~
41 ~~materials, start-up, tenant fit-out, working capital, salaries, research~~
42 ~~and development expenditures and any other expenses determined~~
43 ~~by the authority to be necessary to carry out the purposes of the~~
44 ~~New Jersey Emerging Technology and Biotechnology Financial~~
45 ~~Assistance Program.]~~

46 The authority, in consultation with the Division of Taxation,
47 shall establish rules for the recapture of all, or a portion of, the

1 amount of a grant of a corporation business tax benefit certificate
2 from the new or expanding emerging technology and biotechnology
3 company having surrendered tax benefits pursuant to this section in
4 the event the taxpayer fails to use the private financial assistance
5 received for the surrender of tax benefits as required by this
6 subsection or fails to maintain a headquarters or a base of operation
7 in this State during the five years following receipt of the private
8 financial assistance; except if the failure to maintain a headquarters
9 or a base of operation in this State is due to the liquidation of the
10 new or expanding emerging technology and biotechnology
11 company.

12 c. The authority, in cooperation with the Division of Taxation
13 in the Department of the Treasury, shall review and approve
14 applications by taxpayers under the Corporation Business Tax Act
15 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire
16 surrendered tax benefits approved pursuant to subsection b. of this
17 section which shall be issued in the form of corporation business
18 tax benefit transfer certificates, in exchange for private financial
19 assistance to be made by the taxpayer in an amount equal to at least
20 **[75%] 80%** of the amount of the surrendered tax benefit of an
21 emerging technology or biotechnology company in the State. A
22 corporation business tax benefit transfer certificate shall not be
23 issued unless the applicant certifies that as of the date of the
24 exchange of the corporation business tax benefit certificate it is
25 operating as a new or expanding emerging technology or
26 biotechnology company and has no current intention to cease
27 operating as a new or expanding emerging technology or
28 biotechnology company.

29 The private financial assistance shall assist in funding expenses
30 incurred in connection with the operation of the new or expanding
31 emerging technology or biotechnology company in the State,
32 including but not limited to the expenses of fixed assets, such as the
33 construction and acquisition and development of real estate,
34 materials, start-up, tenant fit-out, working capital, salaries, research
35 and development expenditures and any other expenses determined
36 by the authority to be necessary to carry out the purposes of the
37 New Jersey Emerging Technology and Biotechnology Financial
38 Assistance Program.

39 The authority shall require a corporation business taxpayer that
40 acquires a corporation business tax benefit certificate to enter into a
41 written agreement with the new or expanding emerging technology
42 or biotechnology company concerning the terms and conditions of
43 the private financial assistance made in exchange for the certificate.
44 The written agreement may contain terms concerning the
45 maintenance by the new or expanding emerging technology or
46 biotechnology company of a headquarters or a base of operation in
47 this State.

1 d. [The authority shall coordinate the applications for
2 surrender and acquisition of unused but otherwise allowable tax
3 benefits pursuant to this section in a manner that can best stimulate
4 and encourage the extension of private financial assistance to new
5 and expanding emerging technology and biotechnology companies
6 in this State. The applications shall be submitted and the authority
7 shall approve or disapprove the applications.

8 The authority shall, in consultation with the New Jersey
9 Commerce and Economic Growth Commission, the New Jersey
10 Commission on Science and Technology and any institution of
11 higher education in New Jersey, develop criteria for the approval or
12 disapproval of applications. Such criteria shall include, but need
13 not be limited to, an evaluation of the new or expanding emerging
14 technology or biotechnology company's actual or potential scientific
15 and technological viability, a determination that the new or
16 expanding emerging technology or biotechnology company's
17 principal products or services are sufficiently innovative to provide
18 a competitive advantage, a determination that the proposed financial
19 assistance will result in significant growth in permanent, full-time
20 employment in the State, a determination made by the authority that
21 the new or expanding emerging technology or biotechnology
22 company does not have sufficient resources to operate in the short
23 term or cannot secure financial assistance from venture capital,
24 stock issuance, product sales revenue, a parent corporation or other
25 affiliates, bank or any other method of obtaining capital, and a
26 determination that the financial assistance provided pursuant to this
27 act demonstrates the prospect of a significant positive change in the
28 applicant's net income. The authority shall establish the weight of
29 importance to be given each criterion utilized in its application
30 approval process. No application for surrender and acquisition of
31 unused but otherwise allowable tax benefits pursuant to this section
32 shall be approved in which the new or expanding technology or
33 biotechnology company (1) has demonstrated positive net income in
34 any of the two previous full years of ongoing operations as
35 determined on its financial statements; or (2) has demonstrated a
36 ratio in excess of 110% or greater of operating revenues divided by
37 operating expenses in any of the two previous full years of
38 operations as determined on its financial statements; or (3) is
39 directly or indirectly at least 50% owned or controlled by another
40 corporation that has demonstrated positive net income in any of the
41 two previous full years of ongoing operations as determined on its
42 financial statements or is part of a consolidated group of affiliated
43 corporations, as filed for federal income tax purposes, that in the
44 aggregate has demonstrated positive net income in any of the two
45 previous full years of ongoing operations as determined on its
46 combined financial statements.

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

11 The authority shall require a corporation business taxpayer that
12 acquires a corporation business tax benefit certificate to enter into a
13 written agreement with the new or expanding emerging technology
14 or biotechnology company concerning the terms and conditions of
15 the private financial assistance made in exchange for the certificate.
16 The written agreement may contain terms concerning the
17 maintenance by the new or expanding emerging technology or
18 biotechnology company of a headquarters or a base of operation in
19 this State.】 (Deleted by amendment, P.L. _____, c. _____) (pending
20 before the Legislature as this bill)
21 (cf: P.L.2004, c.65, s.18)
22

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

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

26 “Authority” means the New Jersey Economic Development
27 Authority established pursuant to section 4 of P.L.1974, c.80
28 (C.34:1B-4)【;】.

29 “Biotechnology” means the continually expanding body of
30 fundamental knowledge about the functioning of biological systems
31 from the macro level to the molecular and sub-atomic levels, as
32 well as novel products, services, technologies and sub-technologies
33 developed as a result of insights gained from research advances that
34 add to that body of fundamental knowledge【;】.

35 “Biotechnology company” means an emerging corporation that
36 has its headquarters or base of operations in this State; that owns,
37 has filed for, or has a valid license to use protected, proprietary
38 intellectual property; and that is engaged in the research,
39 development, production, or provision of biotechnology for the
40 purpose of developing or providing products or processes for
41 specific commercial or public purposes, including but not limited
42 to, medical, pharmaceutical, nutritional, and other health-related
43 purposes, agricultural purposes, and environmental purposes, or a
44 person whose headquarters or base of operations is located in this
45 State, engaged in providing services or products necessary for such
46 research, development, production, or provision【;】.

1 “Full-time employee” means a person employed by a new or
2 expanding emerging technology or biotechnology company for
3 consideration for at least 35 hours a week, or who renders any other
4 standard of service generally accepted by custom or practice as full-
5 time employment and whose wages are subject to withholding as
6 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
7 et seq., or who is a partner of a new or expanding emerging
8 technology or biotechnology company who works for the
9 partnership for at least 35 hours a week, or who renders any other
10 standard of service generally accepted by custom or practice as full-
11 time employment, and whose distributive share of income, gain,
12 loss, or deduction, or whose guaranteed payments, or any
13 combination thereof, is subject to the payment of estimated taxes, as
14 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
15 et seq. To qualify as a “full-time employee,” an employee shall
16 also receive from the new or expanding emerging technology or
17 biotechnology company health benefits under a group health plan as
18 defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health
19 benefits plan as defined under section 1 of P.L.1992, c.162
20 (C.17B:27A-17), or a policy or contract of health insurance
21 covering more than one person issued pursuant to Article 2 of
22 chapter 27 of Title 17B of the New Jersey Statutes. “Full-time
23 employee” shall not include any person who works as an
24 independent contractor or on a consulting basis for the new or
25 expanding emerging technology or biotechnology company.

26 “New or expanding” means a technology or biotechnology
27 company that at the end of the calendar year prior to the year in
28 which the company files an application for surrender of unused but
29 otherwise allowable tax benefits under P.L.1997, c.334 (C.34:1B-
30 7.42a et al.), on the date on which the application is submitted, and
31 on the date on which the company receives the corporation business
32 tax benefit certificate, has fewer than 225 employees in the United
33 States of America [, of whom 75% are New Jersey-based
34 employees filling a position or job in this State]; [and] but that has
35 at least one full-time employee working in this State if the company
36 has been incorporated for less than three years, that has at least five
37 full-time employees working in this State if the company has been
38 incorporated for more than three years but less than five years, and
39 that has at least 10 full-time employees working in this State if the
40 company has been incorporated for more than five years.

41 “Technology company” means an emerging corporation that has
42 its headquarters or base of operations in this State; that owns, has
43 filed for, or has a valid license to use protected, proprietary
44 intellectual property; and that employs some combination of the
45 following: highly educated or trained managers and workers, or
46 both, employed in this State who use sophisticated scientific
47 research service or production equipment, processes or knowledge

1 to discover, develop, test, transfer or manufacture a product or
2 service.

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

4

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

7 2. As used in this act:

8 “Affiliate” means an entity that directly or indirectly controls, is
9 under common control with, or is controlled by the business.
10 Control exists in all cases in which the entity is a member of a
11 controlled group of corporations as defined pursuant to section 1563
12 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the
13 entity is an organization in a group of organizations under common
14 control as defined pursuant to subsections (b) or (c) of section 414
15 of the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
16 may establish by clear and convincing evidence, as determined by
17 the Director of the Division of Taxation in the Department of the
18 Treasury, that control exists in situations involving lesser
19 percentages of ownership than required by those statutes. An
20 affiliate of a business may contribute to meeting either the qualified
21 investment or full-time employee requirements of a business that
22 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
23 209).

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

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

35 “Capital investment” in a qualified business facility means
36 expenses incurred after, but before the end of the eighth year after,
37 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for:
38 **[(i)]** a. the site preparation and construction, repair, renovation,
39 improvement, equipping, or furnishing of a building, structure,
40 facility or improvement to real property; and [(ii)] b. obtaining and
41 installing furnishings and machinery, apparatus or equipment for
42 the operation of a business in a building, structure, facility or
43 improvement to real property.

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

45 “Eligible municipality” means a municipality: (1) which
46 qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et
47 seq.) or which was continued to be a qualified municipality

1 thereunder pursuant to P.L.2007, c.111; and (2) in which 30 percent
2 or more of the value of real property **[is] was** exempt from local
3 property taxation during tax year 2006. The percentage of exempt
4 property shall be calculated by dividing the total exempt value by
5 the sum of the net valuation which is taxable and that which is tax
6 exempt.

7 “Full-time employee” means a person employed by the business
8 for consideration for at least 35 hours a week, or who renders any
9 other standard of service generally accepted by custom or practice
10 as full-time employment, or a person who is employed by a
11 professional employer organization pursuant to an employee leasing
12 agreement between the business and the professional employer
13 organization, in accordance with P.L.2001, c.260 (C.34:8-67 et
14 seq.) for at least 35 hours a week, or who renders any other standard
15 of service generally accepted by custom or practice as full-time
16 employment, and whose wages are subject to withholding as
17 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
18 et seq. or an employee who is a resident of another State but whose
19 income is not subject to the “New Jersey Gross Income Tax Act,”
20 N.J.S.54A:1-1 et seq. or who is a partner of a business who works
21 for the partnership for at least 35 hours a week, or who renders any
22 other standard of service generally accepted by custom or practice
23 as full-time employment, and whose distributive share of income,
24 gain, loss, or deduction, or whose guaranteed payments, or any
25 combination thereof, is subject to the payment of estimated taxes, as
26 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
27 et seq. “Full-time employee” shall not include any person who
28 works as an independent contractor or on a consulting basis for the
29 business.

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

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

36 “Qualified business facility” means any building, complex of
37 buildings or structural components of buildings, and all machinery
38 and equipment located within a designated urban transit hub in an
39 eligible municipality, used in connection with the operation of a
40 business.

41 “Residential unit” means a residential dwelling unit such as a
42 rental apartment, a condominium or cooperative unit, a hotel room,
43 or a dormitory room.

44 “Urban transit hub” means:

45 a. property located within a 1/2 mile radius surrounding the mid
46 point of a New Jersey Transit Corporation, Port Authority Transit
47 Corporation or Port Authority Trans-Hudson Corporation rail

1 station platform area, including all light rail stations, and property
2 located within a one mile radius of the mid point of the platform
3 area of such a rail station if the property is in a qualified
4 municipality under the “Municipal Rehabilitation and Economic
5 Recovery Act,” P.L.2002, c.43 (C.52:27BBB-1 et seq.);

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

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

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

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

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

20
21 32. Section 3 of P.L.2007, c.346 (C.34:1B-209) is amended to
22 read as follows:

23 3. a. (1) A business, upon application to and approval from the
24 **【New Jersey Commerce Commission】** authority, shall be allowed a
25 credit of 100 percent of its capital investment, made after the
26 effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) but prior to
27 its submission of documentation pursuant to subsection c. of this
28 section, in a qualified business facility within an eligible
29 municipality, pursuant to the restrictions and requirements of this
30 section. To be eligible for any tax credits authorized under this
31 section, a business shall demonstrate to the authority, at the time of
32 application, that the State’s financial support of the proposed capital
33 investment in a qualified business facility will yield a net positive
34 benefit to both the State and the eligible municipality. The value of
35 all credits approved by the authority pursuant to P.L.2007, c.346
36 (C.34:1B-207 et seq.) shall not exceed \$1,500,000,000.

37 (2) A business, other than a tenant eligible pursuant to paragraph
38 (3) of this subsection, shall make or acquire capital investments
39 totaling not less than **【\$75,000,000】** \$50,000,000 in a qualified
40 business facility, at which the business shall employ not fewer than
41 250 full-time employees to be eligible for a credit under this
42 section. A business that acquires a qualified business facility shall
43 also be deemed to have acquired the capital investment made or
44 acquired by the seller.

45 (3) A business that is a tenant in a qualified business facility, the
46 owner of which has made or acquired capital investments in the
47 facility totaling not less than **【\$75,000,000】** \$50,000,000, shall

1 occupy a leased area of the qualified business facility that
2 represents at least ~~【\$25,000,000】~~ \$17,500,000 of the capital
3 investment in the facility at which the tenant business and up to two
4 other tenants in the qualified business facility shall employ not
5 fewer than 250 full-time employees in the aggregate to be eligible
6 for a credit under this section. The amount of capital investment in
7 a facility that a leased area represents shall be equal to that
8 percentage of the owner's total capital investment in the facility that
9 the percentage of net leasable area leased by the tenant is of the
10 total net leasable area of the qualified business facility. Capital
11 investments made by a tenant shall be deemed to be included in the
12 calculation of the capital investment made or acquired by the
13 owner, but only to the extent necessary to meet the owner's
14 minimum capital investment of \$50,000,000. Capital investments
15 made by a tenant and not allocated to meet the owner's minimum
16 capital investment threshold of \$50,000,000 shall be added to the
17 amount of capital investment represented by the tenant's leased area
18 in the qualified business facility.

19 (4) A business shall not be allowed tax credits under this section
20 if the business participates in a business employment incentive
21 grant relating to the same capital and employees that qualify the
22 business for this credit, or if the business receives assistance
23 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.)~~】, or if the business~~
24 is a licensee as defined pursuant to section 33 of P.L.1977, c.110
25 (C.5:12-33)~~】~~. A business that is allowed a tax credit under this
26 section shall not be eligible for incentives authorized pursuant to
27 P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall not qualify
28 for a tax credit under this section, based upon capital investment
29 and employment of full-time employees, if that capital investment
30 or employment was the basis for which a grant was provided to the
31 business pursuant to the "InvestNJ Business Grant Program Act,"
32 P.L.2008, c.112 (C.34:1B-237 et seq.).

33 (5) Full-time employment for an accounting or privilege period
34 shall be determined as the average of the monthly full-time
35 employment for the period.

36 (6) The capital investment of the owner of a qualified business
37 facility is that percentage of the capital investment made or
38 acquired by the owner of the building that the percentage of net
39 leasable area of the qualified business facility not leased to tenants
40 is of the total net leasable area of the qualified business facility.

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

46 c. (1) The amount of credit allowed shall, except as otherwise
47 provided, be equal to the capital investment made by the business,

1 or the capital investment represented by the business' leased area, or
2 area owned by the business as a condominium, and shall be taken
3 over a 10-year period, at the rate of one-tenth of the total amount of
4 the business' credit for each tax accounting or privilege period of
5 the business, beginning with the tax period in which the business is
6 first approved by the **[commission]** authority as having met the
7 investment capital and employment qualifications, subject to any
8 reduction or disqualification as provided by subsection d. of this
9 section as determined by annual review by the **[commission]**
10 authority. In conducting its annual review, the **[commission]**
11 authority may require a business to submit any information
12 determined by the **[commission]** authority to be necessary and
13 relevant to its review.

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

20 The amount of credit allowed for a tax period to a business that
21 is a tenant in a qualified business facility shall not exceed the
22 business' total lease payments for occupancy of the qualified
23 business facility for the tax period.

24 (2) A business that is a partnership shall not be allowed a credit
25 under this section directly, but the amount of credit of an owner of a
26 business shall be determined by allocating to each owner of the
27 partnership that proportion of the credit of the business that is equal
28 to the owner of the partnership's share, whether or not distributed,
29 of the total distributive income or gain of the partnership for its tax
30 period ending within or with the owner's tax period, or that
31 proportion that is allocated by an agreement, if any, among the
32 owners of the partnership that has been provided to the Director of
33 the Division of Taxation in the Department of the Treasury by such
34 time and accompanied by such additional information as the
35 director may require.

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

42 d. (1) If, in any tax period, fewer than 200 full-time employees
43 of the business at the qualified business facility are employed in
44 new full-time positions, the amount of the credit otherwise
45 determined pursuant to final calculation of the award of tax credits
46 pursuant to subsection c. of this section shall be reduced by 20
47 percent for that tax period and each subsequent tax period until the

1 first period for which documentation demonstrating the restoration
2 of the 200 full-time employees employed in new full-time positions
3 at the qualified business facility has been reviewed and approved by
4 the **[commission]** authority, for which tax period and each
5 subsequent tax period the full amount of the credit shall be
6 allowed~~]; provided, however, that there shall be no reduction if a~~
7 ~~business relocates to an urban transit hub from another location or~~
8 ~~locations in the same municipality] ; provided, however, that for~~
9 ~~businesses applying before January 1, 2010, there shall be no~~
10 ~~reduction if a business relocates to an urban transit hub from~~
11 ~~another location or other locations in the same municipality.~~ For
12 the purposes of this paragraph, a “new full-time position” means a
13 position created by the business at the qualified business facility
14 that did not previously exist in this State.

15 (2) If, in any tax period, the business reduces the total number of
16 full-time employees in its Statewide workforce by more than **[10]**
17 20 percent from the number of full-time employees in its Statewide
18 workforce in the last tax accounting or privilege period **[prior to the**
19 **effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), or in the**
20 **last tax accounting or privilege period]** prior to the credit amount
21 approval under this section, **[whichever is greater,]** then the
22 business shall forfeit its credit amount for that tax period and each
23 subsequent tax period, until the first tax period for which
24 documentation demonstrating the restoration of the business'
25 Statewide workforce to the threshold levels required by this
26 paragraph has been reviewed and approved by the **[commission]**
27 authority, for which tax period and each subsequent tax period the
28 full amount of the credit shall be allowed.

29 (3) If, in any tax period, the number of full-time employees
30 employed by the business at the qualified business facility located
31 in an urban transit hub within an eligible municipality drops below
32 250 then the business shall forfeit its credit amount for that tax
33 period and each subsequent tax period, until the first tax period for
34 which documentation demonstrating the restoration of the number
35 of full-time employees employed by the business at the qualified
36 business facility to 250 has been reviewed and approved by the
37 **[commission]** authority, for which tax period and each subsequent
38 tax period the full amount of the credit shall be allowed.

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

45 (ii) If a tenant subleases its tenancy in whole or in part during the
46 10-year eligibility period the new tenant shall not acquire the credit

1 of the sublessor, and the sublessor tenant shall forfeit all credits for
2 the tax period of its sublease and all subsequent tax periods.

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

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

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

25

26 33. (New section) A business may apply to the Director of the
27 Division of Taxation in the Department of the Treasury and the
28 executive director of the authority for a tax credit transfer
29 certificate, covering one or more years, in lieu of the business being
30 allowed any amount of the credit against the tax liability of the
31 business. The tax credit transfer certificate, upon receipt thereof by
32 the business from the director and the executive director of the
33 authority, may be sold or assigned, in full or in part, to any other
34 person that may have a tax liability pursuant to section 5 of
35 P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of
36 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1
37 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.
38 The certificate provided to the business shall include a statement
39 waiving the business's right to claim that amount of the credit
40 against the taxes that the business has elected to sell or assign. The
41 sale or assignment of any amount of a tax credit transfer certificate
42 allowed under this section shall not be exchanged for consideration
43 received by the business of less than 75 percent of the transferred
44 credit amount. Any amount of a tax credit transfer certificate used
45 by a purchaser or assignee against a tax liability shall be subject to
46 the same limitations and conditions that apply to the use of the

1 credit by the business that originally applied for and was allowed
2 the credit.

3
4 34. (New section) As used in sections 34 and 35 of P.L. , c.
5 (C.) (pending before the Legislature as this bill), the terms
6 “affiliate,” “authority,” “capital investment,” “eligible
7 municipality,” “partnership,” “residential unit,” and “urban transit
8 hub” shall have the same meanings as ascribed thereto in the
9 “Urban Transit Hub Tax Credit Act,” P.L.2007, c.346 (C.34:1B-207
10 et seq.), as amended by P.L. , c. (C.) (pending before the
11 Legislature as this bill), except that all references therein to
12 “business” and “qualified business facility” shall be deemed to refer
13 respectively to “developer” and “qualified residential project,” as
14 such terms are defined in this section. In addition, as used in
15 sections 34 and 35 of P.L. , c. (C.) (pending before the
16 Legislature as this bill):

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

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

25
26 35. (New section) a. (1) A developer, upon application to and
27 approval from the authority, shall be allowed a credit of up to 20
28 percent of its capital investment, made after the effective date of
29 P.L. , c. (C.) (pending before the Legislature as this bill) but
30 prior to its submission of documentation pursuant to subsection c.
31 of this section, in a qualified residential project, pursuant to the
32 restrictions and requirements of this section. To be eligible for any
33 tax credits authorized under this section, a developer shall
34 demonstrate to the authority, through a project pro forma analysis at
35 the time of application, that the qualified residential project is likely
36 to be realized with the provision of tax credits at the level requested
37 but is not likely to be accomplished by private enterprise without
38 the tax credits. The value of all credits approved by the authority
39 pursuant to P.L. , c. (C.) (pending before the Legislature as
40 this bill) may be up to \$150,000,000, except as may be increased by
41 the authority as set forth below; provided, however, that the
42 combined value of all credits approved by the authority pursuant to
43 both P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L. , c. (C.)
44 (pending before the Legislature as this bill) shall not exceed
45 \$1,500,000,000. The authority shall monitor application and
46 allocation activity under P.L.2007, c.346 (C.34:1B-207 et seq.), and
47 if sufficient credits are available after taking into account allocation

1 under P.L.2007, c.346 (C.34:1B-207 et seq.) to those qualified
2 business facilities for which applications have been filed or for
3 which applications are reasonably anticipated, and if the executive
4 director judges certain qualified residential projects to be
5 meritorious, the aforementioned \$150,000,000 cap may, in the
6 discretion of the executive director, be exceeded for allocation to
7 qualified residential projects in such amounts as the executive
8 director deems reasonable, justified, and appropriate. In allocating
9 all credits to qualified residential projects under this section, the
10 executive director shall take into account, together with other
11 factors deemed relevant by the executive director: input from the
12 municipality in which the project is to be located, whether the
13 project furthers specific State or municipal planning and
14 development objectives, or both, and whether the project furthers a
15 public purpose, such as catalyzing urban development or
16 maximizing the value of vacant, dilapidated, outmoded,
17 government-owned, or underutilized property, or both.

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

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

25 b. A developer shall apply for the credit within five years after
26 the effective date of P.L. , c. (C.) (pending before the
27 Legislature as this bill), and a developer shall submit its
28 documentation for approval of its credit amount within eight years
29 after the effective date of P.L. , c. (C.) (pending before the
30 Legislature as this bill).

31 c. The credit shall be administered in accordance with the
32 provisions of paragraphs (c) and (e) of section 3 of P.L.2007, c.346
33 (C.34:1B-209), as amended by section 32 of P.L. , c. (C.)
34 (pending before the Legislature as this bill), and section 33 of P.L.
35 , c. (C.) (pending before the Legislature as this bill), except
36 that (1) all references therein to “business” and “qualified business
37 facility” shall be deemed to refer respectively to “developer” and
38 “qualified residential project,” as such terms are defined in section
39 34 of P.L. , c. (C.) (pending before the Legislature as this
40 bill) and (2) all references therein to credits claimed by tenants and
41 to reductions or disqualifications in credits as determined by annual
42 review of the authority shall be disregarded.

43
44 36. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to
45 read as follows:

46 33. The Legislature finds and declares:

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

6 b. New Jersey's land resources are becoming more scarce,
7 while its redevelopment needs are increasing. In order to balance
8 the needs of developing and redeveloping communities, a
9 reasonable method of providing for the housing needs of low and
10 moderate income and middle income households, without
11 mandating the inclusion of housing in every non-residential project,
12 must be established.

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

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

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

32 f. The negative impact of a State policy that over-relies on a
33 municipal fee structure and of State programs that require a
34 municipality to impose fees and charges on developers must be
35 balanced against any public good expected from such regulation. It
36 is undisputable that the charging of fees at high levels dissuades
37 commerce from locating within a State or municipality or locality
38 and halts non-residential and residential development, and these ill
39 effects directly increase the overall costs of housing, and could
40 impede the constitutional obligation to provide for a realistic
41 opportunity for housing for families at all income levels.

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

43
44 37. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to
45 read as follows:

46 37. a. The provisions of this subsection shall not apply to a
47 financial or other contribution that a developer made or committed

1 itself to make prior to the effective date of sections 32 through 38 of
2 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7). The
3 provisions of 【sections 32 through 38 of】 P.L.2008, c.46
4 【(C.40:55D-8.1 through C.40:55D-8.7)】 that would permit the
5 imposition of a fee upon a developer of non-residential property
6 shall not apply to:

7 (1) Non-residential property for which a 【certificate of
8 occupancy has been issued】 site plan has received either
9 preliminary approval, pursuant to section 34 of P.L.1975, c.291
10 (C.40:55D-46), or final approval, pursuant to section 38 of
11 P.L.1975, c.291 (C.40:55D-50), prior to 【the effective date of
12 P.L.2008, c.46 (C.52:27D-329.1 et al.)】 July 1, 2010; provided that
13 a permit for the construction of the building has been issued by the
14 local enforcing agency having jurisdiction, in accordance with
15 section 13 of P.L.1975, c.217 (C.52:27D-131), prior to January 1,
16 2013; or

17 (2) A non-residential planned development which has received
18 approval of a general development plan pursuant to section 5 of
19 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
20 for which the developer has entered into a developer's agreement
21 pursuant to a development approval granted pursuant to P.L.1975,
22 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
23 into a redevelopment agreement pursuant to P.L.1992, c.79
24 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
25 (C.52:27D-329.1 et al.); provided, however, that the general
26 development plan, developer's agreement, redevelopment
27 agreement, or any development agreement pursuant to the
28 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
29 provides that the developer or redeveloper pay a fee for affordable
30 housing of at least one percent of the equalized assessed value of
31 the improvements which are the subject of the development plan,
32 developer's agreement, or redevelopment agreement;

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

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

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

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

17 c. Whenever non-residential development is situated on real
18 property that has been previously developed with a building,
19 structure, or other improvement, the non-residential development
20 fee shall be equal to two and a half (2.5) percent of the equalized
21 assessed value of the land and improvements on the property where
22 the non-residential development is situated at the time the final
23 certificate of occupancy is issued, less the equalized assessed value
24 of the land and improvements on the property where the non-
25 residential development is situated, as determined by the tax
26 assessor of the municipality at the time the developer or owner,
27 including any previous owners, first sought approval for a
28 construction permit, including, but not limited to, demolition
29 permits, pursuant to the State Uniform Construction Code, or
30 approval under the "Municipal Land Use Law," P.L.1975, c.291
31 (C.40:55D-1 et seq.). If the calculation required under this section
32 results in a negative number, the non-residential development fee
33 shall be zero.

34 Whenever the developer of a non-residential development has
35 made or committed itself to make a financial or other contribution
36 relating to the provision of housing affordable to low and moderate
37 income households prior to the enactment of P.L.2008, c.46
38 (C.52:27D-329.1 et al.), the non-residential development fee shall
39 be reduced by the amount of the financial contribution and the fair
40 market value of any other contribution made by or committed to be
41 made by the developer. For purposes of this section, a developer is
42 considered to have made or committed itself to make a financial or
43 other contribution, if and only if: (1) the contribution has been
44 transferred, including but not limited to when the funds have
45 already been received by the municipality; (2) the developer has
46 obligated itself to make a contribution as set forth in a written
47 agreement with the municipality, such as a developer's agreement;

1 or (3) the developer's obligation to make a contribution is set forth
2 as a condition in a land use approval issued by a municipal land use
3 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
4 (C.40:55D-1 et seq.).

5 d. Unless otherwise provided for by law, no municipality shall
6 be required to return a financial or any other contribution made by
7 or committed to be made by the developer of a non-residential
8 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
9 329.1 et al.) relating to the provision of housing affordable to low
10 and moderate income households, provided that the developer does
11 not obtain an amended, modified, or new municipal land use
12 approval with a substantial change in the non-residential
13 development. If the developer obtains an amended, modified, or
14 new land use approval for non-residential development, the
15 municipality, person, or entity shall be required to return to the
16 developer any funds or other contribution provided by the developer
17 for the provision of housing affordable to low and moderate income
18 households and the developer shall not be entitled to a reduction in
19 the affordable housing development fee based upon that
20 contribution.

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

27 (cf: P.L.2008, c.46, s.37)

28

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

31 20. There is established in the Department of Community
32 Affairs a separate trust fund, to be used for the exclusive purposes
33 as provided in this section, and which shall be known as the "New
34 Jersey Affordable Housing Trust Fund." The fund shall be a non-
35 lapsing, revolving trust fund, and all monies deposited or received
36 for purposes of the fund shall be accounted for separately, by source
37 and amount, and remain in the fund until appropriated for such
38 purposes. The fund shall be the repository of all State funds
39 appropriated for affordable housing purposes, including, but not
40 limited to, the proceeds from the receipts of the additional fee
41 collected pursuant to paragraph (2) of subsection a. of section 3 of
42 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the
43 Statewide non-residential development fees collected pursuant to
44 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or
45 reverting from municipal development trust funds, or other monies
46 as may be dedicated, earmarked, or appropriated by the Legislature
47 for the purposes of the fund. All references in any law, order, rule,

1 regulation, contract, loan, document, or otherwise, to the
2 "Neighborhood Preservation Nonlapsing Revolving Fund" shall
3 mean the "New Jersey Affordable Housing Trust Fund." The
4 department shall be permitted to utilize annually up to 7.5 percent
5 of the monies available in the fund for the payment of any
6 necessary administrative costs related to the administration of the
7 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), the
8 State Housing Commission, or any costs related to administration of
9 P.L.2008, c.46 (C.52:27D-329.1 et al.).

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

21 Of those monies deposited into the "New Jersey Affordable
22 Housing Trust Fund" that are derived from municipal development
23 fee trust funds, or from available collections of Statewide non-
24 residential development fees, a priority for funding shall be
25 established for projects in municipalities that have petitioned the
26 council for substantive certification.

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

30 b. The commissioner shall establish rules and regulations
31 governing the qualifications of applicants, the application
32 procedures, and the criteria for awarding grants and loans and the
33 standards for establishing the amount, terms and conditions of each
34 grant or loan.

35 c. For any period which the council may approve, the
36 commissioner may assist affordable housing programs which are
37 not located in municipalities whose housing elements have been
38 granted substantive certification or which are not in furtherance of a
39 regional contribution agreement; provided that the affordable
40 housing program will meet all or part of a municipal low and
41 moderate income housing obligation.

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

- 1 (1) Rehabilitation of substandard housing units occupied or to
2 be occupied by low and moderate income households;
- 3 (2) Creation of accessory apartments to be occupied by low and
4 moderate income households;
- 5 (3) Conversion of non-residential space to residential purposes;
6 provided a substantial percentage of the resulting housing units are
7 to be occupied by low and moderate income households;
- 8 (4) Acquisition of real property, demolition and removal of
9 buildings, or construction of new housing that will be occupied by
10 low and moderate income households, or any combination thereof;
- 11 (5) Grants of assistance to eligible municipalities for costs of
12 necessary studies, surveys, plans and permits; engineering,
13 architectural and other technical services; costs of land acquisition
14 and any buildings thereon; and costs of site preparation, demolition
15 and infrastructure development for projects undertaken pursuant to
16 an approved regional contribution agreement;
- 17 (6) Assistance to a local housing authority, nonprofit or limited
18 dividend housing corporation or association or a qualified entity
19 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for
20 rehabilitation or restoration of housing units which it administers
21 which: (a) are unusable or in a serious state of disrepair; (b) can be
22 restored in an economically feasible and sound manner; and (c) can
23 be retained in a safe, decent and sanitary manner, upon completion
24 of rehabilitation or restoration; and
- 25 (7) Other housing programs for low and moderate income
26 housing, including, without limitation, (a) infrastructure projects
27 directly facilitating the construction of low and moderate income
28 housing not to exceed a reasonable percentage of the construction
29 costs of the low and moderate income housing to be provided and
30 (b) alteration of dwelling units occupied or to be occupied by
31 households of low or moderate income and the common areas of the
32 premises in which they are located in order to make them accessible
33 to handicapped persons.
- 34 e. Any grant or loan agreement entered into pursuant to this
35 section shall incorporate contractual guarantees and procedures by
36 which the division will ensure that any unit of housing provided for
37 low and moderate income households shall continue to be occupied
38 by low and moderate income households for at least 20 years
39 following the award of the loan or grant, except that the division
40 may approve a guarantee for a period of less than 20 years where
41 necessary to ensure project feasibility.
- 42 f. Notwithstanding the provisions of any other law, rule or
43 regulation to the contrary, in making grants or loans under this
44 section, the department shall not require that tenants be certified as
45 low or moderate income or that contractual guarantees or deed
46 restrictions be in place to ensure continued low and moderate
47 income occupancy as a condition of providing housing assistance

1 from any program administered by the department, when that
2 assistance is provided for a project of moderate rehabilitation if the
3 project (1) contains 30 or fewer rental units and (2) is located in a
4 census tract in which the median household income is 60 percent or
5 less of the median income for the housing region in which the
6 census tract is located, as determined for a three person household
7 by the council in accordance with the latest federal decennial
8 census. A list of eligible census tracts shall be maintained by the
9 department and shall be adjusted upon publication of median
10 income figures by census tract after each federal decennial census.

11 g. In addition to other grants or loans awarded pursuant to this
12 section, and without regard to any limitations on such grants or
13 loans for any other purposes herein imposed, the commissioner
14 shall annually allocate such amounts as may be necessary in the
15 commissioner's discretion, and in accordance with section 3 of
16 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
17 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
18 287.1 et al.). Such rental assistance grants shall be deemed
19 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
20 301 et al.), in order to meet the housing needs of certain low income
21 households who may not be eligible to occupy other housing
22 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

23 h. The department and the State Treasurer shall submit the
24 "New Jersey Affordable Housing Trust Fund" for an audit annually
25 by the State Auditor or State Comptroller, at the discretion of the
26 Treasurer. In addition, the department shall prepare an annual
27 report for each fiscal year, and submit it by November 30th of each
28 year to the Governor and the Legislature, and the Joint Committee
29 on Housing Affordability, or its successor, and post the information
30 to its web site, of all activity of the fund, including details of the
31 grants and loans by number of units, number and income ranges of
32 recipients of grants or loans, location of the housing renovated or
33 constructed using monies from the fund, the number of units upon
34 which affordability controls were placed, and the length of those
35 controls. The report also shall include details pertaining to those
36 monies allocated from the fund for use by the State rental assistance
37 program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3)
38 and subsection g. of this section.

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

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

- 1 39. (New section) The provisions of this section shall apply
2 only to those developments for which a fee was imposed pursuant
3 to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through
4 C.40:55D-8.7), known as the "Statewide Non-residential
5 Development Fee Act."
- 6 a. A developer of a property that received preliminary site plan
7 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),
8 or final approval, pursuant to section 38 of P.L.1975, c.291
9 (C.40:55D-50) prior to July 17, 2008 and that was subject to the
10 payment of a nonresidential development fee prior to the enactment
11 of P.L. , c. (C.) (pending before the Legislature as this bill),
12 shall be entitled to a return of any moneys paid that represent the
13 difference between moneys committed prior to July 17, 2008 and
14 monies paid on or after that date.
- 15 b. A developer of a non-residential project that, prior to July 17,
16 2008, has been referred to a planning board by the State, a
17 governing body, or other public agency for review pursuant to
18 section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject
19 to the payment of a nonresidential development fee prior to the
20 enactment of P.L. , c. (C.) (pending before the Legislature
21 as this bill), shall be entitled to a return of any moneys paid that
22 represent the difference between monies committee prior to July 17,
23 2008 and moneys paid on or after that date.
- 24 c. If moneys are required to be returned under subsection a., b.
25 or d. of this section, a claim shall be submitted, in writing, to the
26 same entity to which the moneys were paid, within 120 days of the
27 effective date of P.L. , c. (C.) (pending before the
28 Legislature as this bill). The entity to whom the funds were paid
29 shall promptly review all requests for returns, and the fees paid
30 shall be returned to the claimant within 30 days of receipt of the
31 claim for return.
- 32 d. A developer of a non-residential project that paid a fee
33 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
34 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008
35 but prior to the effective date of P.L. , c. (pending before the
36 Legislature as this bill), shall be entitled to the return of those
37 monies paid, provided that the provisions of section 37 of P.L.2008,
38 c.46 (C.40:55D-8.6), as amended by P.L. , c. (pending before the
39 Legislature as this bill) do not permit the imposition of a fee upon
40 the developer of that non-residential property.
- 41 e. Notwithstanding the provisions of subsections a., b., c., and d.
42 of this section, if, on the effective date of P.L. , c. (C.)
43 (pending before the Legislature as this bill), a municipality that has
44 returned all or a portion of non-residential fees in accordance with
45 subsections a. or b. of this section shall be reimbursed from the
46 funds available through the appropriation made into the "New
47 Jersey Affordable Housing Trust Fund" pursuant to section 41 of

1 P.L. , c. (C.) (pending before the Legislature as this bill)
2 within 30 days of the municipality providing written notice to the
3 Council on Affordable Housing.
4

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

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

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

22 c. Nothing in P.L. , c. (C.) (pending before the
23 Legislature as this bill) shall be construed to affect the municipal
24 obligation to provide a realistic opportunity for its projected fair
25 share of the regional housing need as determined by the Council on
26 Affordable Housing in accordance with the provisions of the "Fair
27 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).
28

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

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

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

5
6 42. (New section) a. A public research university or a State
7 college shall submit a long-range facilities plan on projects to be
8 developed to the New Jersey Commission on Higher Education for
9 its review and recommendations. The long range facilities plan
10 shall contain details of any public-private partnerships
11 contemplated or entered into by the public research university or
12 State college pursuant to section 43 of P.L. , c. (C.)
13 (pending before the Legislature as this bill), which shall include
14 details on the sources of dedicated funds that will be used for
15 repayment of loans. The long range facilities plan shall adhere to
16 the green building manual prepared by the Commissioner of
17 Community Affairs pursuant to section 1 of P.L.2007, c.132
18 (C.52:27D-130.6) when practicable. The long range facilities plan
19 shall be amended at least once every five years. The plan shall
20 detail the facilities needs of the institution and the institution's
21 plans to address those needs for the ensuing five years.

22 b. In developing its response to the plan, the commission shall
23 consider the overall facilities needs of the institution, long-term
24 fiscal implications of the plan including the debt burden of the
25 institution, the relation of the facilities plan to the academic and
26 student service programs of the institution, and the extent and cost
27 of any deferred maintenance of the institution. The commission
28 shall issue its response to the plan within one full semester of its
29 receipt.

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

33
34 43. (New section) a. A State college or county college may
35 enter into a contract with a private entity, subject to subsection f. of
36 this section, to be referred to as a public-private partnership
37 agreement, that permits the private entity to assume full financial
38 and administrative responsibility for the on-campus construction,
39 reconstruction, repair, alteration, improvement or extension of a
40 building, structure, or facility of the institution, provided that the
41 project is financed in whole by the private entity and that the State
42 or institution of higher education, as applicable, retains full
43 ownership of the land upon which the project is completed.

44 b. A private entity that assumes financial and administrative
45 responsibility for a project pursuant to subsection a. of this section
46 shall not be subject to the procurement and contracting
47 requirements of all statutes applicable to the institution of higher

1 education at which the project is completed, including, but not
2 limited to, the “State College Contracts Law,” P.L.1986, c.43
3 (C.18A:64-52 et seq.), and the “County College Contracts Law,”
4 P.L.1982, c.189 (C.18A:64A-25.1 et seq.).

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

13 d. (1) All construction projects under a public-private partnership
14 agreement entered into pursuant to this section shall contain a
15 project labor agreement. The project labor agreement shall be
16 subject to the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and
17 shall be in a manner that to the greatest extent possible enhances
18 employment opportunities for individuals residing in the county of
19 the project’s location. Further, the general contractor, construction
20 manager, design-build team, or subcontractor for a construction
21 project proposed in accordance with this paragraph shall be
22 registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-
23 56.48 et seq.), and shall be classified by the Division of Property
24 Management and Construction to perform work on a public-private
25 partnership higher education project. All construction projects
26 proposed in accordance with this paragraph shall be submitted to
27 the New Jersey Economic Development Authority for its review
28 and approval and, when practicable, are encouraged to adhere to the
29 Leadership in Energy and Environmental Design Green Building
30 Rating System as adopted by the United States Green Building
31 Council.

32 (2) Where no public fund has been established for the financing
33 of a public improvement, the chief financial officer of the public
34 owner shall require the private entity for whom the public
35 improvement is being made to post, or cause to be posted, a bond
36 guaranteeing prompt payment of moneys due to the contractor, his
37 or her subcontractors and to all persons furnishing labor or
38 materials to the contractor or his or her subcontractors in the
39 prosecution of the work on the public improvement.

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

46 f. (1) On or before the first day of the nineteenth month next
47 following enactment of P.L. , c. (pending before the Legislature

1 as this bill), all projects proposed in accordance with this section
2 shall be submitted to the New Jersey Economic Development
3 Authority for its review and approval. The projects are encouraged,
4 when practicable, to adhere to the green building manual prepared
5 by the Commissioner of Community Affairs pursuant to section 1 of
6 P.L.2007, c.132 (C.52:27D-130.6). Any application that is deemed
7 to be incomplete on the first day of the nineteenth month next
8 following enactment of P.L. , c. (pending before the Legislature
9 as this bill) shall not be eligible for consideration.

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

18 (b) As part of the estimated costs and financial documentation
19 for the project the application shall contain a long-range
20 maintenance plan and shall specify the expenditures that qualify as
21 an appropriate investment in maintenance. This long-range
22 maintenance plan shall be approved by the authority pursuant to
23 regulations promulgated by the authority that reflect nation building
24 maintenance standards and other appropriate building maintenance
25 benchmarks. All contracts to implement a long-range maintenance
26 plan pursuant to this paragraph shall contain a project labor
27 agreement. The project labor agreement shall be subject to the
28 provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in a
29 manner that to the greatest extent possible enhances employment
30 opportunities for individuals residing in the county of the project's
31 location.

32 (3) The authority shall review all completed applications, request
33 additional information as is needed to make a complete assessment
34 of the project. No project shall be undertaken until final approval
35 has been granted by the authority; provided, however, that the
36 authority shall retain the right to revoke approval if it determines
37 that the project has deviated from the plan submitted pursuant to
38 paragraph (2) of this subsection.

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

42 Where no public fund has been established for the financing of a
43 public improvement, the chief financial officer of the public owner
44 shall require the private entity for whom the public improvement is
45 being made to post, or cause to be posted, a bond guaranteeing
46 prompt payment of moneys due to the contractor, his or her
47 subcontractors and to all persons furnishing labor or materials to the

1 contractor or his or her subcontractors in the prosecution of the
2 work on the public improvement.

3

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

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

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

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

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

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

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

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

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

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

25 i. Performance of work or services or the furnishing of
26 materials or supplies for the purpose of conserving energy in
27 buildings owned by, or operations conducted by, the contracting
28 unit, the entire price of which is to be established as a percentage of
29 the resultant savings in energy costs, for a term not exceeding 10
30 years; provided that a contract is entered into only subject to and in
31 accordance with rules and regulations adopted and guidelines
32 promulgated by the Board of Public Utilities establishing a
33 methodology for computing energy cost savings; or

34 j. Any single project for the construction, reconstruction or
35 rehabilitation of a public building, structure or facility, or a public
36 works project, including the retention of the services of an architect,
37 engineer, construction manager, or other consultant in connection
38 with the project, for the length of time necessary for the completion
39 of the actual construction; or

40 k. The management and operation of bookstores, performing
41 arts centers, residence halls, parking facilities and building
42 operations for a term not exceeding **[five]** 30 years; or

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

45 m. The provision of services for maintenance and repair of
46 building systems, including, but not limited to, fire alarms, fire

1 suppression systems, security systems, and heating, ventilation, and
2 air conditioning systems for a term not exceeding five years; or

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

6 All multiyear leases and contracts entered into pursuant to this
7 section, except contracts and agreements for the provision of work
8 or the supplying of equipment to promote energy conservation and
9 authorized pursuant to subsection i. of this section, shall contain a
10 clause making them subject to the availability and appropriation
11 annually of sufficient funds to meet the extended obligation or
12 contain an annual cancellation clause.

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

14

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

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

19 a. Supplying of:

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

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

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

27 c. Collection and disposal of garbage and refuse for any term
28 not exceeding in the aggregate three years; or

29 d. Providing goods or services for the use, support or
30 maintenance of proprietary computer hardware, software
31 peripherals and system development for the hardware for any term
32 of not more than five years; or

33 e. Insurance, including the purchase of insurance coverages,
34 insurance consultant or administrative services, and including
35 participation in a joint self-insurance fund, risk management
36 programs or related services provided by a county college insurance
37 group, or participation in an insurance fund established by a county
38 pursuant to N.J.S.40A:10-6, for any term of not more than three
39 years; or

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

44 g. Supplying of any product or rendering of any service by a
45 company providing voice, data, transmission or switching services,
46 for a term not exceeding five years; or

- 1 h. The providing of food supplies and services, including food
2 supplies and management contracts for student centers, dining
3 rooms and cafeterias, for a term not exceeding [~~three~~] 30 years; or
4 i. (Deleted by amendment, P.L.2009, c.4).
5 j. Any single project for the construction, reconstruction or
6 rehabilitation of a public building, structure or facility, or a public
7 works project including the retention of the services of an architect
8 or engineer in connection with the project, for the length of time
9 necessary for the completion of the actual construction; or
10 k. The management and operation of bookstores for a term not
11 exceeding [~~five~~] 30 years; or
12 l. Custodial or janitorial services for any term not exceeding in
13 the aggregate three years; or
14 m. Child care services for a term not exceeding three years; or
15 n. Security services for a term not exceeding three years; or
16 o. Ground maintenance services for a term not exceeding three
17 years; or
18 p. Laundering, dry-cleaning or rental of uniforms for a term not
19 exceeding three years; or
20 q. The performance of work or services or the furnishing of
21 materials and supplies for the purpose of producing class I
22 renewable energy, as that term is defined in section 3 of P.L.1999,
23 c.23 (C.48:3-51), at, or adjacent to, buildings owned by, or
24 operations conducted by, the contracting unit, the entire price of
25 which is to be established as a percentage of the resultant savings in
26 energy costs, for a term not to exceed [~~15~~] 30 years; provided,
27 however, that these contracts shall be entered into only subject to
28 and in accordance with guidelines promulgated by the Board of
29 Public Utilities establishing a methodology for computing energy
30 cost savings and energy generation costs.
31 All multi-year leases and contracts entered into pursuant to this
32 section, except contracts and agreements for the provision of work
33 or the supplying of equipment to promote energy conservation
34 through the production of class I renewable energy and authorized
35 pursuant to subsection q. of this section, and except contracts for
36 insurance coverages, insurance consultant or administrative
37 services, participation or membership in a joint self-insurance fund,
38 risk management programs or related services of a county college
39 insurance group, and participation in an insurance fund established
40 by a county pursuant to N.J.S.40A:10-6 or a joint insurance fund
41 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), shall
42 contain a clause making them subject to the availability and
43 appropriation annually of sufficient funds to meet the extended
44 obligation or contain an annual cancellation clause.
45 (cf: P.L.2009, c.4, s.5)

1 46. (New section) The New Jersey Commission on Higher
2 Education shall appoint and convene a network of academics and
3 researchers from New Jersey's public and independent institutions
4 of higher education to propose and develop economic development
5 policies and programs for the higher education community.
6

7 47. (New section) Sections 47 through 49 of P.L. , c.
8 (C.) (pending before the Legislature as this bill) shall be known
9 and may be cited as the "Higher Education Partnership Agreements
10 Act."
11

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

14 "Board" means the Local Finance Board established in the
15 Division of Local Government Services in the Department of
16 Community Affairs.

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

22 "Higher education partnership agreement" means an agreement
23 between a municipality and an institution of higher education
24 providing for the issuance of bonds by the municipality, a county
25 improvement authority or a redevelopment entity, and the pledge of
26 payments by the institution of higher education to secure those
27 bonds to finance a higher education project, or part thereof.

28 "Higher education project" means the establishment and
29 construction of higher education buildings and the expansion and
30 construction of additional facilities at, and the acquisition of
31 additional and upgraded equipment for existing higher education
32 buildings, including but not limited to the planning, erecting,
33 purchasing, improving, developing, constructing, reconstructing,
34 extending, rehabilitating, renovating, upgrading, demolishing and
35 equipping of facilities at institutions of higher education.

36 "Institution of higher education" means: Rutgers, The State
37 University; a State college or university established pursuant to
38 chapter 64 of Title 18A of the New Jersey Statutes; the New Jersey
39 Institute of Technology; the University of Medicine and Dentistry
40 of New Jersey; a county college and any other public university or
41 college now or hereafter established or authorized by State law; and
42 any college or university incorporated and located in New Jersey,
43 which by virtue of law or character or license is a nonprofit
44 educational institution authorized to grant academic degrees and
45 which provides a level of education which is equivalent to the
46 education provided by the State's public institutions of higher
47 education, as attested by the receipt of and continuation of regional

1 accreditation by the Middle States Association of Colleges and
2 Schools, and which is eligible to receive State aid under the
3 provisions of the Constitution of the United States and the
4 Constitution of the State of New Jersey, but does not include any
5 educational institution dedicated primarily to the education or
6 training of ministers, priests, rabbis or other professional persons in
7 the field of religion.

8 "Municipality" means the municipal governing body or an entity
9 acting on behalf of the municipality if permitted by the federal
10 Internal Revenue Code of 1986, or, if a redevelopment agency or
11 redevelopment entity is established in the municipality pursuant to
12 P.L.1992, c.79 (C.40A:12A-1 et seq.) and the municipality so
13 provides, the redevelopment agency or entity so established.

14
15 49. (New section) A municipality and an institution of higher
16 education may enter into a higher education partnership agreement
17 for the development of a higher education project. The board shall
18 promulgate rules and regulations, modeled after the procedures and
19 protections set forth in the "Redevelopment Area Bond Financing
20 Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et
21 seq.), within 120 days following the enactment of sections 47
22 through 49 of P.L. , c. (C.) (pending before the Legislature
23 as this bill) in order to effectuate the purposes of this section.

24
25 50. (New section.) a. Receipts from the sale or use of energy
26 and utility service to or by a postconsumer material manufacturing
27 facility for use or consumption directly and primarily in the
28 production of tangible personal property, other than energy, shall be
29 exempt from the tax imposed under the "Sales and Use Tax Act,"
30 P.L.1966, c.30 (C.54:32B-1 et seq.), during the tax exemption
31 period.

32 b. Notwithstanding the provisions of subsection a. of this
33 section, a seller of energy and utility service shall charge and
34 collect from the purchaser that is a postconsumer material
35 manufacturing facility the tax at the rate then in effect, and the tax
36 shall be refunded to the purchaser by the filing, within 30 days of
37 the close of the calendar quarter in which the sale or use is made or
38 rendered, of a claim with the director for a refund of sales and use
39 taxes paid for energy and utility service, which refund shall be paid
40 within 60 days of the filing of a claim for refund. Proof of claim
41 for refund shall be made by the submission of auditable receipts and
42 such other documentation as the director may require.

43 c. If the owner of a postconsumer material manufacturing
44 facility relocates the facility to a location outside this State during
45 the tax exemption period, the owner of the facility shall pay the
46 director the amount of tax for which an exemption shall have been
47 allowed and refunded in accordance with subsection b. of this

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

10 d. For purposes of this section,

11 "Postconsumer material manufacturing facility," means a facility
12 that:

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

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

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

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

27 "Tax exemption period" means the period on or after January 1,
28 2010 but before January 1, 2017.

29

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

32 67. a. As used in this section:

33 "Base rates" means the rates, including minimum bills, charged
34 for utility commodities or service subject to the board's jurisdiction,
35 other than the rates charged under a utility's levelized energy
36 adjustment clause, hereinafter "LEAC," or levelized gas adjustment
37 clause, hereinafter "LGAC," or equivalent rate provision;

38 "Base year" means the calendar year 1996;

39 "Board" means the Board of Public Utilities;

40 "Manufacturing facility" means a facility:

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

45 (2) that manufactures products made from using "postconsumer
46 material," as that term is defined in section 247.3 of title 40, Code
47 of Federal Regulations, and other recovered material feedstocks that

1 meet the requirements of the Comprehensive Procurement
2 Guideline For Products Containing Recovered Materials as
3 promulgated by the United States Environmental Protection Agency
4 in section 247.1 et seq. of title 40, Code of Federal Regulations,
5 pursuant to the "Resource Conservation and Recovery Act,"
6 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.
7 13101, issued by the President of the United States on September
8 14, 1998, provided that at least 75 percent of the manufacturing
9 facility's total annual sales dollar volume of such products that are
10 produced in New Jersey meet the recycled content standards within
11 such guidelines;

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

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

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

23 "Postconsumer material manufacturing facility" means a facility
24 that:

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

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

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

37 (4) employed, individually or collectively with affiliated
38 facilities, not less than 150 employees in this State on April 1,
39 2009;

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

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

45 "Utility service" means the supply, transmission, distribution or
46 transportation of electricity, natural gas or telecommunications

1 services or any combination of such commodities, processes or
2 services.

3 b. No later than 60 days after the date this act is enacted, each
4 electric, gas and telecommunications utility subject to the
5 provisions of this act shall file with the board, and shall
6 simultaneously provide copies to the Director of the Division of the
7 Ratepayer Advocate, revised tariffs and such other supporting
8 schedules, narrative and documentation required by this act, as set
9 forth in this section, to reflect in the utility's rates the changes in tax
10 liability effected pursuant to this act. No later than 90 days after the
11 date of the utility's filing, and after determining that the filing and
12 the rate changes provided for therein are in compliance with the
13 provisions of this act, the board shall approve the utility's filing and
14 associated rates for billing to the utility's customers, effective for
15 utility service rendered on and after January 1, 1998. If the board
16 determines that the utility's filing and the associated rate changes
17 provided for therein are not in compliance with the provisions of
18 this act, the board shall require the utility to amend or otherwise
19 modify its filing to render it in compliance. The board may also
20 permit the rates provided for in the utility's filing to be implemented
21 on an interim basis pending the board's final determination in the
22 event the board, in its discretion, determines that due to the filing's
23 complexity, or for other valid reasons, including but not limited to
24 the enactment of this act after June 30, 1997, additional time is
25 needed for the board to complete its review of the filing. If the
26 rates approved by the board upon its final determination are less
27 than the rates implemented on an interim basis, the difference shall
28 be refunded to the utility's customers with interest computed in
29 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
30 implemented pursuant to this act shall not constitute a fixing of
31 rates pursuant to R.S.48:2-21 and shall not be subject to the hearing
32 requirements set forth in that section.

33 c. As of the effective date of the rate changes implemented
34 pursuant to this act, and except for rates applicable to sales that
35 were or are currently exempt from the unit-based energy taxes
36 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.)
37 and rates applicable to sales to which section 59 of P.L.1997, c.162
38 (C.48:2-21.31) applies, the board shall remove from the base rates
39 of each electric public utility and gas public utility the unit tax rates
40 included therein for the recovery of those unit-based energy taxes,
41 and include therein provision for the recovery of corporation
42 business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
43 seq.), and additionally shall authorize the collection of the sales and
44 use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as
45 follows:

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

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

11 To permit the board to make this determination, in addition to
 12 including in its filing schedules showing its net income earned in
 13 the base year as booked, the utility shall include adjustments to such
 14 booked income to eliminate the effect of revenues, expenses and
 15 extraordinary or other charges that are non-recurring, atypical, or
 16 both, including, but not limited to an adjustment to eliminate the
 17 effect of unusually hot or cold weather, and that would otherwise
 18 make the utility's base year net income unusually high or low or
 19 otherwise unrepresentative of the utility's prospective net income.
 20 If the adjustment is being made to eliminate the effect of unusually
 21 hot or cold weather, associated revenue and expense adjustments
 22 shall also be made. Subject to the board's approval, such adjusted
 23 income shall be the basis for the calculation of the initial provision
 24 for corporation business tax to be included in the utility's base rates.

25 The utility shall also include a calculation of its rate of return on
 26 common equity achieved in the base year, both as booked and as
 27 adjusted in accordance with the foregoing. The calculation shall be
 28 made employing the methodology set forth in N.J.A.C.14:12-
 29 4.2(b)1, and shall separately show the effect of reflecting
 30 adjustments to the calculation, if any, that may have been employed
 31 historically in establishing the utility's rate of return on common
 32 equity allowed for ratemaking purposes. The utility's filing shall
 33 also include copies of its audited financial statements for the base
 34 year and associated quarterly and other reports filed with the
 35 Securities and Exchange Commission.

36 To reflect the provision for corporation business tax in base
 37 rates, the demand charges, or charges per kilowatt, decatherm or
 38 million cubic feet; the energy charges, or charges per kilowatthour
 39 or per therm; and the customer charges, or charges other than
 40 demand and energy charges, set forth in each base rate schedule,
 41 and the floor price employed in parity rate schedules, included in
 42 the utility's tariff filed with and approved by the board shall be
 43 increased by amounts determined by multiplying such charges by
 44 the adjustment factor, "A e, g" derived below:

$$\begin{aligned}
 & \text{A e, g} = \frac{((I e, g) \times (R_s / (1 - R_e)))}{\text{-----}} \\
 & \hspace{10em} (\text{Br e, g})
 \end{aligned}$$

1 where:

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

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

12 "Br e, g" means the utility's base year revenue from base rates
13 applicable to electric or gas sales, or both, and transportation
14 service subject to the board's jurisdiction, but excluding sales that
15 were exempt from unit-based energy taxes formerly imposed
16 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
17 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

18 "Rs" means the corporation business tax rate, expressed as a
19 decimal;

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

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

23 The utility shall account for the changes in tax liability provided
24 for by this act effective January 1, 1998. Such accounting shall
25 include the recording on the utility's income statement and balance
26 sheet of deferred corporation business tax defined, for book
27 accounting purposes, as differences in corporation business tax
28 expense arising from timing differences in the recognition of
29 revenue and expenses for book and tax purposes.

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

45 (4) The utility's filing with the board to implement the rate
46 changes provided for by this act shall include an analysis,
47 description, and quantification of the effect of the changes in rates

1 and tax payments implemented pursuant to this act on the utility's
2 requirement for cash working capital, and if such requirement is
3 less than the cash working capital allowed for the collection and
4 payment of unit-based energy taxes formerly imposed pursuant to
5 P.L.1940, c.5 (C.54:30A-49 et seq.) in determining the utility's base
6 rates in effect prior to the rate changes implemented pursuant to this
7 act, and to the extent the working capital reduction is not offset by a
8 reduction in net deferred taxes as provided for below, such base
9 rates shall be reduced by the reduction in the utility's revenue
10 requirement associated with the remaining reduction in the working
11 capital requirement not so offset, if any. The reduction in working
12 capital shall be determined by using the same methodology
13 employed in establishing the working capital allowance related to
14 unit-based energy taxes reflected in the utility's base rates in effect
15 prior to the rate changes implemented pursuant to this act. The
16 reduction in the utility's revenue requirement associated with the
17 reduced working capital requirement shall be calculated using the
18 utility's last overall rate of return allowed by the board, including
19 provision for federal income taxes and the corporation business tax
20 implemented pursuant to this act payable on the equity portion of
21 the return, and shall be implemented on the effective date of the rate
22 changes provided for, and in the manner set forth in paragraph (2)
23 of this subsection.

24 If the utility's requirement for cash working capital is increased
25 as a result of the changes in rates and tax payments implemented
26 pursuant to this act, the utility may accrue carrying costs, calculated
27 at its last overall rate of return allowed by the board and applied on
28 a simple annual interest basis without compounding, on the
29 increased working capital requirement and request recovery of such
30 carrying costs in a rate proceeding before the board.

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

35 The utility's filing with the board to implement the rate changes
36 provided for by this act shall also include an analysis, description
37 and quantification of net deferred taxes. For the purposes of this
38 section, "net deferred taxes" means deferred corporation business
39 taxes, net of federal deferred income taxes, associated with the tax
40 and rate changes implemented pursuant to this act, including
41 deferred corporation business tax recorded in accordance with
42 section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the
43 calendar year in which this act takes effect and for each year of the
44 tax life of the asset giving rise to the deferred corporation business
45 taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

46 If the change in such net deferred taxes projected for the calendar
47 year in which the rate changes implemented pursuant to this act take

1 effect is negative and if the utility's requirement for working capital
2 is reduced as a result of the changes in rates and tax payments
3 implemented pursuant to this act, the working capital-related rate
4 reduction that otherwise would have been implemented pursuant to
5 this subsection shall be treated as set forth in subparagraph (a) or
6 (b) of this paragraph. For the purposes of this act, a change in net
7 deferred taxes is considered negative when it reduces an existing
8 deferred tax liability or creates a deferred tax asset on the utility's
9 balance sheet. An appropriate rate adjustment for the working
10 capital impacts of this act, reflecting all relevant facts and
11 circumstances at the time of the adjustment, shall be made in the
12 year when the earlier of the following events occur:

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

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

25 (ii) The accumulated balance of such negative net deferred taxes
26 shall include net deferred taxes associated with all assets and
27 liabilities originally placed in service by the utility and held by the
28 utility or a company affiliated with the utility regardless of whether
29 or not such assets continue to be subject to regulation by the New
30 Jersey Board of Public Utilities.

31 (b) The year in which both an appropriate working capital
32 adjustment and the accumulated balance of negative deferred taxes,
33 as described in (ii) of subparagraph (a) of this paragraph (4), are
34 reflected in the utility's rate base in a rate proceeding before the
35 board. It is the intent of this section to fully compensate utilities on
36 a present value basis, for the carrying costs associated with negative
37 net deferred taxes arising as a result of this act, and to remit to
38 ratepayers any credit due them as a result of any overcompensation
39 as may have occurred due to the treatment of working capital and
40 deferred taxes as set forth herein or in subparagraph (a) of this
41 paragraph (4). At the time the above base rate adjustment is made,
42 an analysis shall be made to determine if such carrying costs have
43 been or will be fully recovered pursuant to the intent of this
44 provision and any additional credit or charge to ratepayers to adjust
45 for ratepayer overpayments or underpayments, if any shall be
46 addressed.

1 If the change in net deferred taxes is positive, the increase shall
2 be added to, or increase, the reduction in the utility's requirement
3 for working capital if the requirement is reduced as a result of the
4 rate and tax payment changes implemented pursuant to this act, or
5 subtracted from the working capital requirement if it is increased,
6 and the resultant net working capital requirement shall be reflected
7 in rates or accrue carrying costs in the same manner as prescribed
8 for changes in the utility's requirement for working capital above.

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

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

17 (a) An amount per kilowatthour or per therm determined by
18 multiplying the total revenue received in the base year from sales to
19 which that unit tax rate would have been applicable by the factor
20 $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed under
21 P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
22 dividing the result by the kilowatthours or therms billed in that unit
23 tax rate class in the base year; and

24 (b) An amount per kilowatthour or per therm determined by
25 dividing the revenue that would have been received in the base year
26 from the inclusion, in the manner prescribed in paragraph (2) of
27 subsection c. of this section, of the corporation business tax in the
28 rates applicable to sales billed in that unit tax rate class by the
29 kilowatthours or therms billed in that rate class. In each case, the
30 determination shall reflect the effect of adjustments that affect the
31 level of sales and revenue, if any, as provided in subsection c. of
32 this section. Of the resultant rate per kilowatthour or per therm, the
33 portion for recovery of the utility's transitional energy facilities
34 assessment liability shall be determined by multiplying such rate by
35 the factor $(1 - R_s)$, where R_s is the corporation business tax rate
36 expressed as a decimal.

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

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

46 (ii) for a period of seven years commencing on the first day after
47 the expiration of an off-tariff rate agreement, entered into or

1 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-
2 21.24 et seq.), to a manufacturing facility for use or consumption
3 directly and primarily in the production of tangible personal
4 property, other than energy[.], and

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

9 Notwithstanding the provisions of the exemption provided in
10 **[this]** sub-subparagraph (ii) and sub-subparagraph (iii) of
11 subparagraph (b) of paragraph (1) of subsection d. of this section,
12 the TEFA unit rate surcharge shall be applied to the sales to the
13 owner of the manufacturing facility or the postconsumer material
14 manufacturing facility and the owner shall be refunded an amount
15 equal to the TEFA unit rate surcharge paid by the filing, within 30
16 days following the close of a calendar quarter in which the
17 exemption applies, of a claim with the **[New Jersey]** Director of the
18 Division of Taxation in the Department of the Treasury for a refund
19 of the TEFA unit rate surcharge paid, which refund shall be paid
20 within **[30]** 60 days of the refund claim being filed. Proof of claim
21 for refund shall be made by the submission of such records and
22 other documentation as the **[Director of the Division of Taxation]**
23 director may require. If the owner of the manufacturing facility or
24 the postconsumer material manufacturing facility at any time during
25 the exemption period provided in sub-subparagraph (ii) or sub-
26 subparagraph (iii) of subparagraph (b) of paragraph (1) of
27 subsection d. of this section relocates the manufacturing facility to a
28 location outside of this State, the owner shall pay to the **[Director**
29 **of the Division of Taxation]** director the amount of TEFA unit rate
30 surcharge for which an exemption shall have been allowed and
31 refund obtained under this section. The State Treasurer shall notify
32 the director of the relocation of a manufacturing facility or a
33 postconsumer material manufacturing facility to a location outside
34 of this State, and the director shall issue a tax assessment for the
35 recapture of tax, equal to the amount of TEFA unit rate surcharge
36 for which an exemption shall have been allowed and refund
37 obtained under this section. The recapture of tax shall be a State
38 tax subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et
39 seq., and shall be deposited in the General Fund.

40 If, following the effective date of this act, a customer taking
41 bundled service from the utility shall elect to obtain its
42 requirements from another supplier and take transportation or
43 wheeling service from the utility, the TEFA unit rate surcharge
44 applicable to the bundled service shall continue to apply to the
45 transportation or wheeling service. The TEFA components of the
46 unit rate surcharges determined pursuant to this subsection (the
47 components of the surcharges remaining after deducting the

1 provision for corporation business tax included therein) shall be
 2 used to determine the transitional energy facility assessment
 3 liability pursuant to sections 36 through 49 of P.L.1997, c.162
 4 (C.54:30A-100 through C.54:30A-113).

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

9	January 1, 1999,	20%
10	January 1, 2000,	40%
11	January 1, 2001,	60%

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

15 (a) The sum of the estimated, or actual when known, (i) TEFA
 16 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-
 17 107), and sales and use taxes collected and corporation business
 18 taxes booked for the year 1998 by the gas and electric utilities and
 19 other entities subject to the TEFA provisions of this act (the year
 20 1998 liability), and (ii) the TEFA liabilities of those utilities and
 21 entities in all years following the year 1998 through the year in
 22 which a determination is being made pursuant to this subsection
 23 (the determination year); and

24 (b) The sum of (i) the total of each remitter's base year liability,
 25 as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii)
 26 the cumulative TEFA obligation, defined as the sum through the
 27 determination year of the amounts calculated by multiplying, for the
 28 applicable year, the percentage in the second column of the
 29 following table:

30	Determination Year	% of
31		Year 1998
32		TEFA
33	-----	-----
34	1999	80%
35	2000	60%

36 by the Year 1998 TEFA,
 37 where the Year 1998 TEFA is calculated as the total of each
 38 remitter's base year liability less the sales and use taxes collected
 39 and the corporation business taxes booked for the privilege period
 40 ending in calendar year 1998 by the gas and electric utilities and
 41 other entities subject to the TEFA provisions of this act. For
 42 purposes of this subsection, the amounts assumed for the
 43 determination year, including the year 1998 liability when first
 44 determined for the purposes of this subsection, shall be estimates
 45 based on nine months of actual data through and including the
 46 month of September, and three months of data forecast for the
 47 months of October through December.

1 (4) If the TEFA surcharge adjustment determined for the
2 determination year is positive (that is, if the amount determined
3 pursuant to subparagraph (a) of paragraph (3) of this subsection is
4 greater than the amount determined pursuant to subparagraph (b) of
5 paragraph (3) of this subsection), no reduction shall be made in the
6 reduction in the TEFA unit rate surcharges provided for in
7 paragraph (2) of this subsection for the year following the
8 determination year. If the TEFA surcharge adjustment is negative,
9 the reduction in the TEFA unit rate surcharges that otherwise would
10 have been implemented on January 1 of the year following the
11 determination year pursuant to paragraph (2) of this subsection shall
12 be reduced by an amount (by percentage points) equal to the
13 percentage the TEFA surcharge adjustment is of the total of the
14 base year transitional energy facility assessment of all remitters, as
15 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided
16 however, that such reduction in the reduction in the TEFA unit rate
17 surcharges shall not exceed the percentage shown in paragraph (2)
18 of this subsection for that year; and provided further that in the first
19 two years, that such reduction shall not exceed 10 percentage points
20 for each year.

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

24 (b) The TEFA unit rate surcharges in effect for calendar year
25 2011 shall be reduced on January 1, 2012 and January 1, 2013 by
26 the following percentages:

27	January 1, 2012	25%
28	January 1, 2013	50%

29 e. The utility's filing with the board to implement the rate
30 changes provided for by this act shall include proof of revenue
31 schedules that show for each rate schedule included in the utility's
32 tariff, aggregated by unit-based energy tax unit tax classes, the
33 number of customers billed under the rate schedule, the billing
34 determinants of such customers (i.e. the kilowatts of billing demand
35 and kilowatthours of electric energy consumed, and the million
36 cubic feet/decatherm subject to gas capacity-related charges and
37 decatherm of gas consumed) and the associated revenue, both as
38 booked in the base year and on a pro forma basis reflecting the rate
39 changes implemented pursuant to this act. The proof of revenue
40 shall additionally show the amount of unit-based energy taxes
41 included in the base year revenue as booked, the unit-based energy
42 taxes that would have been collected at the unit-based energy tax
43 unit tax rates effective January 1, 1997, if different, as well as the
44 corporation business tax, sales and use tax and transitional energy
45 facility assessment revenue that would have been collected or
46 received on a pro forma basis if the rates implemented pursuant to
47 this act had been in effect in the base year.

1 f. The board may, in its discretion, permit the rate changes
2 provided for in this act to be implemented as part of a pending base
3 rate case or other proceeding in which the utility's rates are to be
4 changed, provided that the effective date of the changes is not
5 delayed beyond the date on which the changes would have been
6 implemented under subsection c. of this section. The board may
7 also, pursuant to its powers provided by law, permit or require
8 further modifications in the implementation of this section to
9 address unforeseen consequences arising out of the implementation
10 of this act.

11 g. Customers of the utility who are exempt from the sales and
12 use tax imposed on sales of gas and/or electricity or as a result of
13 rate changes occurring prior to the effective date of this act or for
14 other valid reasons are due a refund of sales or use tax inadvertently
15 imposed on such customers as a result of implementing the rate
16 changes provided for by this act shall file with the State Treasurer
17 to obtain such refunds. The State Treasurer shall promptly notify
18 the utility of customers granted refunds under this provision in
19 order to prevent additional collections of the sales and use tax from
20 such customers.

21 h. Public utilities providing telecommunications service
22 regulated by the board shall file for the board's review and approval
23 revised tariffs that eliminate from the rates applicable to such
24 service the excise tax liability included therein pursuant to
25 P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the
26 corporation business tax calculated using the methodology used in
27 calculating the adjustment factor set forth in paragraph (2) of
28 subsection c. of this section. Subsection d. of this section shall not
29 apply to telecommunication utilities, and telecommunication
30 utilities subject to a plan of regulation other than rate base/rate of
31 return shall additionally not be required to file the rate of return
32 information required by paragraph (2) of subsection c. Such
33 utilities shall, however, include a narrative and/or other
34 documentation as required by the board to support the
35 reasonableness of the after-tax income, which may be adjusted to
36 eliminate the effect of non-recurring or other atypical events, on
37 which the corporate business tax inclusion in rates is based.
38 Telecommunications utilities shall comply with all other applicable
39 provisions of this section.

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

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

6 (3) For the purposes of this section, "cogenerator" means a
7 person or business entity that owns or operates a cogeneration
8 facility in the State of New Jersey, which facility is a plant,
9 installation or other structure whose primary purpose is the
10 sequential production of electricity and steam or other forms of
11 useful energy which are used for industrial, commercial, heating or
12 cooling purposes, and which is designated by the Federal Energy
13 Regulatory Commission, or its successor, as a "qualifying facility"
14 pursuant to the provisions of the "Public Utility Regulatory Policies
15 Act of 1978," Pub.L.95-617.
16 (cf: P.L.2008, c.32, s.1)

17
18 52. This act shall take effect immediately; however, sections 9
19 and 11 shall remain inoperative until the first day of the third month
20 next following enactment unless the Local Finance Board
21 determines an earlier operative date.

22
23
24
25

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