

# ASSEMBLY, No. 916

## STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**Assemblywoman SHEILA Y. OLIVER**

**District 34 (Essex and Passaic)**

**Assemblyman THOMAS P. GIBLIN**

**District 34 (Essex and Passaic)**

**Co-Sponsored by:**

**Assemblywoman Wagner**

**SYNOPSIS**

Expands State programs to encourage investments in small technology companies.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT expanding State programs to encourage investments in  
2 small technology companies, and amending P.L.1997, c.344 and  
3 P.L.1999, c.140  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

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

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

37 b. The authority, in cooperation with the Division of Taxation  
38 in the Department of the Treasury, shall review and approve  
39 applications by new or expanding emerging technology and  
40 biotechnology companies in this State with unused but otherwise  
41 allowable carryover of research and development tax credits  
42 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and  
43 unused but otherwise allowable net operating loss carryover  
44 pursuant to paragraph (6) of subsection (k) of section 4 of P.L.1945,  
45 c.162 (C.54:10A-4), to surrender those tax benefits in exchange for

**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 private financial assistance to be made by the corporation business  
2 taxpayer that is the recipient of the corporation business tax benefit  
3 certificate in an amount equal to at least ~~【75%】~~ 80 percent of the  
4 amount of the surrendered tax benefit. Provided that the amount of  
5 the surrendered tax benefit for a surrendered research and  
6 development tax credit carryover is the amount of the credit, and  
7 provided that the amount of the surrendered tax benefit for a  
8 surrendered net operating loss carryover is the amount of the loss  
9 multiplied by the new or expanding emerging technology or  
10 biotechnology company's anticipated allocation factor, as  
11 determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6)  
12 for the tax year in which the benefit is transferred and subsequently  
13 multiplied by the corporation business tax rate provided pursuant to  
14 subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5). The  
15 authority shall be authorized to approve the transfer of no more than  
16 ~~【\$50,000,000 of tax benefits over State fiscal year 2000,~~  
17 ~~\$40,000,000 of tax benefits over each State fiscal year 2001 through~~  
18 ~~2004, and】~~ \$60,000,000 ~~【over】~~ of tax benefits in a State fiscal year  
19 【2005 and each State fiscal year thereafter】. If the total amount of  
20 transferable tax benefits requested to be surrendered by approved  
21 applicants exceeds ~~【\$50,000,000 for State fiscal year 2000,~~  
22 ~~\$40,000,000 for each State fiscal year 2001 through 2004, or~~  
23 ~~\$60,000,00】~~ \$60,000,000 ~~for a State fiscal year 【2005 and for each~~  
24 ~~State fiscal year thereafter】~~, the authority, in cooperation with the  
25 Division of Taxation in the Department of the Treasury, shall not be  
26 authorized to approve the transfer of more than ~~【\$50,000,000 for~~  
27 ~~State fiscal year 2000, more than \$40,000,000 for each State fiscal~~  
28 ~~2001 through 2004, or \$60,000,00】~~ \$60,000,000 ~~for that State fiscal~~  
29 ~~year 【2005 and for each State fiscal year thereafter】~~ and shall  
30 allocate the transfer of tax benefits by approved companies using  
31 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 percent** 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 before  
20 the Legislature as this bill)  
21 (cf: P.L.2004, c.65, s.18)  
22

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

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

40       “Technology company” means an emerging corporation that has  
41 its headquarters or base of operations in this State; that owns, has  
42 filed for, or has a valid license to use protected, proprietary  
43 intellectual property; and that employs some combination of the  
44 following: highly educated or trained managers and workers, or  
45 both, employed in this State who use sophisticated scientific  
46 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 3. This act shall take effect immediately.  
6  
7

8 STATEMENT  
9

10 This bill revises the existing \$60 million per year Technology  
11 Business Tax Certificate Transfer Program, which allows  
12 corporations to purchase the research and development tax credits  
13 and net operating loss deductions of new or expanding emerging  
14 technology and biotechnology companies in this State that are not  
15 able to use these tax benefits because they are not yet profitable.  
16 The bill changes the program in several ways:

17 1) unused balances of the annual \$10 million set-aside for  
18 businesses in three innovation zones revert to the general program  
19 pool for use by businesses not situated in innovations zones;

20 2) the maximum lifetime benefit per business rises from \$10  
21 million to \$15 million;

22 3) the award of the tax benefit transfer certificate becomes  
23 automatic if the applicant meets all requirements and funding is  
24 available. Currently, the New Jersey Economic Development  
25 Authority (NJEDA) must determine whether a business merits the  
26 certificate based on subjective criteria; and

27 4) the recapture of awarded tax benefit transfer certificates is  
28 authorized if a business fails to use the financial assistance received  
29 for transferring the certificate as required by the program or if the  
30 business within five years after receipt of the certificate moves its  
31 headquarters or operations out of New Jersey.

32 The Tax Benefit Certificate Transfer Program is a State financial  
33 assistance program for small technology businesses. Corporation  
34 business tax expenditures support the program, which is operated  
35 through a system of tax benefit sales administered by the NJEDA.  
36 The program allows corporations to purchase the research and  
37 development tax credits and net operating loss deductions of new or  
38 expanding emerging technology and biotechnology companies in  
39 this State that are not able to use these tax benefits because they are  
40 not yet profitable.