

[Second Reprint]

ASSEMBLY, No. 4306

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED NOVEMBER 21, 2011

Sponsored by:

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblyman ANTHONY M. BUCCO

District 25 (Morris)

Assemblyman GARY R. CHIUSANO

District 24 (Sussex, Hunterdon and Morris)

Assemblyman RUBEN J. RAMOS, JR.

District 33 (Hudson)

Co-Sponsored by:

**Assemblywomen McHose, Spencer, Assemblyman Coughlin and
Assemblywoman Pou**

SYNOPSIS

Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs; authorizes transfer of certain real property.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 1, 2011, with amendments.

(Sponsorship Updated As Of: 12/16/2011)

1 AN ACT providing for the availability of tax credits to certain
 2 businesses ¹, authorizing a transfer of certain real property.¹ and
 3 supplementing Title 34 of the Revised Statutes ~~'[and].'~~¹
 4 amending various parts of the statutory law, and repealing
 5 section 6 of P.L.1996, c.25.

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

9
 10 1. (New section) Sections 1 through ~~'[8]~~ ⁹ of this act shall be
 11 known and may be cited as the "Grow New Jersey Assistance Act."

12
 13 2. (New section) As used in this act:

14 "Affiliate" means an entity that directly or indirectly controls, is
 15 under common control with, or is controlled by the business.
 16 Control exists in all cases in which the entity is a member of a
 17 controlled group of corporations as defined pursuant to section 1563
 18 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the
 19 entity is an organization in a group of organizations under common
 20 control as defined pursuant to subsection (b) or (c) of section 414 of
 21 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
 22 may establish by clear and convincing evidence, as determined by
 23 the Director of the Division of Taxation in the Department of the
 24 Treasury, that control exists in situations involving lesser
 25 percentages of ownership than required by those statutes. An
 26 affiliate of a business may contribute to meeting either the qualified
 27 investment or full-time employee requirements of a business that
 28 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
 29 209).

30 "Authority" means the New Jersey Economic Development
 31 Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

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

41 "Capital investment" in a qualified business facility means
 42 expenses incurred after application, but before the end of the tenth
 43 year after, the effective date of P.L. , c. (C.) (pending
 44 before the Legislature as this bill) for: a. site preparation and

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACE committee amendments adopted November 21, 2011.

²Assembly AAP committee amendments adopted December 1, 2011.

1 construction, repair, renovation, improvement, equipping, or
2 furnishing of a building, structure, facility, or improvement to real
3 property; and b. obtaining and installing furnishings and machinery,
4 apparatus, or equipment for the operation of a business in a
5 building, structure, facility, or improvement to real property.

6 "Eligible position" means a full-time position retained or created
7 by a business in this State for which a business provides employee
8 health benefits under a group health plan as defined under section
9 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as
10 defined under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a
11 policy or contract of health insurance covering more than one
12 person issued pursuant to Article 2 of chapter 27 of Title 17B of the
13 New Jersey Statutes.

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

37 "New full-time job" means an eligible position created by the
38 business at the qualified business facility that did not previously
39 exist in this State. For the purposes of determining a number of
40 new full-time jobs, the eligible positions of an affiliate shall be
41 considered eligible positions of the business.

42 "Partnership" means an entity classified as a partnership for
43 federal income tax purposes.

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

1 “Program” means the “Grow New Jersey Assistance Program”
2 established pursuant to section 3 of P.L. , c. (C.) (pending
3 before the Legislature as this bill).

4 "Qualified business facility" means any building, complex of
5 buildings or structural components of buildings, and all machinery
6 and equipment located within a qualified incentive area, used in
7 connection with the operation of a business.

8 "Qualified incentive area" means an area designated pursuant to
9 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
10 (Metropolitan), Planning Area 2 (Suburban), or any urban, regional,
11 or town designated center under the State Development and
12 Redevelopment Plan; an area zoned for development pursuant to a
13 master plan adopted by the New Jersey Meadowlands Commission
14 pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-
15 6) or subject to a redevelopment plan adopted by the New Jersey
16 Meadowlands Commission pursuant to section 20 of P.L.1968,
17 c.404 (C.13:17-21); any land owned by the New Jersey Sports and
18 Exposition Authority, established pursuant to P.L.1971, c.137
19 (C.5:10-1 et seq.), within the boundaries of the Hackensack
20 Meadowlands District as delineated in section 4 of P.L.1968, c.404
21 (C.13:17-4); a pinelands regional growth area, a pinelands town
22 management area, a pinelands village, or a military and federal
23 installation area established pursuant to the pinelands
24 comprehensive management plan adopted pursuant to P.L.1979,
25 c.111 (C.13:18A-1 et seq.); an area designated for development,
26 redevelopment, or economic growth within the Highlands Region;
27 federally owned land approved for closure under any federal Base
28 Closure and Realignment Commission action; or any property
29 consisting of a vacant commercial building having over 400,000
30 square feet of office, laboratory, or industrial space available for
31 occupancy for a period of over one year or is negatively impacted
32 by the approval of a “qualified business facility,” as defined
33 pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

34 "Retained full-time job" means an eligible position that currently
35 exists in New Jersey and is filled by a full-time employee but
36 which, because of a potential relocation by the business, is at risk of
37 being lost to another state or country. For the purposes of
38 determining a number of retained full-time jobs, the eligible
39 positions of an affiliate shall be considered eligible positions of the
40 business.

41
42 3. (New section) a. The Grow New Jersey Assistance Program
43 is hereby established as a program under the jurisdiction of the New
44 Jersey Economic Development Authority and shall be administered
45 by the authority. The purpose of the program is to encourage
46 economic development and job creation and to preserve jobs that
47 currently exist in New Jersey but which are in danger of being
48 relocated outside of the State. To implement this purpose, and to

1 the extent that funding for the program is available, the program
2 may provide tax credits to eligible businesses. To be eligible for
3 any tax credits pursuant to P.L. , c. (C.) (pending before the
4 Legislature as this bill), a business's chief executive officer or
5 equivalent officer shall demonstrate to the authority, at the time of
6 application, that: (1) the business will make, acquire, or lease a
7 capital investment of at least \$20,000,000 at a qualified business
8 facility at which it will (a) employ at least 100 full-time employees
9 in retained full-time jobs, or (b) create at least 100 new full-time
10 jobs in an industry identified by the authority as desirable for the
11 State to maintain or attract; (2) the capital investment resultant from
12 the award of tax credits and the resultant retention and creation of
13 eligible positions will yield a net positive benefit to the State; and ²,
14 except as provided in subsection d. of this section.² (3) the award of
15 tax credits will be a material factor in the business's decision to
16 create or retain the minimum number of full-time jobs for eligibility
17 under the program.

18 b. To assist the authority in determining whether a proposed
19 capital investment will yield a net positive benefit, the business's
20 chief executive officer, or equivalent officer, shall submit a
21 certification to the authority indicating that any existing jobs are at
22 risk of leaving the State, that any projected creation of new full-
23 time jobs would not occur but for the provision of tax credits under
24 the program, and that the business's chief executive officer, or
25 equivalent officer, has reviewed the information submitted to the
26 authority and that the representations contained therein are accurate.
27 In the event that this certification by the business's chief executive
28 officer, or equivalent officer, is found to be willfully false, the
29 authority may revoke any award of tax credits in their entirety,
30 which revocation shall be in addition to any other criminal or civil
31 penalties that the business and the officer may be subject to. When
32 considering an application involving intra-State job transfers, the
33 authority shall require the business to submit the following
34 information as part of its application: a full economic analysis of all
35 locations under consideration by the business; all lease agreements,
36 ownership documents, or substantially similar documentation for
37 the business's current in-State locations; and all lease agreements,
38 ownership documents, or substantially similar documentation for
39 the potential out-of-State location alternatives, to the extent they
40 exist. Based on this information, and any other information deemed
41 relevant by the authority, the authority shall independently verify
42 and confirm, by way of making a factual finding by separate vote of
43 the authority's board, the business's assertion that the jobs are
44 actually at risk of leaving the State, before a business may be
45 awarded any tax credits under this section.

46 c. A project that consists solely of point-of-final-purchase
47 retail facilities shall not be eligible for a grant of tax credits. If a
48 project consists of both point-of-final-purchase retail facilities and

1 non-retail facilities, only the portion of the project consisting of
2 non-retail facilities shall be eligible for a grant of tax credits. If a
3 warehouse facility is part of a point-of-final-purchase retail facility
4 and supplies only that facility, the warehouse facility shall not be
5 eligible for a grant of tax credits. For the purposes of this section,
6 catalog distribution centers shall not be considered point-of-final-
7 purchase retail facilities.

8 ²d. The authority may determine as eligible for tax credits under
9 the program any business that is required to respond to a request for
10 proposals and to fulfill a contract with the federal government
11 although the business's chief executive officer or equivalent officer
12 has not demonstrated to the authority that the award of tax credits
13 will be a material factor in the business's decision to retain at least
14 100 full-time jobs, as otherwise required by paragraph 3 of
15 subsection a. of this section. The authority may, in its discretion,
16 consider the economic benefit of the retained jobs servicing the
17 contract in conducting a net benefit analysis required by paragraph
18 2 of subsection a. of this section. For the purposes of this
19 subsection, "retained jobs" includes jobs that are at risk of being
20 eliminated. Applications to the authority for eligibility under the
21 program pursuant to the criteria set forth in this subsection shall be
22 completed by March 31, 2012. Submission of a proposal to the
23 federal government prior to authority approval shall not disqualify a
24 business from the program.²

25
26 4. (New section) The authority shall require an eligible
27 business to enter an agreement prior to the issuance of tax credits.
28 The agreement shall include, but shall not be limited to, the
29 following:

30 a. A detailed description of the proposed project which will
31 result in job creation or retention, and the number of full-time
32 employees.

33 b. The term of the tax credits, and the first year for which the
34 tax credits may be claimed.

35 c. Personnel information that will enable the authority to
36 administer the program.

37 d. A requirement that the applicant maintain the project at a
38 location in New Jersey for at least 1.5 times the number of years of
39 the term of the tax credits, with at least the number of full-time
40 employees as required by section 6 of P.L. , c. (C.)
41 (pending before the Legislature as this bill) and a provision to
42 permit the authority to recapture all or part of any tax credit
43 awarded, at its discretion, if the business does not remain at the site
44 for the required term.

45 e. A method for the business to report annually to the authority
46 the number of full-time employees for which the tax credits are to
47 be made.

1 f. A provision permitting an audit of the payroll records of the
2 business from time to time, as the authority deems necessary.

3 g. A provision which permits the authority to amend the
4 agreement.

5 h. A provision establishing the conditions under which the
6 agreement may be terminated and awarded tax credits are
7 recaptured, in whole or in part, by the authority at its discretion.

8

9 5. (New section) a. The value of each tax credit for an eligible
10 business shall be equal to \$5,000 per year for a period of ten years
11 for each new or retained full-time job determined by the authority
12 pursuant to section 3 of P.L. , c. (C.) (pending before the
13 Legislature as this bill) to be located at the qualified business
14 facility, subject to the provisions of this section.

15 b. In addition to any grant of tax credits determined pursuant to
16 subsection a. of this section, a bonus award of up to an additional
17 \$3,000 per job of the amount of the original tax credits may be
18 made to any eligible business as determined by the authority. In
19 making a bonus award to an eligible business, the authority shall
20 consider the following factors, such that whether the business: (1) is
21 an industry identified by the authority as desirable for the State to
22 maintain or attract; (2) locates or relocates to a location within a
23 qualified incentive area adjacent to, or within walking distance or
24 short-distance-shuttle service of, a public transit facility, as
25 determined by the authority, by regulation; (3) creates jobs using
26 full-time employees in eligible positions whose annual salaries,
27 according to the Department of Labor and Workforce Development,
28 are greater than the average full-time salary in this State; or (4) is
29 locating to a project site that is or has been negatively impacted by
30 the approval of a "qualified business facility," as defined pursuant
31 to section 2 of P.L.2007, c.346 (C.34:1B-208).

32 c. Notwithstanding the provisions of subsections a. and b. of
33 this section, (1) the amount of tax credits available to be applied by
34 the business annually shall not exceed 'the lesser of' one tenth of
35 the capital investment certified by the authority pursuant to section
36 6 of P.L. , c. (C.) (pending before the Legislature as this
37 bill) 'or \$4,000,000', and (2) the number of new full-time jobs for
38 which a business receives a tax credit shall not exceed the number
39 of retained full-time jobs for which a business receives a tax credit,
40 unless the business qualifies by creating at least 100 new full-time
41 jobs in an industry identified by the authority as desirable for the
42 State to maintain or attract.

43

44 6. (New section) a. (1) The value of all credits approved by the
45 authority pursuant to P.L. , c. (C.) (pending before the
46 Legislature as this bill) shall not exceed \$200,000,000, except that
47 the value of all credits approved by the authority pursuant to this
48 section may exceed \$200,000,000 if the board of the authority

1 determines the credits to be reasonable, justifiable, and appropriate;
2 provided, however, the combined value of all credits approved by
3 the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq. and
4 P.L. , c. (C.) (pending before the Legislature as this bill)
5 shall not exceed \$1,500,000,000.

6 (2) A business, including any affiliate of the business or any
7 business that is a tenant within any qualified business facility, shall
8 make or acquire capital investments totaling not less than
9 \$20,000,000 in a qualified business facility, at which the business
10 shall employ not fewer than 100 full-time employees to be eligible
11 for a credit pursuant to P.L. , c. (pending before the Legislature
12 as this bill). A business that acquires or leases a qualified business
13 facility shall also be deemed to have acquired the capital investment
14 made or acquired by the seller or landlord, as the case may be.

15 (3) A business shall not be allowed tax credits pursuant to
16 P.L.1996, c.25 (C.34:1B-112 et seq.) or P.L.1996, c.26 (C.34:1B-
17 124 et seq.) relating to the same capital and employees that qualify
18 the business for tax credits pursuant to P.L. , c. (pending before
19 the Legislature as this bill). A business that is allowed a tax credit
20 under this section shall not be eligible for incentives authorized
21 pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall
22 not qualify for a tax credit under this section, based upon capital
23 investment and employment of full-time employees, if that capital
24 investment or employment was the basis for which a grant was
25 provided to the business pursuant to the "Urban Transit Hub Tax
26 Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.).

27 (4) Full-time employment for an accounting or privilege period
28 shall be determined as the average of the monthly full-time
29 employment for the period.

30 (5) The capital investment of the owner of a qualified business
31 facility is that percentage of the capital investment made or
32 acquired by the owner of the building that the percentage of net
33 leasable area of the qualified business facility not leased to tenants
34 is of the total net leasable area of the qualified business facility.
35 For a business that is a tenant, the amount of capital investment in a
36 facility that a leased area represents shall be equal to that
37 percentage of the owner's total capital investment in the facility that
38 the percentage of net leasable area leased by the tenant is of the
39 total net leasable area of the qualified business facility. Capital
40 investments made by a tenant shall be deemed to be included in the
41 calculation of the capital investment made or acquired by the
42 owner, but only to the extent necessary to meet the owner's
43 minimum capital investment of \$20,000,000. Capital investments
44 made by a tenant and not allocated to meet the owner's minimum
45 capital investment threshold of \$20,000,000 shall be added to the
46 amount of capital investment represented by the tenant's leased area
47 in the qualified business facility.

1 b. A business shall apply for the tax credit prior to July 1,
2 2014, and shall submit its documentation indicating that it has met
3 the capital investment and employment specified in the project
4 agreement for certification of its credit amount no later than July
5 28, 2017.

6 c. (1) The amount of credit allowed shall not exceed the capital
7 investment made by the business or the capital investment
8 represented by the business' leased area, as certified by the authority
9 pursuant to subsection b. of this section, as having met the
10 investment capital and employment qualifications, subject to any
11 reduction or disqualification as provided by subsection d. of this
12 section as determined by annual review by the authority. In
13 conducting its annual review, the authority may require a business
14 to submit any information determined by the authority to be
15 necessary and relevant to its review.

16 The credit amount for any tax period ending after July 28, 2017,
17 during which the documentation of a business' credit amount
18 remains uncertified shall be forfeited, although credit amounts for
19 the remainder of the years of the 10-year credit period shall remain
20 available to it.

21 The credit amount that may be taken for a tax period of the
22 business that exceeds the final liabilities of the business for the tax
23 period may be carried forward for use by the business in the next 20
24 successive tax periods, and shall expire thereafter, provided that the
25 value of all credits approved by the authority against tax liabilities
26 pursuant to P.L. , c. (pending before the Legislature as this bill),
27 in any fiscal year shall not exceed \$150,000,000 and the combined
28 value of all credits approved by the authority pursuant to P.L.2007,
29 c.346 (C.34:1B-207 et seq.) and P.L. , c. (C.) (pending
30 before the Legislature as this bill) shall not exceed \$1,500,000,000.

31 The amount of credit allowed for a tax period to a business that
32 is a tenant in a qualified business facility shall not exceed the
33 business' total lease payments for occupancy of the qualified
34 business facility for the tax period.

35 (2) A business that is a partnership shall not be allowed a credit
36 under this section directly, but the amount of credit of an owner of a
37 business shall be determined by allocating to each owner of the
38 partnership that proportion of the credit of the business that is equal
39 to the owner of the partnership's share, whether or not distributed,
40 of the total distributive income or gain of the partnership for its tax
41 period ending within or with the owner's tax period, or that
42 proportion that is allocated by an agreement, if any, among the
43 owners of the partnership that has been provided to the Director of
44 the Division of Taxation in the Department of the Treasury by such
45 time and accompanied by such additional information as the
46 director may require.

47 (3) The amount of credit allowed may be applied against the tax
48 liability otherwise due pursuant to section 5 of P.L.1945, c.162

1 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132
2 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950,
3 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

4 d. (1) If, in any tax period, the business reduces the total
5 number of full-time employees in its Statewide workforce by more
6 than 20 percent from the number of full-time employees in its
7 Statewide workforce in the last tax period prior to the credit amount
8 approval under section 3 of P.L. , c. (pending before the
9 Legislature as this bill), then the business shall forfeit its credit
10 amount for that tax period and each subsequent tax period, until the
11 first tax period for which documentation demonstrating the
12 restoration of the business' Statewide workforce to the threshold
13 levels required by this paragraph has been reviewed and approved
14 by the authority, for which tax period and each subsequent tax
15 period the full amount of the credit shall be allowed.

16 (2) If, in any tax period, the number of full-time employees
17 employed by the business at the qualified business facility located
18 within a qualified incentive area drops below 100 or 80 percent of
19 the number of new and retained full-time jobs specified in the
20 project agreement, then the business shall forfeit its credit amount
21 for that tax period and each subsequent tax period, until the first tax
22 period for which documentation demonstrating the restoration of the
23 number of full-time employees employed by the business at the
24 qualified business facility to 100.

25 (3) (a) If the qualified business facility is sold in whole or in
26 part during the 10-year eligibility period the new owner shall not
27 acquire the capital investment of the seller and the seller shall
28 forfeit all credits for the tax period in which the sale occurs and all
29 subsequent tax periods, provided however that any credits of
30 tenants shall remain unaffected.

31 (b) If a tenant subleases its tenancy in whole or in part during
32 the 10-year eligibility period the new tenant shall not acquire the
33 credit of the sublessor, and the sublessor tenant shall forfeit all
34 credits for the tax period of its sublease and all subsequent tax
35 periods.

36
37 7. (New section) A business may apply to the Director of the
38 Division of Taxation in the Department of the Treasury and the
39 chief executive officer of the authority for a tax credit transfer
40 certificate, covering one or more years, in lieu of the business being
41 allowed any amount of the credit against the tax liability of the
42 business. The tax credit transfer certificate, upon receipt thereof by
43 the business from the director and the chief executive officer of the
44 authority, may be sold or assigned, in full or in part, to any other
45 person that may have a tax liability pursuant to section 5 of
46 P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of
47 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1
48 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

1 The certificate provided to the business shall include a statement
2 waiving the business's right to claim that amount of the credit
3 against the taxes that the business has elected to sell or assign. The
4 sale or assignment of any amount of a tax credit transfer certificate
5 allowed under this section shall not be exchanged for consideration
6 received by the business of less than 75 percent of the transferred
7 credit amount. Any amount of a tax credit transfer certificate used
8 by a purchaser or assignee against a tax liability shall be subject to
9 the same limitations and conditions that apply to the use of the
10 credit by the business that originally applied for and was allowed
11 the credit.

12

13 8. (New section) a. The chief executive officer of the authority,
14 in consultation with the Director of the Division of Taxation in the
15 Department of the Treasury, shall adopt rules in accordance with
16 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.) as are necessary to implement P.L. , c. (C.) (pending
18 before the Legislature as this bill), including but not limited to:
19 examples of and the determination of capital investment; the
20 enumeration of qualified incentive areas; specific delineation of
21 these incentive areas; the determination of the limits, if any, on the
22 expense or type of furnishings that may constitute capital
23 improvements; the promulgation of procedures and forms necessary
24 to apply for a tax credit, including the enumeration of the
25 certification procedures and allocation of tax credits for different
26 phases of a qualified business facility; and provisions for tax credit
27 applicants to be charged an initial application fee, and ongoing
28 service fees, to cover the administrative costs related to the tax
29 credit.

30 b. Through regulation, the authority shall establish standards
31 by which qualified business facilities shall be constructed or
32 renovated based on the green building manual prepared by the
33 Commissioner of Community Affairs pursuant to section 1 of
34 P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable
35 energy, energy-efficient technology, and non-renewable resources
36 in order to reduce environmental degradation and encourage long-
37 term cost reduction.

38

39 '9. (New section) a. Notwithstanding the provisions of
40 P.L.1962, c. 220 (C.52:31-1.1 et seq.), P.L. 2011, c.85, or any other
41 law or regulation to the contrary, and without the requirement for
42 the approval by any other party or entity, the State Treasurer is
43 hereby authorized to sell and convey, to the New Jersey Performing
44 Arts Center, in one or more series of transactions, all or any portion
45 of the State of New Jersey's right, title and interest in the land and
46 improvements located in the City of Newark, County of Essex, now
47 subject to the sublease between the State Treasurer and the New
48 Jersey Performing Arts Center which appear on the tax map of the

1 City of Newark and are designated as Block 125, Lots 23, 26 and
2 115, Block 126.01, Lot 21, such portion of Block 17, Lot 1, which
3 was designated for commercial development pursuant to the
4 sublease, and Block 17, Lots 20 and 21. Such conveyances shall be
5 on such terms and conditions, and for such consideration, as shall
6 be determined by the State Treasurer in the State Treasurer's sole
7 discretion. The proceeds from any such sales and conveyances
8 shall be deposited and applied as provided by law. In the event that
9 the identification of any of the property contained in this section by
10 block and lot number is inaccurate, the State Treasurer is authorized
11 to convey such blocks and lots which are subject to the sublease
12 between the State Treasurer and the New Jersey Performing Arts
13 Center as represent the actual parcels to be conveyed.

14 b. The State Treasurer is hereby authorized to enter into any
15 agreements, and to amend any existing agreements, required to
16 effectuate this sale and conveyance to the New Jersey Performing
17 Arts Center and any such agreements and amendments shall not
18 require the approval of any other party or entity, notwithstanding
19 any other law or regulation to the contrary.

20 c. The New Jersey Economic Development Authority is hereby
21 authorized to sell and convey all or any portion of its right, title,
22 and interest in the property described in subsection a. of this section
23 to the New Jersey Performing Arts Center, in one or more series of
24 transactions on such terms and conditions, and for such
25 consideration, as shall be determined by the authority in its sole
26 discretion and to enter into any agreements and amend any existing
27 agreements required to effectuate this sale and conveyance. Any
28 such sale or conveyance shall not require the approval of any other
29 party or entity, notwithstanding any other law or regulation to the
30 contrary.¹

31
32 ¹**[9.] 10.** Section 2 of P.L.2007, c.346 (C.34:1B-208) is
33 amended to read as follows:

34 2. As used in this act:

35 "Affiliate" means an entity that directly or indirectly controls, is
36 under common control with, or is controlled by the business.
37 Control exists in all cases in which the entity is a member of a
38 controlled group of corporations as defined pursuant to section 1563
39 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the
40 entity is an organization in a group of organizations under common
41 control as defined pursuant to subsection (b) or (c) of section 414 of
42 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
43 may establish by clear and convincing evidence, as determined by
44 the Director of the Division of Taxation in the Department of the
45 Treasury, that control exists in situations involving lesser
46 percentages of ownership than required by those statutes. An
47 affiliate of a business may contribute to meeting either the qualified
48 investment or full-time employee requirements of a business that

1 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
2 209).

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

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

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

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

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

1 combination thereof, is subject to the payment of estimated taxes, as
 2 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
 3 et seq. "Full-time employee" shall not include any person who
 4 works as an independent contractor or on a consulting basis for the
 5 business.

6 "Mixed use project" means a project comprising both a qualified
 7 business facility and a qualified residential project.

8 "Partnership" means an entity classified as a partnership for
 9 federal income tax purposes.

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

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

18 "Qualified residential project" shall have the meaning ascribed to
 19 that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).

20 "Residential unit" means a residential dwelling unit such as a
 21 rental apartment, a condominium or cooperative unit, a hotel room,
 22 or a dormitory room.

23 "Urban transit hub" means:

24 a. ²(1)² property located within a ¹[1/2] ²[one¹] 1/2² mile
 25 radius surrounding the mid point of a New Jersey Transit
 26 Corporation, Port Authority Transit Corporation or Port Authority
 27 Trans-Hudson Corporation rail station platform area ¹[, including
 28 all light rail stations]¹, ²including all light rail stations,² and

29 ²(2)² property located within a one mile radius of the mid point
 30 of the platform area of ¹[such]¹ ²such² a ²[¹light¹]² rail station if
 31 the property is in a qualified municipality under the "Municipal
 32 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
 33 (C.52:27BBB-1 et seq.) ²or in an area that is the subject of a Choice
 34 Neighborhoods Transformation Plan funded by the federal
 35 Department of Housing and Urban Development, and

36 ²(3) the site of the campus of an acute care medical facility
 37 located within a one mile radius of the mid point of the platform
 38 area of such a rail station, and

39 ²(4) the site of a closed hospital located within a one mile radius
 40 of the mid point of the platform area of such a rail station²;

41 b. property located within a 1/2 mile radius surrounding the
 42 mid point of ²[¹(1) any light rail station platform area other than a
 43 station that is in a qualified municipality under the "Municipal
 44 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
 45 (C.52:27BBB-1 et seq.) and (2)¹]² one of up to two underground
 46 light rail stations' platform areas that are most proximate to an
 47 interstate rail station;

1 c. property adjacent to, or connected by rail spur to, a freight
2 rail line if the business utilizes that freight line at any rail spur
3 located adjacent to or within a one mile radius surrounding the
4 entrance to the property for loading and unloading freight cars on
5 trains;

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

9 A property which is partially included within the radius shall
10 only be considered part of the urban transit hub if over 50 percent
11 of its land area falls within the radius.

12 "Rail station" shall not include any rail station located at an
13 international airport, except that any property within a 1/2 mile
14 radius surrounding the mid point of a New Jersey Transit
15 Corporation rail station platform area at an international airport
16 upon which a qualified business facility is constructed or renovated
17 commencing after the effective date of P.L. , c. (C.)
18 (pending before the Legislature as this bill) shall be deemed an
19 urban transit hub, excluding any property owned or controlled by
20 the Port Authority of New York and New Jersey.

21 (cf: P.L.2011, c.89, s.1)

22
23 '[10.] 11.' Section 3 of P.L.2007, c.346 (C.34:1B-209) is
24 amended to read as follows:

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

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

47 (3) A business that is a tenant in a qualified business facility, the
48 owner of which has made or acquired capital investments in the

1 facility totaling not less than \$50,000,000, shall occupy a leased
2 area of the qualified business facility that represents at least
3 \$17,500,000 of the capital investment in the facility at which the
4 tenant business and up to two other tenants in the qualified business
5 facility shall employ not fewer than 250 full-time employees in the
6 aggregate to be eligible for a credit under this section. The amount
7 of capital investment in a facility that a leased area represents shall
8 be equal to that percentage of the owner's total capital investment in
9 the facility that the percentage of net leasable area leased by the
10 tenant is of the total net leasable area of the qualified business
11 facility. Capital investments made by a tenant shall be deemed to
12 be included in the calculation of the capital investment made or
13 acquired by the owner, but only to the extent necessary to meet the
14 owner's minimum capital investment of \$50,000,000. Capital
15 investments made by a tenant and not allocated to meet the owner's
16 minimum capital investment threshold of \$50,000,000 shall be
17 added to the amount of capital investment represented by the
18 tenant's leased area 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.). A business that is
24 allowed a tax credit under this section shall not be eligible for
25 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et
26 al.). A business shall not qualify for a tax credit under this section,
27 based upon capital investment and employment of full-time
28 employees, if that capital investment or employment was the basis
29 for which a grant was provided to the business pursuant to the
30 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-
31 237 et seq.).

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

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

40 (7) A business shall be allowed a tax credit of 100 percent of its
41 capital investment, made after the effective date of P.L.2011, c.89
42 but prior to its submission of documentation pursuant to subsection
43 c. of this section, in a qualified business facility that is part of a
44 mixed use project, provided that (a) the qualified business facility
45 represents at least \$17,500,000 of the total capital investment in the
46 mixed use project, (b) the business employs not fewer than 250 full-
47 time employees in the qualified business facility, and (c) the total
48 capital investment in the mixed use project of which the qualified

1 business facility is a part is not less than \$50,000,000. The
2 allowance of credits under this paragraph shall be subject to the
3 restrictions and requirements, to the extent that those are not
4 inconsistent with the provisions of this paragraph, set forth in
5 paragraphs (1) through (6) of this subsection, including but not
6 limited to the requirement that the business shall demonstrate to the
7 authority, at the time of application, that the State's financial
8 support of the proposed capital investment in a qualified business
9 facility will yield a net positive benefit to both the State and the
10 eligible municipality.

11 (8) In determining whether a proposed capital investment will
12 yield a net positive benefit, the authority shall not consider the
13 transfer of an existing job from one location in the State to another
14 location in the State as the creation of a new job, unless (a) the
15 business proposes to transfer existing jobs to a municipality in the
16 State as part of a consolidation of business operations from two or
17 more other locations that are not in the same municipality whether
18 in-State or out-of-State, or (b) the business's chief executive officer,
19 or equivalent officer, submits a certification to the authority
20 indicating that the existing jobs are at risk of leaving the State and
21 that the business's chief executive officer, or equivalent officer, has
22 reviewed the information submitted to the authority and that the
23 representations contained therein are accurate, and the business
24 intends to employ not fewer than 500 full-time employees in the
25 qualified business facility. In the event that this certification by the
26 business's chief executive officer, or equivalent officer, is found to
27 be willfully false, the authority may revoke any award of tax credits
28 in their entirety, which revocation shall be in addition to any other
29 criminal or civil penalties that the business and the officer may be
30 subject to. When considering an application involving intra-State
31 job transfers, the authority shall require the company to submit the
32 following information as part of its application: a full economic
33 analysis of all locations under consideration by the company; all
34 lease agreements, ownership documents, or substantially similar
35 documentation for the business's current in-State locations; and all
36 lease agreements, ownership documents, or substantially similar
37 documentation for the potential out-of-State location alternatives, to
38 the extent they exist. Based on this information, and any other
39 information deemed relevant by the authority, the authority shall
40 independently verify and confirm, by way of making a factual
41 finding by separate vote of the authority's board, the business's
42 assertion that the jobs are actually at risk of leaving the State,
43 before a business may be awarded any tax credits under this section.

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

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

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

21 The credit amount that may be taken for a tax period of the
22 business that exceeds the final liabilities of the business for the tax
23 period may be carried forward for use by the business in the next 20
24 successive tax periods, and shall expire thereafter, provided that the
25 value of all credits approved by the authority against tax liabilities
26 pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year
27 shall not exceed \$150,000,000.

28 The amount of credit allowed for a tax period to a business that
29 is a tenant in a qualified business facility shall not exceed the
30 business' total lease payments for occupancy of the qualified
31 business facility for the tax period.

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

44 (3) The amount of credit allowed may be applied against the tax
45 liability otherwise due pursuant to section 5 of P.L.1945, c.162
46 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132
47 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950,
48 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

1 d. (1) If, in any tax period, fewer than 200 full-time employees
2 of the business at the qualified business facility are employed in
3 new full-time positions, the amount of the credit otherwise
4 determined pursuant to final calculation of the award of tax credits
5 pursuant to subsection c. of this section shall be reduced by 20
6 percent for that tax period and each subsequent tax period until the
7 first period for which documentation demonstrating the restoration
8 of the 200 full-time employees employed in new full-time positions
9 at the qualified business facility has been reviewed and approved by
10 the authority, for which tax period and each subsequent tax period
11 the full amount of the credit shall be allowed; provided, however,
12 that for businesses applying before January 1, 2010, there shall be
13 no reduction if a business relocates to an urban transit hub from
14 another location or other locations in the same municipality. For
15 the purposes of this paragraph, a "new full-time position" means a
16 position created by the business at the qualified business facility
17 that did not previously exist in this State.

18 (2) If, in any tax period, the business reduces the total number
19 of full-time employees in its Statewide workforce by more than 20
20 percent from the number of full-time employees in its Statewide
21 workforce in the last tax accounting or privilege period prior to the
22 credit amount approval under subsection a. of this section, then the
23 business shall forfeit its credit amount for that tax period and each
24 subsequent tax period, until the first tax period for which
25 documentation demonstrating the restoration of the business'
26 Statewide workforce to the threshold levels required by this
27 paragraph has been reviewed and approved by the authority, for
28 which tax period and each subsequent tax period the full amount of
29 the credit shall be allowed.

30 (3) If, in any tax period, (a) the number of full-time employees
31 employed by the business at the qualified business facility located
32 in an urban transit hub within an eligible municipality drops below
33 250, or (b) the number of full-time employees, who are not the
34 subject of intra-State job transfers, pursuant to paragraph (8) of
35 subsection a. of this section, employed by the business at any other
36 business facility in the State, whether or not located in an urban
37 transit hub within an eligible municipality, drops by more than 20
38 percent from the number of full-time employees in its workforce in
39 the last tax accounting or privilege period prior to the credit amount
40 approval under this section, then the business shall forfeit its credit
41 amount for that tax period and each subsequent tax period, until the
42 first tax period for which documentation demonstrating the
43 restoration of the number of full-time employees employed by the
44 business at the qualified business facility to 250 or an increase
45 above the 20 percent reduction has been reviewed and approved by
46 the authority, for which tax period and each subsequent tax period
47 the full amount of the credit shall be allowed.

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

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

12 e. (1) The Executive Director of the New Jersey Economic
13 Development Authority, in consultation with the Director of the
14 Division of Taxation in the Department of the Treasury, shall adopt
15 rules in accordance with the "Administrative Procedure Act,"
16 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
17 this act, including but not limited to: examples of and the
18 determination of capital investment; the enumeration of eligible
19 municipalities; specific delineation of urban transit hubs; the
20 determination of the limits, if any, on the expense or type of
21 furnishings that may constitute capital improvements; the
22 promulgation of procedures and forms necessary to apply for a
23 credit, including the enumeration of the certification procedures and
24 allocation of tax credits for different phases of a qualified business
25 facility or mixed use project; and provisions for credit applicants to
26 be charged an initial application fee, and ongoing service fees, to
27 cover the administrative costs related to the credit.

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

35 (cf: P.L.2011, c.89, s.2)

36
37 ¹[11.] ^{12.}Section 2 of P.L.1996, c.25 (C.34:1B-113) is
38 amended to read as follows:

39 2. As used in this act:

40 "Affiliate" means an entity that directly or indirectly controls, is
41 under common control with, or is controlled by the business.
42 Control exists in all cases in which the entity is a member of a
43 controlled group of corporations as defined pursuant to section 1563
44 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the
45 entity is an organization in a group of organizations under common
46 control as defined pursuant to subsection (b) or (c) of section 414 of
47 the Internal Revenue Code of 1986 (26 U.S.C. s.414). An entity
48 may establish by clear and convincing evidence, as determined by

1 the Director of the Division of Taxation in the Department of the
2 Treasury, that control exists in situations involving lesser
3 percentages of ownership than required by those statutes;

4 "Authority" means the New Jersey Economic Development
5 Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

6 "Business retention or relocation grant of tax credits" or "grant of
7 tax credits" means a grant which consists of the value of
8 corporation business tax credits against the liability imposed
9 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or credits
10 against the taxes imposed on insurers pursuant to P.L.1945, c.132
11 (C.54:18A-1 et al.), section 1 of P.L.1950, c.231 (C.17:32-15), and
12 N.J.S.17B:23-5, provided to fund a portion of retention and
13 relocation costs pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.);

14 "Business" means an employer located in this State that has
15 operated continuously in the State, in whole or in part, in its current
16 form or as a predecessor entity for at least 10 years prior to filing an
17 application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and
18 which is subject to the provisions of R.S.43:21-1 et seq. and may
19 include a sole proprietorship, a partnership, or a corporation that
20 has made an election under Subchapter S of Chapter One of Subtitle
21 A of the Internal Revenue Code of 1986, or any other business
22 entity through which income flows as a distributive share to its
23 owners, limited liability company, nonprofit corporation, or any
24 other form of business organization located either within or outside
25 the State. A business shall include an affiliate of the business if that
26 business applies for a credit based upon any capital investment
27 made by an affiliate or based upon retained full-time jobs of an
28 affiliate;

29 "Capital investment" means expenses that the business incurs
30 following its submission of an application to the authority pursuant
31 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the
32 Capital Investment Completion Date, as shall be defined in the
33 project agreement, for: (1) the site preparation and construction,
34 renovation, improvement, equipping of, or obtaining and installing
35 fixtures and machinery, apparatus or equipment in, a newly
36 constructed, renovated or improved building, structure, facility, or
37 improvement to real property in this State; and (2) obtaining and
38 installing fixtures and machinery, apparatus or equipment in a
39 building, structure, or facility in this State. Provided however, that
40 "capital investment" shall not include soft costs such as financing
41 and design, furniture or decorative items such as artwork or plants,
42 or office equipment if the office equipment is property with a
43 recovery period of less than five years. The recovery period of any
44 property, for purposes of this section, shall be determined as of the
45 date such property is first placed in service or use in this State by
46 the business, determined in accordance with section 168 of the
47 federal Internal Revenue Code of 1986 (26 U.S.C. s.168. A
48 business that acquires or leases a qualified business facility shall

1 also be deemed to have acquired the capital investment made or
2 acquired by the seller or landlord, as the case may be;

3 "Certificate of compliance" means a certificate issued by the
4 authority pursuant to section 9 of P.L.1996, c.25 (C.34:1B-120);

5 "Chief executive officer" means the chief executive officer of the
6 New Jersey Economic Development Authority;

7 "Commitment duration" means the tax credit term and five years
8 from the end of the tax credit term specified in the project
9 agreement entered into pursuant to section 5 of P.L.1996, c.25
10 (C.34:1B-116);

11 "Designated industry" means an industry identified by the
12 authority as desirable for the State to maintain, which may be
13 designated and amended via the promulgation of rules by the
14 authority to reflect changing market conditions;

15 "Designated urban center" means an urban center designated in
16 the State Development and Redevelopment Plan adopted by the
17 State Planning Commission;

18 "Eligible position" means a full-time position retained by a
19 business in this State for which a business provides employee health
20 benefits under a group health plan as defined under section 14 of
21 P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined
22 under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or
23 contract of health insurance covering more than one person issued
24 pursuant to Article 2 of Chapter 27 of Title 17B of the New Jersey
25 Statutes;

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

1 not include any person who works as an independent contractor or
2 on a consulting basis for the business;

3 "New business location" means the premises to which a business
4 will relocate that the business has either purchased or built or for
5 which the business has entered into a purchase agreement or a
6 written lease for a period of no less than the commitment duration
7 or eight years, whichever is greater, from the date of relocation. A
8 "new business location" also means the business's current location
9 or locations if the business makes a capital investment equal to the
10 total value of the business retention or relocation grant of tax credits
11 to the business at that location or locations;

12 "Program" means the Business Retention and Relocation
13 Assistance Grant Program created pursuant to P.L.1996, c.25
14 (C.34:1B-112 et seq.);

15 "Project agreement" means an agreement between a business and
16 the authority that sets the forecasted schedule for completion and
17 occupancy of the project, the date the commitment duration shall
18 commence, the amount and tax credit term of the applicable grant of
19 tax credits, and other such provisions which further the purposes of
20 P.L.1996, c.25 (C.34:1B-112 et seq.);

21 "Retained full-time job" means an eligible position that currently
22 exists in New Jersey and is filled by a full-time employee but
23 which, because of a potential relocation by the business, is at risk of
24 being lost to another state or country. For the purposes of
25 determining a number of retained full-time jobs, the eligible
26 positions of an affiliate shall be considered the eligible positions of
27 the business;

28 "Tax credit term" means the period of time commencing with the
29 first issuance of tax credits and continuing during the period in
30 which the recipient of a grant of tax credits is eligible to apply the
31 tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3);
32 and

33 "Yearly tax credit amount" means \$1,500 times the number of
34 retained full-time jobs. "Yearly tax credit amount" does not include
35 the amount of any bonus award authorized pursuant to section 5 of
36 P.L.2004, c.65 (C.34:1B-115.1).
37 (cf: P.L.2010, c.123, s.1)

38
39 ¹**[12.] 13.**¹Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is
40 amended to read as follows:

41 7. a. The total value of the grants of tax credits, approved by
42 the authority pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that
43 may be applied against tax liability **[in a fiscal year]** for any tax
44 period shall not exceed an aggregate annual limit of \$20,000,000.
45 The total value of the grants of tax credits, issued pursuant to
46 P.L.1996, c.25 (C.34:1B-112 et seq.), that a single business may
47 apply against its tax liability shall not exceed an aggregate annual
48 limit of \$10,000,000 in a fiscal year. A tax credit issued pursuant to

1 P.L.1996, c.25 may be applied against liability in the single tax
2 period in which the tax credit or portion of the tax credit may be
3 applied as prescribed by the project agreement and as set forth in
4 subsection b. of this section and shall expire thereafter.

5 b. Subject to the limitation set forth in subsection a. of this
6 section, grants of tax credits shall be approved for qualifying
7 businesses according to the following schedule, and shall be issued
8 upon the execution and satisfaction of the requirements of the
9 project agreement between the authority and the business with an
10 approved project:

11 (1) for a project that covers a business relocating or retaining 50
12 to 250 full-time employees, a grant of tax credits shall be for the
13 yearly tax credit amount plus any applicable bonus award
14 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1),
15 and may be applied against liability in the tax period in which the
16 tax credit is issued;

17 (2) for a project that covers a business relocating or retaining
18 251 to 400 full-time employees, a grant of tax credits shall be for
19 two times the yearly tax credit amount plus any applicable bonus
20 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
21 115.1), and may be applied against liability in the tax period in
22 which the tax credit is issued and the following tax period, for one-
23 half of the total grant award per tax period, provided that the use of
24 the credit must be accompanied by a certificate of compliance;

25 (3) for a project that covers a business relocating or retaining
26 401 to 600 full-time employees, a grant of tax credits shall be for
27 three times the yearly tax credit amount plus any applicable bonus
28 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
29 115.1) and may be applied against liability in the tax period in
30 which the tax credit is issued and the following two tax periods, for
31 one-third of the total grant award per tax period, provided that the
32 use of the credit must be accompanied by a certificate of
33 compliance;

34 (4) for a project that covers a business relocating or retaining
35 601 to 800 full-time employees, a grant of tax credits shall be for
36 four times the yearly tax credit amount plus any applicable bonus
37 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
38 115.1) and may be applied against liability in the tax period in
39 which the tax credit is issued and the following three tax periods,
40 for one-fourth of the total grant award per tax period, provided that
41 the use of the credit must be accompanied by a certificate of
42 compliance;

43 (5) for a project that covers a business relocating or retaining
44 801 to 1,000 full-time employees, a grant of tax credits shall be for
45 five times the yearly tax credit amount plus any applicable bonus
46 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
47 115.1) and may be applied against liability in the tax period in
48 which the tax credit is issued and the following four tax periods for

1 one-fifth of the total grant award per tax period, provided that the
2 use of the credit must be accompanied by a certificate of
3 compliance; and

4 (6) for a project that covers a business relocating or retaining
5 1,001 or more full-time employees, a grant of tax credits shall be
6 for six times the yearly tax credit amount plus any applicable bonus
7 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
8 115.1) and may be applied against liability in the tax period in
9 which the tax credit is issued and the following five tax periods, for
10 one-sixth of the total grant award per tax period, provided that the
11 use of the credit must be accompanied by a certificate of
12 compliance.

13 c. If the approval of a grant of tax credits pursuant to this
14 section would exceed the \$20,000,000 aggregate annual limit, the
15 authority may award a smaller grant of tax credits or no grants of
16 tax credits, as necessary to comply with the aggregate annual limit.
17 (cf: P.L.2010, c.123, s.6)

18
19 '[13.] 14.' Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is
20 amended to read as follows:

21 17. a. The authority shall establish a corporation business tax
22 credit and insurance premiums tax credit certificate transfer
23 program to allow businesses in this State with unused amounts of
24 tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and
25 otherwise allowable, that cannot be applied by the business to
26 which originally issued before the expiration of the credit, to
27 surrender those tax credits for use by other corporation business and
28 insurance premiums taxpayers in this State. The tax credits may be
29 used on the corporation business tax and insurance premiums tax
30 returns to be filed by those taxpayers in exchange for private
31 financial assistance to be provided by the corporation business
32 taxpayer or insurance premiums taxpayer that is the recipient of the
33 corporation business tax credit certificate or insurance premiums
34 tax credit certificate to assist in the funding of costs incurred by the
35 relocating business.

36 b. Businesses may apply to the executive director of the
37 authority and the Director of the Division of Taxation for a tax
38 credit transfer certificate, covering one or more years. Upon receipt
39 thereof, the business may sell or assign the tax credit certificate in
40 exchange for private financial assistance to be made by the
41 purchaser in an amount equal to at least 75% of the amount of the
42 surrendered tax credit of a business relocating in the State. The
43 private financial assistance shall assist in funding expenses incurred
44 in connection with the operation of the business in the State,
45 including but not limited to the expenses of fixed assets, such as the
46 construction and acquisition and development of real estate,
47 materials, start-up, tenant fit-out, working capital, salaries, research
48 and development expenditures and any other expenses determined

1 by the authority to be necessary to carry out the purposes of
2 P.L.1996, c.25 (C.34:1B-112 et seq.).

3 c. The authority shall establish procedures to facilitate such
4 transfers and encourage liquidity and simplicity in the market for
5 the purchase and sale of such certificates, including, in the
6 authority's discretion, coordinating the applications for surrender
7 and acquisition of unused but otherwise allowable tax credits
8 pursuant to this section in a manner that can best stimulate and
9 encourage the extension of private financial assistance to businesses
10 in this State.

11 d. The authority shall, in consultation with the Director of the
12 Division of Taxation, develop criteria for the approval or
13 disapproval of applications.

14 (cf: P.L.2010, c.123, s.14)

15

16 '【14.】 15.' (New section) Section 6 of P.L.1996, c.25 (34:1B-
17 117) is repealed.

18

19 '【15.】 16. ' This act shall take effect immediately.