Sponsored by:
Assemblyman TROY SINGLETON
District 7 (Burlington)

SYNOPSIS
Modifies certain provisions of EDA incentive programs; requires EDA to provide report with review and analysis of those programs.

CURRENT VERSION OF TEXT
As reported by the Assembly Commerce and Economic Development Committee on June 2, 2016, with amendments.
AN ACT concerning certain economic incentive programs, amending P.L.2011, c.149 and P.L.2009, c.90, and supplementing P.L.1974, c.80. (C.34:1B-1 et seq.)

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

1. Section 3 of P.L.2011, c.149 (C.34:1B-244) is amended to read as follows:

   3. a. The Grow New Jersey Assistance Program is hereby established as a program under the jurisdiction of the New Jersey Economic Development Authority and shall be administered by the authority. The purpose of the program is to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State. To implement this purpose, the program may provide tax credits to eligible businesses for an eligibility period not to exceed 10 years.

   To be eligible for any tax credits pursuant to P.L.2011, c.149 (C.34:1B-242 et al.), a business's chief executive officer or equivalent officer shall demonstrate to the authority, at the time of application, that:

   (1) the business, expressly including its landlord or seller, will make, acquire, or lease a capital investment equal to, or greater than, the applicable amount set forth in subsection b. of this section at a qualified business facility at which it will:

   (a) retain full-time jobs in an amount equal to or greater than the applicable number set forth in subsection c. of this section;

   (b) create new full-time jobs in an amount equal to or greater than the applicable number set forth in subsection c. of this section; or

   (c) in combination, retain full-time jobs and create new full-time jobs in an amount equal to or greater than the applicable number set forth in subsection c. of this section;

   (2) the qualified business facility shall be constructed in accordance with the minimum environmental and sustainability standards;

   (3) the capital investment resultant from the award of tax credits and the resultant retention and creation of full-time jobs will yield a net positive benefit to the State equaling at least 110 percent of the requested tax credit allocation amount, which determination is calculated prior to taking into account the value of the requested tax credit and shall be based on the benefits generated during the [first 20 years following the completion of the project] commitment.

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 June 2, 2016.
period, except that [):

(a) for a mega project or a project located in a Garden State Growth Zone, the determination shall be based on the benefits generated during a period of up to 30 years following the completion of the project, as determined by the authority, and

(b) for a project located in a Garden State Growth Zone which qualified for the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), the net positive benefit determination shall be based on the benefits generated during a period of up to 35 years following completion of the project, as determined by the authority, and shall equal yield a net positive benefit to the State of at least 100 percent of the requested tax credit allocation amount and may utilize the value of those property taxes subject to the provisions of section 24 of P.L.2013 c.161 (C.52:27D-489s), or the value of those property taxes that would have been assessed on the new construction, improvements, or substantial rehabilitation of structures on real property if the structures were not exempt because they are on real property owned by a public entity, and incremental sales and excise taxes that are derived from activities within the area and which are rebated or retained by the municipality pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.) or any other law providing for such rebate or retention; and

(4) except as provided in subsection f. of this section, the award of tax credits will be a material factor in the business's decision to create or retain the minimum number of new or retained full-time jobs for eligibility under the program.

With respect to the provisions of paragraph (3) of this subsection, in the case of a project located in a Garden State Growth Zone, the authority, in its discretion, may award bonuses in its net positive benefit calculation.

b. For all projects approved after the effective date of P.L.2013, c.161, the minimum capital investment required to be eligible under this program shall be as follows:

(1) for the rehabilitation, improvement, fit-out, or retrofit of an existing industrial, warehousing, logistics, or research and development premises for continued similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of $20 per square foot of gross leasable area;

(2) for the new construction of an industrial, warehousing, logistics, or research and development premises for similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of $60 per square foot of gross leasable area;

(3) for the rehabilitation, improvement, fit-out, or retrofit of an existing premises that does not qualify pursuant to paragraph (1) or (2) of this subsection, a minimum investment of $40 per square foot of gross leasable area; and
(4) for the new construction of a premises that does not qualify pursuant to paragraph (1) or (2) of this subsection, a minimum investment of $120 per square foot of gross leasable area.

The minimum capital investment required by this subsection shall be reduced by one-third for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties.

c. The minimum number of new or retained full-time jobs required to be eligible under this program shall be as follows:

(1) for a business that is a technology startup company or a manufacturing company, a minimum of 10 new or 25 retained full-time jobs;

(2) for a business engaged primarily in a targeted industry other than a technology startup company or a manufacturing company, a minimum of 25 new or 35 retained full-time jobs; and

(3) for any other business, a minimum of 35 new or 50 retained full-time jobs.

The minimum number of new or retained full-time jobs required by this subsection shall be reduced by one-quarter for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties.

d. To assist the authority in determining whether a proposed capital investment will yield a net positive benefit, the business's chief executive officer, or equivalent officer, shall submit a certification to the authority indicating: (1) that any existing full-time jobs are at risk of leaving the State or being eliminated; (2) that any projected creation or retention, as applicable, of new full-time jobs would not occur but for the provision of tax credits under the program; and (3) that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the authority and that the representations contained therein are accurate, provided however, that in satisfaction of the provisions of paragraphs (1) and (2) of this subsection, the certification with respect to a project in a Garden State Growth Zone that qualifies under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or a project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority, shall indicate that the provision of tax credits under the program is a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino
Reinvestment Development Authority. In the event that this
1 certification by the business's chief executive officer, or equivalent
2 officer, is found to be willfully false, the authority may revoke any
3 award of tax credits in their entirety, which revocation shall be in
4 addition to any other criminal or civil penalties that the business
5 and the officer may be subject to. When considering an application
6 involving intra-State job transfers, the authority shall require the
7 business to submit the following information as part of its
8 application: a full economic analysis of all locations under
9 consideration by the business; all lease agreements, ownership
documents, or substantially similar documentation for the business's
10 current in-State locations; and all lease agreements, ownership
documents, or substantially similar documentation for the potential
11 out-of-State location alternatives, to the extent they exist. Based on
12 this information, and any other information deemed relevant by the
13 authority, the authority shall independently verify and confirm, by
14 way of making a factual finding by separate vote of the authority's
15 board, the business's assertion that the jobs are actually at risk of
16 leaving the State, and as to the date or dates at which the authority
17 expects that those jobs would actually leave the State, or, with
18 respect to projects located in a Garden State Growth Zone that
19 qualifies under the "Municipal Rehabilitation and Economic
20 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or projects
21 located in a Garden State Growth Zone which contains a Tourism
22 District as established pursuant to section 5 of P.L.2011, c.18
23 (C.5:12-219) and regulated by the Casino Reinvestment
24 Development Authority, the business's assertion that the provision
25 of tax credits under the program is a material factor in the business's
26 decision to make a capital investment and locate in a Garden State
27 Growth Zone that qualifies under the "Municipal Rehabilitation and
29 in a Garden State Growth Zone which contains a Tourism District
30 as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219)
31 and regulated by the Casino Reinvestment Development Authority,
32 before a business may be awarded any tax credits under this section.
33 e. A project that consists solely of point-of-final-purchase
34 retail facilities shall not be eligible for a grant of tax credits. If a
35 project consists of both point-of-final-purchase retail facilities and
36 non-retail facilities, only the portion of the project consisting of
37 non-retail facilities shall be eligible for a grant of tax credits. For a
38 qualified business facility that is a mixed-use project that includes
39 retail facilities and that is located in a Garden State Growth Zone or
40 the Atlantic City Tourism District as established pursuant to section
41 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino
42 Reinvestment Development Authority, retail facilities in an amount
43 up to 7.5 percent of the mixed-use project may be included in the
44 mixed-use project application for a grant of tax credits along with
45 the non-retail facilities, and that application may include in the
aggregate the pro-rata number of full-time employees employed by any number of tenants or other occupants of the included retail facilities. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this section, a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by a full-service supermarket or grocery store, located in a Garden State Growth Zone which qualified under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27B-BB-1 et al.), or a tourism destination project in the Atlantic City Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219), or catalog distribution centers shall not be considered point-of-final-purchase retail facilities.

f. The authority may determine as eligible for tax credits under the program any business that is required to respond to a request for proposals and to fulfill a contract with the federal government although the business's chief executive officer or equivalent officer has not demonstrated to the authority that the award of tax credits will be a material factor in the business's decision to retain the minimum number of retained full-time jobs, as otherwise required by this section. The authority may, in its discretion, consider the economic benefit of the retained jobs servicing the contract in conducting a net benefit analysis required by paragraph (4) of subsection a. of this section. For the purposes of this subsection, "retained full-time jobs" includes jobs that are at risk of being eliminated. Applications to the authority for eligibility under the program pursuant to the criteria set forth in this subsection shall be completed by December 31, 2013. Submission of a proposal to the federal government prior to authority approval shall not disqualify a business from the program.

g. Nothing shall preclude a business from applying for tax credits under the program for more than one project pursuant to one or more applications.

(cf: P.L.2014, c.63, s.3)

2. Section 4 of P.L.2011, c.149 (C.34:1B-245) is amended to read as follows:

4. The authority shall require an eligible business to enter into an incentive agreement prior to the issuance of tax credits. The incentive agreement shall include, but shall not be limited to, the following:

a. A detailed description of the proposed project which will result in job creation or retention, and the number of new or retained full-time jobs that are approved for tax credits.

b. The eligibility period of the tax credits, including the first year for which the tax credits may be claimed.
c. Personnel information that will enable the authority to administer the program.

d. A requirement that the applicant maintain the project at a location in New Jersey for the commitment period, with at least the minimum number of full-time employees as required by this program, and a provision to permit the authority to recapture all or part of any tax credits awarded, at its discretion, if the business does not remain in compliance with this provision for the required term, and in the instance of the business terminating an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), such permitted recapture may be calculated to recognize the period of time that the business was in compliance prior to termination.

e. A method for the business to certify that it has met the capital investment and employment requirements of the program pursuant to paragraph (1) of subsection a. of section 3 of P.L.2011, c.149 (C.34:1B-244) and to report annually to the authority the number of full-time employees for which the tax credits are to be made.

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

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

h. A provision establishing the conditions under which the agreement may be terminated.

i. A requirement that each worker employed to perform building maintenance services, custodial services, or security services at a qualified business facility by a business or a tenant or subcontractor of a business or tenant shall be paid not less than the prevailing wage rate for the worker’s craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

(cf: P.L.2013, c.161, s.9)

3. Section 8 of P.L.2009, c.90 (C.52:27D-489h) is amended to read as follows:

8. a. (1) The authority, in consultation with the State Treasurer, shall promulgate an incentive grant application form and procedure for the Economic Redevelopment and Growth Grant program.

(2) (a) The Local Finance Board, in consultation with the authority, shall develop a minimum standard incentive grant application form for municipal Economic Redevelopment and Growth Grant programs.

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

(c) The authority shall require, through regulation, that each worker employed in building maintenance services, custodial services, or security services of a redevelopment project by a developer or a tenant or subcontractor of a developer or tenant shall be paid not less than the prevailing wage rate for the worker’s craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

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

(1) the status of control of the entire redevelopment project site;
(2) all required State and federal government permits that have been issued for the redevelopment project, or will be issued pending resolution of financing issues;
(3) local planning and zoning board approvals, as required, for the redevelopment project;
(4) estimates of the revenue increment base, the eligible revenues for the project, and the assumptions upon which those estimates are made.

c. (1) With regard to State tax revenues proposed to be pledged for an incentive grant the authority and the State Treasurer shall review the project costs, evaluate and validate the project financing gap estimated by the developer, and conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the project, except with regards to a qualified residential project, a mixed use parking project, or a project involving university infrastructure, will result in net benefits to the State including, without limitation, both direct and indirect economic benefits and non-financial community revitalization objectives, including but not limited to, the promotion of the use of public transportation in the case of the ancillary infrastructure project portion of any transit project.

(2) With regard to local incremental revenues proposed to be pledged for an incentive grant the authority and the Local Finance Board shall review the project costs, and except with respect to an application by a municipal redeveloper, evaluate and validate the project financing gap projected by the developer, and conduct a local fiscal impact analysis to ensure that the overall public assistance provided to the project, except with regards to a qualified residential project, a mixed use parking project, or a project involving university infrastructure, will result in net benefits to the municipality wherein the redevelopment project is located.
including, without limitation, both direct and indirect economic
benefits and non-financial community revitalization objectives,
including but not limited to, the promotion of the use of public
transportation in the case of the ancillary infrastructure project
portion of any transit project.

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

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

(5) A developer who has already applied for an incentive grant
award prior to the effective date of the "New Jersey Economic
but who has not yet been approved for the grant, or has not
executed an agreement with the authority, may proceed under that
application or seek to amend the application or reapply for an
incentive grant award for the same project or any part thereof for
the purpose of availing himself or herself of any more favorable
provisions of the Economic Redevelopment and Growth Grant
program established pursuant to the "New Jersey Economic
except that projects with costs exceeding $200,000,000 shall not be
eligible for revised percentage caps under subsection d. of section

cf: P.L.2015, c.242, s.3)

4. (New section) a. The authority shall not approve an
application for a development subsidy if the applicant or its
corporate parent became an inverted domestic corporation prior to
its application.

b. If a recipient corporation or corporate parent becomes an
inverted domestic corporation during the term of a development
subsidy, the recipient corporation or corporate parent shall pay back
the total value of the development subsidy.

c. A recipient corporation or corporate parent shall submit to
the authority a standing certificate attesting to the legal status of the
recipient corporation and corporate parent one year after receiving a
development subsidy and annually throughout the term of the
development subsidy.

d. The authority shall not award a development subsidy to a
recipient corporation that previously received a development
subsidy that was a loan or loan guarantee if the recipient
corporation is in default, or the payment of principal and interest is
greater than 24 months overdue, on that previously awarded loan or
loan guarantee.

e. As used in this section:
A328 [1R] SINGLETON

10

1(1) “corporate parent,” “development subsidy,” “recipient
corporation” and “tax expenditure” shall have the same meaning as
provided in section 3 of P.L.2007, c.200 (C.52:39-3); and

2(2) “inverted domestic corporation” means a company that has
been determined to be an inverted company by the U.S. Department
of the Treasury or the Internal Revenue Service.\(^1\)

3\[5.\] \(^1\) (New section) a. The authority shall submit a
written report to the Governor and, pursuant to section 2 of
P.L.1991, c.164 (C.52:14-19.1), to the Legislature providing a
comprehensive review and analysis of the Grow New Jersey
Assistance Program, established pursuant to P.L.2011, c.149
(C.34:1B-242 et seq.), the Economic Redevelopment and Growth
Grant program, established pursuant to section 5 of P.L.2009, c.90
(C.52:27D-489e), with particular emphasis on the recalibration of
those programs, the creation of Garden State Growth Zones,
pursuant to P.L.2013, c.161 (C.52:27D-489p et al.), and the
effectiveness of those programs on private-sector job creation and
retention and capital investment.

b. The report required pursuant to subsection a. of this section
shall be submitted within three months of the effective date of
P.L.,
c. (C.\(\)) (pending before the Legislature as this bill) and every
three years thereafter until the final incentive is awarded under the
Grow New Jersey Assistance Program and the Economic
Redevelopment and Growth Grant program. The report shall
include, but not be limited to:

1(1) the amount of liabilities in terms of the foregone tax revenue
to the State and local governments of the programs cited in this
section;

2(2) a cost-benefit analysis of the programs cited in this section;

3(3) an assessment of the success of the programs in achieving
the goal of encouraging businesses to engage in economic
development, job creation, and the preservation of existing jobs
within New Jersey; and

4(4) any recommendations for improving the operation and
effectiveness of the programs cited in this section, including
recommendations for legislation.

c. The authority may contract with a public or private not-for-
profit, non-partisan entity to undertake the review and analysis of
the programs cited in this section and to prepare the report required
pursuant to subsection a. of this section. The authority shall make
the report available on its Internet website.

\[6.\] \(^1\) This act shall take effect immediately.