SENATE, No. 3631

STATE OF NEW JERSEY

217th LEGISLATURE

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Sponsored by:
Senator RAYMOND J. LESNIAK
District 20 (Union)
Senator SAMUEL D. THOMPSON
District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Provides tax credits for certain business headquarters located in State.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning tax credits for certain business headquarters located in this State 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. The Legislature finds and declares that:

a. (1) the Grow New Jersey Assistance Program (Grow Program) is the State's premier job creation and retention business incentive program that offers eligible businesses creating or retaining jobs in New Jersey tax credits for making certain capital investments at certain locations in the State;

(2) according to the New Jersey Economic Development Authority (authority), the State agency that administers the Grow Program, as of the end of July 2017, the authority approved 229 projects, amounting to more than $4.4 billion in tax credits to be awarded after these businesses create or retain jobs and make capital investments;

(3) the authority reports that, collectively, these eligible businesses are to make a total capital investment of $3.85 billion, create 28,800 new full-time jobs, retain 30,420 jobs at risk of leaving the State, and create 15,730 estimated construction jobs, having an estimated net benefit to the State of $13.4 billion; and

(4) although the Grow Program is achieving its intended result of having businesses locate in the commercial areas of the State's cities and shuttered suburban office parks, thereby revitalizing these commercial areas, the State has opportunities from time to time to attract corporate headquarters that have the effect of transforming the economy of a region of the State.

b. Therefore, the Legislature determines that it is in the economic interest of the residents of this State that a new, enhanced business incentive program be created to supplement the Grow Program, where an eligible business creating at least 30,000 new, full-time, high-paying jobs and making a capital investment of at least $3 billion at a site in this State, be awarded an enhanced amount of tax credits by the authority for undertaking the construction of a corporate headquarters that has the effect of transforming the economy of a region of the State.

2. As used in P.L. , c. (C.) (pending before the Legislature as this bill):

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code (26 U.S.C. s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code (26 U.S.C. s.414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes.

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

"Business" means an applicant proposing to own or lease premises in a transformative corporate headquarters that is a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

"Capital investment" in a transformative corporate headquarters means expenses by a business or any affiliate of the business incurred after application for:

a. site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property; and

b. obtaining and installing furnishings and machinery, apparatus, or equipment, including but not limited to material goods subject to bonus depreciation under sections 168 and 179 of the federal Internal Revenue Code (26 U.S.C. s.168 and s.179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property.

In addition to the foregoing, if a business acquires or leases a transformative corporate headquarters, the capital investment made or acquired by the seller or owner, as the case may be, if pertaining primarily to the premises of the transformative corporate headquarters, shall be considered a capital investment by the business and, if pertaining generally to the transformative corporate headquarters being acquired or leased, shall be allocated to the premises of the transformative corporate headquarters on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the transformative corporate headquarters. The capital investment described herein may include any capital investment made or acquired within 24 months prior to the date of application so long as the amount of capital investment made or acquired by the business, any affiliate of the business, or any owner after the date of application equals at least 50 percent of the amount of capital investment, allocated to the premises of the transformative corporate headquarters being acquired or leased on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the transformative corporate headquarters made or acquired prior to the date of application.

"Commitment period" means the period of time that is one and a half times the eligibility period for each applicable phase agreement.

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

"Eligibility period" means the period in which a business may claim a tax credit under the Transformative Headquarters Economic Assistance Program for a given project phase, beginning with the tax period in which the authority accepts certification of the business that it has met the capital investment and employment requirements of the respective phase of the program and extending thereafter for a term of not more than 10 years, with the term to be determined solely at the discretion of the applicant.

"Eligible position" or "full-time job" means a new full-time position at a transformative corporate headquarters, which the business has filled with a full-time employee of that business.

"Full-time employee" means a person:

a. who is employed by a business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment; and

b. who is provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or federal law.

"Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. Full-time employee shall also not include any person who, at the time of the transformative corporate headquarters application, works in New Jersey for consideration for at least 35 hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment but who prior to the application was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or federal law.

"Government entity" means the State government, a local unit of government, or a State or local government agency or authority.

"Incentive agreement" means the contract between the business and the authority, which sets forth the terms and conditions under which the business shall be eligible to receive the incentives authorized pursuant to the Transformative Headquarters Economic Assistance Program.

“Incentive phase agreement” means a sub-agreement of the incentive agreement that governs the timing, capital investment, employment levels, and other applicable details of the respective phase.

"Incentive phase agreement effective date" means the date the authority issues a tax credit for a portion of the total tax credits awarded proportionate to the number of new full-time jobs created during the respective phase, based on documentation submitted by a business pursuant to subsection a. of section 6 of P.L. , c. (C.) (pending before the Legislature as this bill).

"Minimum environmental and sustainability standards" means standards established by the authority in accordance with 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.

"New full-time job" means an eligible position created by the business at the transformative corporate headquarters that did not previously exist in this State.

"Program" means the "Transformative Headquarters Economic Assistance Program" established pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

"Providing public infrastructure" means:

a. undertaking and paying for the construction of public infrastructure;

b. contributing money or paying debt service for the construction of public infrastructure; or

c. deeding land to a government entity for use as public infrastructure.

"Public infrastructure" means:

a. buildings and structures such as: schools; fire houses; police stations; recreation centers; public works garages; and water and sewer treatment and pumping facilities;

b. open space with improvements such as: athletic fields; playgrounds; and planned parks;

c. open space without improvements;

d. public transportation facilities such as: train stations and public parking facilities; and

e. sidewalks, streets, roads, ramps, and jug handles.

To qualify as “public infrastructure,” the facilities, land, or both, shall have a minimum fair market value of $5,000,000; provided, however, that multiple lands and facilities, valued individually at less than $5,000,000, that are part of the same redevelopment project may be aggregated to achieve the minimum $5,000,000 requirement. In the case of open space without improvements, the land shall have a minimum fair market value of at least $1,000,000 prior to its dedication as open space.

"Qualified business facility" means within any building, complex of buildings or structural components of buildings, and all machinery and equipment, at one or more sites zoned for that purpose located anywhere within this State, used in connection with the operation of a business.

"Transformative corporate headquarters" or "headquarters" means the corporate headquarters of a business that is a qualified business facility at which the business intends to create at least 30,000 new full-time jobs and make at least $3,000,000,000 in capital investment.

3. a. The Transformative Headquarters Economic 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 shall be to encourage economic development and job creation in New Jersey by providing tax credits to a business establishing a transformative corporate headquarters in this State, at which at least 30,000 new full-time jobs will be created and at least $3,000,000,000 in capital investment will be made. To implement this purpose, the program may provide tax credits claimed by an eligible business for an eligibility period not to exceed 10 years per project phase.

b. To be eligible for any tax credits pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), 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, $3,000,000,000 at a transformative corporate headquarters at which it intends to create new full-time jobs in an amount equal to or greater than 30,000;

(2) the transformative corporate headquarters shall be constructed in accordance with the minimum environmental and sustainability standards as determined by the authority;

(3) (a) the capital investment resultant from the award of tax credits and the resultant creation of full-time jobs will yield a net positive benefit to the State equaling at least 115 percent of the requested tax credit allocation amount where the net positive benefit determination shall be calculated for each phase and based on the benefits generated during a period of up to 50 years following completion of each phase of the transformative corporate headquarters, as determined by the authority, and shall equal at least 115 percent of the requested tax credit allocation amount;

(b) an individual phase may generate a net benefit of less than 115 percent of the tax credit allocation amount, provided that the total of all phases calculated up to that point, including the current phase, is at least 115 percent; and

(c) the calculation of future phases of the headquarters shall not be used to claim a net positive benefit to the State equaling at least 115 percent of the requested tax credit allocation amount towards the calculation of the current phase; and

(4) the award of tax credits will be a material factor in the business's decision to create at least 30,000 new full-time jobs at the headquarters for eligibility under the program.

c. The minimum capital investment required to be eligible under the program shall be $120 per square foot of gross leasable area for construction of a transformative corporate headquarters.

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 projected creation of new full-time jobs at a transformative corporate headquarters would not occur but for the provision of tax credits under the program; and

(2) 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 (2) and (3) of subsection b. of this section, the certification shall indicate that the provision of tax credits under the program is a material factor in the business decision to create the minimum number of new full-time jobs set forth in the business's application and make a minimum amount of capital investment of $3,000,000,000 at a transformative corporate headquarters.

In the event that this certification by the business's chief executive officer, or equivalent officer, is found to be willfully false, the authority may revoke any award of tax credits in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to.

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 not be limited to, the following:

a. a detailed description of the proposed transformative corporate headquarters, including the phases for completion of the headquarters and the number of new full-time jobs that are approved for tax credits;

b. an incentive phase agreement which for each phase, identifies a description of the phase, the expected capital investment and number of new full-time jobs, and the time following acceptance of the incentive agreement when each phase is to begin and be completed, with the awarding of tax credits under the incentive agreement to be predicated on the number of full-time jobs created through the fulfillment of each incentive phase agreement;

c. the eligibility period of the tax credits for each phase, including the first year for which the tax credits may be claimed;

d. personnel information that will enable the authority to administer the program;

e. (1) a requirement that the applicant maintain each phase of the headquarters at a location in New Jersey for the commitment period 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 according to the incentive phase agreement schedule required pursuant to subsection b. of this section;

(2) a provision which requires the applicant to complete a number of phases of the headquarters equal to 30,000 new full-time jobs and $3,000,000,000 in capital investment prior to the 20th year following authority approval of the incentive agreement and a provision setting forth the requirements pursuant to subsection c. of section 8 of P.L. , c. (C.) (pending before the Legislature as this bill) in the event the headquarters fails to achieve the required employment level of new full-time jobs or capital investment by the 20th year of the incentive agreement;

(3) a provision that up to $25,000,000 of the tax credits awarded to the business may be sold annually, pursuant to subsection c. of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill), to a third party, provided that the maximum amount of tax credits the business may sell shall be $500,000,000, and that the proceeds from the sales of tax credit are used for providing public infrastructure;

(4) a provision that each phase shall have a minimum investment of $300,000,000 and that the first phase shall employ a minimum of 5,000 new full-time jobs; and

(5) in the instance of the business terminating an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to the P.L. , c. (C.) (pending before the Legislature as this bill), the permitted recapture may be calculated to recognize the period of time that the business was in compliance prior to termination.

f. a method for the business to certify that the business has met the employment and capital investment requirements of the program, pursuant to incentive phase agreements and the incentive agreement towards the headquarters completion and job creation schedule, and to report annually to the authority the number of new full-time employees against which the tax credits are to be made;

g. a provision permitting an audit of the payroll records of the business from time to time, as the authority deems necessary;

h. a provision which permits the authority to amend the agreement; and

i. a provision establishing the conditions under which the agreement may be terminated.

5. a. The total amount of the tax credit awarded for an eligible business for each new full-time job shall be $10,000 per year for 10 years. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period following the creation of the full-time job pursuant to the incentive phase agreements.

b. Following the enactment of P.L. , c. (C.) (pending before the Legislature as this bill), there shall be no monetary cap on the value of credits approved by the authority attributable to the program.

6. a. (1) A business shall submit an application for tax credits to the authority prior to July 1, 2019. If the business requests additional time to submit its application, the authority shall have the discretion to grant one six-month extension of this deadline. A business shall submit its documentation indicating that it has met the capital investment and employment requirements for the first phase, as specified in the incentive agreement and the incentive phase agreement, for certification of its tax credit amount within three years following the date of approval of its application by the authority. The authority shall have the discretion to grant two, one-year extensions of this deadline.

(2) Full-time employment for a tax period shall be determined as the average of the monthly full-time employment for the tax period.

b. In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

7. a. The total tax credit amount calculated and credited to the business annually for each year of the eligibility period may be applied against the tax liability otherwise due and required to be paid by the business pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 for the privilege period or the tax accounting period of the business that coincides with the year of the business's eligibility period for which the tax credit has been issued.

b. The order of priority of the application of the tax credit issued to a business by the authority pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), and any other tax credits allowed by law, shall be as prescribed by the director. The amount of the tax credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 for the privilege period or the tax accounting period, with any other credits allowed by law, shall not reduce the tax liability otherwise due and required to be paid to an amount less than zero. If the tax credit issued to a business exceeds the amount of tax otherwise due and required to be paid, the amount of that excess may be carried over, if necessary, to the 50 privilege periods or tax accounting periods following the privilege period or taxable year for which the tax credit is first allowed to be applied.

c. A business issued an annual installment of a tax credit may apply to the authority and the director for a tax credit transfer certificate in lieu of the business being allowed any amount of the tax credit against the tax liability otherwise due and required to be paid by the business, subject to the limitations on the annual and total amounts of tax credits that may be sold pursuant to paragraph (3) of subsection e. of section 4 of P.L. , c. (C.) (pending before the Legislature as this bill). The tax credit transfer certificate, upon receipt thereof by the business from the authority and the director, may be sold or assigned, in full or in part, to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The certificate issued to the business shall include a statement waiving the business's right to claim that amount of the annual installment of the tax credit against the taxes that the business has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed pursuant to this subsection shall not be sold or exchanged for consideration received by the business of less than 75 percent of the transferred tax credit amount. The amount of any tax credit transfer certificate used by a purchaser or assignee against a tax liability otherwise due and required to be paid shall be subject to the same limitations and conditions that apply to the use of the credit by the business that was issued the annual installment of the tax credit.

8. a. If, in any tax period, the number of new full-time employees employed by the business at the headquarters drops below 80 percent of the number of new full-time jobs specified in the incentive phase agreements for all phases completed, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the headquarters to 80 percent of the number of jobs specified in the incentive phase agreements for all phases completed.

b. If the headquarters is sold by the owner in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided however, that any credits of the business shall remain unaffected.

c. If the headquarters fails to achieve an employment level of 30,000 new full-time jobs or a capital investment of at least $3,000,000,000 by the 20th year of the incentive agreement, then the business shall not receive any tax credits for an incomplete phase, and for a completed phase, if the total employment achieved is between:

(1) 20,000 and 29,999 new full-time jobs, the amount of tax credits shall be reduced to $7,000 per employee per year;

(2) 10,000 and 19,999 new full-time jobs, the amount of tax credits shall be reduced to $5,000 per employee per year; and

(3) 5,000 and 9,999 new full-time jobs, the amount of tax credits shall be reduced to $3,000 per employee per year.

The business shall repay any amount of tax credits allowed prior to the 20th year of the incentive agreement that is in excess of the amount calculated based on the reduced tax credit first by forfeiting any tax credit amounts carried over, pursuant to subsection b. of section 7 of P.L.   , c.   (C.   ) (pending before the Legislature as this bill), and then by payment of current funds.

9. a. The chief executive officer of the authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement P.L.   , c.   (C.   ) (pending before the Legislature as this bill), including but not limited to:

(1) examples of and the determination of capital investment at the headquarters;

(2) the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements;

(3) the promulgation of procedures and forms necessary to apply for a tax credit, including the enumeration of the certification procedures and allocation of tax credits for different phases of a headquarters; and

(4) provisions for tax credit applicants to be charged an initial application fee and ongoing service fees to cover the administrative costs related to the tax credit.

b. Through regulation, the authority shall establish standards by which a headquarters shall be constructed or renovated in compliance with the minimum environmental and sustainability standards.

10. This act shall take effect immediately.

STATEMENT

The Grow New Jersey Assistance Program (Grow Program) is the State's premier job creation and retention business incentive program that offers eligible businesses creating or retaining jobs in New Jersey tax credits for making certain capital investments at certain locations in the State. Although the Grow Program is achieving its intended result of having businesses locate to the commercial areas of the State's cities and shuttered suburban office parks, thereby revitalizing these commercial areas, the State has opportunities from time to time to attract corporate headquarters that have the effect of transforming the economy of a region of the State by establishing a new business incentive program that complements the Grow Program.

This bill establishes a "Transformative Headquarters Economic Assistance Program" (program) under the jurisdiction of the New Jersey Economic Development Authority (authority). The purpose of this new business incentive program is to encourage economic development and new job creation in New Jersey at a corporate headquarters (headquarters) that is transformational to the regional economy, where at least 30,000 new full-time jobs are created and at least $3 billion in capital investment is made. The program provides tax credits claimed by an eligible business for an eligibility period not to exceed 10 years for each phase of the headquarters.

To be eligible for tax credits under the bill, an eligible business's chief executive officer or equivalent officer is to demonstrate to the authority, at the time of application, that:

(1) the business will make, acquire, or lease a capital investment equal to, or greater than, $3 billion at a headquarters at which it will create at least 30,000 new full-time jobs;

(2) the headquarters is to 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 creation of new full-time jobs will yield a net positive benefit to the State equaling at least 110 percent of the requested tax credit allocation amount where the net positive benefit determination shall be calculated for each phase of the headquarters based on the benefits generated during a period of up to 50 years following completion of the headquarters; and

(4) the award of tax credits will be a material factor in the business's decision to create at least 30,000 new full-time jobs for eligibility under the program.

The bill requires a business to submit an application for tax credits to the authority prior to July 1, 2019. If the business requests additional time to submit its application, the authority is to have the discretion to grant one six-month extension of this deadline.

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

(1) a detailed description of the proposed headquarters, including the phases for completion of the headquarters and the number of new full-time jobs that are approved for tax credits;

(2) the eligibility period of the tax credits for each phase, including the first year for which the tax credits may be claimed;

(3) personnel information that will enable the authority to administer the program;

(4) a requirement that the applicant maintain the headquarters at a location in New Jersey for the commitment period 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;

(5) a provision that up to $25,000,000 of the tax credits awarded to the business may be sold annually to a third party, provided that the maximum amount of tax credits the business may sell shall be $500,000,000 and that the proceeds are used for providing public infrastructure;

(6) a method for the business to certify that it has met the employment and capital investment requirements of the program pursuant to a phased-in headquarters completion and new full-time job creation employment schedule and to report annually to the authority the number of new full-time employees against which the tax credits are to be made;

(7) a provision permitting an audit of the payroll records of the business from time to time, as the authority deems necessary; and

(8) a provision which permits the authority to amend the agreement and provisions establishing the conditions under which the agreement may be terminated.

The total amount of the tax credit for an eligible business for each new full-time job is $10,000 per year for up to 10 years. The total tax credit amount is to be calculated and credited to the business annually for each year of the eligibility period. There is no monetary cap on the value of credits approved by the authority attributable to the program. If the tax credit issued to a business exceeds the amount of tax otherwise due and required to be paid, the amount of that excess may be carried over, if necessary, to the 50 tax periods following the taxable year for which the tax credit is first allowed to be applied.

If, in any tax period, the number of new full-time employees employed by the business at its headquarters drops below 80 percent of the number of new full-time jobs specified in the incentive phase agreements for all phases completed, then the business is to forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the headquarters to 80 percent of the number of jobs specified in the incentive phase agreements for all phases completed.