

[First Reprint]
ASSEMBLY, No. 1415

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1996

By Assemblymen AZZOLINA, GEIST, Malone, Asselta,
LeFevre and Blee

1 AN ACT creating the "Business Employment Incentive Program,"
2 amending and supplementing P.L.1974, c.80 and making an
3 appropriation therefor.

4

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

7

8 1. (New section) This act shall be known and may be cited as the
9 "Business Employment Incentive Program Act."

10

11 2. (New section) As used in this act, unless a different meaning
12 clearly appears from the context:

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

15 "Base years" means the first two complete calendar years following
16 the effective date of an agreement;

17 "Business" means a corporation; sole proprietorship; partnership;
18 corporation that has made an election under Subchapter S of Chapter
19 One of Subtitle A of the Internal Revenue Code of 1986, or any other
20 business entity through which income flows as a distributive share to
21 its owners; limited liability company; nonprofit corporation; or any
22 other form of business organization located either within or outside
23 this State. A grant received under this act by a partnership,
24 Subchapter S-Corporation, or other such business entity shall be
25 apportioned among the persons to whom the income or profit of the
26 partnership, Subchapter S-Corporation, or other entity is distributed,
27 in the same proportions as those in which the income or profit is
28 distributed;

29 "Business employment incentive agreement" or "agreement" means
30 the written agreement between the authority and a business proposing

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted January 29, 1996.

1 to create new jobs in this State in accordance with the provisions of
2 this act which establishes the terms and conditions of a grant to be
3 awarded pursuant to this act;

4 "Department" means the Department of Commerce and Economic
5 Development;

6 "Director" means the Director of the Division of Taxation;

7 "Division" means the Division of Taxation in the Department of the
8 Treasury;

9 "Eligible position" is a new full time position created by a business
10 in New Jersey or transferred from another state by the business under
11 the terms and conditions set forth in this act during the base years or
12 in subsequent years of a grant ¹. In determining if positions are
13 eligible positions, the authority shall give greater consideration to
14 positions that average at least 1.5 times the minimum wage during the
15 term of an agreement authorized pursuant to this act¹;

16 "Employment incentive" means the amount of a grant determined
17 pursuant to subsection a. of section 6 of this act;

18 "Full time employee" means a person who is employed for
19 consideration for at least 35 hours a week, or who renders any other
20 standard of service generally accepted by custom or practice as
21 full-time employment, whose wages are subject to withholding as
22 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
23 et seq., and who is determined by the authority to be employed in a
24 permanent position according to criteria it develops. "Full time
25 employee" shall not include any person who works as an independent
26 contractor or on a consulting basis for the business;

27 "Grant" means a business employment incentive grant as established
28 in this act;

29 "New employee" means a full time employee first employed in an
30 eligible position on the project which is the subject of an agreement.
31 An out-of-state resident or a resident of New Jersey who is employed
32 outside New Jersey by the business and whose position is relocated to
33 New Jersey after the execution of the agreement may be classified as
34 a new employee when his position is relocated to New Jersey and his
35 wages are subject to withholding as provided in the "New Jersey Gross
36 Income Tax Act," N.J.S.54A:1-1 et seq.; except that such a New
37 Jersey resident shall not be classified as a "new employee" unless his
38 wages, prior to the relocation, were subject to income taxes imposed
39 by the state or municipality in which the position was previously
40 located. "New employee" may also include an employee rehired or
41 called back from a layoff during or following the base years to a
42 vacant position previously held by that employee or to a new position
43 established during or following the base years. "New employee" shall
44 not include any employee who was previously employed in New Jersey
45 by the business or by a related person as defined in section 2 of
46 P.L.1993, c.170 (C.54:10A-5.5) if the employee is transferred to the

1 business which is the subject of an agreement unless the employee's
2 position at his previous employer is filled by a new employee. "New
3 employee" also shall not include a child, grandchild, parent or spouse
4 of an individual associated with the business who has direct or indirect
5 ownership of at least 15% of the profits, capital, or value of the
6 business;

7 "Targeted area" means a qualifying municipality as defined in P.
8 L.1978, c.14 (C.52:27D-178); and

9 "Withholdings" means the amount withheld by a business from the
10 wages of new employees pursuant to the "New Jersey Gross Income
11 Tax Act," N.J.S.54A:1-1 et seq.

12

13 3. (New section) There is established the Business Employment
14 Incentive Program to be administered by the New Jersey Economic
15 Development Authority. In order to foster job creation in this State,
16 the authority may enter into agreements with businesses to provide
17 business employment incentive grants in accordance with the
18 provisions of this act if it finds that:

19 a. The project proposed by the business will create, during the term
20 of the agreement, a net increase in employment by the business and its
21 related persons, as defined in section 2 of P.L.1993, c.170
22 (C.54:10A-5.5), in the State as provided in section 4 of this act;

23 b. The project is economically sound and will benefit the people of
24 New Jersey by increasing opportunities for employment and by
25 strengthening New Jersey's economy; and

26 c. The authority determines that the receipt of the business
27 employment incentive grant will be a material factor in the business'
28 decision to go forward with the project.

29

30 4. (New section) a. A business may apply to the authority for a
31 grant for any project which:

32 (1) Will create at least 75 eligible positions in the base years; or

33 (2) Will create at least 25 eligible positions in a targeted area in the
34 base years.

35 b. In the case of a business which is a landlord, the business may
36 apply to the authority for a grant for any project in which:

37 (1) (a) At least 75 eligible positions are created in the base years;
38 or

39 (b) At least 25 eligible positions are created in a targeted area in
40 the base years; and

41 (2) The tenants or proposed tenants have agreed to assign to the
42 landlord any claim of right that they may have to a grant provided by
43 this act; and

44 (3) The tenant or proposed tenants have agreed to cooperate with
45 the landlord in annually providing to the authority the number of new
46 employees in eligible positions, the withholdings and any other

1 information which may be required by the authority.

2 c. A project which consists solely of point-of-final-purchase retail
3 facilities shall not be eligible for a grant under this act. If a project
4 consists of both point-of-final-purchase retail facilities and non-retail
5 facilities, only the portion of the project consisting of non-retail
6 facilities shall be eligible for a grant, and only the withholdings from
7 new employees which are employed in the portion of the project which
8 represents non-retail facilities shall be used to determine the amount
9 of the grant. If a warehouse facility is part of a point-of-final purchase
10 retail facility and supplies only that facility, the warehouse facility shall
11 not be eligible for a grant. For the purposes of this act, catalog
12 distribution centers shall not be considered point-of-final-purchase
13 retail facilities.

14

15 5. (New section) A business shall apply to the authority for a grant
16 on a form prescribed by the authority which shall include:

17 a. The name of the business, the proposed location of the project,
18 and the type of activity which will be engaged in at the project site;

19 b. The names and addresses of the principals or management of the
20 business, and the nature of the form of business organization under
21 which it is operated;

22 c. The most recent financial statement of the business;

23 d. The number of eligible positions proposed to be created during
24 the base years and thereafter; and

25 e. An estimate of the total withholdings.

26

27 6. (New section) a. The amount of the employment incentive
28 awarded as a grant in each case shall be not less than 10% and not
29 more than 80% of the withholdings of the business, and shall be
30 subject to the provisions of sections 10 and 11 of this act. The
31 employment incentive shall be based on criteria developed by the
32 authority after considering the following:

33 (1) The number of eligible positions to be created;

34 (2) The expected duration of those positions;

35 (3) The type of contribution the business can make to the
36 long-term growth of the State's economy;

37 (4) The amount of other financial assistance the business will
38 receive from the State for the project; and

39 (5) The total dollar investment the business is making in the
40 project.

41 b. The term of the grant shall not exceed 10 years.

42 c. At the discretion of the authority, the grant may apply only to
43 new employees in eligible positions created during the base years, or
44 to additional new employees in eligible positions created during the
45 remainder of the term of the grant.

- 1 7. (New section) The business employment incentive agreement
2 shall include, but shall not be limited to, the following:
- 3 a. A detailed description of the proposed project which will result
4 in job creation, and the number of new employees to be hired in the
5 base years;
- 6 b. The term of the grant, and the first year for which the grant may
7 be claimed;
- 8 c. The new employees whose positions are subjects of the grant,
9 pursuant to subsection c. of section 6 of this act;
- 10 d. A requirement that the applicant maintain the project at a
11 location in New Jersey for at least 1.5 times the number of years of the
12 term of the grant, with at least the number of eligible positions as
13 required by section 4 of this act;
- 14 e. The employment incentive, as determined pursuant to subsection
15 a. of section 6 of this act;
- 16 f. A method for determining the number of new employees who are
17 employed during a grant year;
- 18 g. A method for the business to report annually to the authority the
19 number of new employees for which the grant is to be made;
- 20 h. A requirement that the business report to the authority annually
21 the aggregate amount of withholdings during the grant year;
- 22 i. A provision permitting an audit of the payroll records of the
23 business by the authority from time to time, as the authority deems
24 necessary;
- 25 j. A provision which permits the authority to amend an agreement
26 pursuant to section 9 of this act;
- 27 k. A provision which requires the business to maintain operations
28 at the project location or another location approved by the authority
29 for at least 1.5 times the term of the grant, and a provision to permit
30 the authority to recapture all or part of the grant at its discretion if the
31 business does not remain at the site for the required term; and
- 32 l. A provision establishing the conditions under which the grant
33 agreement may be terminated and grant funds recaptured by the
34 authority.
- 35
- 36 8. (New section) a. No later than February 1 of each year, for the
37 preceding grant year, every business which is awarded a grant under
38 this act shall submit to the authority a copy of its applicable New
39 Jersey tax return showing business income and withholdings as a
40 condition of its continuation in the grant program, together with an
41 annual payroll report showing (1) the eligible positions which are
42 created during the base years and (2) the new eligible positions created
43 during each subsequent year of the grant.
- 44 b. The division may require by regulation any information which it
45 deems necessary to effectuate the provisions of this act.
- 46 c. The authority may cause an audit of any business receiving a

1 grant to be conducted at any time.

2

3 9. (New section) a. If the business receiving a grant fails to meet
4 or comply with any condition or requirement set forth in a grant
5 agreement or in rules and regulations of the authority or the division,
6 the authority may amend the agreement to reduce the amount of the
7 employment incentive or the term of the grant agreement. The
8 reduction of the employment incentive shall be applicable to the grant
9 year immediately following the grant year in which the authority
10 amends the agreement.

11 b. If a business fails to maintain employment at the levels stipulated
12 in the agreement or otherwise fails to comply with any condition of the
13 grant agreement for any two consecutive years, the authority may
14 terminate the agreement.

15

16 10. (New section) No amount shall be disbursed to a recipient
17 business as a grant under this act in any year until the State Treasurer
18 has certified that the amount of withholdings received in that year by
19 the division from the business equals or exceeds the amount of the
20 grant.

21

22 11. (New section) a. A business that is receiving a business
23 relocation grant pursuant to the provisions of P.L. , c. (C.)(now
24 before the Legislature as Senate Bill No. 2390 (1R) or Assembly Bill
25 No. 3202 (1R) of 1995) shall not be eligible to receive a grant under
26 this act except upon the approval of the State Treasurer.

27 b. A business that is receiving any other grant by operation of State
28 law shall not receive an amount as a grant pursuant to this act which,
29 when combined with such other grants, exceeds 80% of its
30 withholdings, except upon the approval of the State Treasurer.
31 Amounts received as grants from the Office of Customized Training
32 pursuant to the "1992 New Jersey Employment and Workforce
33 Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.) shall be
34 excluded from the calculation of the total amount permitted under this
35 subsection.

36

37 12. (New section) The department shall conduct a study to
38 determine the minimum funding level required to implement the
39 Business Employment Incentive Program successfully. Major
40 consideration shall be given to the rate of return for each job created
41 as a result of business employment incentive grants.

42

43 13. (New section) The authority shall establish an application fee
44 for a grant application and service fees payable by each business which
45 is a grant recipient to pay the costs of the administration of the
46 program.

1 14. (New section) The New Jersey Economic Development
2 Authority, after consultation with the Department of Commerce and
3 Economic Development and the Division of Taxation, shall, in
4 accordance with the "Administrative Procedure Act," P.L.1968, c.410
5 (C.52:14B-1 et seq.), adopt rules necessary to implement the
6 provisions of the Business Employment Incentive Program not related
7 to the collection or determination of taxes and tax withholding. The
8 rules shall provide for the recipients of business employment incentive
9 grants to be charged an initial application fee, and ongoing service
10 fees, to cover the administrative costs related to the program. The
11 Director of the Division of Taxation is authorized to promulgate those
12 rules necessary to effectuate the tax related provisions of the Business
13 Employment Incentive Program.

14
15 15. (New section) The Department of Commerce and Economic
16 Development shall submit a report on the Business Employment
17 Incentive Program to the Governor, President of the Senate, and
18 Speaker of the General Assembly on or before October 31 of each
19 year. The report shall include information on the number of
20 agreements entered into during the preceding fiscal year, a description
21 of the project under each agreement, the number of jobs created, new
22 income tax revenue received from withholdings, amounts awarded as
23 grants and an update on the status of projects under agreement before
24 the preceding fiscal year. After the program's fifth year, the
25 department, in conjunction with the State Treasurer, shall assess the
26 effectiveness of the program in creating new jobs in New Jersey and
27 the impact on State revenues. The department shall submit a final
28 report to the Governor, Senate President, and Speaker of the General
29 Assembly on or before January 1, 2000.

30
31 16. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as
32 follows:

33 5. The authority shall have the following powers:

34 a. To adopt bylaws for the regulation of its affairs and the conduct
35 of its business;

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

37 c. To sue and be sued;

38 d. To acquire in the name of the authority by purchase or
39 otherwise, on such terms and conditions and such manner as it may
40 deem proper, or by the exercise of the power of eminent domain in the
41 manner provided by the Eminent Domain Act of 1971, P.L.1971,
42 c.361 (C.20:3-1 et seq.), any lands or interests therein or other
43 property which it may determine is reasonably necessary for any
44 project; provided, however, that the authority shall not take by
45 exercise of the power of eminent domain any real property except
46 upon consent thereto given by resolution of the governing body of the

1 municipality in which such real property is located; and provided
2 further that the authority shall be limited in its exercise of the power
3 of eminent domain to municipalities receiving State aid under the
4 provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to
5 municipalities which had a population, according to the latest federal
6 decennial census, in excess of 10,000;

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

13 f. To establish and maintain reserve and insurance funds with
14 respect to the financing of the project;

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

18 h. To mortgage, pledge or assign or otherwise encumber all or any
19 portion of a project or revenues, whenever it shall find such action to
20 be in furtherance of the purposes of this act;

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

24 j. To contract for and to accept any gifts or grants or loans of
25 funds or property or financial or other aid in any form from the United
26 States of America or any agency or instrumentality thereof, or from
27 the State or any agency, instrumentality or political subdivision
28 thereof, or from any other source and to comply, subject to the
29 provisions of the act, with the terms and conditions thereof;

30 k. In connection with any application for assistance under this act
31 or commitments therefor, to require and collect such fees and charges
32 as the authority shall determine to be reasonable;

33 l. To adopt, amend and repeal regulations to carry out the
34 provisions of this act;

35 m. To acquire, purchase, manage and operate, hold and dispose of
36 real and personal property or interests therein, take assignments of
37 rentals and leases and make and enter into all contracts, leases,
38 agreements and arrangements necessary or incidental to the
39 performance of its duties;

40 n. To purchase, acquire and take assignments of notes, mortgages
41 and other forms of security and evidences of indebtedness;

42 o. To purchase, acquire, attach, seize, accept or take title to any
43 project by conveyance or by foreclosure, and sell, lease, manage or
44 operate any project for a use specified in this act;

45 p. To borrow money and to issue bonds of the authority and to
46 provide for the rights of the holders thereof, as provided in this act;

1 q. To extend credit or make loans to any person for the planning,
2 designing, acquiring, constructing, reconstructing, improving,
3 equipping and furnishing of a project, which credits or loans may be
4 secured by loan and security agreements, mortgages, leases and any
5 other instruments, upon such terms and conditions as the authority
6 shall deem reasonable, including provision for the establishment and
7 maintenance of reserve and insurance funds, and to require the
8 inclusion in any mortgage, lease, contract, loan and security agreement
9 or other instrument, such provisions for the construction, use,
10 operation and maintenance and financing of a project as the authority
11 may deem necessary or desirable;

12 r. To guarantee up to 90% of the amount of a loan to a person, if
13 the proceeds of the loan are to be applied to the purchase and
14 installation, in a building devoted to industrial or commercial
15 purposes, or in an office building, of an energy improvement system;

16 s. To employ consulting engineers, architects, attorneys, real estate
17 counselors, appraisers, and such other consultants and employees as
18 may be required in the judgment of the authority to carry out the
19 purposes of the act, and to fix and pay their compensation from funds
20 available to the authority therefor, all without regard to the provisions
21 of Title [11, Civil Service,]11A of the [Revised] New Jersey Statutes;

22 t. To do and perform any acts and things authorized by this act
23 under, through or by means of its own officers, agents and employees,
24 or by contract with any person;

25 u. To procure insurance against any losses in connection with its
26 property, operations or assets in such amounts and from such insurers
27 as it deems desirable;

28 v. To do any and all things necessary or convenient to carry out its
29 purposes and exercise the powers given and granted in the act;

30 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
31 maintain or repair or provide for the construction, reconstruction,
32 improvement, alteration, equipping or maintenance or repair of any
33 development property and lot, award and enter into construction
34 contracts, purchase orders and other contracts with respect thereto,
35 upon such terms and conditions as the authority shall determine to be
36 reasonable, including, but not limited to, reimbursement for the
37 planning, designing, financing, construction, reconstruction,
38 improvement, equipping, furnishing, operation and maintenance of any
39 such development property and the settlement of any claims arising
40 therefrom and the establishment and maintenance of reserve funds with
41 respect to the financing of such development property; [and]

42 x. When authorized by the governing body of a municipality
43 exercising jurisdiction over an urban growth zone, to construct, cause
44 to be constructed or to provide financial assistance to projects in an
45 urban growth zone which shall be exempt from the terms and
46 requirements of the land use ordinances and regulations, including, but

1 not limited to, the master plan and zoning ordinances, of such
2 municipality; and
3 y. To enter into business employment incentive agreements as
4 provided in the "Business Employment Incentive Program Act."
5 P.L. c. (C.)(now before the Legislature as this bill).
6 (cf: P.L.1983, c.282, s.3)

7
8 17. For the fiscal year beginning July 1, 1995, there is appropriated
9 to the New Jersey Economic Development Authority from the General
10 Fund such sums as may be necessary to fund the Business Employment
11 Incentive Program established by this act, the amount of which shall
12 not exceed the total amount of revenues received as withholdings, as
13 defined in section 2 of P.L. , c. (C.) (now before the Legislature
14 as this bill) from all businesses receiving grants pursuant to this act, as
15 certified by the Director of the Division of Taxation.

16
17 18. This act shall take effect immediately.

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21

22 _____
23 Creates the Business Employment Incentive Program and appropriates
General Fund revenues therefor.