

[Second Reprint]  
ASSEMBLY, No. 1415

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1996

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

1 AN ACT creating <sup>2</sup>[the "Business Employment Incentive Program,"]  
2 business employment incentives through a grant agreement program  
3 and an exemption under the sales and use tax for certain sales of  
4 machinery, apparatus and equipment used in the production or  
5 transmission of radio or television information,<sup>2</sup> amending and  
6 supplementing P.L.1974, c.80 <sup>2</sup>, amending P.L.1980, c.105,<sup>2</sup> and  
7 making an appropriation therefor..  
8

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

11  
12 1. (New section) <sup>2</sup>[This] Sections 1 through 17 of this<sup>2</sup> act shall  
13 be known and may be cited as the "Business Employment Incentive  
14 Program Act."  
15

16 2. (New section) As used in <sup>2</sup>sections 1 through 17 of<sup>2</sup> this act,  
17 unless a different meaning clearly appears from the context:

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

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

22 "Business" means a corporation; sole proprietorship; partnership;  
23 corporation that has made an election under Subchapter S of Chapter  
24 One of Subtitle A of the Internal Revenue Code of 1986, or any other  
25 business entity through which income flows as a distributive share to  
26 its owners; limited liability company; nonprofit corporation; or any  
27 other form of business organization located either within or outside  
28 this State <sup>2</sup>, including a cooperative association<sup>2</sup>. A grant received  
29 under this act by a partnership, Subchapter S-Corporation, or other  
30 such business entity shall be apportioned among the persons to whom

**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:**

<sup>1</sup> Assembly AAP committee amendments adopted January 29, 1996.

<sup>2</sup> Senate SBA committee amendments adopted March 18, 1996.

1 the income or profit of the partnership, Subchapter S-Corporation, or  
2 other entity is distributed, in the same proportions as those in which  
3 the income or profit is distributed <sup>2</sup>. "Cooperative association" shall  
4 include financial, stock or commodities exchanges<sup>2</sup> ;

5 "Business employment incentive agreement" or "agreement" means  
6 the written agreement between the authority and a business proposing  
7 <sup>2</sup>[to create new jobs] a project<sup>2</sup> in this State in accordance with the  
8 provisions of this act which establishes the terms and conditions of a  
9 grant to be awarded pursuant to this act;

10 "Department" means the Department of Commerce and Economic  
11 Development;

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

13 "Division" means the Division of Taxation in the Department of the  
14 Treasury;

15 "Eligible position" is a new full time position created by a business  
16 in New Jersey or transferred from another state by the business under  
17 the terms and conditions set forth in this act during the base years or  
18 in subsequent years of a grant <sup>1</sup>. In determining if positions are  
19 eligible positions, the authority shall give greater consideration to  
20 positions that average at least 1.5 times the minimum <sup>2</sup>hourly<sup>2</sup> wage  
21 during the term of an agreement authorized pursuant to this act<sup>1</sup>;

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

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

33 "Grant" means a business employment incentive grant as established  
34 in this act;

35 "New employee" means a full time employee first employed in an  
36 eligible position on the project which is the subject of an agreement.  
37 An out-of-state resident or a resident of New Jersey who is employed  
38 outside New Jersey by the business and whose position is relocated to  
39 New Jersey after the execution of the agreement may be classified as  
40 a new employee when his position is relocated to New Jersey and his  
41 wages are subject to withholding as provided in the "New Jersey Gross  
42 Income Tax Act," N.J.S.54A:1-1 et seq.; except that such a New  
43 Jersey resident shall not be classified as a "new employee" unless his  
44 wages, prior to the relocation, were subject to income taxes imposed  
45 by the state or municipality in which the position was previously  
46 located. "New employee" may also include an employee rehired or

1 called back from a layoff during or following the base years to a  
2 vacant position previously held by that employee or to a new position  
3 established during or following the base years. "New employee" shall  
4 not include any employee who was previously employed in New Jersey  
5 by the business or by a related person as defined in section 2 of  
6 P.L.1993, c.170 (C.54:10A-5.5) if the employee is transferred to the  
7 business which is the subject of an agreement unless the employee's  
8 position at his previous employer is filled by a new employee. "New  
9 employee" also shall not include a child, grandchild, parent or spouse  
10 of an individual associated with the business who has direct or indirect  
11 ownership of at least 15% of the profits, capital, or value of the  
12 business;

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

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

18

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

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

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

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

35

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

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

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

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

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

44 or

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

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

4 (3) The tenant or proposed tenants have agreed to cooperate with  
5 the landlord in annually providing to the authority the number of new  
6 employees in eligible positions, the withholdings and any other  
7 information which may be required by the authority.

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

20  
21 5. (New section) A business shall apply to the authority for a grant  
22 on a form prescribed by the authority which shall include:

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

25 b. The names and addresses of the principals or management of the  
26 business, and the nature of the form of business organization under  
27 which it is operated;

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

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

31 e. An estimate of the total withholdings.

32 <sup>2</sup>A cooperative association may apply, in one consolidated  
33 application in a form and manner determined by the authority, for a  
34 grant on its own behalf as a business and for grants on behalf of the  
35 members of the association who may qualify under this act.

36 If a cooperative association is applying for grants on behalf of its  
37 members, the members for whom the application is submitted shall  
38 assign to the association any claim of right the members may have  
39 under this act to apply for grants individually during the term of the  
40 business employment incentive agreement, and agree to cooperate with  
41 the association in providing to the authority all the information  
42 required for the initial application, the business employment incentive  
43 agreement, and any other information the authority may require for  
44 the purposes of this act. The cooperative association shall be  
45 responsible for providing to the authority all the information required  
46 under this act.

1     If a cooperative association applies for a grant on behalf of its  
2 members, the members included in the application may be permitted  
3 to meet the qualifications for a grant collectively by participating in a  
4 project that will meet the requirements of section 3 and 4 of this act,  
5 the amount of a grant shall be calculated under the terms of this act as  
6 if the members are all collectively one business entity, and any  
7 restrictions on the qualification for a grant shall apply to each member  
8 who is listed in the application as participating in the project. The  
9 grants awarded shall be paid to the cooperative association. A grant  
10 received under this act by a cooperative association may be  
11 apportioned to the members of the association in a manner determined  
12 by the association. Each member included in the application shall be  
13 required to sign the business employment incentive agreement and  
14 shall abide by its terms.<sup>2</sup>  
15

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

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

23       (2) The expected duration of those positions;

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

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

28       (5) The total dollar investment the business is making in the  
29 project.

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

31     c. At the discretion of the authority, the grant may apply only to  
32 new employees in eligible positions created during the base years, or  
33 to additional new employees in eligible positions created during the  
34 remainder of the term of the grant.

35

36     7. (New section) The business employment incentive agreement  
37 shall include, but shall not be limited to, the following:

38       a. A detailed description of the proposed project which will result  
39 in job creation, and the number of new employees to be hired in the  
40 base years;

41       b. The term of the grant, and the first year for which the grant may  
42 be claimed;

43       c. The new employees whose positions are subjects of the grant,  
44 pursuant to subsection c. of section 6 of this act;

45       d. A requirement that the applicant maintain the project at a  
46 location in New Jersey for at least 1.5 times the number of years of the

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

1 in the agreement or otherwise fails to comply with any condition of the  
2 grant agreement for any two consecutive years, the authority may  
3 terminate the agreement.

4  
5 10. (New section) No amount shall be disbursed to a recipient  
6 business as a grant under this act in any year until the State Treasurer  
7 has certified that the amount of withholdings received in that year by  
8 the division from the business equals or exceeds the amount of the  
9 grant.

10  
11 11. (New section) a. A business that is receiving a business  
12 relocation grant pursuant to the provisions of P.L. , c. (C. )(now  
13 before the Legislature as Senate Bill No. 2390 (1R) or Assembly Bill  
14 No. 3202 (1R) of 1995) shall not be eligible to receive a grant under  
15 this act except upon the approval of the State Treasurer.

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

25  
26 12. (New section) The department shall conduct a study to  
27 determine the minimum funding level required to implement the  
28 Business Employment Incentive Program successfully. Major  
29 consideration shall be given to the rate of return for each job created  
30 as a result of business employment incentive grants.

31  
32 13. (New section) The authority shall establish an application fee  
33 for a grant application and service fees payable by each business which  
34 is a grant recipient to pay the costs of the administration of the  
35 program.

36  
37 14. (New section) The New Jersey Economic Development  
38 Authority, after consultation with the Department of Commerce and  
39 Economic Development and the Division of Taxation, shall, in  
40 accordance with the "Administrative Procedure Act," P.L.1968, c.410  
41 (C.52:14B-1 et seq.), adopt rules necessary to implement the  
42 provisions of the Business Employment Incentive Program not related  
43 to the collection or determination of taxes and tax withholding. The  
44 rules shall provide for the recipients of business employment incentive  
45 grants to be charged an initial application fee, and ongoing service  
46 fees, to cover the administrative costs related to the program. <sup>2</sup>The

1 rules also shall include the procedures to clarify the application of the  
2 various provisions of this act to cooperative associations that submit  
3 applications on behalf of their members.<sup>2</sup> The Director of the Division  
4 of Taxation is authorized to promulgate those rules necessary to  
5 effectuate the tax related provisions of the Business Employment  
6 Incentive Program.

7  
8 15. (New section) The Department of Commerce and Economic  
9 Development shall submit a report on the Business Employment  
10 Incentive Program to the Governor, President of the Senate, and  
11 Speaker of the General Assembly on or before October 31 of each  
12 year. The report shall include information on the number of  
13 agreements entered into during the preceding fiscal year, a description  
14 of the project under each agreement, the number of jobs created, new  
15 income tax revenue received from withholdings, amounts awarded as  
16 grants and an update on the status of projects under agreement before  
17 the preceding fiscal year. After the program's fifth year, the  
18 department, in conjunction with the State Treasurer, shall assess the  
19 effectiveness of the program in creating new jobs in New Jersey and  
20 the impact on State revenues. The department shall submit a final  
21 report to the Governor, Senate President, and Speaker of the General  
22 Assembly on or before January 1, 2000.

23  
24 16. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as  
25 follows:

26 5. The authority shall have the following powers:

27 a. To adopt bylaws for the regulation of its affairs and the conduct  
28 of its business;

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

30 c. To sue and be sued;

31 d. To acquire in the name of the authority by purchase or  
32 otherwise, on such terms and conditions and such manner as it may  
33 deem proper, or by the exercise of the power of eminent domain in the  
34 manner provided by the Eminent Domain Act of 1971, P.L.1971,  
35 c.361 (C.20:3-1 et seq.), any lands or interests therein or other  
36 property which it may determine is reasonably necessary for any  
37 project; provided, however, that the authority shall not take by  
38 exercise of the power of eminent domain any real property except  
39 upon consent thereto given by resolution of the governing body of the  
40 municipality in which such real property is located; and provided  
41 further that the authority shall be limited in its exercise of the power  
42 of eminent domain to municipalities receiving State aid under the  
43 provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to  
44 municipalities which had a population, according to the latest federal  
45 decennial census, in excess of 10,000;

46 e. To enter into contracts with a person upon such terms and

- 1 conditions as the authority shall determine to be reasonable, including,  
2 but not limited to, reimbursement for the planning, designing,  
3 financing, construction, reconstruction, improvement, equipping,  
4 furnishing, operation and maintenance of the project and to pay or  
5 compromise any claims arising therefrom;
- 6 f. To establish and maintain reserve and insurance funds with  
7 respect to the financing of the project;
- 8 g. To sell, convey or lease to any person all or any portion of a  
9 project, for such consideration and upon such terms as the authority  
10 may determine to be reasonable;
- 11 h. To mortgage, pledge or assign or otherwise encumber all or any  
12 portion of a project or revenues, whenever it shall find such action to  
13 be in furtherance of the purposes of this act;
- 14 i. To grant options to purchase or renew a lease for any of its  
15 projects on such terms as the authority may determine to be  
16 reasonable;
- 17 j. To contract for and to accept any gifts or grants or loans of  
18 funds or property or financial or other aid in any form from the United  
19 States of America or any agency or instrumentality thereof, or from  
20 the State or any agency, instrumentality or political subdivision  
21 thereof, or from any other source and to comply, subject to the  
22 provisions of the act, with the terms and conditions thereof;
- 23 k. In connection with any application for assistance under this act  
24 or commitments therefor, to require and collect such fees and charges  
25 as the authority shall determine to be reasonable;
- 26 l. To adopt, amend and repeal regulations to carry out the  
27 provisions of this act;
- 28 m. To acquire, purchase, manage and operate, hold and dispose of  
29 real and personal property or interests therein, take assignments of  
30 rentals and leases and make and enter into all contracts, leases,  
31 agreements and arrangements necessary or incidental to the  
32 performance of its duties;
- 33 n. To purchase, acquire and take assignments of notes, mortgages  
34 and other forms of security and evidences of indebtedness;
- 35 o. To purchase, acquire, attach, seize, accept or take title to any  
36 project by conveyance or by foreclosure, and sell, lease, manage or  
37 operate any project for a use specified in this act;
- 38 p. To borrow money and to issue bonds of the authority and to  
39 provide for the rights of the holders thereof, as provided in this act;
- 40 q. To extend credit or make loans to any person for the planning,  
41 designing, acquiring, constructing, reconstructing, improving,  
42 equipping and furnishing of a project, which credits or loans may be  
43 secured by loan and security agreements, mortgages, leases and any  
44 other instruments, upon such terms and conditions as the authority  
45 shall deem reasonable, including provision for the establishment and  
46 maintenance of reserve and insurance funds, and to require the

- 1 inclusion in any mortgage, lease, contract, loan and security agreement  
2 or other instrument, such provisions for the construction, use,  
3 operation and maintenance and financing of a project as the authority  
4 may deem necessary or desirable;
- 5 r. To guarantee up to 90% of the amount of a loan to a person, if  
6 the proceeds of the loan are to be applied to the purchase and  
7 installation, in a building devoted to industrial or commercial  
8 purposes, or in an office building, of an energy improvement system;
- 9 s. To employ consulting engineers, architects, attorneys, real estate  
10 counselors, appraisers, and such other consultants and employees as  
11 may be required in the judgment of the authority to carry out the  
12 purposes of the act, and to fix and pay their compensation from funds  
13 available to the authority therefor, all without regard to the provisions  
14 of Title [11, Civil Service,]11A of the [Revised] New Jersey Statutes;
- 15 t. To do and perform any acts and things authorized by this act  
16 under, through or by means of its own officers, agents and employees,  
17 or by contract with any person;
- 18 u. To procure insurance against any losses in connection with its  
19 property, operations or assets in such amounts and from such insurers  
20 as it deems desirable;
- 21 v. To do any and all things necessary or convenient to carry out its  
22 purposes and exercise the powers given and granted in the act;
- 23 w. To construct, reconstruct, rehabilitate, improve, alter, equip,  
24 maintain or repair or provide for the construction, reconstruction,  
25 improvement, alteration, equipping or maintenance or repair of any  
26 development property and lot, award and enter into construction  
27 contracts, purchase orders and other contracts with respect thereto,  
28 upon such terms and conditions as the authority shall determine to be  
29 reasonable, including, but not limited to, reimbursement for the  
30 planning, designing, financing, construction, reconstruction,  
31 improvement, equipping, furnishing, operation and maintenance of any  
32 such development property and the settlement of any claims arising  
33 therefrom and the establishment and maintenance of reserve funds with  
34 respect to the financing of such development property; [and]
- 35 x. When authorized by the governing body of a municipality  
36 exercising jurisdiction over an urban growth zone, to construct, cause  
37 to be constructed or to provide financial assistance to projects in an  
38 urban growth zone which shall be exempt from the terms and  
39 requirements of the land use ordinances and regulations, including, but  
40 not limited to, the master plan and zoning ordinances, of such  
41 municipality; and
- 42 y. To enter into business employment incentive agreements as  
43 provided in the "Business Employment Incentive Program Act."

1 P.L. c. (C. )(now before the Legislature as this bill).  
2 (cf: P.L.1983, c.282, s.3)

3  
4 17. <sup>2</sup>[For the fiscal year beginning July 1, 1995, there] There <sup>2</sup> is  
5 appropriated to the New Jersey Economic Development Authority  
6 from the General Fund such sums as may be necessary to fund the  
7 Business Employment Incentive Program established by this act, the  
8 amount of which shall not exceed the total amount of revenues  
9 received as withholdings, as defined in section 2 of P.L. , c. (C. )  
10 (now before the Legislature as this bill) from all businesses receiving  
11 grants pursuant to this act, as certified by the Director of the Division  
12 of Taxation.

13  
14 <sup>2</sup>18. Section 25 of P.L.1980, c.105 (C.54:32B-8.13) is amended to  
15 read as follows:

16 25. Receipts from the following are exempt from the tax imposed  
17 under the Sales and Use Tax Act:

18 a. Sales of machinery, apparatus or equipment for use or  
19 consumption directly and primarily in the production of tangible  
20 personal property by manufacturing, processing, assembling or  
21 refining;

22 b. Sales of machinery, apparatus or equipment for use or  
23 consumption directly and primarily in the production, generation,  
24 transmission or distribution of gas, electricity, refrigeration, steam or  
25 water for sale or in the operation of sewerage systems;

26 c. Sales of telephones, telephone lines, cables, central office  
27 equipment or station apparatus, or other machinery, equipment or  
28 apparatus, or comparable telegraph equipment to a service provider  
29 subject to the jurisdiction of the Board of Public Utilities or the  
30 Federal Communications Commission, for use directly and primarily  
31 in receiving at destination or initiating, transmitting and switching  
32 telephone, telegraph or interactive telecommunications service for sale  
33 to the general public;

34 d. Sales of machinery, apparatus, equipment, building materials,  
35 or structures or portions thereof, used directly and primarily for  
36 cogeneration in a cogeneration facility. As used in this subsection,  
37 "cogeneration facility" means a facility the primary purpose of which  
38 is the sequential production of electricity and steam or other forms of  
39 useful energy which are used for industrial or commercial heating or  
40 cooling purposes and which is designated by the Federal Energy  
41 Regulatory Commission, or its successor, as a "qualifying facility"  
42 pursuant to the provisions of the "Public Utility Regulatory Policies  
43 Act of 1978," Pub. L. 95-617. The Director of the Office of Energy  
44 in the Department of Environmental Protection, in consultation with  
45 the Director of the Division of Taxation, shall adopt, pursuant to the  
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.), rules and regulations establishing technical specifications for  
2 eligibility for the exemption provided in this subsection;  
3 e. Sales of machinery, apparatus or equipment including  
4 transponders, earth stations, microwave dishes, transmitters and  
5 receivers which have a useful life exceeding one year, other than that  
6 used in the construction or operation of towers, to a commercial  
7 broadcaster operating under a broadcasting license issued by the  
8 Federal Communications Commission or to a provider of  
9 cable/satellite television program services who may or may not operate  
10 under a broadcasting license issued by the Federal Communications  
11 Commission for use or consumption directly and primarily in the  
12 production or transmission of radio or television [broadcasts]  
13 information transmitted, delivered or archived through any medium or  
14 method.

15 The exemptions granted under this section shall not be construed  
16 to apply to sales, otherwise taxable, of machinery, equipment or  
17 apparatus whose use is incidental to the activities described in  
18 subsections a., b., c., d. and e. of this section.

19 The exemptions granted in this section shall not apply to motor  
20 vehicles or to parts with a useful life of one year or less or tools or  
21 supplies used in connection with the machinery, equipment or  
22 apparatus described in this section.<sup>2</sup>

23 (cf: P.L.1995, c.317, s.1)

24

25 <sup>2</sup>[18.] 19.<sup>2</sup> This act shall take effect immediately <sup>2</sup>, provided  
26 however that section 18 shall remain inoperative until the first day of  
27 the first month following enactment<sup>2</sup>.

28

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31

32 Creates employment incentives through grant program and sales and  
33 use tax exemption; appropriates General Fund revenues.