

ASSEMBLY, No. 2630

STATE OF NEW JERSEY

INTRODUCED JANUARY 9, 1997

By Assemblywomen ALLEN and WEINBERG

1 AN ACT creating the Multistate Industrial Retention Commission and
2 the New Jersey Industrial Stabilization Board and making an
3 appropriation.
4

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

8 ARTICLE I
9

10 THE "MULTISTATE INDUSTRIAL RETENTION
11 COMMISSION"
12

13 1. This act shall be known and may be cited as the "The Jobs and
14 Communities Protection Act"
15

16 2. As used in this act:

17 "Affiliate" means any entity which has a relationship with an
18 employer in which the entity, directly or indirectly, is controlled by or
19 controls the employer.

20 "Agency" means a state and any of its instrumentalities, including
21 any of its agencies or political subdivisions and any authorities created
22 by the legislature of the state.

23 "Commission" means the Multistate Industrial Retention
24 Commission established pursuant to section 3 of this act.

25 "Commissioner" means a member appointed to the commission
26 pursuant to this act.

27 "Concurring state" means any state which enacts legislation which
28 concurs with this legislation.

29 "Economic development assistance" means any economic
30 development assistance provided to an employer by an agency,
31 including, but not limited to, direct grants, including job training
32 grants, and subsidized financing, except that "economic development
33 assistance" shall not include any assistance which is financed by funds
34 provided by the United States.

35 "Employer" means an individual or private business entity which
36 employs the workforce at an establishment and includes all affiliates of
37 the employer.

1 "Establishment" means a single place of employment operated by an
2 employer, but shall not include a temporary construction site.

3 "Significant transfer or termination of operations" means a
4 termination of operations or transfer of operations which results,
5 during any continuous period of not more than 180 days, in the
6 termination of employment of 50 or more employees.

7 "Termination of employment" means the layoff of an employee
8 without a commitment to reinstate the employee to his previous
9 employment within six months of the layoff, except that "termination
10 of employment" shall not mean any layoff of a construction worker
11 upon the completion of a construction project or any layoff of a
12 seasonal employee, or refer to any situation in which an employer
13 offers to an employee, at a location not more than 30 miles from the
14 previous place of employment, the same employment or a position
15 with equivalent status, benefits, pay, and other terms and conditions
16 of employment.

17 "Termination of operations" means the permanent termination of all
18 or a portion of the operations conducted in an establishment, except
19 for a termination of operations made necessary because of a court
20 order, fire, flood, natural disaster, national emergency, act of war, civil
21 disorder, or industrial sabotage.

22 "Transfer of operations" means the transfer of all or a portion of the
23 operations conducted in an establishment to another location, inside
24 or outside of the state where the establishment is located.

25

26 3. a. There is hereby created the Multistate Industrial Retention
27 Commission, which shall have all of the powers and duties set forth
28 herein and any additional powers and duties as are conferred upon it
29 by subsequent action of the legislatures of all of the concurring states.

30 b. The commission shall consist of one commissioner from each
31 concurring state who shall be appointed, and shall serve, in the manner
32 determined by the legislature of that state. Each commissioner shall
33 not receive compensation from the commission but may be reimbursed
34 for necessary expenses incurred in and incident to the performance of
35 the duties of the commissioner.

36 c. The commission shall provide for its own organization,
37 administration and procedures and shall adopt rules and regulations
38 governing its meetings and transactions. It shall first organize itself
39 upon the enactment of concurring legislation by not less than five
40 states and upon the appointment of a commissioner from each of those
41 states, and shall subsequently organize itself annually. In organizing
42 itself, the commission shall elect a chairperson and vice-chairperson
43 from among its commissioners and appoint an executive director who
44 shall serve as its secretary and chief executive officer.

45 d. Each commissioner shall be entitled to one vote on all matters
46 which may come before the commission except as provided pursuant

1 to subsection h. of section 5 of this act. No determination, decision or
2 action of the commission shall be made or taken unless a majority of
3 the commissioners votes in favor of the action.

4

5 4. The commission shall have the power to:

6 a. Sue and be sued in a court of competent jurisdiction;

7 b. Adopt and have a seal;

8 c. Provide for the hiring, organization and administration of a
9 commission staff and retain and employ counsel, and fix and provide
10 for the qualification, appointment, removal, term, tenure,
11 compensation, pension and retirement rights of its officers and
12 employees;

13 d. Establish one or more offices for the transacting of its business;

14 e. Make and enforce rules and regulations that the commission
15 deems necessary to effectuate the purposes of this act; provided that
16 any rule or regulation, other than one which deals solely with the
17 internal management of the commission, shall be adopted only after
18 public hearing and shall not be effective unless filed in accordance with
19 the law of each respective concurring state applicable to the filing of
20 rules and regulations;

21 f. Conduct any investigation and hearing necessary to implement
22 the purposes of this act upon the request of the designated agency of
23 a concurring state; administer oaths and issue subpoenas to compel the
24 attendance of witnesses and the giving of testimony and the production
25 of other evidence; and have full and free access to and from all
26 property, premises and places necessary to conduct the investigation;

27 g. Accept any donations and grants of money, goods or services,
28 conditional or otherwise; cooperate with and receive assistance and
29 data from any agency which will enable it to implement the purposes
30 of this act; and, in the manner provided pursuant to this act,
31 recommend actions to be taken by the concurring states and their
32 agencies; and

33 h. Do all other things necessary or incidental to the administration
34 of its functions pursuant to this act.

35

36 5. a. The purpose of the commission is to provide information,
37 analysis and recommendations to concurring states which will assist
38 them in making informed decisions when they act in their roles as
39 market participants to prevent the harm caused to the welfare of their
40 citizens by detrimental net relocations of employment associated with
41 significant transfers or terminations of operations of establishments in
42 those states.

43 b. In order to implement its purpose pursuant to this section, the
44 commission shall investigate any significant transfer or termination of
45 operations of an establishment located in a concurring state upon a
46 request by the designated agency of the state where the establishment

1 is located, and may investigate any possible future significant transfer
2 or termination of operation of an establishment upon the request of the
3 designated agency of the state where the establishment is located.

4 c. The goal of each investigation undertaken by the commission of
5 an actual or anticipated significant transfer or termination of
6 operations of an establishment pursuant to this section shall be to
7 make a determination of fact as to whether the employer at the
8 establishment is responsible for a detrimental net relocation of
9 employment in connection with the transfer or termination. For the
10 purposes of this act, an employer shall be regarded as responsible for
11 a detrimental net relocation of employment if the commission finds
12 that:

13 (1) Employment lost from the establishment was transferred or is
14 being transferred to one or more other locations, including any transfer
15 by means of outsourcing or contracting out of production, and that
16 employment loss is not the result of the employer reducing or
17 discontinuing entirely its total sale or use of the product line or lines
18 which had been produced at the establishment; and

19 (2) The transfer of employment to other locations has contributed
20 or will contribute to an undermining of labor, health, environmental,
21 human rights, civil rights or other standards, based on a diminishment
22 of the pay and conditions of employees, of the funding of
23 infrastructure and education or other public services required for the
24 general welfare, or of other conditions affecting employees and their
25 communities, which diminishment is demonstrable by comparison of
26 conditions where the establishment was or is located and conditions at
27 the location or locations to which the employment is or will be
28 transferred.

29 The commission shall require the employer to report all changes in
30 the location, during the preceding period of not less than ten years, of
31 all employment and production of the employer related to each
32 product line produced at the affected establishment, including changes
33 related to the outsourcing or contracting out of production. The
34 commission shall consider all of those changes when determining
35 whether the employer is responsible for a detrimental net relocation of
36 employment.

37 d. In the course of its investigation, the commission shall conduct
38 one or more hearings to provide an opportunity for the employer to
39 present its views with respect to whether the significant transfer or
40 termination of operations has occurred or will occur and whether the
41 employer is responsible for a detrimental net relocation of
42 employment.

43 e. If it is determined that the employer is responsible for a
44 detrimental net relocation of employment, the commission shall decide
45 which one or more, if any, of the following actions to recommend that
46 each concurring state take against the responsible employer:

1 (1) Placing the employer, for a period of time determined by the
2 commission, on a list of employers debarred from selling, leasing or
3 otherwise furnishing goods or services to any agency of that state,
4 except that the debarment shall not apply to the purchase or lease of
5 goods or services from the employer if that employer is the only
6 person able to provide those goods or services in commercial
7 quantities and of satisfactory quality and shall not apply if the goods
8 or services are paid for by the United States;

9 (2) Placing the employer, for a period of time determined by the
10 commission, on a list of employers debarred from receiving economic
11 development assistance from any agency of that state; or

12 (3) Placing the employer, for a period of time determined by the
13 commission, on a list of employers debarred from having investments
14 made in them of assets of any pension or annuity funds, cash
15 management funds and other funds which any agency of that state is
16 authorized to invest, except that the commission may not recommend
17 that any concurring state impose a bar on investment pursuant to this
18 paragraph until the total amount of investment assets of all concurring
19 states and all agencies of the concurring states is \$150 billion or more.

20 To comply with this recommendation, a state shall:

21 (a) Prohibit any new investment of fund assets in the employer
22 after the employer is placed on the list;

23 (b) Take appropriate action to sell, redeem, divest or withdraw any
24 investment held in the employer not later than one year after the
25 employer is placed on the list; and

26 (c) Initiate and support efforts to get other investors, including
27 multi-employer private pension funds, public employee pension funds
28 in other states and other institutional investors, to sell, redeem, divest
29 or withdraw investments of their assets from the employer.

30 f. Of the employers who are determined during any one year to be
31 responsible for a detrimental net relocation of employment:

32 (1) Not less than 50% shall be subject to a recommendation that
33 concurring states take the action indicated in paragraph (1) of
34 subsection e. of this section;

35 (2) Not less than 75% shall be subject to a recommendation that
36 concurring states take the action indicated in paragraph (2) of
37 subsection e. of this section; and

38 (3) Not less than 25% shall be subject to a recommendation that
39 concurring states take the action indicated in paragraph (3) of
40 subsection e. of this section.

41 g. In determining whether to recommend one or more of the
42 actions permitted pursuant to subsection e. of this section to be taken
43 against an employer determined to be responsible for a detrimental net
44 relocation of employment, the commission shall consider the following
45 factors:

46 (1) The seriousness of the impact of the net relocation on the

1 workers and other citizens of the concurring state and whether the
2 employer has been responsible for other detrimental net relocations of
3 employment;

4 (2) How likely it is that the action or actions will have an sufficient
5 impact to deter the detrimental net relocation of employment or
6 subsequent net relocations; and

7 (3) Any likely negative impact that the action or actions may have
8 on the concurring states and their citizens.

9 If an employer reverses its decision to undertake a significant
10 transfer or termination of operations and rehires any employees who
11 have lost employment as a result of the transfer or termination, the
12 commission may withdraw its recommendation.

13 h. Any decision to recommend any of the actions against an
14 employer pursuant to subsection e. of this section or withdraw a
15 recommendation shall require an affirmative vote of not less than two
16 thirds of all of the votes of the members of the commission. Each
17 commissioner shall be entitled to one vote on any decision to
18 recommend any of the actions or withdraw a recommendation, except
19 that, in the case of a decision regarding the placement of the employer
20 on the list of employers barred from investment pursuant to paragraph
21 (3) of subsection e. of this section, each commissioner shall be given
22 one additional vote for each \$10 billion in assets of any pension or
23 annuity funds, cash management funds and other funds which that
24 commissioner's concurring state or any agency of that state is
25 authorized to invest.

26 i. The commission shall make available to each concurring state all
27 information at its disposal that is necessary or useful to enable the
28 state to implement any recommendation of the commission. The
29 commission and each concurring state shall make available to the
30 public a list of all employers who are determined by the commission to
31 be responsible for a detrimental net relocation of employment and a list
32 of all employers who are subject to each of the recommendations
33 indicated in subsection e. of this section.

34
35 6. All meetings and hearings of the commission shall be open to the
36 public, except for deliberations involving the consideration of
37 documents and information which are confidential pursuant to this
38 section. The minutes of the public meetings and hearings of the
39 commission shall be public records open to inspection and copying at
40 its offices during regular business hours, subject to the law relating to
41 public records of the concurring states in which such minutes are
42 located.

43 Any information obtained from any person by the commission which
44 would adversely affect the competitive position of the person if made
45 public shall be retained solely for the use of the commission and the
46 concurring states in the implementation of this act, and shall not be

1 disclosed for any other purpose without the written consent of the
2 person.

3
4 7. If an establishment located in a concurring state is subject to a
5 significant transfer or termination of operations, the employer who
6 operates the establishment shall provide, not later than the time at
7 which the first termination of employment occurs in connection with
8 the transfer or termination of operations, notification of the transfer or
9 termination of operations to the designated agency in the concurring
10 state, the political subdivision where the establishment is located, the
11 affected employees and any collective bargaining unit of the
12 employees. The subdivision, employees or collective bargaining unit
13 may file a request that the designated agency request the commission
14 to conduct an investigation of the transfer or termination of operations
15 pursuant to section 5 of this act. The notification shall be in writing
16 on a form provided by the commission and shall include:

17 a. A statement of the number of employees whose employment will
18 be terminated, when the terminations will occur, any employment
19 available to employees at any other establishment operated by the
20 employer, and information regarding the terms, conditions and location
21 of that employment;

22 b. A statement of the reasons for the transfer or termination of
23 operations; and

24 c. A statement which describes: the right of the designated agency
25 to request an investigation of the transfer or termination of operations;
26 the right of the political subdivision, the employees or their collective
27 bargaining unit to file a request to have the agency make the request;
28 and the actions that the commission may recommend pursuant to
29 section 5 of this act if the commission determines that the employer is
30 responsible for a detrimental net relocation of employment.

31
32 8. a. No person shall obstruct, withhold requested information or
33 in any other way interfere with a commissioner or officer, employee or
34 agent of the commission engaged in the conduct of an investigation
35 deemed necessary by the commission to implement the purposes of this
36 act or engaged in the performance of any other duty pursuant to the
37 provisions of this act.

38 b. In addition to any other penalty provided by law, if the
39 commission determines that an employer has violated or attempted or
40 conspired to violate any provision of section 7 of this act or subsection
41 a. of this section, the commission shall recommend that the employer
42 be placed on all of the debarment lists provided for pursuant to
43 subsection e. of section 5 of this act until the violation has ceased.
44 Prior to making a determination regarding a violation pursuant to this
45 subsection, the commission shall conduct a hearing to provide an
46 opportunity for the employer to present its views with respect to the

1 violation.

2 c. Any subpoena issued by the commission shall be enforced by any
3 court of competent jurisdiction of the concurring states, according to
4 the practice and procedure of the court applicable to subpoenas issued
5 in proceedings pending before it.

6

7 9. The commission shall provide for an annual independent audit
8 of its accounts and financial transactions by a certified public
9 accountant, and for the publication of the report of the audit. The
10 commission shall also make an annual report of its activities to the
11 governors and legislatures of the concurring states.

12

13 10. The commission shall annually adopt a current expense budget
14 for each fiscal year, and shall apportion the amount required to balance
15 the expenditures therein, less estimated revenues from all sources, to
16 the concurring states in accordance with equitable cost-sharing
17 formulae adopted by the commission, except that the annual share for
18 each concurring state shall be not less than the lesser of: an amount
19 equal to \$0.03 per each member of the state's total population; or a
20 total amount of \$150,000. Following the adoption of its annual
21 budget, the commission shall transmit certified copies of the budget to
22 the budget officers of the concurring states at the time and in the
23 manner required under their respective budgetary procedures. The
24 budget shall include the amount apportioned for the support of the
25 commission's current expense budget in their respective budgets next
26 to be adopted, subject to the review and approval required by the
27 budgetary processes of the respective concurring states. The amounts
28 shall be due and payable to the commission in equal quarterly
29 installments during the commission's fiscal year.

30

31 11. Amendments and supplements to this act may be adopted by
32 legislative action of all the concurring states. A concurring state may
33 withdraw from its concurrence with this act by repealing its concurring
34 legislation. The provisions of this act shall not be operative during any
35 time that the total number of concurring states is reduced to less than
36 five.

37

38 12. The provisions of this act shall be severable, and if any
39 provision of the act is declared to be unconstitutional or the
40 applicability thereof to any concurring state, agency, person or
41 circumstance is held invalid, the constitutionality of the remainder of
42 the act and its applicability to any other concurring state, agency,
43 person or circumstance shall not be affected. The provisions of this
44 act shall be reasonably and liberally construed.

1 for five years, four shall be appointed for three years, and four shall be
2 appointed for two years. Of the members appointed pursuant to this
3 subsection, not more than six shall be of the same political party, and
4 each shall hold office for the term of appointment and until his
5 successor is appointed and qualified. Any member may be removed
6 from office by the Governor, for cause, after a hearing and may be
7 suspended by the Governor pending the completion of the hearing. A
8 member appointed to fill a vacancy occurring prior to the expiration
9 of the term shall have a term of appointment for the unexpired portion
10 of the term only. All vacancies shall be filled in the same manner as
11 the original appointment. Members of the board shall serve without
12 compensation, but shall be reimbursed for necessary expenses incurred
13 in the performance of their duties as members.

14

15 17. The board shall first organize itself upon the appointment of its
16 members, and shall subsequently organize itself annually. In
17 organizing itself, the board shall elect a chairperson and
18 vice-chairperson from among its members. Each member shall be
19 entitled to one vote on all matters which may come before the board.
20 No determination, decision or action of the board shall be made or
21 taken unless a majority of the members votes in favor of the action,
22 and the board shall not place an employer on a list of employers barred
23 from having investments made into them without the concurrence of
24 a majority of the board members who represent unions representing
25 employees covered by the pension plans of the State or any agency of
26 the State.

27

28 18. The board shall annually appoint the commissioner to serve as
29 New Jersey's member on the Multistate Industrial Retention
30 Commission. The board shall also appoint an executive director of the
31 board, who shall report to the chairperson of the board and be
32 responsible for administering the daily operations of the board. The
33 executive director shall serve in the State unclassified service. The
34 board may also hire and employ, pursuant to Title 11A, Civil Service,
35 of the New Jersey Statutes, other professional, technical, and clerical
36 staff as may be necessary to perform the functions assigned to the
37 board. The board shall have access to all files and records of the
38 Department of the Treasury, the Department of Labor, the Department
39 of Commerce and Economic Development and other relevant State
40 agencies and may call to its assistance and avail itself of the services
41 of the employees of those departments and agencies to provide
42 whatever information the board deems necessary in the performance
43 of its functions. The board is authorized to: conduct any review,
44 investigation or hearing necessary to implement the purposes of this
45 act; administer oaths and issue subpoenas to compel the attendance of
46 witnesses and the giving of testimony and the production of other

1 evidence; and have full and free access to and from all property,
2 premises and places necessary to conduct the investigation; and accept
3 all donations and grants of money, goods or services, conditional or
4 otherwise.

5
6 19. The board shall work with appropriate agencies and seek the
7 cooperation of businesses, labor organizations or other interested
8 entities to collect relevant information regarding economic
9 developments and to establish and foster early warning networks to
10 assist in identifying establishments which are likely to experience
11 future significant transfers or terminations of operations. The board
12 shall also seek the collaboration of other concurring states in efforts
13 to identify establishments likely to experience future significant
14 transfers or terminations of operations. The board may, in
15 implementing the provisions of this act, consult with, and use
16 information provided by, any early warning network established
17 pursuant to this section and any national, state or local public or
18 private entity or organization.

19
20 20. a. For the purposes of Article I of this act, the designated
21 agency in this State shall be the board. If an establishment located in
22 the State is subject to, or will be subject to, a significant transfer or
23 termination of operations, a request that the board review the transfer
24 or termination may be filed by the political subdivision where the
25 establishment is located, the affected employees or any collective
26 bargaining unit of the employees. The board shall conduct the review
27 and if it determines that there is a reasonable likelihood that the
28 employer at the establishment is responsible for a detrimental net
29 relocation of employment in connection with the transfer or
30 termination, the board shall: (1) request that the commission conduct
31 an investigation of the transfer or termination pursuant to section 5 of
32 this act; or, (2) if the commission is not in operation, conduct the
33 investigation itself in the manner provided by subsection b. of section
34 22 of this act.

35 b. The board may also consider a request filed by any interested
36 entity that the board review a likely future significant transfer or
37 termination of the operations of an establishment located in the State,
38 and if the board determines that there is a reasonable likelihood that
39 the transfer or termination will occur and that the employer at the
40 establishment is or will be responsible for a detrimental net relocation
41 of employment, the board shall: (1) request that the commission
42 conduct an investigation of the transfer or termination; or, (2) if the
43 commission is not in operation, conduct the investigation itself in the
44 manner provided by subsection b. of section 22 of this act.

1 21. a. The board shall review each recommendation made by the
2 commission pursuant to sections 5 or 8 of this act.

3 b. In the case of a recommendation made pursuant to section 8 of
4 this act, if the board concurs with the commission that an employer has
5 violated, or attempted or conspired to violate, the provisions of
6 sections 7 or 8 of this act, the board is authorized, notwithstanding any
7 other provision of the laws of this State, to direct all agencies of this
8 State to comply with the recommendation, and each agency shall
9 comply with any recommendation of the commission when so directed
10 by the board.

11 c. In the case of a recommendation made pursuant to section 5 of
12 this act, if the board concurs with the commission's determination of
13 fact that an employer is responsible for a detrimental net relocation of
14 employment, and, if the board finds the recommendation of the
15 commission to be appropriate based on the factors indicated in
16 subsection g. of section 5 of this act, the board is authorized to direct
17 all relevant agencies of this State to comply with the recommendation,
18 and each agency, including the State Investment Council and the
19 Director of the Division of Investment, shall, notwithstanding any
20 other provision of the laws of this State, comply with any
21 recommendation of the commission when so directed by the board. If
22 the board concurs with a determination of the commission that an
23 employer is responsible for a detrimental net relocation of
24 employment, but does not place the employer on a list of employers
25 barred from having investments made into them, the board is
26 authorized to direct the relevant agencies to initiate or support
27 shareholder petitions or initiatives with respect to the employer which
28 may, directly or indirectly, have an impact on the relocation or
29 subsequent relocations, including petitions or initiatives concerning the
30 governance and the selection of officers of the employer, and each
31 agency, including the State Investment Council and the Director of the
32 Division of Investment, shall act as directed by the board,
33 notwithstanding any other provision of the laws of this State.

34 The board shall continue or discontinue each action taken pursuant
35 to this subsection based on the board's ongoing assessment of the
36 effectiveness of the action and on any decision of the commission to
37 withdraw its recommendation regarding the action pursuant to
38 subsection h. of section 5 of this act.

39 d. The board shall be responsible for identifying all relevant
40 agencies of this State and implementing compliance by those agencies
41 with directives made by the board pursuant to this section.

42

43 22. a. The board shall investigate any set of transfers or
44 terminations of operations at one or more establishments of a single
45 employer which have resulted or will result in the termination of
46 employment of 300 or more employees in the State and may

1 investigate any significant transfer or termination of operations of an
2 establishment in the State which is part of a set of transfers or
3 terminations of operations at one or more establishments of a single
4 employer which has resulted or will result in the termination of
5 employment of a total of 10,000 or more employees inside and outside
6 of the State. The purpose of the investigation shall be to determine if
7 the transfer or termination of operations is likely to have significant
8 short-term or long-term adverse effects on the efficiency, effectiveness
9 or viability of the productive operations of the employer and
10 significant adverse effects on the economy, including adverse effects
11 related to reduced wages and conditions for workers, reduced public
12 revenues needed for infrastructure and education and other public
13 services and weakened labor, health, environmental, human rights, civil
14 rights or other standards.

15 In the course of the investigation, the board shall conduct one or
16 more hearings to provide an opportunity for the employer to present
17 its views with respect to the transfer or termination of operations and
18 whether they will have significant adverse effects on the long-range
19 viability of the employer or significant adverse effects on the State or
20 national economy.

21 b. If the commission is not in operation and the board conducts,
22 pursuant to section 20 of this act, an investigation of an actual or
23 anticipated significant transfer or termination of operations of an
24 establishment, the goal of the investigation shall be for the board to
25 make a determination of fact as to whether the employer at the
26 establishment is responsible for a detrimental net relocation of
27 employment in connection with the transfer or termination. To make
28 the determination, the board shall use the same criteria and procedures
29 as the commission would use to make the determination pursuant to
30 subsections c. and d. of section 5 of this act.

31 c. Upon a determination as a result of an investigation conducted
32 pursuant to subsection a. of this section that the transfers or
33 terminations of operations are likely to cause significant adverse
34 effects on the productive operations of the employer and on the
35 economy, or upon a determination as a result of an investigation
36 conducted pursuant to subsection b. of this section that an employer
37 is responsible for a detrimental net relocation of employment in
38 connection with the transfer or termination, the board is authorized to
39 publicize the determination and take, with respect to the employer, one
40 or more of the actions, for a period of time determined by the board,
41 which subsection e. of section 5 of this act permits the commission to
42 recommend in the case of an employer that the commission finds is
43 responsible for a detrimental net relocation of employment.

44 If the board does not place an employer on a list of employers
45 barred from having investments made into them, it is authorized to
46 require the relevant agencies to initiate or support shareholder

1 petitions or initiatives with respect to the employer which may,
2 directly or indirectly, have an impact on the transfers or terminations
3 of operations or subsequent transfers or terminations of operations,
4 including petitions or initiatives concerning the governance and the
5 selection of officers of the employer.

6 Each agency, including the State Investment Council and the
7 Director of the Division of Investment, shall, notwithstanding any
8 other provision of the laws of this State, comply with all actions taken
9 by the board pursuant to this subsection. The board shall be
10 responsible for identifying all relevant agencies of this State and
11 monitoring compliance by those agencies with directives made by the
12 board pursuant to this section.

13 d. In determining which one or more, if any, of the actions
14 permitted pursuant to subsection c. of this section to take against an
15 employer, the board shall consider the factors which the commission
16 is required to consider pursuant to subsection g. of section 5 of this
17 act in the case of an employer that the commission finds is responsible
18 for a detrimental net relocation of employment.

19 The board shall continue or discontinue each action based on the
20 board's ongoing assessment of the effectiveness of the action and may
21 discontinue an action against an employer if an employer reverses its
22 decision regarding a transfer or termination of operations and rehires
23 any employees who lost jobs as a result of the transfer or termination.
24

25 23. a. No person shall obstruct, withhold requested information or
26 in any other way interfere with an officer, employee or agent of the
27 board engaged in the conduct of an investigation deemed necessary by
28 the board to implement the purposes of this act or engaged in the
29 performance of any other duty pursuant to the provisions of this act.

30 b. In addition to any other penalty provided by law, if the board
31 determines that an employer has violated or attempted or conspired to
32 violate any provision of section 7 of this act or subsection a. of this
33 section, the board shall place the employer on all of the debarment lists
34 provided for pursuant to the subsection e. of section 5 of this act until
35 the violation has ceased. Prior to making a determination regarding
36 a violation pursuant to this subsection, the board shall conduct a
37 hearing to provide an opportunity for the employer to present its views
38 with respect to the violation.

39 c. Any determination or action of the board shall be subject to
40 judicial review in the Superior Court and court costs related to the
41 judicial review shall be paid by the party which does not prevail. Any
42 subpoena issued by the board pursuant to this act shall be enforced by
43 the Superior Court.
44

45 24. Not more than 20 employers shall be included at any one time
46 on the list of employers debarred from having investments made in

1 them by agencies of the State pursuant to section 21 or 22 of this act
2 and not more than 10 employers shall be added to that list during any
3 one calendar year, except that the limits to the number of debarred
4 employers provided by this section shall not apply to employers that
5 are debarred from having investments made in them because of
6 violation of section 7 of this act, subsection a. of section 8 of this act
7 or subsection a. of section 23 of this act.

8
9 25. The board shall, in accordance with the "Administrative
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate
11 whatever rules and regulations it deems necessary for the
12 implementation and enforcement of the provisions of this act.

13
14 26. The board shall prepare an annual budget and issue to the
15 Governor and the Legislature an annual report of its activities which
16 shall include: the results of each review and investigation conducted
17 by the board; and a description of the actions taken by the board and
18 by relevant agencies at the direction of, or in consultation with, the
19 board, and the effects of the actions.

20
21 27. The phrase "court of competent jurisdiction" as used in this act
22 shall, with reference to this State, mean the Superior Court of the
23 State of New Jersey, and for the purposes of that jurisdiction the
24 commission shall be deemed to be a State administrative agency. A
25 subpoena duly issued by the commission may be enforced upon ex
26 parte application pursuant to the Rules Governing the Courts of the
27 State of New Jersey.

28
29 28. The Legislature hereby finds and declares that:

30 a. There is a growing concern among business managers, financial
31 professionals and public officials that the financial markets are putting
32 too much pressure on businesses to take the "low road" to profits
33 which: emphasizes short-term profit maximization, cost-cutting,
34 reduced wages and benefits and the downsizing of the workforce;
35 forgoes long-term investment in machinery, worker training, research
36 and development, and safety and health; and thus often undermines the
37 productivity, efficiency and long-range profitability of business
38 operations and the well-being of the communities in which they are
39 located; and

40 b. There is also growing recognition that investors, workers and
41 communities alike often benefit when a business takes the "high road"
42 to profits of pursuing long-term investment strategies based on: new
43 plant, equipment and technologies; increased research and
44 development; improved safety and health; intensive worker training
45 and education; harmonious labor relations; and increased opportunities
46 for genuine worker participation in decision-making processes which

1 improve the quality of work and work life;

2 c. A focus on "high road" investment strategies, instead of short-
3 sighted "low road" investments, is especially appropriate in the
4 investment of public employee pension and annuity funds, which are
5 particularly well suited to a long-term perspective; and such a focus
6 benefits public employees by enhancing long-term economic stability
7 in the private sector, which is essential to support public services, the
8 public employment base, and the stable financing of public employee
9 pensions; and

10 d. It is therefore an appropriate public policy of the State, and a
11 prudent fiduciary policy benefiting public employees and retirees, to
12 authorize and direct every agency with authority over the investment
13 of public funds, including the State Investment Council and the
14 Director of the Division of Investment, to emphasize investment
15 strategies which enhance the long-term development of technological
16 innovation, productive capacity and the quality of the workforce,
17 rather than short-term gains.

18

19 29. Notwithstanding any other provision of the laws of this State,
20 the State Investment Council and the Director of the Division of
21 Investment, and any other agency with the authority over the
22 investment of public funds are, to the extent that available information
23 and other resources permit, authorized and directed to:

24 a. Assess the policies of employers and give priority to investment
25 into employers which the agency determines have appropriate policies
26 to promote the productivity, efficiency and long-range profitability of
27 the employer's business operations and the well-being of the
28 communities in which they are located by enhancing the long-term
29 development of technological innovation, productive capacity and
30 workforce quality, including policies emphasizing investment in new
31 plant, equipment and technologies, increased research and
32 development, improved safety and health, intensive worker training
33 and education, harmonious labor relations and increased opportunities
34 for genuine worker participation in decision-making processes which
35 improve the quality of work and work life; and

36 b. Initiate or support shareholder petitions or initiatives which may,
37 directly or indirectly, encourage such appropriate policies, including
38 petitions or initiatives concerning the governance and the selection of
39 officers of the employers.

40 In making its assessments concerning employer policies and related
41 decisions regarding investments, the agency shall consult with the New
42 Jersey Industrial Stabilization Board established by section 15 of
43 P.L.____, c.____ (C.____)(now pending before the Legislature as this
44 bill) and may use information provided by any national, state or local
45 public or private organization or entity, if the agency finds the
46 information to be reliable and helpful in its implementation of the

1 provisions of this section.

2 The agency shall refrain from making investments which assist any
3 merger, acquisition, takeover, buyout or other action which directly
4 causes reductions of productive capacity and employment.

5

6 30. There is appropriated from the General Fund to implement the
7 purposes of this act:

8 a. Upon the enactment of concurring legislation by any four other
9 States, \$150,000 to the Multistate Industrial Retention Commission;
10 and

11 b. Upon the effective date of this act, \$200,000 to the New Jersey
12 Industrial Stabilization Board.

13

14 31. This act shall take effect immediately but sections 3 through 6
15 and 8 through 13 shall remain inoperative until the enactment of
16 concurring legislation by any four other states.

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18

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STATEMENT

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21 This bill creates the New Jersey Industrial Stabilization Board and,
22 with the concurrence of at least four other states, creates the
23 Multistate Industrial Retention Commission. The bill also authorizes
24 the board and other State agencies to take a variety of actions to
25 respond to job losses caused by downsizings and plant relocations and
26 to otherwise strengthen the economy of the State.

27 Article I of the bill (sections 1 through 13) represents the portion
28 of the bill which would be adopted by all concurring states. It creates
29 a Multistate Industrial Retention Commission, made up of one
30 commissioner from each concurring state.

31 The purpose of the commission is to assist concurring states in
32 preventing the harm caused by net relocations of employment
33 associated with closings or relocations of workplaces in those states.
34 To do so, the commission is required to investigate any significant
35 closing or relocation of a workplace from a concurring state at the
36 request of the state. The commission may also investigate possible
37 future closings or relocations.

38 The goal of each investigation is to determine whether the employer
39 carried out a detrimental net relocation of employment in connection
40 with the closing or relocation, which means an actual relocation of
41 employment that undermines labor, health, environmental, human
42 rights, civil rights or other standards, as demonstrated by a worsening
43 of the pay and conditions of employees, of the funding of public
44 services, or of other circumstances affecting employees and their
45 communities.

46 If the commission finds the employer responsible for a detrimental

1 net relocation of employment, it is authorized to recommend that the
2 concurring states take any of the following actions against the
3 employer:

4 1. Bar the employer from entering into public contracts in the state;

5 2. Bar the employer from receiving economic development
6 assistance or incentives in the state; or

7 3. Bar the employer from having investments made into it of assets
8 of any public pension or other funds under the control of the state or
9 its instrumentalities. In this case, the concurring states would initiate
10 and support initiatives to have other states and institutional investors
11 also divest from the employer.

12 In deciding whether to recommend taking one or more of the
13 actions against an employer, the commission is required to consider
14 the seriousness of the impact of the relocation and whether the
15 employer is responsible for other relocations, how likely the actions
16 are to deter the relocation or subsequent relocations, and any likely
17 negative impact of the actions on the concurring states.

18 Article II of this bill (sections 14 through 31) concerns the
19 effectuation of the bill in New Jersey and does not require the
20 concurrence of other states. Article II creates a New Jersey Industrial
21 Stabilization Board consisting of representatives from State
22 government, local communities and workers adversely affected by
23 closings and layoffs, and public employees covered by public pensions.

24 The board is directed to choose which closings or relocations to
25 have the commission investigate, and to decide whether to direct
26 relevant State agencies to comply with commission recommendations.
27 If the commission is not in operation, the board may itself investigate
28 a closing or relocation, and, if it finds that the employer carried out a
29 detrimental net relocation of employment, the board may direct State
30 agencies to take any of the actions which the commission is permitted
31 to recommend. Whether or not the commission is in operation, the
32 board may also investigate major downsizings eliminating more than
33 300 jobs in the State or 10,000 jobs in total, and if it finds that the
34 downsizing is likely to do significant harm both to the economy and
35 the productive operations of the employer, the board may take any of
36 the indicated actions that it determines will be effective. In addition,
37 the board may direct State agencies to initiate or support shareholder
38 petitions or initiatives in cases where divestment is not imposed. The
39 agencies are required to comply with all board directives and actions.

40 To ensure that pension divestment actions do not adversely impact
41 the performance of pension fund portfolios, the bill limits the total
42 number of employers subject to divestment at any one time to 20, not
43 counting employers subject to divestment for obstructing an
44 investigation of the commission or board. All divestment actions must
45 be approved by the majority of public employee members of the board.

46 Finally, the bill authorizes and directs all agencies with authority to

1 invest public funds to emphasize investment strategies which enhance
2 the long-term development, rather than short-term gains. The
3 agencies are directed to give priority to investment into employers
4 which have appropriate policies to promote the productivity, efficiency
5 and long-range profitability of the employers and the well-being of the
6 communities in which they are located by enhancing the long-term
7 development of technological innovation, productive capacity and
8 workforce quality. The agencies are also directed to initiate or
9 support shareholder petitions or initiatives in support of such
10 appropriate policies, and to refrain from making investments which
11 assist any merger, acquisition, takeover, buyout or other action which
12 directly causes reductions of productive capacity and employment.

13 The bill appropriates \$150,000 from New Jersey's General Fund to
14 the commission, once the commission is in operation, and \$200,000 to
15 the board.

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20 "The Jobs and Communities Protection Act"; appropriates \$350,000.