§§1-15,17
C.34:1B-124
To
34:1B-139
§19
Note To §18

P.L. 1996, CHAPTER 26, ***approved May 9, 1996***
Assembly No. 1415 ***(Second Reprint)***

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

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

1. (New section) [2]**[**This**]** Sections 1 through 17 of this[2] act shall be known and may be cited as the "Business Employment Incentive Program Act."

2. (New section) As used in [2]sections 1 through 17 of[2] this act, unless a different meaning clearly appears from the context:

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

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

"Business" means a corporation; sole proprietorship; partnership; corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners; limited liability company; nonprofit corporation; or any other form of business organization located either within or outside this State [2], including a cooperative association[2] . A grant received under this act by a partnership, Subchapter S-Corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S-Corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed [2]. "Cooperative association" shall include financial, stock or commodities exchanges[2] ;

"Business employment incentive agreement" or "agreement" means

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.
[2] Senate SBA committee amendments adopted March 18, 1996.

the written agreement between the authority and a business proposing [2][to create new jobs] a project[2] in this State in accordance with the provisions of this act which establishes the terms and conditions of a grant to be awarded pursuant to this act;

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

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

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

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

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

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

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

"New employee" means a full time employee first employed in an eligible position on the project which is the subject of an agreement. An out-of-state resident or a resident of New Jersey who is employed outside New Jersey by the business and whose position is relocated to New Jersey after the execution of the agreement may be classified as a new employee when his position is relocated to New Jersey and his wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; except that such a New Jersey resident shall not be classified as a "new employee" unless his wages, prior to the relocation, were subject to income taxes imposed by the state or municipality in which the position was previously located. "New employee" may also include an employee rehired or called back from a layoff during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years. "New employee" shall not include any employee who was previously employed in New Jersey by the business or by a related person as defined in section 2 of

P.L.1993, c.170 (C.54:10A-5.5) if the employee is transferred to the business which is the subject of an agreement unless the employee's position at his previous employer is filled by a new employee. "New employee" also shall not include a child, grandchild, parent or spouse of an individual associated with the business who has direct or indirect ownership of at least 15% of the profits, capital, or value of the business;

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The tenant or proposed tenants have agreed to cooperate with the landlord in annually providing to the authority the number of new

employees in eligible positions, the withholdings and any other information which may be required by the authority.

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

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

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

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

c. The most recent financial statement of the business;

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

e. An estimate of the total withholdings.

[2]A cooperative association may apply, in one consolidated application in a form and manner determined by the authority, for a grant on its own behalf as a business and for grants on behalf of the members of the association who may qualify under this act.

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

If a cooperative association applies for a grant on behalf of its members, the members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that will meet the requirements of section 3 and 4 of this act, the amount of a grant shall be calculated under the terms of this act as

if the members are all collectively one business entity, and any restrictions on the qualification for a grant shall apply to each member who is listed in the application as participating in the project. The grants awarded shall be paid to the cooperative association. A grant received under this act by a cooperative association may be apportioned to the members of the association in a manner determined by the association. Each member included in the application shall be required to sign the business employment incentive agreement and shall abide by its terms.[2]

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

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

(2) The expected duration of those positions;

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

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

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

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

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

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

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

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

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

d. A requirement that the applicant maintain the project at a location in New Jersey for at least 1.5 times the number of years of the term of the grant, with at least the number of eligible positions as required by section 4 of this act;

e. The employment incentive, as determined pursuant to subsection a. of section 6 of this act;

f. A method for determining the number of new employees who are

employed during a grant year;

g. A method for the business to report annually to the authority the number of new employees for which the grant is to be made;

h. A requirement that the business report to the authority annually the aggregate amount of withholdings during the grant year;

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

j. A provision which permits the authority to amend an agreement pursuant to section 9 of this act;

k. A provision which requires the business to maintain operations at the project location or another location approved by the authority for at least 1.5 times the term of the grant, and a provision to permit the authority to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term; and

l. A provision establishing the conditions under which the grant agreement may be terminated and grant funds recaptured by the authority.

8. (New section) a. No later than February 1 of each year, for the preceding grant year, every business which is awarded a grant under this act shall submit to the authority a copy of its applicable New Jersey tax return showing business income and withholdings as a condition of its continuation in the grant program, together with an annual payroll report showing (1) the eligible positions which are created during the base years and (2) the new eligible positions created during each subsequent year of the grant.

b. The division may require by regulation any information which it deems necessary to effectuate the provisions of this act.

c. The authority may cause an audit of any business receiving a grant to be conducted at any time.

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

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

10. (New section) No amount shall be disbursed to a recipient

business as a grant under this act in any year until the State Treasurer has certified that the amount of withholdings received in that year by the division from the business equals or exceeds the amount of the grant.

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

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

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

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

14. (New section) The New Jersey Economic Development Authority, after consultation with the Department of Commerce and Economic Development and the Division of Taxation, shall, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules necessary to implement the provisions of the Business Employment Incentive Program not related to the collection or determination of taxes and tax withholding. The rules shall provide for the recipients of business employment incentive grants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the program. [2]<u>The rules also shall include the procedures to clarify the application of the various provisions of this act to cooperative associations that submit applications on behalf if their members.</u>[2] The Director of the Division of Taxation is authorized to promulgate those rules necessary to effectuate the tax related provisions of the Business Employment

Incentive Program.

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

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

5. The authority shall have the following powers:

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

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

c. To sue and be sued;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

r. To guarantee up to 90% of the amount of a loan to a person, if

the proceeds of the loan are to be applied to the purchase and installation, in a building devoted to industrial or commercial purposes, or in an office building, of an energy improvement system;

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

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

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

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

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

x. When authorized by the governing body of a municipality exercising jurisdiction over an urban growth zone, to construct, cause to be constructed or to provide financial assistance to projects in an urban growth zone which shall be exempt from the terms and requirements of the land use ordinances and regulations, including, but not limited to, the master plan and zoning ordinances, of such municipality; and

y. To enter into business employment incentive agreements as provided in the "Business Employment Incentive Program Act," P.L. c. (C.)(now before the Legislature as this bill).

(cf: P.L.1983, c.282, s.3)

17. [2]**[**For the fiscal year beginning July 1, 1995, there**]** There [2] is appropriated to the New Jersey Economic Development Authority from the General Fund such sums as may be necessary to fund the Business Employment Incentive Program established by this act, the amount of which shall not exceed the total amount of revenues

received as withholdings, as defined in section 2 of P.L. , c. (C.) (now before the Legislature as this bill) from all businesses receiving grants pursuant to this act, as certified by the Director of the Division of Taxation.

[2]18. Section 25 of P.L.1980, c.105 (C.54:32B-8.13) is amended to read as follows:

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

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

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

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

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

e. Sales of machinery, apparatus or equipment ,including transponders, earth stations, microwave dishes, transmitters and receivers which have a useful life exceeding one year, other than that used in the construction or operation of towers, to a commercial broadcaster operating under a broadcasting license issued by the Federal Communications Commission or to a provider of

cable/satellite television program services who may or may not operate under a broadcasting license issued by the Federal Communications Commission for use or consumption directly and primarily in the production or transmission of radio or television [broadcasts] information transmitted, delivered or archived through any medium or method.

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

The exemptions granted in this section shall not apply to motor vehicles or to parts with a useful life of one year or less or tools or supplies used in connection with the machinery, equipment or apparatus described in this section.[2]

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

[2][18.] 19.[2] This act shall take effect immediately ,[2] provided however that section 18 shall remain inoperative until the first day of the first month following enactment[2].

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