

SENATE, No. 446

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1996

By Senators SINGER and McGREEVEY

1 AN ACT establishing a corporation business tax benefit certificate  
2 transfer program to assist new or expanding emerging technology  
3 and biotechnology companies in this State, and supplementing  
4 P.L.1995, c.137 (C.34:1B-7.37 et seq.).  
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6 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7 *of New Jersey:*  
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9 1. a. The New Jersey Economic Development Authority shall  
10 establish within the New Jersey Emerging Technology and  
11 Biotechnology Financial Assistance Program established pursuant to  
12 P.L.1995, c.137 (C.34:1B-7.37 et seq.) , a corporation business tax  
13 benefit certificate transfer program to allow new or expanding  
14 emerging technology and biotechnology companies in this State with  
15 unused amounts of research and development tax credits otherwise  
16 allowable which cannot be applied for the credit's tax year due to the  
17 limitations of subsection b. of section 1 of P.L.1993, c.175  
18 (C.54:10A-5.24) and unused net operating loss carryover pursuant to  
19 subparagraph (B) of paragraph (6) of subsection k. of section 4 of  
20 P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for use  
21 by other corporation business taxpayers in this State on the  
22 corporation business tax returns to be filed by those taxpayers in  
23 exchange for private financial assistance to be provided by the  
24 corporation business taxpayer that is the recipient of the corporation  
25 business tax benefit certificate to assist in the funding of costs incurred  
26 by the new or expanding emerging technology and biotechnology  
27 company.

28 b. The authority, in cooperation with the Division of Taxation in  
29 the Department of the Treasury, shall review and approve applications  
30 by new or expanding emerging technology and biotechnology  
31 companies in this State with unused but otherwise allowable carryover  
32 of research and development tax credits pursuant to section 1 of  
33 P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable  
34 net operating loss carryover pursuant to paragraph (6) of subsection  
35 k. of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those  
36 tax benefits in exchange for private financial assistance to be made by  
37 the corporation business taxpayer that is the recipient of the

1 corporation business tax benefit certificate in an amount equal to at  
2 least 75% of the amount of the surrendered tax benefit. The private  
3 financial assistance shall be used to fund expenses incurred in  
4 connection with the operation of the new or expanding emerging  
5 technology or biotechnology company in the State, including but not  
6 limited to the expenses of fixed assets, such as the construction and  
7 acquisition and development of real estate, materials, start-up, tenant  
8 fit-out, working capital, salaries, research and development  
9 expenditures and any other expenses determined by the authority to be  
10 necessary to carry out the purposes of the New Jersey Emerging  
11 Technology and Biotechnology Financial Assistance Program.

12 c. The authority, in cooperation with the Division of Taxation in  
13 the Department of the Treasury, shall review and approve applications  
14 by taxpayers under the Corporation Business Tax Act (1945),  
15 P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax  
16 benefits approved pursuant to subsection b. of this section which shall  
17 be issued in the form of corporation business tax benefit transfer  
18 certificates, in exchange for private financial assistance to be made by  
19 the taxpayer in an amount equal to at least 75% of the amount of the  
20 surrendered tax benefit of an emerging technology or biotechnology  
21 company in the State. The private financial assistance shall assist in  
22 funding expenses incurred in connection with the operation of the new  
23 or expanding emerging technology or biotechnology company in the  
24 State, including but not limited to the expenses of fixed assets, such as  
25 the construction and acquisition and development of real estate,  
26 materials, start-up, tenant fit-out, working capital, salaries, research  
27 and development expenditures and any other expenses determined by  
28 the authority to be necessary to carry out the purposes of the New  
29 Jersey Emerging Technology and Biotechnology Financial Assistance  
30 Program.

31 d. The authority shall coordinate the applications for surrender and  
32 acquisition of unused but otherwise allowable tax benefits pursuant to  
33 this section in a manner that can best stimulate and encourage the  
34 extension of private financial assistance to new and expanding  
35 emerging technology and biotechnology companies in this State. The  
36 applications shall be submitted and the authority shall approve or  
37 disapprove the applications pursuant to the process and criteria  
38 established under section 6 of the "New Jersey Emerging Technology  
39 and Biotechnology Financial Assistance Act, P.L.1995, c.137  
40 (C.34:1B-7.42). The authority shall require a corporation business  
41 taxpayer that acquires a corporation business tax benefit certificate to  
42 enter into a written agreement with the new or expanding emerging  
43 technology or biotechnology company concerning the terms and  
44 conditions of the private financial assistance made in exchange for the  
45 certificate. The written agreement may contain terms concerning the  
46 maintenance by the new or expanding emerging technology or

1 biotechnology company of a headquarters or a base of operation in this  
2 State.

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4 2. a. Notwithstanding the provisions of paragraph (6) of  
5 subsection k. of section 4 of P.L.1945, c.162 (C.54:10A-4) to the  
6 contrary, a taxpayer that has acquired a corporation business tax  
7 benefit certificate pursuant to the provisions of section 1 of P.L.1996,  
8 c. (C. ) (Now pending before the Legislature as this bill), that  
9 includes the right to a net operating loss carryover deduction shall  
10 attach that certificate to any return the taxpayer is required to file  
11 under P.L.1945, c.162 (C.54:10A-1 et seq.), and shall otherwise apply  
12 the net operating loss carryover deduction as evidenced by the  
13 certificate according to the provisions of subsection k. of section 4 of  
14 P.L.1945, c.162 and any rules or regulations the director may adopt  
15 to carry out the provisions of this section.

16 b. A new or expanding emerging technology or biotechnology  
17 company that has surrendered an unused net operating loss carryover  
18 pursuant to the provisions of section 1 of P.L.1996, c. (C. ) (Now  
19 pending before the Legislature as this bill), shall not be allowed a net  
20 operating loss carryover deduction based upon the right to such a  
21 deduction as evidenced by the corporation business tax benefit  
22 certificate and shall attach a copy of the certificate to any return the  
23 taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et  
24 seq.).

25  
26 3. a. Notwithstanding the provisions of section 1 of P.L.1993,  
27 c.175 (C.54:10A-5.24) to the contrary, a taxpayer that has acquired  
28 a corporation business tax benefit certificate pursuant to the provisions  
29 of section 1 of P.L.1996, c. (C. ) (Now pending before the  
30 Legislature as this bill), that includes the right to a research and  
31 development tax credit carryover shall attach that certificate to any  
32 return the taxpayer is required to file under P.L.1945, c.162  
33 (C.54:10A-1 et seq.), and shall otherwise apply the credit carryover as  
34 evidenced by the certificate according to the provisions of section 1 of  
35 P.L.1993, c.175 (C.54:10A-5.24) and any rules or regulations the  
36 director may adopt to carry out the provisions of this section.

37 b. A new or expanding emerging technology or biotechnology  
38 company that has surrendered an unused research and development tax  
39 credit carryover pursuant to the provisions of section 1 of P.L.1996,  
40 c. (C. ) (Now pending before the Legislature as this bill), shall not  
41 be allowed a research and development tax credit carryover based  
42 upon the right to such a credit carryover as evidenced by the  
43 corporation business tax benefit certificate and shall attach a copy of  
44 the certificate to any return the taxpayer is required to file under  
45 P.L.1945, c.162 (C.54:10A-1 et seq.).

