[Passed Both Houses]

[First Reprint]

SENATE, No. 446

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1996

By Senators SINGER, McGREEVEY, Kyrillos, Palaia, Inverso, Assemblymen Felice, Impreveduto, Cohen, Bucco, LeFevre, Augustine and Suliga

AN ACT establishing a corporation business tax benefit certificate transfer program to assist new or expanding emerging technology and biotechnology companies in this State, and supplementing P.L.1995, c.137 (C.34:1B-7.37 et seq.).

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

1. a. The New Jersey Economic Development Authority shall establish within the New Jersey Emerging Technology and Biotechnology Financial Assistance Program established pursuant to P.L.1995, c.137 (C.34:1B-7.37 et seq.) , a corporation business tax benefit certificate transfer program to allow new or expanding emerging technology and biotechnology companies in this State with unused amounts of research and development tax credits otherwise allowable which cannot be applied for the credit's tax year due to the limitations of subsection b. of section 1 of P.L.1993, c.175 (C.54:10A-5.24) and unused net operating loss carryover pursuant to subparagraph (B) of paragraph (6) of subsection [1]**[**k.**]** (k)[1] of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for use by other corporation business taxpayers in this State on the corporation business tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate to assist in the funding of costs incurred by the new or expanding emerging technology and biotechnology

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] Senate SNR committee amendments adopted May 9, 1996.

company.

b. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by new or expanding emerging technology and biotechnology companies in this State with unused but otherwise allowable carryover of research and development tax credits pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable net operating loss carryover pursuant to paragraph (6) of subsection [1]**[**k.**]** (k)[1] of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits in exchange for private financial assistance to be made by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate in an amount equal to at least 75% of the amount of the surrendered tax benefit. The private financial assistance shall be used to fund expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

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

d. The authority shall coordinate the applications for surrender and acquisition of unused but otherwise allowable tax benefits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to new and expanding emerging technology and biotechnology companies in this State. The

applications shall be submitted and the authority shall approve or disapprove the applications pursuant to the process and criteria established under section 6 of the "New Jersey Emerging Technology and Biotechnology Financial Assistance [1][Act,] Act,"[1] P.L.1995, c.137 (C.34:1B-7.42). The authority shall require a corporation business taxpayer that acquires a corporation business tax benefit certificate to enter into a written agreement with the new or expanding emerging technology or biotechnology company concerning the terms and conditions of the private financial assistance made in exchange for the certificate. The written agreement may contain terms concerning the maintenance by the new or expanding emerging technology or biotechnology company of a headquarters or a base of operation in this State.

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

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

3. a. Notwithstanding the provisions of section 1 of P.L.1993, c.175 (C.54:10A-5.24) to the contrary, a taxpayer that has acquired a corporation business tax benefit certificate pursuant to the provisions of section 1 of P.L. [1][1996][1] , c. (C.) ([1][Now] now[1] pending before the Legislature as this bill), that includes the right to a research and development tax credit carryover shall attach that certificate to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.), and shall otherwise apply the credit carryover as evidenced by the certificate according to the provisions of section 1 of P.L.1993, c.175 (C.54:10A-5.24) and any rules or regulations the

director may adopt to carry out the provisions of this section.

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

4. This act shall take effect immediately and sections 1 through 3 shall apply to tax years beginning on or after January 1 next following enactment.

Provides for establishment of a corporation business tax benefit certificate transfer program to assist new or expanding emerging technology and biotechnology companies in this State.