

SENATE, No. 471

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1996

By Senators KYRILLOS and CIESLA

1 AN ACT creating the "Business Employment Incentive Program,"  
2 amending and supplementing P.L.1974, c.80 and making an  
3 appropriation therefor.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) This act shall be known and may be cited as the  
9 "Business Employment Incentive Program Act."

10  
11 2. (New section) As used in this act, unless a different meaning  
12 clearly appears from the context:

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

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

17 "Business" means a corporation; sole proprietorship; partnership;  
18 corporation that has made an election under Subchapter S of Chapter  
19 One of Subtitle A of the Internal Revenue Code of 1986, or any other  
20 business entity through which income flows as a distributive share to  
21 its owners; limited liability company; nonprofit corporation; or any  
22 other form of business organization located either within or outside  
23 this State. A grant received under this act by a partnership,  
24 Subchapter S-Corporation, or other such business entity shall be  
25 apportioned among the persons to whom the income or profit of the  
26 partnership, Subchapter S-Corporation, or other entity is distributed,  
27 in the same proportions as those in which the income or profit is  
28 distributed;

29 "Business employment incentive agreement" or "agreement" means  
30 the written agreement between the authority and a business proposing  
31 to create new jobs in this State in accordance with the provisions of  
32 this act which establishes the terms and conditions of a grant to be  
33 awarded pursuant to this act;

34 "Department" means the Department of Commerce and Economic

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 Development;

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

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

5 "Eligible position" is a new full time position created by a business  
6 in New Jersey or transferred from another state by the business under  
7 the terms and conditions set forth in this act during the base years or  
8 in subsequent years of a grant;

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

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

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

22 "New employee" means a full time employee first employed in an  
23 eligible position on the project which is the subject of an agreement.  
24 An out-of-state resident or a resident of New Jersey who is employed  
25 outside New Jersey by the business and whose position is relocated to  
26 New Jersey after the execution of the agreement may be classified as  
27 a new employee when his position is relocated to New Jersey and his  
28 wages are subject to withholding as provided in the "New Jersey Gross  
29 Income Tax Act," N.J.S.54A:1-1 et seq.; except that such a New  
30 Jersey resident shall not be classified as a "new employee" unless his  
31 wages, prior to the relocation, were subject to income taxes imposed  
32 by the state or municipality in which the position was previously  
33 located. "New employee" may also include an employee rehired or  
34 called back from a layoff during or following the base years to a  
35 vacant position previously held by that employee or to a new position  
36 established during or following the base years. "New employee" shall  
37 not include any employee who was previously employed in New Jersey  
38 by the business or by a related person as defined in section 2 of  
39 P.L.1993, c.170 (C.54:10A-5.5) if the employee is transferred to the  
40 business which is the subject of an agreement unless the employee's  
41 position at his previous employer is filled by a new employee. "New  
42 employee" also shall not include a child, grandchild, parent or spouse  
43 of an individual associated with the business who has direct or indirect  
44 ownership of at least 15% of the profits, capital, or value of the  
45 business;

46 "Targeted area" means a qualifying municipality as defined in

1 P.L.1978, c.14 (C.52:27D-178); and

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

5

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

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

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

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

22

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

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

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

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

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

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

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

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

41 c. A project which consists solely of point-of-final-purchase retail  
42 facilities shall not be eligible for a grant under this act. If a project  
43 consists of both point-of-final-purchase retail facilities and non-retail  
44 facilities, only the portion of the project consisting of non-retail  
45 facilities shall be eligible for a grant, and only the withholdings from  
46 new employees which are employed in the portion of the project which

1 represents non-retail facilities shall be used to determine the amount  
2 of the grant. If a warehouse facility is part of a point-of-final purchase  
3 retail facility and supplies only that facility, the warehouse facility shall  
4 not be eligible for a grant. For the purposes of this act, catalog  
5 distribution centers shall not be considered point-of-final-purchase  
6 retail facilities.

7  
8 5. (New section) A business shall apply to the authority for a grant  
9 on a form prescribed by the authority which shall include:

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

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

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

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

18 e. An estimate of the total withholdings.

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

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

27 (2) The expected duration of those positions;

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

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

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

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

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

39  
40 7. (New section) The business employment incentive agreement  
41 shall include, but shall not be limited to, the following:

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

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

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

1 reduction of the employment incentive shall be applicable to the grant  
2 year immediately following the grant year in which the authority  
3 amends the agreement.

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

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

14  
15 11. (New section) a. A business that is receiving a business  
16 relocation grant pursuant to the provisions of P.L. , c. (C. )(now  
17 before the Legislature as Senate Bill No. 472 of 1996 or Assembly Bill  
18 No. of 1996) shall not be eligible to receive a grant under this act  
19 except upon the approval of the State Treasurer.

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

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

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

40  
41 14. (New section) The New Jersey Economic Development  
42 Authority, after consultation with the Department of Commerce and  
43 Economic Development and the Division of Taxation, shall, in  
44 accordance with the "Administrative Procedure Act," P.L.1968, c.410  
45 (C.52:14B-1 et seq.), adopt rules necessary to implement the  
46 provisions of the Business Employment Incentive Program not related

1 to the collection or determination of taxes and tax withholding. The  
2 rules shall provide for the recipients of business employment incentive  
3 grants to be charged an initial application fee, and ongoing service  
4 fees, to cover the administrative costs related to the program. The  
5 Director of the Division of Taxation is authorized to promulgate those  
6 rules necessary to effectuate the tax related provisions of the Business  
7 Employment Incentive Program.

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

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

27 5. The authority shall have the following powers:

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

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

31 c. To sue and be sued;

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

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

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

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

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

12  
13 18. This act shall take effect immediately.

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15  
16 STATEMENT

17  
18 This bill establishes the Business Employment Incentive Program,  
19 which would make direct payments in the form of grants to businesses  
20 creating new jobs in the State. The amount of the employment  
21 incentive would equal a percentage, between 10% and 80%, of the  
22 total amount of State income taxes withheld by the business during a  
23 grant year for the new employees hired. The employment incentive  
24 can be authorized for a fixed number of years, not to exceed 10.

25 The bill also provides that the amount disbursed in any year to a  
26 recipient business as a grant could not exceed the amount of  
27 withholdings received by the Division of Taxation from the employer  
28 in that year. The bill also prohibits a business receiving a grant under  
29 Senate Bill No. 472 of 1996, a companion bill creating a Business  
30 Relocation Assistance Grant Program, from receiving a grant pursuant  
31 to this bill. The bill also limits the amount of a grant to a business  
32 under this bill if, when the amount is combined with any other grants  
33 received pursuant to State law, the total amount of all grants exceeds  
34 80 percent of its withholdings, except upon the approval of the State  
35 Treasurer. Amounts received from the Office of Customized Training  
36 pursuant to the "1992 New Jersey Employment and Workforce  
37 Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.) would be  
38 excluded from the calculation of the 80 percent threshold.

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43 \_\_\_\_\_  
44 Creates the Business Employment Incentive Program and appropriates  
General Fund revenues therefor.