

SENATE, No. 3016

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

Sponsored by:

Senator JENNIFER BECK

District 12 (Mercer and Monmouth)

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

SYNOPSIS

Revises Business Employment Incentive Program to spur economic growth.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT revising the Business Employment Incentive Program to
2 spur economic growth, and supplementing Title 34 of the
3 Revised Statutes and repealing parts of statutory law.

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

7
8 1. (New section) Sections 1 through 14 of this act shall be
9 known and may be cited as the "Business Employment Incentive
10 Program Act of 2009."

11
12 2. (New section) All references in any law, order, rule,
13 regulation, contract, document, judicial or administrative, or
14 otherwise, to the "Business Employment Incentive Program Act",
15 P.L.1996, c.26, s.1 (C.34:1B-124 et seq.), shall mean the "Business
16 Employment Incentive Program Act of 2009", P.L. , c. (C.)
17 (pending before the Legislature as this bill).

18
19 3. (New section) As used in this act, unless a different
20 meaning clearly appears from the context:

21 "Authority" means the New Jersey Economic Development
22 Authority.

23 "Business employment incentive agreement" or "agreement"
24 means the grant agreement between a business proposing to create
25 new jobs in this State and the authority which establishes the terms
26 of the employment incentive grant for that business as provided in
27 section 6 of P.L. , c. (C.) (pending before the Legislature
28 as this bill).

29 "Employment incentive" means the amount of a grant claimed
30 under this act according to a business employment incentive
31 agreement, expressed as a percentage of the total amount of
32 personal income taxes withheld by the business during a taxable
33 year for new employees.

34 "Full-time employee" means an individual who is employed for
35 at least 35 hours a week, or who renders any other standard of
36 service generally accepted by custom or practice as full-time
37 employment.

38 "New employee" means a full-time employee first employed by a
39 business in the project that is the subject of a business employment
40 incentive agreement after the business enters into that agreement
41 with the authority. An out-of-state resident, or a State resident
42 whose job is located outside of New Jersey prior to the execution of
43 the agreement, shall be classified as a new employee when the
44 employee's job is relocated to New Jersey and as a consequence the
45 employee's wages are subject to income tax withholding as
46 provided under the "New Jersey Gross Income Tax Act,"
47 N.J.S.54A:1-1 et seq. A State resident shall not be classified as a
48 "new employee" unless his wages, prior to the relocation, were

1 subject to income taxes imposed by the state or municipality in
2 which the job was previously located. "New employee" may also
3 include an employee rehired or called back from a lay-off to work
4 in a new facility or on a new product or service established or
5 produced by the business after entering into the agreement. "New
6 employee" shall not include any employee who was employed in
7 New Jersey by the applicant or by a related person as defined in
8 section 2 of P.L.1993, c.170 (C.54:10A-5.5) and whose
9 employment was shifted to the business after it entered into the
10 agreement, unless that employee was replaced at substantially the
11 same terms and conditions of employment by another newly-hired
12 employee at the transferred employee's former place of
13 employment. In addition, "new employee" does not include a child,
14 grandchild, parent, or spouse, other than a legally separated spouse,
15 of any individual who is an employee of the business and who has
16 direct or indirect ownership interest of at least 15 percent of the
17 profits, capital, or value of the business, as that interest is
18 determined under appropriate provisions of the federal Internal
19 Revenue Code of 1986.

20 "New income tax revenue" means the total amount withheld by
21 the business during the taxable year from the wages of new
22 employees pursuant to the "New Jersey Gross Income Tax Act,"
23 N.J.S.54A:1-1, as certified by the Director of the Division of
24 Taxation.

25 "Percentage" means a proportion per hundred established in a
26 business employment incentive agreement that shall range between
27 10 percent and 80 percent.

28 "Program" means the Business Employment Incentive Program
29 established pursuant to this act.

30 "Targeted area" means a qualifying municipality as defined in
31 section 1 of P.L.1978, c.14 (C.52:27D-178).

32

33 4. (New section) There is established the Business
34 Employment Incentive Program. The authority may make grants
35 under the program to foster job creation in this State. The grant
36 shall be claimed for the taxable years specified in the agreement.
37 The amount of the grant shall equal the new income tax revenue for
38 the taxable year multiplied by the percentage specified in the
39 agreement.

40

41 5. (New section) A business or potential business that proposes
42 a project to create new jobs in this State may apply to the authority
43 to enter into an agreement for a grant under this act. The authority
44 shall prescribe the form of the application. After receipt of an
45 application, the authority may enter into an agreement with the
46 business for a grant if it determines that:

47 a. The proposed project will create positions for at least 75 new
48 employees in New Jersey within the first two complete taxable

1 years or the proposed project will create positions for at least 25
2 new employees in a targeted area within the first two complete
3 taxable years;

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

7 c. The authority's project analysis shows that the receipt of the
8 employment incentives will be a major factor in the business's
9 decision to undertake the project.

10

11 6. (New section) The business employment incentive
12 agreement shall include:

13 a. A detailed description of the proposed project;

14 b. The length of the grant, which shall not exceed 10 years, and
15 the first taxable year for which the grant may be claimed;

16 c. A requirement that the applicant shall maintain the project at
17 a location in New Jersey for at least 1.5 times the length of the
18 grant;

19 d. The percentage;

20 e. A specified method for determining how many new
21 employees are employed during a taxable year;

22 f. A requirement that the business shall report annually to the
23 authority the number of new employees, the new income tax
24 revenue withheld in connection with those new employees, and any
25 other information the authority deems necessary.

26

27 7. (New section) For the purposes of this act, a business may
28 include a sole proprietorship, a partnership, a corporation that has
29 made an election under Subchapter S of Chapter One of Subtitle A
30 of the federal Internal Revenue Code of 1986, or any other business
31 entity through which income flows as a distributive share to its
32 owners. A grant received under this act by a partnership,
33 Subchapter S Corporation, or other such business entity shall be
34 apportioned among the persons to whom the income or profit of the
35 partnership, Subchapter S Corporation, or other entity is distributed,
36 in the same proportions as those in which the income or profit is
37 distributed.

38

39 8. (New section) Projects that consist solely of point-of-final-
40 purchase retail facilities are not eligible for a grant under this act.
41 If a project consists of both point-of-final-purchase retail facilities
42 and non-retail facilities, only that portion of the project consisting
43 of the non-retail facilities is eligible for a grant and only the new
44 income tax revenue of the non-retail facilities shall be considered
45 when computing the amount of the grant. If a warehouse facility is
46 part of a point-of-final-purchase retail facility and supplies only that
47 facility, the warehouse facility is not eligible for a grant. Catalog

1 distribution centers are not considered point-of-final-purchase retail
2 facilities for the purposes of this act, and are eligible for grants.

3
4 9. (New section) A landlord that proposes a project to create
5 new jobs in this State may apply to the authority to enter into an
6 agreement for a grant under this act. The authority shall prescribe
7 the form of the application. After receipt of the application, the
8 authority may enter into an agreement with the landlord for a grant
9 if it determines that:

10 a. The tenants in the proposed project will in the aggregate
11 create positions for at least 75 new employees in New Jersey within
12 the first two complete taxable years or the tenants in the proposed
13 project will create positions for at least 25 new employees in a
14 targeted area within the first two complete taxable years;

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

18 c. The authority's project analysis shows that the receipt of
19 business employment incentives will be a major factor in the
20 decision of the landlord and tenant to undertake the project;

21 d. The tenants have agreed to assign to the landlord any claim
22 of right that the tenant may have to a grant; and

23 e. The tenants have agreed to cooperate with the landlord in
24 annually supplying information to the authority concerning the
25 number of new employees, the new income tax revenue withheld in
26 connection with those new employees, and any other information
27 that the authority may require to perform its duties under this act.

28
29 10. (New section) Every business which is awarded a grant
30 under this act shall submit a copy of its New Jersey tax returns,
31 appropriate to its form of ownership, showing business income or
32 activity for each taxable year a grant is claimed to the authority.
33 Failure to submit a copy of these documents may result in the
34 suspension or termination of the business's grant.

35
36 11. (New section) Every business that receives approval on its
37 grant application will be required to maintain operations at the
38 project location for at least 1.5 times the length of the grant. The
39 grant agreement shall contain assurances that provide for the
40 recapture of grant funds if a business does not remain at the project
41 site for the required length of time. In determining the portion of
42 the grant to be recaptured, the authority shall consider the effect of
43 market conditions on the project and whether the business continues
44 to maintain other operations in this State.

45
46 12. (New section) If a business fails to meet or comply with any
47 condition or requirement set forth in an agreement, the authority
48 may amend the agreement to reduce the percentage or term of the

1 grant agreement. The reduction of the percentage or term shall take
2 effect in the taxable year immediately following the taxable year in
3 which the authority amends the agreement. If a business fails to
4 maintain employment at the levels stipulated in the agreement, or
5 otherwise fails to comply with any condition of the agreement for
6 any two consecutive taxable years, the authority may terminate the
7 agreement.

8
9 13. (New section) The authority, after consultation with the
10 Division of Taxation in the Department of the Treasury, shall, in
11 accordance with the "Administrative Procedure Act," P.L. 1968, c.
12 410 (C.52:14B-1 et seq.), adopt rules necessary to implement the
13 provisions of the Business Employment Incentive Program not
14 related to the collection or determination of taxes and tax
15 withholding. The rules shall provide for the recipients of
16 employment incentive grants to be charged an initial application
17 fee, and ongoing service fees, to cover the administrative costs
18 related to the program. The Director of the Division of Taxation is
19 authorized to promulgate those rules necessary to effectuate the tax
20 related provisions of the Business Employment Incentive Program.

21
22 14. (New section) The authority shall submit a report on the
23 program to the Governor, President of the Senate, and Speaker of
24 the Assembly on or before October 31 of each year in accordance
25 with section 2 of P.L.1991, c.164 (C.52:14-19.1). The report shall
26 include information on the number of agreements entered into
27 during the preceding fiscal year, a description of the project under
28 each agreement, the number of jobs created, new income tax
29 revenue received, amounts awarded as grants and an update on the
30 status of projects under agreement before the preceding fiscal year.

31
32 15. The following sections are repealed:

33 Section 1 of P.L.1996, c.26 (C.34:1B-124);

34 Section 2 of P.L.1996, c.26 (C.34:1B-125);

35 Section 3 of P.L.1996, c.26 (C.34:1B-126);

36 Section 4 of P.L.1996, c.26 (C.34:1B-127);

37 Section 5 of P.L.1996, c.26 (C.34:1B-128);

38 Section 6 of P.L.1996, c.26 (C.34:1B-129);

39 Section 7 of P.L.1996, c.26 (C.34:1B-130);

40 Section 8 of P.L.1996, c.26 (C.34:1B-131);

41 Section 9 of P.L.1996, c.26 (C.34:1B-132);

42 Section 10 of P.L.1996, c.26 (C.34:1B-133);

43 Section 11 of P.L.1996, c.26 (C.34:1B-134);

44 Section 12 of P.L.1996, c.26 (C.34:1B-135);

45 Section 13 of P.L.1996, c.26 (C.34:1B-136);

46 Section 14 of P.L.1996, c.26 (C.34:1B-137);

47 Section 15 of P.L.1996, c.26 (C.34:1B-138);

48 Section 17 of P.L.1996, c.26 (C.34:1B-139);

1 Section 9 of P.L.2003, c.166 (C.34:1B-139.1);
2 Section 10 of P.L.2003, c.166 (C.34:1B-139.2); and
3 Section 11 of P.L.2003, c.166 (C.34:1B-139.3).

4
5 16. A business employment incentive agreement entered into
6 before the effective date of P.L. , c. (C. et seq.) (pending
7 before the Legislature as this bill) shall remain in effect until the
8 expiration date of the business employment incentive agreement,
9 notwithstanding the provisions of P.L. , c. (C. et seq.)
10 (pending before the Legislature as this bill).

11
12 17. This act shall take effect immediately.

13
14
15 STATEMENT

16
17 This bill revises the Business Employment Incentive Program
18 (BEIP) to jumpstart New Jersey's stalled economy. To that end, the
19 legislation scuttles the growth-stunting limitations and bureaucratic
20 hassles that have been frivolously added to the program over the
21 years. The reinvigorated BEIP is to take on the form of the
22 program envisioned by the legislation that served as the basis for
23 BEIP's creation, Assembly Bill No. 3210 of 1995.

24 Under the legislation, businesses receive employment incentive
25 grants equal to a percentage, between 10 percent and 80 percent, of
26 the total amount of State income taxes withheld by the business
27 during a calendar year for new employees hired. Most importantly,
28 the amount of the grant is no longer capped at \$50,000 per new
29 employee over the term of the agreement, an ill-considered
30 limitation that was added in 2003. In addition, the bill rescinds the
31 ability of the New Jersey Economic Development Authority to bond
32 to pay for BEIP grants, eliminates the arbitrary preferred treatment
33 of a subset of businesses, and removes several administrative
34 limitations that unduly burden businesses seeking to create jobs in
35 partnership with the State.