

[Third Reprint]

**SENATE, No. 3033**

---

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

---

INTRODUCED SEPTEMBER 19, 2011

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Senator JOSEPH M. KYRILLOS, JR.**

**District 13 (Middlesex and Monmouth)**

**Co-Sponsored by:**

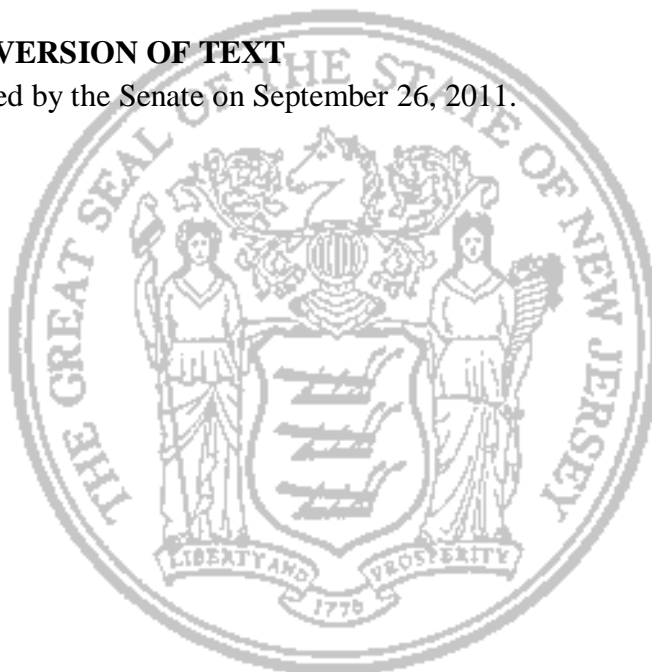
**Senators Oroho, Stack, Sarlo, Cunningham, Van Drew, Beach, Addiego,  
Beck, Buono, Girgenti, Gordon and Ruiz**

**SYNOPSIS**

Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs.

**CURRENT VERSION OF TEXT**

As amended by the Senate on September 26, 2011.



**(Sponsorship Updated As Of: 9/27/2011)**

1 AN ACT providing for the availability of tax credits to certain  
2 businesses and supplementing Title 34 of the Revised Statutes  
3 '[and],'<sup>1</sup> amending '[P.L.2007, c.346] various parts of the  
4 statutory law, and repealing section 6 of P.L.1996, c.25'.<sup>1</sup>  
5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7 *of New Jersey:*  
8

9 1. (New section) Sections 1 through 8 of this act shall be  
10 known and may be cited as the "Grow New Jersey Assistance Act."  
11

12 2. (New section) As used in this act:

13 "Affiliate" means an entity that directly or indirectly controls, is  
14 under common control with, or is controlled by the business.  
15 Control exists in all cases in which the entity is a member of a  
16 controlled group of corporations as defined pursuant to section 1563  
17 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the  
18 entity is an organization in a group of organizations under common  
19 control as defined pursuant to subsection (b) or (c) of section 414 of  
20 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer  
21 may establish by clear and convincing evidence, as determined by  
22 the Director of the Division of Taxation in the Department of the  
23 Treasury, that control exists in situations involving lesser  
24 percentages of ownership than required by those statutes. An  
25 affiliate of a business may contribute to meeting either the qualified  
26 investment or full-time employee requirements of a business that  
27 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-  
28 209).

29 "Authority" means the New Jersey Economic Development  
30 Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

31 "Business" means a corporation that is subject to the tax imposed  
32 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a  
33 corporation that is subject to the tax imposed pursuant to sections 2  
34 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of  
35 P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership,  
36 an S corporation, or a limited liability corporation. A business shall  
37 include an affiliate of the business if that business applies for a  
38 credit based upon any capital investment made by or full-time  
39 employees of an affiliate.

40 "Capital investment" in a qualified business facility means  
41 expenses incurred after application, but before the end of the tenth  
42 year after, the effective date of P.L. , c. (C. ) (pending  
43 before the Legislature as this bill) for: a. site preparation and

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SEG committee amendments adopted September 19, 2011.

<sup>2</sup>Senate SBA committee amendments adopted September 22, 2011.

<sup>3</sup>Senate floor amendments adopted September 26, 2011.

1 construction, repair, renovation, improvement, equipping, or  
2 furnishing of a building, structure, facility, or improvement to real  
3 property; and b. obtaining and installing furnishings and machinery,  
4 apparatus, or equipment for the operation of a business in a  
5 building, structure, facility, or improvement to real property.

6 <sup>1</sup>"Eligible position" means a full-time position retained or  
7 <sup>3</sup>[hired] created<sup>3</sup> by a business in this State for which a business  
8 provides employee health benefits under a group health plan as  
9 defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health  
10 benefits plan as defined under section 1 of P.L.1992, c.162  
11 (C.17B:27A-17), or a policy or contract of health insurance  
12 covering more than one person issued pursuant to Article 2 of  
13 chapter 27 of Title 17B of the New Jersey Statutes.<sup>1</sup>

14 "Full-time employee" means a person employed by the business  
15 for consideration for at least 35 hours a week, or who renders any  
16 other standard of service generally accepted by custom or practice  
17 as full-time employment, or a person who is employed by a  
18 professional employer organization pursuant to an employee leasing  
19 agreement between the business and the professional employer  
20 organization, in accordance with P.L.2001, c.260 (C.34:8-67 et  
21 seq.) for at least 35 hours a week, or who renders any other standard  
22 of service generally accepted by custom or practice as full-time  
23 employment, and whose wages are subject to withholding as  
24 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
25 et seq. or an employee who is a resident of another State but whose  
26 income is not subject to the "New Jersey Gross Income Tax Act,"  
27 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
28 for the partnership for at least 35 hours a week, or who renders any  
29 other standard of service generally accepted by custom or practice  
30 as full-time employment, and whose distributive share of income,  
31 gain, loss, or deduction, or whose guaranteed payments, or any  
32 combination thereof, is subject to the payment of estimated taxes, as  
33 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
34 et seq. "Full-time employee" shall not include any person who  
35 works as an independent contractor or on a consulting basis for the  
36 business.

37 <sup>3</sup>"New full-time job" means an eligible position created by the  
38 business at the qualified business facility that did not previously  
39 exist in this State. For the purposes of determining a number of  
40 new full-time jobs, the eligible positions of an affiliate shall be  
41 considered eligible positions of the business.<sup>3</sup>

42 "Partnership" means an entity classified as a partnership for  
43 federal income tax purposes.

44 "Professional employer organization" means an employee leasing  
45 company registered with the Department of Labor and Workforce  
46 Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

1 “Program” means the “Grow New Jersey Assistance Program”  
2 established pursuant to section 3 of P.L. , c. (C. ) (pending  
3 before the Legislature as this bill).

4 "Qualified business facility" means any building, complex of  
5 buildings or structural components of buildings, and all machinery  
6 and equipment located within a qualified incentive area, used in  
7 connection with the operation of a business.

8 "Qualified incentive area" means an area designated pursuant to  
9 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1  
10 (Metropolitan), Planning Area 2 (Suburban) <sup>2</sup>, or any urban,  
11 regional, or town designated center under the State Development  
12 and Redevelopment Plan<sup>2</sup>; an area zoned for development pursuant  
13 to a master plan adopted by the New Jersey Meadowlands  
14 Commission pursuant to subsection (i) of section 6 of P.L.1968,  
15 c.404 (C.13:17-6) or subject to a redevelopment plan adopted by the  
16 New Jersey Meadowlands Commission pursuant to section 20 of  
17 P.L.1968, c.404 (C.13:17-21); any land owned by the New Jersey  
18 Sports and Exposition Authority, established pursuant to P.L.1971,  
19 c.137 (C.5:10-1 et seq.), within the boundaries of the Hackensack  
20 Meadowlands District as delineated in section 4 of P.L.1968, c.404  
21 (C.13:17-4); a pinelands regional growth area, a pinelands town  
22 management area, a pinelands village, or a military and federal  
23 installation area established pursuant to the pinelands  
24 comprehensive management plan adopted pursuant to P.L.1979,  
25 c.111 (C.13:18A-1 et seq.); an area designated for development,  
26 redevelopment, or economic growth within the Highlands Region;  
27 federally owned land approved for closure under any federal Base  
28 Closure and Realignment Commission action; or any property  
29 consisting of a vacant commercial building having over 400,000  
30 square feet of office <sup>1</sup>, laboratory, or industrial<sup>1</sup> space available for  
31 occupancy for a period of over one year or is negatively impacted  
32 by the approval of a “qualified business facility,” as defined  
33 pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

34 <sup>1</sup>"Retained full-time job" means an eligible position that  
35 currently exists in New Jersey and is filled by a full-time employee  
36 but which, because of a potential relocation by the business, is at  
37 risk of being lost to another state or country. For the purposes of  
38 determining a number of retained full-time jobs, the eligible  
39 positions of an affiliate shall be considered <sup>3</sup>[the]<sup>3</sup> eligible  
40 positions of the business.<sup>1</sup>

41  
42 3. (New section) a. The Grow New Jersey Assistance Program  
43 is hereby established as a program under the jurisdiction of the New  
44 Jersey Economic Development Authority and shall be administered  
45 by the authority. The purpose of the program is to encourage  
46 economic development and job creation and to preserve jobs that  
47 currently exist in New Jersey but which are in danger of being

1 relocated outside of the State. To implement this purpose, and to  
2 the extent that funding for the program is available, the program  
3 may provide tax credits to eligible businesses. To be eligible for  
4 any tax credits pursuant to P.L. , c. (C. ) (pending before the  
5 Legislature as this bill), a business's chief executive officer or  
6 equivalent officer shall demonstrate to the authority, at the time of  
7 application, that: (1) the business will make, acquire, or lease a  
8 capital investment of at least \$20,000,000 at a qualified business  
9 facility at which it will <sup>3</sup>(a)<sup>3</sup> employ at least 100 full-time  
10 employees in retained full-time jobs <sup>3</sup>, or (b) create at least 100 new  
11 full-time jobs in an industry identified by the authority as desirable  
12 for the State to maintain or attract<sup>3</sup>; <sup>3</sup>[and]<sup>3</sup> (2) the capital  
13 investment resultant from the award of tax credits and the resultant  
14 retention and creation of eligible positions will yield a net positive  
15 benefit to the State <sup>3</sup>; and (3) the award of tax credits will be a  
16 material factor in the business's decision to create or retain the  
17 minimum number of full-time jobs for eligibility under the  
18 program<sup>3</sup>.

19 b. <sup>3</sup>[In] To assist the authority in<sup>3</sup> determining whether a  
20 proposed capital investment will yield a net positive benefit, the  
21 business's chief executive officer, or equivalent officer, shall submit  
22 a certification to the authority indicating that <sup>3</sup>[the] any<sup>3</sup> existing  
23 jobs are at risk of leaving the State <sup>3</sup>, that any projected creation of  
24 new full-time jobs would not occur but for the provision of tax  
25 credits under the program,<sup>3</sup> and that the business's chief executive  
26 officer, or equivalent officer, has reviewed the information  
27 submitted to the authority and that the representations contained  
28 therein are accurate. In the event that this certification by the  
29 business's chief executive officer, or equivalent officer, is found to  
30 be willfully false, the authority may revoke any award of tax credits  
31 in their entirety, which revocation shall be in addition to any other  
32 criminal or civil penalties that the business and the officer may be  
33 subject to. When considering an application involving intra-State  
34 job transfers, the authority shall require the business to submit the  
35 following information as part of its application: a full economic  
36 analysis of all locations under consideration by the business; all  
37 lease agreements, ownership documents, or substantially similar  
38 documentation for the business's current in-State locations; and all  
39 lease agreements, ownership documents, or substantially similar  
40 documentation for the potential out-of-State location alternatives, to  
41 the extent they exist. Based on this information, and any other  
42 information deemed relevant by the authority, the authority shall  
43 independently verify and confirm, by way of making a factual  
44 finding by separate vote of the authority's board, the business's  
45 assertion that the jobs are actually at risk of leaving the State,  
46 before a business may be awarded any tax credits under this section.

1       <sup>1</sup>c. A project that consists solely of point-of-final-purchase  
2 retail facilities shall not be eligible for a grant of tax credits. If a  
3 project consists of both point-of-final-purchase retail facilities and  
4 non-retail facilities, only the portion of the project consisting of  
5 non-retail facilities shall be eligible for a grant of tax credits. If a  
6 warehouse facility is part of a point-of-final-purchase retail facility  
7 and supplies only that facility, the warehouse facility shall not be  
8 eligible for a grant of tax credits. For the purposes of this section,  
9 catalog distribution centers shall not be considered point-of-final-  
10 purchase retail facilities.<sup>1</sup>

11  
12       4. (New section) The authority shall require an eligible  
13 business to enter an agreement prior to the issuance of tax credits.  
14 The agreement shall include, but shall not be limited to, the  
15 following:

16       a. A detailed description of the proposed project which will  
17 result in job creation or retention, and the number of full-time  
18 employees.

19       b. The term of the tax credits, and the first year for which the  
20 tax credits may be claimed.

21       c. Personnel information that will enable the authority to  
22 administer the program.

23       d. A requirement that the applicant maintain the project at a  
24 location in New Jersey for at least 1.5 times the number of years of  
25 the term of the tax credits, with at least the number of full-time  
26 employees as required by section 6 of P.L.     , c.     (C.     )  
27 (pending before the Legislature as this bill) and a provision to  
28 permit the authority to recapture all or part of any tax credit  
29 awarded, at its discretion, if the business does not remain at the site  
30 for the required term.

31       e. A method for the business to report annually to the authority  
32 the number of full-time employees for which the tax credits are to  
33 be made.

34       f. A provision permitting an audit of the payroll records of the  
35 business from time to time, as the authority deems necessary.

36       g. A provision which permits the authority to amend the  
37 agreement.

38       h. A provision establishing the conditions under which the  
39 agreement may be terminated and awarded tax credits are  
40 recaptured, in whole or in part, by the authority at its discretion.

41

42       5. (New section) a. The value of each tax credit for an eligible  
43 business shall be equal to \$5,000 per year for a period of ten years  
44 for each new or retained full-time job <sup>3</sup>**[certified]** determined<sup>3</sup> by  
45 the authority pursuant to section 3 of P.L.     , c.     (C.     ) (pending  
46 before the Legislature as this bill) to be located at the qualified  
47 business facility, subject to the provisions of this section.

1        b. In addition to any grant of tax credits determined pursuant to  
 2 subsection a. of this section, a bonus award of up to an additional  
 3 \$3,000 per job of the amount of the original tax credits may be  
 4 made to any eligible business as determined by the authority. In  
 5 making a bonus award to an eligible business, the authority shall  
 6 consider the following factors, such that whether the business: (1) is  
 7 an industry identified by the authority as desirable for the State to  
 8 maintain <sup>3</sup>or attract<sup>3</sup>; (2) <sup>2</sup>locates or<sup>2</sup> relocates to a location within a  
 9 qualified incentive area adjacent to <sup>1</sup>, or within walking distance or  
 10 short-distance-shuttle service of,<sup>1</sup> a public transit facility, as  
 11 determined by the authority <sup>1</sup>; <sup>1</sup> by regulation; (3) creates jobs using  
 12 full-time employees in eligible positions whose annual salaries,  
 13 according to the Department of Labor and Workforce Development,  
 14 are greater than the average full-time salary in this State; or (4) is  
 15 locating to a project site that is or has been negatively impacted by  
 16 the approval of a “qualified business facility,” as defined pursuant  
 17 to section 2 of P.L.2007, c.346 (C.34:1B-208).

18        <sup>1</sup>c. Notwithstanding the provisions of subsections a. and b. of  
 19 this section, (1) the amount of tax credits available to be applied by  
 20 the business annually shall not exceed one tenth of the capital  
 21 investment certified by the authority pursuant to section 6 of  
 22 P.L. , c. (C. ) (pending before the Legislature as this bill),  
 23 and (2) the number of new full-time jobs <sup>3</sup>for which a business  
 24 receives a tax credit<sup>3</sup> shall not exceed the number of retained full-  
 25 time jobs for which a business receives a tax credit <sup>3</sup>, unless the  
 26 business qualifies by creating at least 100 new full-time jobs in an  
 27 industry identified by the authority as desirable for the State to  
 28 maintain or attract<sup>3</sup>. <sup>3</sup>[For the purposes of this section, a “new full-  
 29 time job” means an eligible position created by the business at the  
 30 qualified business facility that did not previously exist in this  
 31 State.]<sup>3 1</sup>

32  
 33        6. (New section) a. (1) The value of all credits approved by the  
 34 authority pursuant to P.L. , c. (C. ) (pending before the  
 35 Legislature as this bill) shall not exceed \$200,000,000, except that  
 36 the value of all credits approved by the authority pursuant to this  
 37 section may exceed \$200,000,000 if the board of the authority  
 38 determines the credits to be reasonable, justifiable, and appropriate;  
 39 provided, however, the combined value of all credits approved by  
 40 the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq. and  
 41 P.L. , c. (C. ) (pending before the Legislature as this bill)  
 42 shall not exceed \$1,500,000,000.

43        (2) A business, including any affiliate of the business or any  
 44 business that is a tenant within any qualified business facility, shall  
 45 make or acquire capital investments totaling not less than  
 46 \$20,000,000 in a qualified business facility, at which the business  
 47 shall employ not fewer than 100 full-time employees to be eligible

1 for a credit pursuant to P.L. , c. (pending before the Legislature  
2 as this bill). A business that acquires or leases a qualified business  
3 facility shall also be deemed to have acquired the capital investment  
4 made or acquired by the seller or landlord, as the case may be.

5 (3) A business shall not be allowed tax credits pursuant to  
6 P.L.1996, c.25 (C.34:1B-112 et seq.) <sup>3</sup>or P.L.1996, c.26 (C.34:1B-  
7 124 et seq.)<sup>3</sup> relating to the same capital and employees that qualify  
8 the business for tax credits pursuant to P.L. , c. (pending before  
9 the Legislature as this bill). A business that is allowed a tax credit  
10 under this section shall not be eligible for incentives authorized  
11 pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall  
12 not qualify for a tax credit under this section, based upon capital  
13 investment and employment of full-time employees, if that capital  
14 investment or employment was the basis for which a grant was  
15 provided to the business pursuant to the "Urban Transit Hub Tax  
16 Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.).

17 (4) Full-time employment for an accounting or privilege period  
18 shall be determined as the average of the monthly full-time  
19 employment for the period.

20 (5) The capital investment of the owner of a qualified business  
21 facility is that percentage of the capital investment made or  
22 acquired by the owner of the building that the percentage of net  
23 leasable area of the qualified business facility not leased to tenants  
24 is of the total net leasable area of the qualified business facility.

25 <sup>1</sup>For a business that is a tenant, the amount of capital investment in  
26 a facility that a leased area represents shall be equal to that  
27 percentage of the owner's total capital investment in the facility that  
28 the percentage of net leasable area leased by the tenant is of the  
29 total net leasable area of the qualified business facility. Capital  
30 investments made by a tenant shall be deemed to be included in the  
31 calculation of the capital investment made or acquired by the  
32 owner, but only to the extent necessary to meet the owner's  
33 minimum capital investment of \$20,000,000. Capital investments  
34 made by a tenant and not allocated to meet the owner's minimum  
35 capital investment threshold of <sup>2</sup>[\$50,000,000] \$20,000,000<sup>2</sup> shall  
36 be added to the amount of capital investment represented by the  
37 tenant's leased area in the qualified business facility.<sup>1</sup>

38 b. A business shall apply for the tax credit prior to July 1,  
39 2014, and shall submit its documentation indicating that it has met  
40 the capital investment and employment specified in the project  
41 agreement for certification of its credit amount no later than July  
42 28, 2017.

43 c. (1) The amount of credit allowed shall not exceed the capital  
44 investment made by the business or the capital investment  
45 represented by the business' leased area, as certified by the authority  
46 pursuant to subsection b. of this section, as having met the  
47 investment capital and employment qualifications, subject to any



1 reduction or disqualification as provided by subsection d. of this  
2 section as determined by annual review by the authority. In  
3 conducting its annual review, the authority may require a business  
4 to submit any information determined by the authority to be  
5 necessary and relevant to its review.

6 The credit amount for any tax period ending after July 28, 2017,  
7 during which the documentation of a business' credit amount  
8 remains uncertified shall be forfeited, although credit amounts for  
9 the remainder of the years of the 10-year credit period shall remain  
10 available to it.

11 The credit amount that may be taken for a tax period of the  
12 business that exceeds the final liabilities of the business for the tax  
13 period may be carried forward for use by the business in the next 20  
14 successive tax periods, and shall expire thereafter, provided that the  
15 value of all credits approved by the authority against tax liabilities  
16 pursuant to P.L. , c. (pending before the Legislature as this bill),  
17 in any fiscal year shall not exceed \$150,000,000 and the combined  
18 value of all credits approved by the authority pursuant to P.L.2007,  
19 c.346 (C.34:1B-207 et seq.) and P.L. , c. (C. ) (pending  
20 before the Legislature as this bill) shall not exceed \$1,500,000,000.

21 The amount of credit allowed for a tax period to a business that  
22 is a tenant in a qualified business facility shall not exceed the  
23 business' total lease payments for occupancy of the qualified  
24 business facility for the tax period.

25 (2) A business that is a partnership shall not be allowed a credit  
26 under this section directly, but the amount of credit of an owner of a  
27 business shall be determined by allocating to each owner of the  
28 partnership that proportion of the credit of the business that is equal  
29 to the owner of the partnership's share, whether or not distributed,  
30 of the total distributive income or gain of the partnership for its tax  
31 period ending within or with the owner's tax period, or that  
32 proportion that is allocated by an agreement, if any, among the  
33 owners of the partnership that has been provided to the Director of  
34 the Division of Taxation in the Department of the Treasury by such  
35 time and accompanied by such additional information as the  
36 director may require.

37 (3) The amount of credit allowed may be applied against the tax  
38 liability otherwise due pursuant to section 5 of P.L.1945, c.162  
39 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132  
40 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950,  
41 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

42 d. (1) If, in any tax period, the business reduces the total  
43 number of full-time employees in its Statewide workforce by more  
44 than 20 percent from the number of full-time employees in its  
45 Statewide workforce in the last tax period prior to the credit amount  
46 approval under section 3 of P.L. , c. (pending before the  
47 Legislature as this bill), then the business shall forfeit its credit  
48 amount for that tax period and each subsequent tax period, until the

1 first tax period for which documentation demonstrating the  
2 restoration of the business' Statewide workforce to the threshold  
3 levels required by this paragraph has been reviewed and approved  
4 by the authority, for which tax period and each subsequent tax  
5 period the full amount of the credit shall be allowed.

6 (2) If, in any tax period, the number of full-time employees  
7 employed by the business at the qualified business facility located  
8 within a qualified incentive area drops below 100 or 80 percent of  
9 the number of new and retained full-time jobs specified in the  
10 project agreement, then the business shall forfeit its credit amount  
11 for that tax period and each subsequent tax period, until the first tax  
12 period for which documentation demonstrating the restoration of the  
13 number of full-time employees employed by the business at the  
14 qualified business facility to 100.

15 (3) (a) If the qualified business facility is sold in whole or in  
16 part during the 10-year eligibility period the new owner shall not  
17 acquire the capital investment of the seller and the seller shall  
18 forfeit all credits for the tax period in which the sale occurs and all  
19 subsequent tax periods, provided however that any credits of  
20 tenants shall remain unaffected.

21 (b) If a tenant subleases its tenancy in whole or in part during  
22 the 10-year eligibility period the new tenant shall not acquire the  
23 credit of the sublessor, and the sublessor tenant shall forfeit all  
24 credits for the tax period of its sublease and all subsequent tax  
25 periods.

26  
27 7. (New section) A business may apply to the Director of the  
28 Division of Taxation in the Department of the Treasury and the  
29 chief executive officer of the authority for a tax credit transfer  
30 certificate, covering one or more years, in lieu of the business being  
31 allowed any amount of the credit against the tax liability of the  
32 business. The tax credit transfer certificate, upon receipt thereof by  
33 the business from the director and the chief executive officer of the  
34 authority, may be sold or assigned, in full or in part, to any other  
35 person that may have a tax liability pursuant to section 5 of  
36 P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of  
37 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1  
38 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.  
39 The certificate provided to the business shall include a statement  
40 waiving the business's right to claim that amount of the credit  
41 against the taxes that the business has elected to sell or assign. The  
42 sale or assignment of any amount of a tax credit transfer certificate  
43 allowed under this section shall not be exchanged for consideration  
44 received by the business of less than 75 percent of the transferred  
45 credit amount. Any amount of a tax credit transfer certificate used  
46 by a purchaser or assignee against a tax liability shall be subject to  
47 the same limitations and conditions that apply to the use of the

1 credit by the business that originally applied for and was allowed  
2 the credit.

3  
4 8. (New section) a. The chief executive officer of the authority,  
5 in consultation with the Director of the Division of Taxation in the  
6 Department of the Treasury, shall adopt rules in accordance with  
7 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
8 seq.) as are necessary to implement P.L. , c. (C. ) (pending  
9 before the Legislature as this bill), including but not limited to:  
10 examples of and the determination of capital investment; the  
11 enumeration of qualified incentive areas; specific delineation of  
12 these incentive areas; the determination of the limits, if any, on the  
13 expense or type of furnishings that may constitute capital  
14 improvements; the promulgation of procedures and forms necessary  
15 to apply for a tax credit, including the enumeration of the  
16 certification procedures and allocation of tax credits for different  
17 phases of a qualified business facility; and provisions for tax credit  
18 applicants to be charged an initial application fee, and ongoing  
19 service fees, to cover the administrative costs related to the tax  
20 credit.

21 b. Through regulation, the authority shall establish standards  
22 by which qualified business facilities shall be constructed or  
23 renovated based on the green building manual prepared by the  
24 Commissioner of Community Affairs pursuant to section 1 of  
25 P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable  
26 energy, energy-efficient technology, and non-renewable resources  
27 in order to reduce environmental degradation and encourage long-  
28 term cost reduction.

29  
30 9. Section 2 of P.L.2007, c.346 (C.34:1B-208) is amended to  
31 read as follows:

32 2. As used in this act:

33 "Affiliate" means an entity that directly or indirectly controls, is  
34 under common control with, or is controlled by the business.  
35 Control exists in all cases in which the entity is a member of a  
36 controlled group of corporations as defined pursuant to section 1563  
37 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the  
38 entity is an organization in a group of organizations under common  
39 control as defined pursuant to subsection (b) or (c) of section 414 of  
40 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer  
41 may establish by clear and convincing evidence, as determined by  
42 the Director of the Division of Taxation in the Department of the  
43 Treasury, that control exists in situations involving lesser  
44 percentages of ownership than required by those statutes. An  
45 affiliate of a business may contribute to meeting either the qualified  
46 investment or full-time employee requirements of a business that  
47 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-  
48 209).

1 "Authority" means the New Jersey Economic Development  
2 Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

3 "Business" means a corporation that is subject to the tax imposed  
4 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a  
5 corporation that is subject to the tax imposed pursuant to sections 2  
6 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of  
7 P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership,  
8 an S corporation, or a limited liability corporation. A business shall  
9 include an affiliate of the business if that business applies for a  
10 credit based upon any capital investment made by or full-time  
11 employees of an affiliate.

12 "Capital investment" in a qualified business facility means  
13 expenses incurred after, but before the end of the eighth year after,  
14 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a.  
15 the site preparation and construction, repair, renovation,  
16 improvement, equipping, or furnishing of a building, structure,  
17 facility or improvement to real property; and b. obtaining and  
18 installing furnishings and machinery, apparatus or equipment for  
19 the operation of a business in a building, structure, facility or  
20 improvement to real property.

21 "Eligible municipality" means a municipality: (1) which qualifies  
22 for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or  
23 which was continued to be a qualified municipality thereunder  
24 pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of  
25 the value of real property was exempt from local property taxation  
26 during tax year 2006. The percentage of exempt property shall be  
27 calculated by dividing the total exempt value by the sum of the net  
28 valuation which is taxable and that which is tax exempt.

29 "Full-time employee" means a person employed by the business  
30 for consideration for at least 35 hours a week, or who renders any  
31 other standard of service generally accepted by custom or practice  
32 as full-time employment, or a person who is employed by a  
33 professional employer organization pursuant to an employee leasing  
34 agreement between the business and the professional employer  
35 organization, in accordance with P.L.2001, c.260 (C.34:8-67 et  
36 seq.) for at least 35 hours a week, or who renders any other standard  
37 of service generally accepted by custom or practice as full-time  
38 employment, and whose wages are subject to withholding as  
39 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
40 et seq. or an employee who is a resident of another State but whose  
41 income is not subject to the "New Jersey Gross Income Tax Act,"  
42 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
43 for the partnership for at least 35 hours a week, or who renders any  
44 other standard of service generally accepted by custom or practice  
45 as full-time employment, and whose distributive share of income,  
46 gain, loss, or deduction, or whose guaranteed payments, or any  
47 combination thereof, is subject to the payment of estimated taxes, as  
48 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1

1 et seq. "Full-time employee" shall not include any person who  
2 works as an independent contractor or on a consulting basis for the  
3 business.

4 "Mixed use project" means a project comprising both a qualified  
5 business facility and a qualified residential project.

6 "Partnership" means an entity classified as a partnership for  
7 federal income tax purposes.

8 "Professional employer organization" means an employee leasing  
9 company registered with the Department of Labor and Workforce  
10 Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

11 "Qualified business facility" means any building, complex of  
12 buildings or structural components of buildings, and all machinery  
13 and equipment located within a designated urban transit hub in an  
14 eligible municipality, used in connection with the operation of a  
15 business.

16 "Qualified residential project" shall have the meaning ascribed to  
17 that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).

18 "Residential unit" means a residential dwelling unit such as a  
19 rental apartment, a condominium or cooperative unit, a hotel room,  
20 or a dormitory room.

21 "Urban transit hub" means:

22 a. property located within a 1/2 mile radius surrounding the  
23 mid point of a New Jersey Transit Corporation, Port Authority  
24 Transit Corporation or Port Authority Trans-Hudson Corporation  
25 rail station platform area, including all light rail stations, and  
26 property located within a one mile radius of the mid point of the  
27 platform area of such a rail station if the property is in a qualified  
28 municipality under the "Municipal Rehabilitation and Economic  
29 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et seq.);

30 b. property located within a 1/2 mile radius surrounding the  
31 mid point of one of up to two underground light rail stations'  
32 platform areas that are most proximate to an interstate rail station;

33 c. property adjacent to, or connected by rail spur to, a freight  
34 rail line if the business utilizes that freight line at any rail spur  
35 located adjacent to or within a one mile radius surrounding the  
36 entrance to the property for loading and unloading freight cars on  
37 trains;

38 which property shall have been specifically delineated by the  
39 authority pursuant to subsection e. of section 3 of P.L.2007, c.346  
40 (C.34:1B-209).

41 A property which is partially included within the radius shall  
42 only be considered part of the urban transit hub if over 50 percent  
43 of its land area falls within the radius.

44 "Rail station" shall not include any rail station located at an  
45 international airport, except that any property within a 1/2 mile  
46 radius surrounding the mid point of a New Jersey Transit  
47 Corporation rail station platform area at an international airport  
48 upon which a qualified business facility is constructed or renovated

1 commencing after the effective date of P.L. , c. (C. )  
2 (pending before the Legislature as this bill) shall be deemed an  
3 urban transit hub, excluding any property owned or controlled by  
4 the Port Authority of New York and New Jersey.  
5 (cf: P.L.2011, c.89, s.1)  
6

7 '10. Section 3 of P.L.2007, c.346 (C.34:1B-209) is amended to  
8 read as follows:

9 3. a. (1) A business, upon application to and approval from the  
10 authority, shall be allowed a credit of 100 percent of its capital  
11 investment, made after the effective date of P.L.2007, c.346  
12 (C.34:1B-207 et seq.) but prior to its submission of documentation  
13 pursuant to subsection c. of this section, in a qualified business  
14 facility within an eligible municipality, pursuant to the restrictions  
15 and requirements of this section. To be eligible for any tax credits  
16 authorized under this section, a business shall demonstrate to the  
17 authority, at the time of application, that the State's financial  
18 support of the proposed capital investment in a qualified business  
19 facility will yield a net positive benefit to both the State and the  
20 eligible municipality. The value of all credits approved by the  
21 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall  
22 not exceed \$1,500,000,000.

23 (2) A business, other than a tenant eligible pursuant to  
24 paragraph (3) of this subsection, shall make or acquire capital  
25 investments totaling not less than \$50,000,000 in a qualified  
26 business facility, at which the business shall employ not fewer than  
27 250 full-time employees to be eligible for a credit under this  
28 section. A business that acquires a qualified business facility shall  
29 also be deemed to have acquired the capital investment made or  
30 acquired by the seller.

31 (3) A business that is a tenant in a qualified business facility, the  
32 owner of which has made or acquired capital investments in the  
33 facility totaling not less than \$50,000,000, shall occupy a leased  
34 area of the qualified business facility that represents at least  
35 \$17,500,000 of the capital investment in the facility at which the  
36 tenant business and up to two other tenants in the qualified business  
37 facility shall employ not fewer than 250 full-time employees in the  
38 aggregate to be eligible for a credit under this section. The amount  
39 of capital investment in a facility that a leased area represents shall  
40 be equal to that percentage of the owner's total capital investment in  
41 the facility that the percentage of net leasable area leased by the  
42 tenant is of the total net leasable area of the qualified business  
43 facility. Capital investments made by a tenant shall be deemed to  
44 be included in the calculation of the capital investment made or  
45 acquired by the owner, but only to the extent necessary to meet the  
46 owner's minimum capital investment of \$50,000,000. Capital  
47 investments made by a tenant and not allocated to meet the owner's  
48 minimum capital investment threshold of \$50,000,000 shall be

1 added to the amount of capital investment represented by the  
2 tenant's leased area in the qualified business facility.

3 (4) A business shall not be allowed tax credits under this section  
4 if the business participates in a business employment incentive  
5 grant relating to the same capital and employees that qualify the  
6 business for this credit, or if the business receives assistance  
7 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is  
8 allowed a tax credit under this section shall not be eligible for  
9 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et  
10 al.). A business shall not qualify for a tax credit under this section,  
11 based upon capital investment and employment of full-time  
12 employees, if that capital investment or employment was the basis  
13 for which a grant was provided to the business pursuant to the  
14 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-  
15 237 et seq.).

16 (5) Full-time employment for an accounting or privilege period  
17 shall be determined as the average of the monthly full-time  
18 employment for the period.

19 (6) The capital investment of the owner of a qualified business  
20 facility is that percentage of the capital investment made or  
21 acquired by the owner of the building that the percentage of net  
22 leasable area of the qualified business facility not leased to tenants  
23 is of the total net leasable area of the qualified business facility.

24 (7) A business shall be allowed a tax credit of 100 percent of its  
25 capital investment, made after the effective date of P.L.2011, c.89  
26 but prior to its submission of documentation pursuant to subsection  
27 c. of this section, in a qualified business facility that is part of a  
28 mixed use project, provided that (a) the qualified business facility  
29 represents at least \$17,500,000 of the total capital investment in the  
30 mixed use project, (b) the business employs not fewer than 250 full-  
31 time employees in the qualified business facility, and (c) the total  
32 capital investment in the mixed use project of which the qualified  
33 business facility is a part is not less than \$50,000,000. The  
34 allowance of credits under this paragraph shall be subject to the  
35 restrictions and requirements, to the extent that those are not  
36 inconsistent with the provisions of this paragraph, set forth in  
37 paragraphs (1) through (6) of this subsection, including but not  
38 limited to the requirement that the business shall demonstrate to the  
39 authority, at the time of application, that the State's financial  
40 support of the proposed capital investment in a qualified business  
41 facility will yield a net positive benefit to both the State and the  
42 eligible municipality.

43 (8) In determining whether a proposed capital investment will  
44 yield a net positive benefit, the authority shall not consider the  
45 transfer of an existing job from one location in the State to another  
46 location in the State as the creation of a new job, unless (a) the  
47 business proposes to transfer existing jobs to a municipality in the  
48 State as part of a consolidation of business operations from two or

1 more other locations that are not in the same municipality whether  
2 in-State or out-of-State, or (b) the business's chief executive officer,  
3 or equivalent officer, submits a certification to the authority  
4 indicating that the existing jobs are at risk of leaving the State and  
5 that the business's chief executive officer, or equivalent officer, has  
6 reviewed the information submitted to the authority and that the  
7 representations contained therein are accurate, and the business  
8 intends to employ not fewer than 500 full-time employees in the  
9 qualified business facility. In the event that this certification by the  
10 business's chief executive officer, or equivalent officer, is found to  
11 be willfully false, the authority may revoke any award of tax credits  
12 in their entirety, which revocation shall be in addition to any other  
13 criminal or civil penalties that the business and the officer may be  
14 subject to. When considering an application involving intra-State  
15 job transfers, the authority shall require the company to submit the  
16 following information as part of its application: a full economic  
17 analysis of all locations under consideration by the company; all  
18 lease agreements, ownership documents, or substantially similar  
19 documentation for the business's current in-State locations; and all  
20 lease agreements, ownership documents, or substantially similar  
21 documentation for the potential out-of-State location alternatives, to  
22 the extent they exist. Based on this information, and any other  
23 information deemed relevant by the authority, the authority shall  
24 independently verify and confirm, by way of making a factual  
25 finding by separate vote of the authority's board, the business's  
26 assertion that the jobs are actually at risk of leaving the State,  
27 before a business may be awarded any tax credits under this section.

28 b. A business shall apply for the credit within five years after  
29 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and  
30 shall submit its documentation for approval of its credit amount  
31 within eight years after the effective date of P.L.2007, c.346  
32 (C.34:1B-207 et seq.).

33 c. (1) The amount of credit allowed shall, except as otherwise  
34 provided, be equal to the capital investment made by the business,  
35 or the capital investment represented by the business' leased area, or  
36 area owned by the business as a condominium, and shall be taken  
37 over a 10-year period, at the rate of one-tenth of the total amount of  
38 the business' credit for each tax accounting or privilege period of  
39 the business, beginning with the tax period in which the business is  
40 first **[approved]** certified by the authority as having met the  
41 investment capital and employment qualifications, subject to any  
42 reduction or disqualification as provided by subsection d. of this  
43 section as determined by annual review by the authority. In  
44 conducting its annual review, the authority may require a business  
45 to submit any information determined by the authority to be  
46 necessary and relevant to its review.

47 The credit amount for any tax period ending after the date eight  
48 years after the effective date of P.L.2007, c.346 (C.34:1B-207 et



1 seq.) during which the documentation of a business' credit amount  
2 remains **[unapproved]** uncertified shall be forfeited, although credit  
3 amounts for the remainder of the years of the 10-year credit period  
4 shall remain available to it.

5 The credit amount that may be taken for a tax period of the  
6 business that exceeds the final liabilities of the business for the tax  
7 period may be carried forward for use by the business in the next 20  
8 successive tax periods, and shall expire thereafter, provided that the  
9 value of all credits approved by the authority against tax liabilities  
10 pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year  
11 shall not exceed \$150,000,000.

12 The amount of credit allowed for a tax period to a business that  
13 is a tenant in a qualified business facility shall not exceed the  
14 business' total lease payments for occupancy of the qualified  
15 business facility for the tax period.

16 (2) A business that is a partnership shall not be allowed a credit  
17 under this section directly, but the amount of credit of an owner of a  
18 business shall be determined by allocating to each owner of the  
19 partnership that proportion of the credit of the business that is equal  
20 to the owner of the partnership's share, whether or not distributed,  
21 of the total distributive income or gain of the partnership for its tax  
22 period ending within or with the owner's tax period, or that  
23 proportion that is allocated by an agreement, if any, among the  
24 owners of the partnership that has been provided to the Director of  
25 the Division of Taxation in the Department of the Treasury by such  
26 time and accompanied by such additional information as the  
27 director may require.

28 (3) The amount of credit allowed may be applied against the tax  
29 liability otherwise due pursuant to section 5 of P.L.1945, c.162  
30 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132  
31 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950,  
32 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

33 d. (1) If, in any tax period, fewer than 200 full-time employees  
34 of the business at the qualified business facility are employed in  
35 new full-time positions, the amount of the credit otherwise  
36 determined pursuant to final calculation of the award of tax credits  
37 pursuant to subsection c. of this section shall be reduced by 20  
38 percent for that tax period and each subsequent tax period until the  
39 first period for which documentation demonstrating the restoration  
40 of the 200 full-time employees employed in new full-time positions  
41 at the qualified business facility has been reviewed and approved by  
42 the authority, for which tax period and each subsequent tax period  
43 the full amount of the credit shall be allowed; provided, however,  
44 that for businesses applying before January 1, 2010, there shall be  
45 no reduction if a business relocates to an urban transit hub from  
46 another location or other locations in the same municipality. For  
47 the purposes of this paragraph, a "new full-time position" means a

1 position created by the business at the qualified business facility  
2 that did not previously exist in this State.

3 (2) If, in any tax period, the business reduces the total number  
4 of full-time employees in its Statewide workforce by more than 20  
5 percent from the number of full-time employees in its Statewide  
6 workforce in the last tax accounting or privilege period prior to the  
7 credit amount approval under subsection a. of this section, then the  
8 business shall forfeit its credit amount for that tax period and each  
9 subsequent tax period, until the first tax period for which  
10 documentation demonstrating the restoration of the business'  
11 Statewide workforce to the threshold levels required by this  
12 paragraph has been reviewed and approved by the authority, for  
13 which tax period and each subsequent tax period the full amount of  
14 the credit shall be allowed.

15 (3) If, in any tax period, (a) the number of full-time employees  
16 employed by the business at the qualified business facility located  
17 in an urban transit hub within an eligible municipality drops below  
18 250, or (b) the number of full-time employees, who are not the  
19 subject of intra-State job transfers, pursuant to paragraph (8) of  
20 subsection a. of this section, employed by the business at any other  
21 business facility in the State, whether or not located in an urban  
22 transit hub within an eligible municipality, drops by more than 20  
23 percent from the number of full-time employees in its workforce in  
24 the last tax accounting or privilege period prior to the credit amount  
25 approval under this section, then the business shall forfeit its credit  
26 amount for that tax period and each subsequent tax period, until the  
27 first tax period for which documentation demonstrating the  
28 restoration of the number of full-time employees employed by the  
29 business at the qualified business facility to 250 or an increase  
30 above the 20 percent reduction has been reviewed and approved by  
31 the authority, for which tax period and each subsequent tax period  
32 the full amount of the credit shall be allowed.

33 (4) (i) If the qualified business facility is sold in whole or in part  
34 during the 10-year eligibility period the new owner shall not acquire  
35 the capital investment of the seller and the seller shall forfeit all  
36 credits for the tax period in which the sale occurs and all subsequent  
37 tax periods, provided however that any credits of tenants shall  
38 remain unaffected.

39 (ii) If a tenant subleases its tenancy in whole or in part during  
40 the 10-year eligibility period the new tenant shall not acquire the  
41 credit of the sublessor, and the sublessor tenant shall forfeit all  
42 credits for the tax period of its sublease and all subsequent tax  
43 periods.

44 e. (1) The Executive Director of the New Jersey Economic  
45 Development Authority, in consultation with the Director of the  
46 Division of Taxation in the Department of the Treasury, shall adopt  
47 rules in accordance with the "Administrative Procedure Act,"  
48 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement

1 this act, including but not limited to: examples of and the  
2 determination of capital investment; the enumeration of eligible  
3 municipalities; specific delineation of urban transit hubs; the  
4 determination of the limits, if any, on the expense or type of  
5 furnishings that may constitute capital improvements; the  
6 promulgation of procedures and forms necessary to apply for a  
7 credit, including the enumeration of the certification procedures and  
8 allocation of tax credits for different phases of a qualified business  
9 facility or mixed use project; and provisions for credit applicants to  
10 be charged an initial application fee, and ongoing service fees, to  
11 cover the administrative costs related to the credit.

12 (2) Through regulation, the Economic Development Authority  
13 shall establish standards based on the green building manual  
14 prepared by the Commissioner of Community Affairs pursuant to  
15 section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of  
16 renewable energy, energy-efficient technology, and non-renewable  
17 resources in order to reduce environmental degradation and  
18 encourage long-term cost reduction.<sup>1</sup>

19 (cf: P.L.2011, c.89, s.2)  
20

21 <sup>1</sup>11. Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to  
22 read as follows:

23 2. As used in this act:

24 "Affiliate" means an entity that directly or indirectly controls, is  
25 under common control with, or is controlled by the business.  
26 Control exists in all cases in which the entity is a member of a  
27 controlled group of corporations as defined pursuant to section 1563  
28 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the  
29 entity is an organization in a group of organizations under common  
30 control as defined pursuant to subsection (b) or (c) of section 414 of  
31 the Internal Revenue Code of 1986 (26 U.S.C. s.414). An entity  
32 may establish by clear and convincing evidence, as determined by  
33 the Director of the Division of Taxation in the Department of the  
34 Treasury, that control exists in situations involving lesser  
35 percentages of ownership than required by those statutes;

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

38 "Business retention or relocation grant of tax credits" or "grant of  
39 tax credits" means a grant which consists of the value of  
40 corporation business tax credits against the liability imposed  
41 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or credits  
42 against the taxes imposed on insurers pursuant to P.L.1945, c.132  
43 (C.54:18A-1 et al.), section 1 of P.L.1950, c.231 (C.17:32-15), and  
44 N.J.S.17B:23-5, provided to fund a portion of retention and  
45 relocation costs pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.);

46 "Business" means an employer located in this State that has  
47 operated continuously in the State, in whole or in part, in its current  
48 form or as a predecessor entity for at least 10 years prior to filing an

1 application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and  
2 which is subject to the provisions of R.S.43:21-1 et seq. and may  
3 include a sole proprietorship, a partnership, or a corporation that  
4 has made an election under Subchapter S of Chapter One of Subtitle  
5 A of the Internal Revenue Code of 1986, or any other business  
6 entity through which income flows as a distributive share to its  
7 owners, limited liability company, nonprofit corporation, or any  
8 other form of business organization located either within or outside  
9 the State. A business shall include an affiliate of the business if that  
10 business applies for a credit based upon any capital investment  
11 made by an affiliate or based upon retained full-time jobs of an  
12 affiliate;

13 "Capital investment" means expenses that the business incurs  
14 following its submission of an application to the authority pursuant  
15 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the  
16 Capital Investment Completion Date, as shall be defined in the  
17 project agreement, for: (1) the site preparation and construction,  
18 renovation, improvement, equipping of, or obtaining and installing  
19 fixtures and machinery, apparatus or equipment in, a newly  
20 constructed, renovated or improved building, structure, facility, or  
21 improvement to real property in this State; and (2) obtaining and  
22 installing fixtures and machinery, apparatus or equipment in a  
23 building, structure, or facility in this State. Provided however, that  
24 "capital investment" shall not include soft costs such as financing  
25 and design, furniture or decorative items such as artwork or plants,  
26 or office equipment if the office equipment is property with a  
27 recovery period of less than five years. The recovery period of any  
28 property, for purposes of this section, shall be determined as of the  
29 date such property is first placed in service or use in this State by  
30 the business, determined in accordance with section 168 of the  
31 federal Internal Revenue Code of 1986 (26 U.S.C. s.168. A  
32 business that acquires or leases a qualified business facility shall  
33 also be deemed to have acquired the capital investment made or  
34 acquired by the seller or landlord, as the case may be;

35 "Certificate of compliance" means a certificate issued by the  
36 authority pursuant to section 9 of P.L.1996, c.25 (C.34:1B-120);

37 "Chief executive officer" means the chief executive officer of the  
38 New Jersey Economic Development Authority;

39 "Commitment duration" means the tax credit term and five years  
40 from the end of the tax credit term specified in the project  
41 agreement entered into pursuant to section 5 of P.L.1996, c.25  
42 (C.34:1B-116);

43 "Designated industry" means an industry identified by the  
44 authority as desirable for the State to maintain, which may be  
45 designated and amended via the promulgation of rules by the  
46 authority to reflect changing market conditions;

1 "Designated urban center" means an urban center designated in  
2 the State Development and Redevelopment Plan adopted by the  
3 State Planning Commission;

4 "Eligible position" means a full-time position retained by a  
5 business in this State for which a business provides employee health  
6 benefits under a group health plan as defined under section 14 of  
7 P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined  
8 under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or  
9 contract of health insurance covering more than one person issued  
10 pursuant to Article 2 of Chapter 27 of Title 17B of the New Jersey  
11 Statutes;

12 "Full-time employee" means a person employed by the business  
13 for consideration for at least 35 hours a week, or who renders any  
14 other standard of service generally accepted by custom or practice,  
15 as determined by the authority, as full-time employment, or a  
16 person who is employed by a professional employer organization  
17 pursuant to an employee leasing agreement between the business  
18 and the professional employer organization, in accordance with  
19 P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or  
20 who renders any other standard of service generally accepted by  
21 custom or practice, as determined by the authority, as full-time  
22 employment, and whose wages are subject to withholding as  
23 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
24 et seq. or an employee who is a resident of another State but whose  
25 income is not subject to the "New Jersey Gross Income Tax Act,"  
26 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
27 for the partnership for at least 35 hours a week, or who renders any  
28 other standard of service generally accepted by custom or practice,  
29 as determined by the authority, as full-time employment, and whose  
30 distributive share of income, gain, loss, or deduction, or whose  
31 guaranteed payments, or any combination thereof, is subject to the  
32 payment of estimated taxes, as provided in the "New Jersey Gross  
33 Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall  
34 not include any person who works as an independent contractor or  
35 on a consulting basis for the business;

36 "New business location" means the premises to which a business  
37 will relocate that the business has either purchased or built or for  
38 which the business has entered into a purchase agreement or a  
39 written lease for a period of no less than the commitment duration  
40 or eight years, whichever is greater, from the date of relocation. A  
41 "new business location" also means the business's current location  
42 or locations if the business makes a capital investment equal to the  
43 total value of the business retention or relocation grant of tax credits  
44 to the business at that location or locations;

45 "Program" means the Business Retention and Relocation  
46 Assistance Grant Program created pursuant to P.L.1996, c.25  
47 (C.34:1B-112 et seq.);

1 "Project agreement" means an agreement between a business and  
2 the authority that sets the forecasted schedule for completion and  
3 occupancy of the project, the date the commitment duration shall  
4 commence, the amount and tax credit term of the applicable grant of  
5 tax credits, and other such provisions which further the purposes of  
6 P.L.1996, c.25 (C.34:1B-112 et seq.);

7 "Retained full-time job" means an eligible position that currently  
8 exists in New Jersey and is filled by a full-time employee but  
9 which, because of a potential relocation by the business, is at risk of  
10 being lost to another state or country. For the purposes of  
11 determining a number of retained full-time jobs, the eligible  
12 positions of an affiliate shall be considered the eligible positions of  
13 the business;

14 "Tax credit term" means the period of time commencing with the  
15 first issuance of tax credits and continuing during the period in  
16 which the recipient of a grant of tax credits is eligible to apply the  
17 tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3);  
18 and

19 "Yearly tax credit amount" means \$1,500 times the number of  
20 retained full-time jobs. "Yearly tax credit amount" does not include  
21 the amount of any bonus award authorized pursuant to section 5 of  
22 P.L.2004, c.65 (C.34:1B-115.1).<sup>1</sup>  
23 (cf: P.L.2010, c.123, s.1)  
24

25 <sup>1</sup>12. Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is amended to  
26 read as follows:

27 7. a. The total value of the grants of tax credits, approved by  
28 the authority pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that  
29 may be applied against tax liability **【in a fiscal year】** for any tax  
30 period shall not exceed an aggregate annual limit of \$20,000,000.  
31 The total value of the grants of tax credits, issued pursuant to  
32 P.L.1996, c.25 (C.34:1B-112 et seq.), that a single business may  
33 apply against its tax liability shall not exceed an aggregate annual  
34 limit of \$10,000,000 in a fiscal year. A tax credit issued pursuant to  
35 P.L.1996, c.25 may be applied against liability in the single tax  
36 period in which the tax credit or portion of the tax credit may be  
37 applied as prescribed by the project agreement and as set forth in  
38 subsection b. of this section and shall expire thereafter.

39 b. Subject to the limitation set forth in subsection a. of this  
40 section, grants of tax credits shall be approved for qualifying  
41 businesses according to the following schedule, and shall be issued  
42 upon the execution and satisfaction of the requirements of the  
43 project agreement between the authority and the business with an  
44 approved project:

45 (1) for a project that covers a business relocating or retaining 50  
46 to 250 full-time employees, a grant of tax credits shall be for the  
47 yearly tax credit amount plus any applicable bonus award  
48 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1),

1 and may be applied against liability in the tax period in which the  
2 tax credit is issued;

3 (2) for a project that covers a business relocating or retaining  
4 251 to 400 full-time employees, a grant of tax credits shall be for  
5 two times the yearly tax credit amount plus any applicable bonus  
6 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
7 115.1), and may be applied against liability in the tax period in  
8 which the tax credit is issued and the following tax period, for one-  
9 half of the total grant award per tax period, provided that the use of  
10 the credit must be accompanied by a certificate of compliance;

11 (3) for a project that covers a business relocating or retaining  
12 401 to 600 full-time employees, a grant of tax credits shall be for  
13 three times the yearly tax credit amount plus any applicable bonus  
14 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
15 115.1) and may be applied against liability in the tax period in  
16 which the tax credit is issued and the following two tax periods, for  
17 one-third of the total grant award per tax period, provided that the  
18 use of the credit must be accompanied by a certificate of  
19 compliance;

20 (4) for a project that covers a business relocating or retaining  
21 601 to 800 full-time employees, a grant of tax credits shall be for  
22 four times the yearly tax credit amount plus any applicable bonus  
23 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
24 115.1) and may be applied against liability in the tax period in  
25 which the tax credit is issued and the following three tax periods,  
26 for one-fourth of the total grant award per tax period, provided that  
27 the use of the credit must be accompanied by a certificate of  
28 compliance;

29 (5) for a project that covers a business relocating or retaining  
30 801 to 1,000 full-time employees, a grant of tax credits shall be for  
31 five times the yearly tax credit amount plus any applicable bonus  
32 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
33 115.1) and may be applied against liability in the tax period in  
34 which the tax credit is issued and the following four tax periods for  
35 one-fifth of the total grant award per tax period, provided that the  
36 use of the credit must be accompanied by a certificate of  
37 compliance; and

38 (6) for a project that covers a business relocating or retaining  
39 1,001 or more full-time employees, a grant of tax credits shall be  
40 for six times the yearly tax credit amount plus any applicable bonus  
41 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
42 115.1) and may be applied against liability in the tax period in  
43 which the tax credit is issued and the following five tax periods, for  
44 one-sixth of the total grant award per tax period, provided that the  
45 use of the credit must be accompanied by a certificate of  
46 compliance.

47 c. If the approval of a grant of tax credits pursuant to this  
48 section would exceed the \$20,000,000 aggregate annual limit, the

1 authority may award a smaller grant of tax credits or no grants of  
2 tax credits, as necessary to comply with the aggregate annual limit.<sup>1</sup>  
3 (cf: P.L.2010, c.123, s.6)  
4

5 <sup>1</sup>13. Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is amended  
6 to read as follows:

7 17. a. The authority shall establish a corporation business tax  
8 credit and insurance premiums tax credit certificate transfer  
9 program to allow businesses in this State with unused amounts of  
10 tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and  
11 otherwise allowable, that cannot be applied by the business to  
12 which originally issued before the expiration of the credit, to  
13 surrender those tax credits for use by other corporation business and  
14 insurance premiums taxpayers in this State. The tax credits may be  
15 used on the corporation business tax and insurance premiums tax  
16 returns to be filed by those taxpayers in exchange for private  
17 financial assistance to be provided by the corporation business  
18 taxpayer or insurance premiums taxpayer that is the recipient of the  
19 corporation business tax credit certificate or insurance premiums  
20 tax credit certificate to assist in the funding of costs incurred by the  
21 relocating business.

22 b. Businesses may apply to the executive director of the  
23 authority and the Director of the Division of Taxation for a tax  
24 credit transfer certificate, covering one or more years. Upon receipt  
25 thereof, the business may sell or assign the tax credit certificate in  
26 exchange for private financial assistance to be made by the  
27 purchaser in an amount equal to at least 75% of the amount of the  
28 surrendered tax credit of a business relocating in the State. The  
29 private financial assistance shall assist in funding expenses incurred  
30 in connection with the operation of the business in the State,  
31 including but not limited to the expenses of fixed assets, such as the  
32 construction and acquisition and development of real estate,  
33 materials, start-up, tenant fit-out, working capital, salaries, research  
34 and development expenditures and any other expenses determined  
35 by the authority to be necessary to carry out the purposes of  
36 P.L.1996, c.25 (C.34:1B-112 et seq.).

37 c. The authority shall establish procedures to facilitate such  
38 transfers and encourage liquidity and simplicity in the market for  
39 the purchase and sale of such certificates, including, in the  
40 authority's discretion, coordinating the applications for surrender  
41 and acquisition of unused but otherwise allowable tax credits  
42 pursuant to this section in a manner that can best stimulate and  
43 encourage the extension of private financial assistance to businesses  
44 in this State.

45 d. The authority shall, in consultation with the Director of the  
46 Division of Taxation, develop criteria for the approval or  
47 disapproval of applications.<sup>1</sup>  
48 (cf: P.L.2010, c.123, s.14)



1        '14. (New section) Section 6 of P.L.1996, c.25 (34:1B-117) is  
2        repealed.'  
3  
4        **'[10.] 15.'** This act shall take effect immediately.