

[Fifth Reprint]
SENATE, No. 3033

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED SEPTEMBER 19, 2011

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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; authorizes transfer of certain real property.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 1, 2011, with amendments.

(Sponsorship Updated As Of: 12/16/2011)

1 AN ACT providing for the availability of tax credits to certain
2 businesses ⁴, authorizing a transfer of certain real property.⁴ and
3 supplementing Title 34 of the Revised Statutes '[and].'¹
4 amending ¹[P.L.2007, c.346] various parts of the statutory law,
5 and repealing section 6 of P.L.1996, c.25¹.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 1. (New section) Sections 1 through ⁴[8] ⁹ of this act shall be
11 known and may be cited as the "Grow New Jersey Assistance Act."
12

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

14 "Affiliate" means an entity that directly or indirectly controls, is
15 under common control with, or is controlled by the business.
16 Control exists in all cases in which the entity is a member of a
17 controlled group of corporations as defined pursuant to section 1563
18 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the
19 entity is an organization in a group of organizations under common
20 control as defined pursuant to subsection (b) or (c) of section 414 of
21 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
22 may establish by clear and convincing evidence, as determined by
23 the Director of the Division of Taxation in the Department of the
24 Treasury, that control exists in situations involving lesser
25 percentages of ownership than required by those statutes. An
26 affiliate of a business may contribute to meeting either the qualified
27 investment or full-time employee requirements of a business that
28 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
29 209).

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

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

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:

¹Senate SEG committee amendments adopted September 19, 2011.

²Senate SBA committee amendments adopted September 22, 2011.

³Senate floor amendments adopted September 26, 2011.

⁴Assembly ACE committee amendments adopted November 21, 2011.

⁵Assembly AAP committee amendments adopted December 1, 2011.

1 "Capital investment" in a qualified business facility means
2 expenses incurred after application, but before the end of the tenth
3 year after, the effective date of P.L. , c. (C.) (pending
4 before the Legislature as this bill) for: a. site preparation and
5 construction, repair, renovation, improvement, equipping, or
6 furnishing of a building, structure, facility, or improvement to real
7 property; and b. obtaining and installing furnishings and machinery,
8 apparatus, or equipment for the operation of a business in a
9 building, structure, facility, or improvement to real property.

10 ¹"Eligible position" means a full-time position retained or
11 ³[hired] created³ by a business in this State for which a business
12 provides employee health benefits under a group health plan as
13 defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health
14 benefits plan as defined under section 1 of P.L.1992, c.162
15 (C.17B:27A-17), or a policy or contract of health insurance
16 covering more than one person issued pursuant to Article 2 of
17 chapter 27 of Title 17B of the New Jersey Statutes.¹

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

41 ³"New full-time job" means an eligible position created by the
42 business at the qualified business facility that did not previously
43 exist in this State. For the purposes of determining a number of
44 new full-time jobs, the eligible positions of an affiliate shall be
45 considered eligible positions of the business.³

46 "Partnership" means an entity classified as a partnership for
47 federal income tax purposes.

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

4 "Program" means the "Grow New Jersey Assistance Program"
5 established pursuant to section 3 of P.L. , c. (C.) (pending
6 before the Legislature as this bill).

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

11 "Qualified incentive area" means an area designated pursuant to
12 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
13 (Metropolitan), Planning Area 2 (Suburban) ², or any urban,
14 regional, or town designated center under the State Development
15 and Redevelopment Plan²; an area zoned for development pursuant
16 to a master plan adopted by the New Jersey Meadowlands
17 Commission pursuant to subsection (i) of section 6 of P.L.1968,
18 c.404 (C.13:17-6) or subject to a redevelopment plan adopted by the
19 New Jersey Meadowlands Commission pursuant to section 20 of
20 P.L.1968, c.404 (C.13:17-21); any land owned by the New Jersey
21 Sports and Exposition Authority, established pursuant to P.L.1971,
22 c.137 (C.5:10-1 et seq.), within the boundaries of the Hackensack
23 Meadowlands District as delineated in section 4 of P.L.1968, c.404
24 (C.13:17-4); a pinelands regional growth area, a pinelands town
25 management area, a pinelands village, or a military and federal
26 installation area established pursuant to the pinelands
27 comprehensive management plan adopted pursuant to P.L.1979,
28 c.111 (C.13:18A-1 et seq.); an area designated for development,
29 redevelopment, or economic growth within the Highlands Region;
30 federally owned land approved for closure under any federal Base
31 Closure and Realignment Commission action; or any property
32 consisting of a vacant commercial building having over 400,000
33 square feet of office ¹, laboratory, or industrial¹ space available for
34 occupancy for a period of over one year or is negatively impacted
35 by the approval of a "qualified business facility," as defined
36 pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

37 ¹"Retained full-time job" means an eligible position that
38 currently exists in New Jersey and is filled by a full-time employee
39 but which, because of a potential relocation by the business, is at
40 risk of being lost to another state or country. For the purposes of
41 determining a number of retained full-time jobs, the eligible
42 positions of an affiliate shall be considered ³[the]³ eligible
43 positions of the business.¹
44

45 3. (New section) a. The Grow New Jersey Assistance Program
46 is hereby established as a program under the jurisdiction of the New
47 Jersey Economic Development Authority and shall be administered

1 by the authority. The purpose of the program is to encourage
2 economic development and job creation and to preserve jobs that
3 currently exist in New Jersey but which are in danger of being
4 relocated outside of the State. To implement this purpose, and to
5 the extent that funding for the program is available, the program
6 may provide tax credits to eligible businesses. To be eligible for
7 any tax credits pursuant to P.L. , c. (C.) (pending before the
8 Legislature as this bill), a business's chief executive officer or
9 equivalent officer shall demonstrate to the authority, at the time of
10 application, that: (1) the business will make, acquire, or lease a
11 capital investment of at least \$20,000,000 at a qualified business
12 facility at which it will ³(a)³ employ at least 100 full-time
13 employees in retained full-time jobs ³, or (b) create at least 100 new
14 full-time jobs in an industry identified by the authority as desirable
15 for the State to maintain or attract³; ³[and]³ (2) the capital
16 investment resultant from the award of tax credits and the resultant
17 retention and creation of eligible positions will yield a net positive
18 benefit to the State ³; and ⁵, except as provided in subsection d. of
19 this section,⁵ (3) the award of tax credits will be a material factor in
20 the business's decision to create or retain the minimum number of
21 full-time jobs for eligibility under the program³.

22 b. ³[In] To assist the authority in³ determining whether a
23 proposed capital investment will yield a net positive benefit, the
24 business's chief executive officer, or equivalent officer, shall submit
25 a certification to the authority indicating that ³[the] any³ existing
26 jobs are at risk of leaving the State ³, that any projected creation of
27 new full-time jobs would not occur but for the provision of tax
28 credits under the program,³ and that the business's chief executive
29 officer, or equivalent officer, has reviewed the information
30 submitted to the authority and that the representations contained
31 therein are accurate. In the event that this certification by the
32 business's chief executive officer, or equivalent officer, is found to
33 be willfully false, the authority may revoke any award of tax credits
34 in their entirety, which revocation shall be in addition to any other
35 criminal or civil penalties that the business and the officer may be
36 subject to. When considering an application involving intra-State
37 job transfers, the authority shall require the business to submit the
38 following information as part of its application: a full economic
39 analysis of all locations under consideration by the business; all
40 lease agreements, ownership documents, or substantially similar
41 documentation for the business's current in-State locations; and all
42 lease agreements, ownership documents, or substantially similar
43 documentation for the potential out-of-State location alternatives, to
44 the extent they exist. Based on this information, and any other
45 information deemed relevant by the authority, the authority shall
46 independently verify and confirm, by way of making a factual
47 finding by separate vote of the authority's board, the business's

1 assertion that the jobs are actually at risk of leaving the State,
2 before a business may be awarded any tax credits under this section.

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

13 ⁵d. The authority may determine as eligible for tax credits under
14 the program any business that is required to respond to a request for
15 proposals and to fulfill a contract with the federal government
16 although the business's chief executive officer or equivalent officer
17 has not demonstrated to the authority that the award of tax credits
18 will be a material factor in the business's decision to retain at least
19 100 full-time jobs, as otherwise required by paragraph 3 of
20 subsection a. of this section. The authority may, in its discretion,
21 consider the economic benefit of the retained jobs servicing the
22 contract in conducting a net benefit analysis required by paragraph
23 2 of subsection a. of this section. For the purposes of this
24 subsection, "retained jobs" includes jobs that are at risk of being
25 eliminated. Applications to the authority for eligibility under the
26 program pursuant to the criteria set forth in this subsection shall be
27 completed by March 31, 2012. Submission of a proposal to the
28 federal government prior to authority approval shall not disqualify a
29 business from the program.⁵

30
31 4. (New section) The authority shall require an eligible
32 business to enter an agreement prior to the issuance of tax credits.
33 The agreement shall include, but shall not be limited to, the
34 following:

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

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

40 c. Personnel information that will enable the authority to
41 administer the program.

42 d. A requirement that the applicant maintain the project at a
43 location in New Jersey for at least 1.5 times the number of years of
44 the term of the tax credits, with at least the number of full-time
45 employees as required by section 6 of P.L. , c. (C.) (pending
46 before the Legislature as this bill) and a provision to permit the
47 authority to recapture all or part of any tax credit awarded, at its

1 discretion, if the business does not remain at the site for the
2 required term.

3 e. A method for the business to report annually to the authority
4 the number of full-time employees for which the tax credits are to
5 be made.

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

8 g. A provision which permits the authority to amend the
9 agreement.

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

13

14 5. (New section) a. The value of each tax credit for an eligible
15 business shall be equal to \$5,000 per year for a period of ten years
16 for each new or retained full-time job ³~~certified~~ determined³ by
17 the authority pursuant to section 3 of P.L. , c. (C.) (pending
18 before the Legislature as this bill) to be located at the qualified
19 business facility, subject to the provisions of this section.

20 b. In addition to any grant of tax credits determined pursuant to
21 subsection a. of this section, a bonus award of up to an additional
22 \$3,000 per job of the amount of the original tax credits may be
23 made to any eligible business as determined by the authority. In
24 making a bonus award to an eligible business, the authority shall
25 consider the following factors, such that whether the business: (1) is
26 an industry identified by the authority as desirable for the State to
27 maintain ³or attract³; (2) ²locates or² relocates to a location within a
28 qualified incentive area adjacent to ¹, or within walking distance or
29 short-distance-shuttle service of,¹ a public transit facility, as
30 determined by the authority ¹, ¹ by regulation; (3) creates jobs using
31 full-time employees in eligible positions whose annual salaries,
32 according to the Department of Labor and Workforce Development,
33 are greater than the average full-time salary in this State; or (4) is
34 locating to a project site that is or has been negatively impacted by
35 the approval of a “qualified business facility,” as defined pursuant
36 to section 2 of P.L.2007, c.346 (C.34:1B-208).

37 ¹c. Notwithstanding the provisions of subsections a. and b. of
38 this section, (1) the amount of tax credits available to be applied by
39 the business annually shall not exceed ⁴the lesser of⁴ one tenth of
40 the capital investment certified by the authority pursuant to section
41 6 of P.L. , c. (C.) (pending before the Legislature as this
42 bill) ⁴or \$4,000,000⁴, and (2) the number of new full-time jobs ³for
43 which a business receives a tax credit³ shall not exceed the number
44 of retained full-time jobs for which a business receives a tax credit
45 ³, unless the business qualifies by creating at least 100 new full-
46 time jobs in an industry identified by the authority as desirable for
47 the State to maintain or attract³ : ³[For the purposes of this section,

1 a “new full-time job” means an eligible position created by the
2 business at the qualified business facility that did not previously
3 exist in this State.”^{3 1}
4

5 6. (New section) a. (1) The value of all credits approved by the
6 authority pursuant to P.L. , c. (C.) (pending before the
7 Legislature as this bill) shall not exceed \$200,000,000, except that
8 the value of all credits approved by the authority pursuant to this
9 section may exceed \$200,000,000 if the board of the authority
10 determines the credits to be reasonable, justifiable, and appropriate;
11 provided, however, the combined value of all credits approved by
12 the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq. and
13 P.L. , c. (C.) (pending before the Legislature as this bill)
14 shall not exceed \$1,500,000,000.

15 (2) A business, including any affiliate of the business or any
16 business that is a tenant within any qualified business facility, shall
17 make or acquire capital investments totaling not less than
18 \$20,000,000 in a qualified business facility, at which the business
19 shall employ not fewer than 100 full-time employees to be eligible
20 for a credit pursuant to P.L. , c. (pending before the Legislature
21 as this bill). A business that acquires or leases a qualified business
22 facility shall also be deemed to have acquired the capital investment
23 made or acquired by the seller or landlord, as the case may be.

24 (3) A business shall not be allowed tax credits pursuant to
25 P.L.1996, c.25 (C.34:1B-112 et seq.) ³or P.L.1996, c.26 (C.34:1B-
26 124 et seq.)³ relating to the same capital and employees that qualify
27 the business for tax credits pursuant to P.L. , c. (pending before
28 the Legislature as this bill). A business that is allowed a tax credit
29 under this section shall not be eligible for incentives authorized
30 pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall
31 not qualify for a tax credit under this section, based upon capital
32 investment and employment of full-time employees, if that capital
33 investment or employment was the basis for which a grant was
34 provided to the business pursuant to the "Urban Transit Hub Tax
35 Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.).

36 (4) Full-time employment for an accounting or privilege period
37 shall be determined as the average of the monthly full-time
38 employment for the period.

39 (5) The capital investment of the owner of a qualified business
40 facility is that percentage of the capital investment made or
41 acquired by the owner of the building that the percentage of net
42 leasable area of the qualified business facility not leased to tenants
43 is of the total net leasable area of the qualified business facility.

44 ¹For a business that is a tenant, the amount of capital investment in
45 a facility that a leased area represents shall be equal to that
46 percentage of the owner's total capital investment in the facility that
47 the percentage of net leasable area leased by the tenant is of the
48 total net leasable area of the qualified business facility. Capital

1 investments made by a tenant shall be deemed to be included in the
2 calculation of the capital investment made or acquired by the
3 owner, but only to the extent necessary to meet the owner's
4 minimum capital investment of \$20,000,000. Capital investments
5 made by a tenant and not allocated to meet the owner's minimum
6 capital investment threshold of ²[\$50,000,000] \$20,000,000² shall
7 be added to the amount of capital investment represented by the
8 tenant's leased area in the qualified business facility.¹

9 b. A business shall apply for the tax credit prior to July 1,
10 2014, and shall submit its documentation indicating that it has met
11 the capital investment and employment specified in the project
12 agreement for certification of its credit amount no later than July
13 28, 2017.

14 c. (1) The amount of credit allowed shall not exceed the capital
15 investment made by the business or the capital investment
16 represented by the business' leased area, as certified by the authority
17 pursuant to subsection b. of this section, as having met the
18 investment capital and employment qualifications, subject to any
19 reduction or disqualification as provided by subsection d. of this
20 section as determined by annual review by the authority. In
21 conducting its annual review, the authority may require a business
22 to submit any information determined by the authority to be
23 necessary and relevant to its review.

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

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

39 The amount of credit allowed for a tax period to a business that
40 is a tenant in a qualified business facility shall not exceed the
41 business' total lease payments for occupancy of the qualified
42 business facility for the tax period.

43 (2) A business that is a partnership shall not be allowed a credit
44 under this section directly, but the amount of credit of an owner of a
45 business shall be determined by allocating to each owner of the
46 partnership that proportion of the credit of the business that is equal
47 to the owner of the partnership's share, whether or not distributed,
48 of the total distributive income or gain of the partnership for its tax

1 period ending within or with the owner's tax period, or that
2 proportion that is allocated by an agreement, if any, among the
3 owners of the partnership that has been provided to the Director of
4 the Division of Taxation in the Department of the Treasury by such
5 time and accompanied by such additional information as the
6 director may require.

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

12 d. (1) If, in any tax period, the business reduces the total
13 number of full-time employees in its Statewide workforce by more
14 than 20 percent from the number of full-time employees in its
15 Statewide workforce in the last tax period prior to the credit amount
16 approval under section 3 of P.L. , c. (pending before the
17 Legislature as this bill), then the business shall forfeit its credit
18 amount for that tax period and each subsequent tax period, until the
19 first tax period for which documentation demonstrating the
20 restoration of the business' Statewide workforce to the threshold
21 levels required by this paragraph has been reviewed and approved
22 by the authority, for which tax period and each subsequent tax
23 period the full amount of the credit shall be allowed.

24 (2) If, in any tax period, the number of full-time employees
25 employed by the business at the qualified business facility located
26 within a qualified incentive area drops below 100 or 80 percent of
27 the number of new and retained full-time jobs specified in the
28 project agreement, then the business shall forfeit its credit amount
29 for that tax period and each subsequent tax period, until the first tax
30 period for which documentation demonstrating the restoration of the
31 number of full-time employees employed by the business at the
32 qualified business facility to 100.

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

39 (b) 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
45 7. (New section) A business may apply to the Director of the
46 Division of Taxation in the Department of the Treasury and the
47 chief executive officer of the authority for a tax credit transfer
48 certificate, covering one or more years, in lieu of the business being

1 allowed any amount of the credit against the tax liability of the
2 business. The tax credit transfer certificate, upon receipt thereof by
3 the business from the director and the chief executive officer of the
4 authority, may be sold or assigned, in full or in part, to any other
5 person that may have a tax liability pursuant to section 5 of
6 P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of
7 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1
8 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.
9 The certificate provided to the business shall include a statement
10 waiving the business's right to claim that amount of the credit
11 against the taxes that the business has elected to sell or assign. The
12 sale or assignment of any amount of a tax credit transfer certificate
13 allowed under this section shall not be exchanged for consideration
14 received by the business of less than 75 percent of the transferred
15 credit amount. Any amount of a tax credit transfer certificate used
16 by a purchaser or assignee against a tax liability shall be subject to
17 the same limitations and conditions that apply to the use of the
18 credit by the business that originally applied for and was allowed
19 the credit.

20
21 8. (New section) a. The chief executive officer of the authority,
22 in consultation with the Director of the Division of Taxation in the
23 Department of the Treasury, shall adopt rules in accordance with
24 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
25 seq.) as are necessary to implement P.L. , c. (C.) (pending
26 before the Legislature as this bill), including but not limited to:
27 examples of and the determination of capital investment; the
28 enumeration of qualified incentive areas; specific delineation of
29 these incentive areas; the determination of the limits, if any, on the
30 expense or type of furnishings that may constitute capital
31 improvements; the promulgation of procedures and forms necessary
32 to apply for a tax credit, including the enumeration of the
33 certification procedures and allocation of tax credits for different
34 phases of a qualified business facility; and provisions for tax credit
35 applicants to be charged an initial application fee, and ongoing
36 service fees, to cover the administrative costs related to the tax
37 credit.

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

46
47 9. (New section) a. Notwithstanding the provisions of
48 P.L.1962, c. 220 (C.52:31-1.1 et seq.), P.L. 2011, c.85, or any other

1 law or regulation to the contrary, and without the requirement for
2 the approval by any other party or entity, the State Treasurer is
3 hereby authorized to sell and convey, to the New Jersey Performing
4 Arts Center, in one or more series of transactions, all or any portion
5 of the State of New Jersey's right, title and interest in the land and
6 improvements located in the City of Newark, County of Essex, now
7 subject to the sublease between the State Treasurer and the New
8 Jersey Performing Arts Center which appear on the tax map of the
9 City of Newark and are designated as Block 125, Lots 23, 26 and
10 115, Block 126.01, Lot 21, such portion of Block 17, Lot 1, which
11 was designated for commercial development pursuant to the
12 sublease, and Block 17, Lots 20 and 21. Such conveyances shall be
13 on such terms and conditions, and for such consideration, as shall
14 be determined by the State Treasurer in the State Treasurer's sole
15 discretion. The proceeds from any such sales and conveyances
16 shall be deposited and applied as provided by law. In the event that
17 the identification of any of the property contained in this section by
18 block and lot number is inaccurate, the State Treasurer is authorized
19 to convey such blocks and lots which are subject to the sublease
20 between the State Treasurer and the New Jersey Performing Arts
21 Center as represent the actual parcels to be conveyed.

22 b. The State Treasurer is hereby authorized to enter into any
23 agreements, and to amend any existing agreements, required to
24 effectuate this sale and conveyance to the New Jersey Performing
25 Arts Center and any such agreements and amendments shall not
26 require the approval of any other party or entity, notwithstanding
27 any other law or
28 regulation to the contrary.

29 c. The New Jersey Economic Development Authority is hereby
30 authorized to sell and convey all or any portion of its right, title,
31 and interest in the property described in subsection a. of this section
32 to the New Jersey Performing Arts Center, in one or more series of
33 transactions on such terms and conditions, and for such
34 consideration, as shall be determined by the authority in its sole
35 discretion and to enter into any agreements and amend any existing
36 agreements required to effectuate this sale and conveyance. Any
37 such sale or conveyance shall not require the approval of any other
38 party or entity, notwithstanding any other law or regulation to the
39 contrary.⁴

41 ⁴[9.] 10.⁴ Section 2 of P.L.2007, c.346 (C.34:1B-208) is
42 amended to read as follows:

43 2. As used in this act:

44 "Affiliate" means an entity that directly or indirectly controls, is
45 under common control with, or is controlled by the business.
46 Control exists in all cases in which the entity is a member of a
47 controlled group of corporations as defined pursuant to section 1563
48 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the

1 entity is an organization in a group of organizations under common
2 control as defined pursuant to subsection (b) or (c) of section 414 of
3 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
4 may establish by clear and convincing evidence, as determined by
5 the Director of the Division of Taxation in the Department of the
6 Treasury, that control exists in situations involving lesser
7 percentages of ownership than required by those statutes. An
8 affiliate of a business may contribute to meeting either the qualified
9 investment or full-time employee requirements of a business that
10 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
11 209).

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

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

23 "Capital investment" in a qualified business facility means
24 expenses incurred after, but before the end of the eighth year after,
25 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a.
26 the site preparation and construction, repair, renovation,
27 improvement, equipping, or furnishing of a building, structure,
28 facility or improvement to real property; and b. obtaining and
29 installing furnishings and machinery, apparatus or equipment for
30 the operation of a business in a building, structure, facility or
31 improvement to real property.

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

40 "Full-time employee" means a person employed by the business
41 for consideration for at least 35 hours a week, or who renders any
42 other standard of service generally accepted by custom or practice
43 as full-time employment, or a person who is employed by a
44 professional employer organization pursuant to an employee leasing
45 agreement between the business and the professional employer
46 organization, in accordance with P.L.2001, c.260 (C.34:8-67 et
47 seq.) for at least 35 hours a week, or who renders any other standard
48 of service generally accepted by custom or practice as full-time

1 employment, and whose wages are subject to withholding as
 2 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
 3 et seq. or an employee who is a resident of another State but whose
 4 income is not subject to the "New Jersey Gross Income Tax Act,"
 5 N.J.S.54A:1-1 et seq. or who is a partner of a business who works
 6 for the partnership for at least 35 hours a week, or who renders any
 7 other standard of service generally accepted by custom or practice
 8 as full-time employment, and whose distributive share of income,
 9 gain, loss, or deduction, or whose guaranteed payments, or any
 10 combination thereof, is subject to the payment of estimated taxes, as
 11 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
 12 et seq. "Full-time employee" shall not include any person who
 13 works as an independent contractor or on a consulting basis for the
 14 business.

15 "Mixed use project" means a project comprising both a qualified
 16 business facility and a qualified residential project.

17 "Partnership" means an entity classified as a partnership for
 18 federal income tax purposes.

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

22 "Qualified business facility" means any building, complex of
 23 buildings or structural components of buildings, and all machinery
 24 and equipment located within a designated urban transit hub in an
 25 eligible municipality, used in connection with the operation of a
 26 business.

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

29 "Residential unit" means a residential dwelling unit such as a
 30 rental apartment, a condominium or cooperative unit, a hotel room,
 31 or a dormitory room.

32 "Urban transit hub" means:

33 a. ⁵(1)⁵ property located within a ⁴[1/2] ⁵[one⁴] ¹/2⁵ mile
 34 radius surrounding the mid point of a New Jersey Transit
 35 Corporation, Port Authority Transit Corporation or Port Authority
 36 Trans-Hudson Corporation rail station platform area ⁴[, including
 37 all light rail stations]⁴, ⁵including all light rail stations.⁵ and

38 ⁵(2)⁵ property located within a one mile radius of the mid point
 39 of the platform area of ⁴[such]⁴ ⁵such⁵ a ⁵[⁴light⁴]⁵ rail station if
 40 the property is in a qualified municipality under the "Municipal
 41 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
 42 (C.52:27BBB-1 et seq.) ⁵or in an area that is the subject of a Choice
 43 Neighborhoods Transformation Plan funded by the federal
 44 Department of Housing and Urban Development, and

45 (3) the site of the campus of an acute care medical facility
 46 located within a one mile radius of the mid point of the platform
 47 area of such a rail station, and

1 (4) the site of a closed hospital located within a one mile radius
 2 of the mid point of the platform area of such a rail station⁵;

3 b. property located within a 1/2 mile radius surrounding the
 4 mid point of ⁵[(1) any light rail station platform area other than a
 5 station that is in a qualified municipality under the "Municipal
 6 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
 7 (C.52:27BBB-1 et seq.) and (2)⁴]⁵ one of up to two underground
 8 light rail stations' platform areas that are most proximate to an
 9 interstate rail station;

10 c. property adjacent to, or connected by rail spur to, a freight
 11 rail line if the business utilizes that freight line at any rail spur
 12 located adjacent to or within a one mile radius surrounding the
 13 entrance to the property for loading and unloading freight cars on
 14 trains;

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

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

21 "Rail station" shall not include any rail station located at an
 22 international airport, except that any property within a 1/2 mile
 23 radius surrounding the mid point of a New Jersey Transit
 24 Corporation rail station platform area at an international airport
 25 upon which a qualified business facility is constructed or renovated
 26 commencing after the effective date of P.L. _____, c. _____ (C. _____)
 27 (pending before the Legislature as this bill) shall be deemed an
 28 urban transit hub, excluding any property owned or controlled by
 29 the Port Authority of New York and New Jersey.

30 (cf: P.L.2011, c.89, s.1)

31
 32 ⁴['10.] 11.⁴ Section 3 of P.L.2007, c.346 (C.34:1B-209) is
 33 amended to read as follows:

34 3. a. (1) A business, upon application to and approval from the
 35 authority, shall be allowed a credit of 100 percent of its capital
 36 investment, made after the effective date of P.L.2007, c.346
 37 (C.34:1B-207 et seq.) but prior to its submission of documentation
 38 pursuant to subsection c. of this section, in a qualified business
 39 facility within an eligible municipality, pursuant to the restrictions
 40 and requirements of this section. To be eligible for any tax credits
 41 authorized under this section, a business shall demonstrate to the
 42 authority, at the time of application, that the State's financial
 43 support of the proposed capital investment in a qualified business
 44 facility will yield a net positive benefit to both the State and the
 45 eligible municipality. The value of all credits approved by the
 46 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall
 47 not exceed \$1,500,000,000.

1 (2) A business, other than a tenant eligible pursuant to
2 paragraph (3) of this subsection, shall make or acquire capital
3 investments totaling not less than \$50,000,000 in a qualified
4 business facility, at which the business shall employ not fewer than
5 250 full-time employees to be eligible for a credit under this
6 section. A business that acquires a qualified business facility shall
7 also be deemed to have acquired the capital investment made or
8 acquired by the seller.

9 (3) A business that is a tenant in a qualified business facility, the
10 owner of which has made or acquired capital investments in the
11 facility totaling not less than \$50,000,000, shall occupy a leased
12 area of the qualified business facility that represents at least
13 \$17,500,000 of the capital investment in the facility at which the
14 tenant business and up to two other tenants in the qualified business
15 facility shall employ not fewer than 250 full-time employees in the
16 aggregate to be eligible for a credit under this section. The amount
17 of capital investment in a facility that a leased area represents shall
18 be equal to that percentage of the owner's total capital investment in
19 the facility that the percentage of net leasable area leased by the
20 tenant is of the total net leasable area of the qualified business
21 facility. Capital investments made by a tenant shall be deemed to
22 be included in the calculation of the capital investment made or
23 acquired by the owner, but only to the extent necessary to meet the
24 owner's minimum capital investment of \$50,000,000. Capital
25 investments made by a tenant and not allocated to meet the owner's
26 minimum capital investment threshold of \$50,000,000 shall be
27 added to the amount of capital investment represented by the
28 tenant's leased area in the qualified business facility.

29 (4) A business shall not be allowed tax credits under this section
30 if the business participates in a business employment incentive
31 grant relating to the same capital and employees that qualify the
32 business for this credit, or if the business receives assistance
33 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is
34 allowed a tax credit under this section shall not be eligible for
35 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et
36 al.). A business shall not qualify for a tax credit under this section,
37 based upon capital investment and employment of full-time
38 employees, if that capital investment or employment was the basis
39 for which a grant was provided to the business pursuant to the
40 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-
41 237 et seq.).

42 (5) Full-time employment for an accounting or privilege period
43 shall be determined as the average of the monthly full-time
44 employment for the period.

45 (6) The capital investment of the owner of a qualified business
46 facility is that percentage of the capital investment made or
47 acquired by the owner of the building that the percentage of net

1 leasable area of the qualified business facility not leased to tenants
2 is of the total net leasable area of the qualified business facility.

3 (7) A business shall be allowed a tax credit of 100 percent of its
4 capital investment, made after the effective date of P.L.2011, c.89
5 but prior to its submission of documentation pursuant to subsection
6 c. of this section, in a qualified business facility that is part of a
7 mixed use project, provided that (a) the qualified business facility
8 represents at least \$17,500,000 of the total capital investment in the
9 mixed use project, (b) the business employs not fewer than 250 full-
10 time employees in the qualified business facility, and (c) the total
11 capital investment in the mixed use project of which the qualified
12 business facility is a part is not less than \$50,000,000. The
13 allowance of credits under this paragraph shall be subject to the
14 restrictions and requirements, to the extent that those are not
15 inconsistent with the provisions of this paragraph, set forth in
16 paragraphs (1) through (6) of this subsection, including but not
17 limited to the requirement that the business shall demonstrate to the
18 authority, at the time of application, that the State's financial
19 support of the proposed capital investment in a qualified business
20 facility will yield a net positive benefit to both the State and the
21 eligible municipality.

22 (8) In determining whether a proposed capital investment will
23 yield a net positive benefit, the authority shall not consider the
24 transfer of an existing job from one location in the State to another
25 location in the State as the creation of a new job, unless (a) the
26 business proposes to transfer existing jobs to a municipality in the
27 State as part of a consolidation of business operations from two or
28 more other locations that are not in the same municipality whether
29 in-State or out-of-State, or (b) the business's chief executive officer,
30 or equivalent officer, submits a certification to the authority
31 indicating that the existing jobs are at risk of leaving the State and
32 that the business's chief executive officer, or equivalent officer, has
33 reviewed the information submitted to the authority and that the
34 representations contained therein are accurate, and the business
35 intends to employ not fewer than 500 full-time employees in the
36 qualified business facility. In the event that this certification by the
37 business's chief executive officer, or equivalent officer, is found to
38 be willfully false, the authority may revoke any award of tax credits
39 in their entirety, which revocation shall be in addition to any other
40 criminal or civil penalties that the business and the officer may be
41 subject to. When considering an application involving intra-State
42 job transfers, the authority shall require the company to submit the
43 following information as part of its application: a full economic
44 analysis of all locations under consideration by the company; all
45 lease agreements, ownership documents, or substantially similar
46 documentation for the business's current in-State locations; and all
47 lease agreements, ownership documents, or substantially similar
48 documentation for the potential out-of-State location alternatives, to

1 the extent they exist. Based on this information, and any other
2 information deemed relevant by the authority, the authority shall
3 independently verify and confirm, by way of making a factual
4 finding by separate vote of the authority's board, the business's
5 assertion that the jobs are actually at risk of leaving the State,
6 before a business may be awarded any tax credits under this section.

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

12 c. (1) The amount of credit allowed shall, except as otherwise
13 provided, be equal to the capital investment made by the business,
14 or the capital investment represented by the business' leased area, or
15 area owned by the business as a condominium, and shall be taken
16 over a 10-year period, at the rate of one-tenth of the total amount of
17 the business' credit for each tax accounting or privilege period of
18 the business, beginning with the tax period in which the business is
19 first **[approved]** certified by the authority as having met the
20 investment capital and employment qualifications, subject to any
21 reduction or disqualification as provided by subsection d. of this
22 section as determined by annual review by the authority. In
23 conducting its annual review, the authority may require a business
24 to submit any information determined by the authority to be
25 necessary and relevant to its review.

26 The credit amount for any tax period ending after the date eight
27 years after the effective date of P.L.2007, c.346 (C.34:1B-207 et
28 seq.) during which the documentation of a business' credit amount
29 remains **[unapproved]** uncertified shall be forfeited, although credit
30 amounts for the remainder of the years of the 10-year credit period
31 shall remain available to it.

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

39 The amount of credit allowed for a tax period to a business that
40 is a tenant in a qualified business facility shall not exceed the
41 business' total lease payments for occupancy of the qualified
42 business facility for the tax period.

43 (2) A business that is a partnership shall not be allowed a credit
44 under this section directly, but the amount of credit of an owner of a
45 business shall be determined by allocating to each owner of the
46 partnership that proportion of the credit of the business that is equal
47 to the owner of the partnership's share, whether or not distributed,
48 of the total distributive income or gain of the partnership for its tax

1 period ending within or with the owner's tax period, or that
2 proportion that is allocated by an agreement, if any, among the
3 owners of the partnership that has been provided to the Director of
4 the Division of Taxation in the Department of the Treasury by such
5 time and accompanied by such additional information as the
6 director may require.

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

12 d. (1) If, in any tax period, fewer than 200 full-time employees
13 of the business at the qualified business facility are employed in
14 new full-time positions, the amount of the credit otherwise
15 determined pursuant to final calculation of the award of tax credits
16 pursuant to subsection c. of this section shall be reduced by 20
17 percent for that tax period and each subsequent tax period until the
18 first period for which documentation demonstrating the restoration
19 of the 200 full-time employees employed in new full-time positions
20 at the qualified business facility has been reviewed and approved by
21 the authority, for which tax period and each subsequent tax period
22 the full amount of the credit shall be allowed; provided, however,
23 that for businesses applying before January 1, 2010, there shall be
24 no reduction if a business relocates to an urban transit hub from
25 another location or other locations in the same municipality. For
26 the purposes of this paragraph, a "new full-time position" means a
27 position created by the business at the qualified business facility
28 that did not previously exist in this State.

29 (2) If, in any tax period, the business reduces the total number
30 of full-time employees in its Statewide workforce by more than 20
31 percent from the number of full-time employees in its Statewide
32 workforce in the last tax accounting or privilege period prior to the
33 credit amount approval under subsection a. of this section, then the
34 business shall forfeit its credit amount for that tax period and each
35 subsequent tax period, until the first tax period for which
36 documentation demonstrating the restoration of the business'
37 Statewide workforce to the threshold levels required by this
38 paragraph has been reviewed and approved by the authority, for
39 which tax period and each subsequent tax period the full amount of
40 the credit shall be allowed.

41 (3) If, in any tax period, (a) the number of full-time employees
42 employed by the business at the qualified business facility located
43 in an urban transit hub within an eligible municipality drops below
44 250, or (b) the number of full-time employees, who are not the
45 subject of intra-State job transfers, pursuant to paragraph (8) of
46 subsection a. of this section, employed by the business at any other
47 business facility in the State, whether or not located in an urban
48 transit hub within an eligible municipality, drops by more than 20

1 percent from the number of full-time employees in its workforce in
2 the last tax accounting or privilege period prior to the credit amount
3 approval under this section, then the business shall forfeit its credit
4 amount for that tax period and each subsequent tax period, until the
5 first tax period for which documentation demonstrating the
6 restoration of the number of full-time employees employed by the
7 business at the qualified business facility to 250 or an increase
8 above the 20 percent reduction has been reviewed and approved by
9 the authority, for which tax period and each subsequent tax period
10 the full amount of the credit shall be allowed.

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

17 (ii) If a tenant subleases its tenancy in whole or in part during
18 the 10-year eligibility period the new tenant shall not acquire the
19 credit of the sublessor, and the sublessor tenant shall forfeit all
20 credits for the tax period of its sublease and all subsequent tax
21 periods.

22 e. (1) The Executive Director of the New Jersey Economic
23 Development Authority, in consultation with the Director of the
24 Division of Taxation in the Department of the Treasury, shall adopt
25 rules in accordance with the "Administrative Procedure Act,"
26 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
27 this act, including but not limited to: examples of and the
28 determination of capital investment; the enumeration of eligible
29 municipalities; specific delineation of urban transit hubs; the
30 determination of the limits, if any, on the expense or type of
31 furnishings that may constitute capital improvements; the
32 promulgation of procedures and forms necessary to apply for a
33 credit, including the enumeration of the certification procedures and
34 allocation of tax credits for different phases of a qualified business
35 facility or mixed use project; and provisions for credit applicants to
36 be charged an initial application fee, and ongoing service fees, to
37 cover the administrative costs related to the credit.

38 (2) Through regulation, the Economic Development Authority
39 shall establish standards based on the green building manual
40 prepared by the Commissioner of Community Affairs pursuant to
41 section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of
42 renewable energy, energy-efficient technology, and non-renewable
43 resources in order to reduce environmental degradation and
44 encourage long-term cost reduction.¹

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

46

47 ⁴[¹¹.] 12.⁴ Section 2 of P.L.1996, c.25 (C.34:1B-113) is
48 amended to read as follows:

1 2. As used in this act:

2 "Affiliate" means an entity that directly or indirectly controls, is
3 under common control with, or is controlled by the business.
4 Control exists in all cases in which the entity is a member of a
5 controlled group of corporations as defined pursuant to section 1563
6 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the
7 entity is an organization in a group of organizations under common
8 control as defined pursuant to subsection (b) or (c) of section 414 of
9 the Internal Revenue Code of 1986 (26 U.S.C. s.414). An entity
10 may establish by clear and convincing evidence, as determined by
11 the Director of the Division of Taxation in the Department of the
12 Treasury, that control exists in situations involving lesser
13 percentages of ownership than required by those statutes;

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

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

24 "Business" means an employer located in this State that has
25 operated continuously in the State, in whole or in part, in its current
26 form or as a predecessor entity for at least 10 years prior to filing an
27 application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and
28 which is subject to the provisions of R.S.43:21-1 et seq. and may
29 include a sole proprietorship, a partnership, or a corporation that
30 has made an election under Subchapter S of Chapter One of Subtitle
31 A of the Internal Revenue Code of 1986, or any other business
32 entity through which income flows as a distributive share to its
33 owners, limited liability company, nonprofit corporation, or any
34 other form of business organization located either within or outside
35 the State. A business shall include an affiliate of the business if that
36 business applies for a credit based upon any capital investment
37 made by an affiliate or based upon retained full-time jobs of an
38 affiliate;

39 "Capital investment" means expenses that the business incurs
40 following its submission of an application to the authority pursuant
41 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the
42 Capital Investment Completion Date, as shall be defined in the
43 project agreement, for: (1) the site preparation and construction,
44 renovation, improvement, equipping of, or obtaining and installing
45 fixtures and machinery, apparatus or equipment in, a newly
46 constructed, renovated or improved building, structure, facility, or
47 improvement to real property in this State; and (2) obtaining and
48 installing fixtures and machinery, apparatus or equipment in a

1 building, structure, or facility in this State. Provided however, that
2 "capital investment" shall not include soft costs such as financing
3 and design, furniture or decorative items such as artwork or plants,
4 or office equipment if the office equipment is property with a
5 recovery period of less than five years. The recovery period of any
6 property, for purposes of this section, shall be determined as of the
7 date such property is first placed in service or use in this State by
8 the business, determined in accordance with section 168 of the
9 federal Internal Revenue Code of 1986 (26 U.S.C. s.168. A
10 business that acquires or leases a qualified business facility shall
11 also be deemed to have acquired the capital investment made or
12 acquired by the seller or landlord, as the case may be;

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

15 "Chief executive officer" means the chief executive officer of the
16 New Jersey Economic Development Authority;

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

21 "Designated industry" means an industry identified by the
22 authority as desirable for the State to maintain, which may be
23 designated and amended via the promulgation of rules by the
24 authority to reflect changing market conditions;

25 "Designated urban center" means an urban center designated in
26 the State Development and Redevelopment Plan adopted by the
27 State Planning Commission;

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

36 "Full-time employee" means a person employed by the business
37 for consideration for at least 35 hours a week, or who renders any
38 other standard of service generally accepted by custom or practice,
39 as determined by the authority, as full-time employment, or a
40 person who is employed by a professional employer organization
41 pursuant to an employee leasing agreement between the business
42 and the professional employer organization, in accordance with
43 P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or
44 who renders any other standard of service generally accepted by
45 custom or practice, as determined by the authority, as full-time
46 employment, and whose wages are subject to withholding as
47 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
48 et seq. or an employee who is a resident of another State but whose

1 income is not subject to the "New Jersey Gross Income Tax Act,"
2 N.J.S.54A:1-1 et seq. or who is a partner of a business who works
3 for the partnership for at least 35 hours a week, or who renders any
4 other standard of service generally accepted by custom or practice,
5 as determined by the authority, as full-time employment, and whose
6 distributive share of income, gain, loss, or deduction, or whose
7 guaranteed payments, or any combination thereof, is subject to the
8 payment of estimated taxes, as provided in the "New Jersey Gross
9 Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall
10 not include any person who works as an independent contractor or
11 on a consulting basis for the business;

12 "New business location" means the premises to which a business
13 will relocate that the business has either purchased or built or for
14 which the business has entered into a purchase agreement or a
15 written lease for a period of no less than the commitment duration
16 or eight years, whichever is greater, from the date of relocation. A
17 "new business location" also means the business's current location
18 or locations if the business makes a capital investment equal to the
19 total value of the business retention or relocation grant of tax credits
20 to the business at that location or locations;

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

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

30 "Retained full-time job" means an eligible position that currently
31 exists in New Jersey and is filled by a full-time employee but
32 which, because of a potential relocation by the business, is at risk of
33 being lost to another state or country. For the purposes of
34 determining a number of retained full-time jobs, the eligible
35 positions of an affiliate shall be considered the eligible positions of
36 the business;

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

42 "Yearly tax credit amount" means \$1,500 times the number of
43 retained full-time jobs. "Yearly tax credit amount" does not include
44 the amount of any bonus award authorized pursuant to section 5 of
45 P.L.2004, c.65 (C.34:1B-115.1).¹
46 (cf: P.L.2010, c.123, s.1)

1 ⁴[¹².] 13.⁴ Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is
2 amended to read as follows:

3 7. a. The total value of the grants of tax credits, approved by
4 the authority pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that
5 may be applied against tax liability **[in a fiscal year]** for any tax
6 period shall not exceed an aggregate annual limit of \$20,000,000.
7 The total value of the grants of tax credits, issued pursuant to
8 P.L.1996, c.25 (C.34:1B-112 et seq.), that a single business may
9 apply against its tax liability shall not exceed an aggregate annual
10 limit of \$10,000,000 in a fiscal year. A tax credit issued pursuant to
11 P.L.1996, c.25 may be applied against liability in the single tax
12 period in which the tax credit or portion of the tax credit may be
13 applied as prescribed by the project agreement and as set forth in
14 subsection b. of this section and shall expire thereafter.

15 b. Subject to the limitation set forth in subsection a. of this
16 section, grants of tax credits shall be approved for qualifying
17 businesses according to the following schedule, and shall be issued
18 upon the execution and satisfaction of the requirements of the
19 project agreement between the authority and the business with an
20 approved project:

21 (1) for a project that covers a business relocating or retaining 50
22 to 250 full-time employees, a grant of tax credits shall be for the
23 yearly tax credit amount plus any applicable bonus award
24 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1),
25 and may be applied against liability in the tax period in which the
26 tax credit is issued;

27 (2) for a project that covers a business relocating or retaining
28 251 to 400 full-time employees, a grant of tax credits shall be for
29 two times the yearly tax credit amount plus any applicable bonus
30 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
31 115.1), and may be applied against liability in the tax period in
32 which the tax credit is issued and the following tax period, for one-
33 half of the total grant award per tax period, provided that the use of
34 the credit must be accompanied by a certificate of compliance;

35 (3) for a project that covers a business relocating or retaining
36 401 to 600 full-time employees, a grant of tax credits shall be for
37 three times the yearly tax credit amount plus any applicable bonus
38 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
39 115.1) and may be applied against liability in the tax period in
40 which the tax credit is issued and the following two tax periods, for
41 one-third of the total grant award per tax period, provided that the
42 use of the credit must be accompanied by a certificate of
43 compliance;

44 (4) for a project that covers a business relocating or retaining
45 601 to 800 full-time employees, a grant of tax credits shall be for
46 four times the yearly tax credit amount plus any applicable bonus
47 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
48 115.1) and may be applied against liability in the tax period in

1 which the tax credit is issued and the following three tax periods,
2 for one-fourth of the total grant award per tax period, provided that
3 the use of the credit must be accompanied by a certificate of
4 compliance;

5 (5) for a project that covers a business relocating or retaining
6 801 to 1,000 full-time employees, a grant of tax credits shall be for
7 five times the yearly tax credit amount plus any applicable bonus
8 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
9 115.1) and may be applied against liability in the tax period in
10 which the tax credit is issued and the following four tax periods for
11 one-fifth of the total grant award per tax period, provided that the
12 use of the credit must be accompanied by a certificate of
13 compliance; and

14 (6) for a project that covers a business relocating or retaining
15 1,001 or more full-time employees, a grant of tax credits shall be
16 for six times the yearly tax credit amount plus any applicable bonus
17 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
18 115.1) and may be applied against liability in the tax period in
19 which the tax credit is issued and the following five tax periods, for
20 one-sixth of the total grant award per tax period, provided that the
21 use of the credit must be accompanied by a certificate of
22 compliance.

23 c. If the approval of a grant of tax credits pursuant to this
24 section would exceed the \$20,000,000 aggregate annual limit, the
25 authority may award a smaller grant of tax credits or no grants of
26 tax credits, as necessary to comply with the aggregate annual limit.⁴
27 (cf: P.L.2010, c.123, s.6)

28
29 ⁴[¹³.] 14.⁴ Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is
30 amended to read as follows:

31 17. a. The authority shall establish a corporation business tax
32 credit and insurance premiums tax credit certificate transfer
33 program to allow businesses in this State with unused amounts of
34 tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and
35 otherwise allowable, that cannot be applied by the business to
36 which originally issued before the expiration of the credit, to
37 surrender those tax credits for use by other corporation business and
38 insurance premiums taxpayers in this State. The tax credits may be
39 used on the corporation business tax and insurance premiums tax
40 returns to be filed by those taxpayers in exchange for private
41 financial assistance to be provided by the corporation business
42 taxpayer or insurance premiums taxpayer that is the recipient of the
43 corporation business tax credit certificate or insurance premiums
44 tax credit certificate to assist in the funding of costs incurred by the
45 relocating business.

46 b. Businesses may apply to the executive director of the
47 authority and the Director of the Division of Taxation for a tax
48 credit transfer certificate, covering one or more years. Upon receipt

1 thereof, the business may sell or assign the tax credit certificate in
2 exchange for private financial assistance to be made by the
3 purchaser in an amount equal to at least 75% of the amount of the
4 surrendered tax credit of a business relocating in the State. The
5 private financial assistance shall assist in funding expenses incurred
6 in connection with the operation of the business in the State,
7 including but not limited to the expenses of fixed assets, such as the
8 construction and acquisition and development of real estate,
9 materials, start-up, tenant fit-out, working capital, salaries, research
10 and development expenditures and any other expenses determined
11 by the authority to be necessary to carry out the purposes of
12 P.L.1996, c.25 (C.34:1B-112 et seq.).

13 c. The authority shall establish procedures to facilitate such
14 transfers and encourage liquidity and simplicity in the market for
15 the purchase and sale of such certificates, including, in the
16 authority's discretion, coordinating the applications for surrender
17 and acquisition of unused but otherwise allowable tax credits
18 pursuant to this section in a manner that can best stimulate and
19 encourage the extension of private financial assistance to businesses
20 in this State.

21 d. The authority shall, in consultation with the Director of the
22 Division of Taxation, develop criteria for the approval or
23 disapproval of applications.¹

24 (cf: P.L.2010, c.123, s.14)

25

26 ⁴~~['14.]~~ ^{15.}⁴ (New section) Section 6 of P.L.1996, c.25 (34:1B-
27 117) is repealed.¹

28

29 ¹~~[10.]~~ ⁴~~[15.]~~ ^{16.}⁴ This act shall take effect immediately.