SENATE, No. 3232

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED NOVEMBER 5, 2015

Sponsored by:
Senator PAUL A. SARLO
District 36 (Bergen and Passaic)
Senator STEVEN V. OROHO
District 24 (Morris, Sussex and Warren)

SYNOPSIS

Allows businesses due to receive grant under Business Employment Incentive Program to receive tax credit instead of grant.

CURRENT VERSION OF TEXT

As introduced.

AN ACT authorizing certain tax credits under the Business Employment Incentive Program and amending P.L.1996, c.26.

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

1. Section 2 of P.L.1996, c.26 (C.34:1B-125) is amended to read as follows:

2. As used in sections 1 through 17 of P.L.1996, c.26 (C.34:1B-124 et seq.) and in sections 9 through 11 of P.L.2003, c.166 (C.34:1B-139.1 through C.34:1B-139.3), unless a different meaning clearly appears from the context:

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment **[**;**]**.

"Advanced computing company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced computing for the purpose of developing or providing products or processes for specific commercial or public purposes **[**;**]**.

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials **[**;**]**.

"Advanced materials company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced materials for the purpose of developing or providing products or processes for specific commercial or public purposes **[**;**]**.

"Application year" means the grant year for which an eligible partnership submits the information required under section 8 of P.L.1996, c.26 (C.34:1B-131);

"Authority" means the New Jersey Economic Development Authority created pursuant to section 4 of P.L.1974, c.80 **[**(C.34:1B-1 et seq.);**]** (C.34:1B-4).

"Base years" means the first two complete calendar years following the effective date of an agreement **[**;**]**.

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as

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.

well as novel products, services, technologies, and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge [;].

"Biotechnology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a person, whose headquarters or base of operations is located in New Jersey, engaged in providing services or products necessary for such research, development, production, or provision [;].

"Bonds means bonds, notes, or other obligations issued by the authority pursuant to [this act;] P.L.1996, c.26 (C.34:1B-124 et seq.).

"Business" means a corporation; sole proprietorship; partnership; corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners; limited liability company; nonprofit corporation; or any other form of business organization located either within or outside this State. A grant received under [this act] P.L.1996, c.26 (C.34:1B-124 et seq.) by a partnership, Subchapter S-Corporation, or other [such] business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S-Corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed [;].

"Business employment incentive agreement" or "agreement" means the written agreement between the authority and a business proposing a project in this State in accordance with the provisions of [this act] P.L.1996, c.26 (C.34:1B-124 et seq.) which establishes the terms and conditions of a grant to be awarded pursuant to [this act;] P.L.1996, c.26 (C.34:1B-124 et seq.).

[]"Department" means the New Jersey Commerce and Economic Growth Commission;[]

"Designated industry" means a business engaged in the field of biotechnology, pharmaceuticals, financial services [or], transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology, or medical device technology [;].

"Director" means the Director of the Division of Taxation [;].

"Division" means the Division of Taxation in the Department of the Treasury [;].

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment, and

instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices **[**;**]**.

"Electronic device technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of electronic device technology for the purpose of developing or providing products or processes for specific commercial or public purposes **[**;**]**.

"Eligible partnership" means a partnership or limited liability company that is qualified to receive a grant as established in **[**this act;**]** P.L.1996, c.26 (C.34:1B-124 et seq.).

"Eligible position" is a new full-time position created by a business in New Jersey or transferred from another state by the business under the terms and conditions set forth in **[**this act**]** P.L.1996, c.26 (C.34:1B-124 et seq.) during the base years or in subsequent years of a grant. In determining if positions are eligible positions, the authority shall give greater consideration to positions that average at least 1.5 times the minimum hourly wage during the term of an agreement authorized pursuant to **[**this act**]** P.L.1996, c.26 (C.34:1B-124 et seq.). For grants awarded on or after July 1, 2003, eligible position includes only a position for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes. **[**"Eligible**]** An "eligible position" shall also **[**includes**]** include all current and future partners or members of a partnership or limited liability company created by a business in New Jersey or transferred from another state by the business pursuant to the conditions set forth in **[**this act**]** P.L.1996, c.26 (C.34:1B-124 et seq.) during the base years or in subsequent years of a grant. An "eligible position" shall also include a position occupied by a resident of this State whose position is relocated to this State from another state but who does not qualify as a "new employee" because prior to relocation **[**his**]** the resident's wages or **[**his**]** the resident's distributive share of income from a gain, from a loss or deduction, or **[**his**]** the resident's guaranteed payments or any combination thereof, prior to the relocation, were not subject to income taxes imposed by the state or municipality in which the position was previously located. An "eligible position" shall also include a position occupied by a resident of another State whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. An "eligible position" shall not include any position located within New Jersey, which, within a

period either three months prior to the business' application for a grant under [this act] P.L.1996, c.26 (C.34:1B-124 et seq.) or six months after the date of application, ceases to exist or be located within New Jersey [;].

"Employment incentive" means the amount of a grant, either in cash or in tax credits, determined pursuant to subsection a. of section 6 of [this act;] P.L.1996, c.26 (C.34:1B-129).

"Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources [;].

"Environmental technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of environmental technology for the purpose of developing or providing products or processes for specific commercial or public purposes [;].

"Estimated tax" means an amount calculated for a partner in an eligible position equal to [6.37%] 6.37 percent of the lesser of [(i)]: a. the amount of the partner's net income from the eligible partnership that is sourced to New Jersey as reflected in Column B of the partner's Schedule NJK-1 of the application year less the amount of the partner's net income from the eligible partnership that is sourced to New Jersey as reflected in column B of the partner's Schedule NJK-1 in the foundation year [,]; or [(ii)] b. the net of all items of partnership income upon which tax has been paid as reflected on the partner's New Jersey Gross Income Tax return in the application year [;].

"Foundation year" means the year immediately prior to the creation of the eligible position [;].

"Full-time employee" means a person who is employed for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and who is determined by the authority to be employed in a permanent position according to criteria it develops, or who is a partner of an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business [;].

"Grant" means a business employment incentive grant as established in ⟦this act;⟧ P.L.1996, c.26 (C.34:1B-124 et seq.).

"Medical device technology" means a technology involving any medical equipment or product ⟦(other⟧, other than a pharmaceutical ⟦product)⟧ product, that has therapeutic value, diagnostic value, or both, and is regulated by the federal Food and Drug Administration ⟦;⟧.

"Medical device technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of medical device technology for the purpose of developing or providing products or processes for specific commercial or public purposes ⟦;⟧.

"Net income from the eligible partnership" means the net combination of a partner's distributive share of the eligible partnership's income, gain, loss, deduction, or guaranteed payments ⟦;⟧.

"New employee" means a full-time employee first employed in an eligible position on the project which is the subject of an agreement or who is a partner of an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; except that ⟦such⟧ a New Jersey resident whose position is relocated to this State shall not be classified as a "new employee" unless ⟦his⟧ the employee's wages, or ⟦his⟧ the employee's distributive share of income from a gain, from a loss or deduction, or ⟦his⟧ the employee's guaranteed payments or any combination thereof, prior to the relocation, were subject to income taxes imposed by the state or municipality in which the position was previously located. "New employee" may also include an employee rehired or called back from a layoff during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years. "New employee" shall not include any employee who was previously employed in New Jersey by the business or by a related person as defined in section 2 of P.L.1993, c.170 (C.54:10A-5.5) if the employee is transferred to the business, which is the subject of an agreement, unless the employee's position at ⟦his⟧ the employee's previous employer is filled by a new employee. "New employee" also shall not include a child, grandchild, parent, or spouse of an individual associated with the business who has direct or indirect ownership of at least ⟦15%⟧ 15 percent of the profits, capital, or value of the business. New employee shall also include an

employee whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. **[**;**]**

"Partner" means a person who is entitled to either a distributive share of a partnership's income, gain, loss, or deduction, or guaranteed payments, or any combination thereof, by virtue of holding an interest in the partnership. "Partner" also includes a person who is a member of a limited liability company which is treated as a partnership, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. **[**;**]**

"Refunding Bonds" means bonds, notes or other obligations issued to refinance bonds, notes or other obligations previously issued by the authority pursuant to the provision of **[**this act;**]** P.L.1996, c.26 (C.34:1B-124 et seq.).

"Residual withholdings" means for any period of time, the excess of the estimated cumulative withholdings for all executed agreements eligible for payments under **[**this act**]** P.L.1996, c.26 (C.34:1B-124 et seq.) over the cumulative anticipated grant amounts **[**;**]**.

"Schedule NJK-1" means Schedule NJK-1 as the form existed for taxable year 1997 **[**;**]**.

"Withholdings" means the amount withheld by a business from the wages of new employees or estimated taxes paid by, or on behalf of, partners that are new employees, or any combination thereof, pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and, if the new employee is an employee whose position has moved to New Jersey but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.54A:1-1 et seq., the amount of withholding that would occur if the employee were to move to New Jersey.

(cf: P.L.2003, c.166, s.1)

2. Section 6 of P.L.1996, c.26 (C.34:1B-129) is amended to read as follows:

6. a. The amount of the employment incentive awarded as a grant **[**in**]** by the authority shall either be awarded in cash or as a tax credit. In each case, the amount of the grant shall be not less than **[**10%**]** 10 percent and not more than **[**50%**]** 50 percent of the withholdings of the business, or not less than **[**10%**]** 10 percent and not more than **[**30%**]** 30 percent of the estimated tax of the partners of an eligible partnership whether paid directly by the partner or by the eligible partnership on behalf of **[**such**]** the partner's account, or any combination thereof, and shall be subject to the provisions of sections 10 and 11 of **[**this act**]** P.L.1996, c.26 (C.34:1B-133 and C.34:1B-134). In no case shall the aggregate amount of the employment incentive grant awarded pursuant to a business

employment incentive agreement entered into on or after July 1, 2003 exceed an average of $50,000 for all new employees over the term of the grant. The employment incentive shall be based on criteria developed by the authority after considering the following:

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

(2) The expected duration of those positions;

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

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

(5) The total dollar investment the business is making in the project;

(6) Whether the business is a designated industry;

(7) Impact of the business on State tax revenues; and

(8) Such other related factors determined by the authority.

b. A business may be eligible to be awarded a grant, either in cash or in tax credits, of up to ⟦80%⟧ 80 percent of the withholdings of the business or up to ⟦50%⟧ 50 percent of the estimated tax of the partners of an eligible partnership if the grant promotes smart growth and the goals, strategies, and policies of the State Development and Redevelopment Plan, established pursuant to section 5 of P.L.1985, c.398 (C.52:18A-200), as determined by and based upon criteria promulgated by the authority following consultation with the ⟦Department of Community Affairs,⟧ Office of ⟦Smart Growth⟧ State Planning in the Department of State.

c. The term of the grant shall not exceed 10 years.

d. At the discretion of the authority, the grant may apply to new employees or partners in eligible positions created during the base years, and during the remainder of the term of the grant.

e. Within 180 days of the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill), a business that was approved for a grant prior to the enactment of the P.L. , c. (C.) (pending before the Legislature as this bill), may direct the authority to convert the grant to a tax credit against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The direction to convert the grant to a tax credit shall be irrevocable. An approved tax credit shall be issued in the manner and for the amounts as follows and may only be applied in the tax period for which they are issued and shall not be carried forward:

(1) For grants accrued but not paid during calendar years 2008 through 2013, the tax credit shall be equal to an approved amount and shall be issued in five installments over a five year period beginning in the 2017 tax accounting or privilege period of the business or tax credit transferee in the following percentages: in year one, 30 percent of the accrued amount; in year two, 30 percent

of the accrued amount; in year three, 20 percent of the accrued amount; in year four, 10 percent of the accrued amount; in year five, 10 percent of the accrued amount. To the extent any amount in this paragraph has not been approved by the authority by the commencement of State fiscal year 2017, the aggregate tax credit that would have been issued in State fiscal year 2017 shall be issued in the year the amount is approved and the five-year period shall commence in that fiscal year;

(2) For a grant accrued but not paid during calendar year 2014, the tax credit shall be equal to any approved amount and shall be issued in four equal installments over a four-year period beginning in the 2019 tax accounting or privilege period of the business or tax credit transferee;

(3) For a grant accrued but not paid during calendar year 2015, the tax credit shall be equal to any approved amount and shall be issued in four equal installments over a four-year period beginning in the 2019 tax accounting or privilege period of the business or tax credit transferee;

(4) For a grant accrued but not paid during calendar year 2016, the tax credit shall be equal to any approved amount and shall be issued in three equal installments over a three-year period beginning in the 2020 tax accounting or privilege period of the business or tax credit transferee;

(5) For a grant accrued but not paid during calendar year 2017, the tax credit shall be equal to any approved amount and shall be issued in three equal installments over a three-year period beginning in the 2020 tax accounting or privilege period of the business or tax credit transferee;

(6) For a grant accrued but not paid during calendar year 2018, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2022 tax accounting or privilege period of the business or tax credit transferee;

(7) For a grant accrued but not paid during calendar year 2019, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2022 tax accounting or privilege period of the business or tax credit transferee;

(8) For a grant accrued but not paid during calendar year 2020, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(9) For a grant accrued but not paid during calendar year 2021, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(10) For a grant accrued but not paid during calendar year 2022, the tax credit shall be equal to any approved amount and shall be paid in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(11) For a grant accrued but not paid during calendar year 2023, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(12) For a grant accrued but not paid during calendar year 2024, the tax credit shall be equal to any approved amount and shall be issued in the 2025 tax accounting or privilege period of the business or tax credit transferee; and

(13) For a grant accrued but not paid during calendar year 2025, the tax credit shall be equal to any approved amount and shall be issued in the 2025 tax accounting or privilege period of the business or tax credit transferee.

f. The amount of the credit allowed pursuant to this section shall be applied against the tax otherwise due under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5, prior to all other credits and payments. If the credit exceeds the amount of tax liability otherwise due from a business that pays taxes under section 5 of P.L.1945, c.162 (C.54:10A-5), that amount of excess shall be an overpayment for the purposes of R.S.54:49-15, provided, however, that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not apply.

g. A business that does not pay taxes under section 5 of P.L.1945, c.162 (C.54:10A-5) sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 may apply to the executive director of the authority for a tax credit transfer certificate, covering one or more years. The tax credit transfer certificate, upon receipt thereof by the business from the director and the executive director of the authority, may be sold or assigned, in full or in part, in an amount not less than $100,000, or the amount of the refundable tax credit issued if less than $100,000, of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The tax credit transfer certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 90 percent of the transferred credit amount before considering

any further discounting to present value which shall be permitted. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same privileges, limitations, and conditions that apply to the use of the credit by the business that originally applied for and was allowed the tax credit, including treating the amount of excess as an overpayment under subsection f. of this section. The tax credit transferee may not transfer its tax credit to any other party.
(cf: P.L.2003, c.166, s.4)

3. Section 15 of P.L.1996, c.26 (C.34:1B-138) is amended to read as follows:

15. The [New Jersey Commerce and Economic Growth Commission] authority shall submit a report on the Business Employment Incentive Program to the Governor [, President of the Senate, and Speaker of the General Assembly] and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature on or before October 31 of each year. The report shall include information on the number of agreements entered into during the preceding fiscal year, a description of the project under each agreement, the number of jobs created, new income tax revenue received from withholdings, amounts awarded as grants and an update on the status of projects under agreement before the preceding fiscal year.
(cf: P.L.2003, c.166, s.8)

4. This act shall take effect immediately and be operative as of January 1, 2016.

STATEMENT

This bill allows a business that is eligible to receive a grant under the Business Employment Incentive Program (BEIP) to direct the New Jersey Economic Development Authority (authority) to convert the grant to a refundable tax credit against its corporate, gross income, or insurance premium tax liability in an amount equal to the credit payment schedule provided in the bill. The direction to convert the grant to a tax credit is to be irrevocable. Approved tax credits may only be applied in the tax period for which they are issued and are not to be carried forward. If the credit exceeds the amount of tax liability otherwise due from a business that pays corporate business taxes, the amount of excess is to be deemed an overpayment and the business is to receive a refund without interest due to it.

The bill allows a business that does not pay corporate business taxes to apply to the executive director of the authority for a tax credit transfer certificate, covering one or more years. The tax

credit transfer certificate may be sold or assigned, in full or in part, in an amount not less than $100,000, or the amount of the refundable tax credit issued if less than $100,000, of tax credits to any other person that may have a corporate, gross income, or insurance premium tax liability. The sale or assignment of any amount of a tax credit transfer certificate is not to be exchanged for consideration received by the business of less than 90 percent of the transferred credit amount before considering any further discounting to present value which is permitted. The tax credit transferee may not transfer its tax credit to any other party.