

ASSEMBLY, No. 5833

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED DECEMBER 4, 2023

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

SYNOPSIS

Revises various requirements of New Jersey Aspire Program and establishes Redevelopment Project Bridge Financing Program.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the New Jersey Aspire Program, amending
2 various parts of the statutory law, and supplementing P.L.2020,
3 c.156.

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

7
8 1. Section 55 of P.L.2020, c.156 (C.34:1B-323) is amended to
9 read as follows:

10 55. As used in sections 54 through 67 of P.L.2020, c.156
11 (C.34:1B-322 through 34:1B-335):

12 "Agency" means the New Jersey Housing and Mortgage Finance
13 Agency established pursuant to P.L.1983, c.530 (C.55:14K-1 et
14 seq.).

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

17 "Aviation district" means all areas within the boundaries of the
18 Atlantic City International Airport, established pursuant to section
19 24 of P.L.1991, c.252 (C.27:25A-24), and the Federal Aviation
20 Administration William J. Hughes Technical Center and the area
21 within a one-mile radius of the outermost boundary of the Atlantic
22 City International Airport and the Federal Aviation Administration
23 William J. Hughes Technical Center.

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

27 "Building services" means any cleaning or routine building
28 maintenance work, including but not limited to sweeping,
29 vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse
30 or trash, window cleaning, securing, patrolling, or other work in
31 connection with the care or securing of an existing building,
32 including services typically provided by a door-attendant or
33 concierge. "Building services" shall not include any skilled
34 maintenance work, professional services, or other public work for
35 which a contractor is required to pay the "prevailing wage" as
36 defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

37 "Cash flow" means the profit or loss that an investment property
38 earns from rent, deposits, and other fees after financial obligations,
39 such as debt, maintenance, government payments, and other
40 expenses, have been paid.

41 "Collaborative workspace" means coworking, accelerator,
42 incubator, or other shared working environments that promote
43 collaboration, interaction, socialization, and coordination among
44 tenants through the clustering of multiple businesses or individuals.
45 For this purpose, the collaborative workspace shall be the greater

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

Matter underlined thus is new matter.

1 of: 2,500 of dedicated square feet or 10 percent of the total property
2 on which the redevelopment project is situated. The collaborative
3 workspace shall include a community manager, be focused on
4 collaboration among the community members, and include
5 regularly scheduled education events for the community members.
6 The collaborative workspace shall also include a physical open
7 space that supports the engagement of its community members.

8 "Commercial project" means a redevelopment project, which is
9 predominantly commercial and, if located in a government-
10 restricted municipality, contains 25,000 or more square feet, or if
11 located in any other municipality, contains 50,000 or more square
12 feet of office and retail space, industrial space including space
13 predominantly used for warehouse distribution or fulfillment
14 centers, or film studios, professional stages, television studios,
15 recording studios, screening rooms, or other infrastructure for film
16 production, and may include a parking component. The term
17 "commercial project" includes a redevelopment project comprised
18 solely of a health care or health services center, which contains not
19 less than 10,000 square feet devoted to health care or health
20 services, and which may include a parking component.

21 "Developer" means a person who enters or proposes to enter into
22 an incentive award agreement pursuant to the provisions of section
23 60 of P.L.2020, c.156 (C.34:1B-328), including, but not limited, to
24 a lender that completes a redevelopment project, operates a
25 redevelopment project, or completes and operates a redevelopment
26 project.

27 "Director" means the Director of the Division of Taxation in the
28 Department of the Treasury.

29 "Distressed municipality" means a municipality that is qualified
30 to receive assistance under P.L.1978, c.14 (C.52:27D-178 et seq.), a
31 municipality under the supervision of the Local Finance Board
32 pursuant to the provisions of the "Local Government Supervision
33 Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.), a municipality
34 identified by the Director of the Division of Local Government
35 Services in the Department of Community Affairs to be facing
36 serious fiscal distress, a SDA municipality, or a municipality in
37 which a major rail station is located.

38 "Economic development incentive" means a financial incentive,
39 awarded by the authority, or agreed to between the authority and a
40 business or person, for the purpose of stimulating economic
41 development or redevelopment in New Jersey, including, but not
42 limited to, a bond, grant, loan, loan guarantee, matching fund, tax
43 credit, or other tax expenditure.

44 "Eligibility period" means the period not to exceed 15 years for a
45 commercial or mixed-use project or the period not to exceed 10
46 years for a residential project specified in an incentive award
47 agreement during which a developer may claim a tax credit under
48 the program, as such period shall be determined by the authority

1 pursuant to subsection b. of section 60 of P.L.2020, c.156
2 (C.34:1B-328).

3 "Enhanced area" means (1) a municipality that contains an urban
4 transit hub, as defined in section 2 of P.L.2007, c.346 (C.34:1B-
5 208); (2) the five municipalities with the highest poverty rates
6 according to the 2017 Municipal Revitalization Index; and (3) the
7 three municipalities with the highest percentage of SNAP recipients
8 according to the 2017 Municipal Revitalization Index.

9 "Environmental remediation costs" means any costs incurred by
10 a developer in the completion of any actions necessary to
11 investigate, clean up, or respond to a known, suspected, or
12 threatened discharge of contaminants, including, as necessary, the
13 preliminary assessment, site investigation, remedial investigation,
14 and remedial action, pursuant to sections 23 through 43 and section
15 45 of P.L.1993, c.139 (C.58:10B-1 et seq.).

16 "Food delivery source" means access to nutritious foods, such as
17 fresh fruits and vegetables, through grocery operators, including,
18 but not limited to a full-service supermarket or grocery store, and
19 other healthy food retailers of at least 16,000 square feet, including,
20 but not limited to, a prepared food establishment selling primarily
21 nutritious ready-to-serve meals.

22 "Food desert community" means a physically contiguous area in
23 the State in which residents have limited access to nutritious foods,
24 such as fresh fruits and vegetables, and that has been designated as
25 a food desert community pursuant to subsection b. of section 38 of
26 P.L.2020, c.156 (C.34:1B-306).

27 "Government-restricted municipality" means a municipality in
28 this State with a municipal revitalization index distress score of at
29 least 75, that met the criteria for designation as an urban aid
30 municipality in the 2019 State fiscal year, and that, on the effective
31 date of P.L.2020, c.156 (C.34:1B-269 et al.), is subject to financial
32 restrictions imposed pursuant to the "Municipal Stabilization and
33 Recovery Act," P.L.2016, c.4 (C.52:27BBBB-1 et seq.), or is
34 restricted in its ability to levy property taxes on property in that
35 municipality as a result of the State of New Jersey owning or
36 controlling property representing at least 25 percent of the total land
37 area of the municipality or as a result of the federal government of
38 the United States owning or controlling at least 50 acres of the total
39 land area of the municipality, which is dedicated as a national
40 natural landmark.

41 "Health care or health services center" means an establishment
42 that consists of not less than 10,000 square feet devoted to health
43 care or health services, where patients are admitted for or seek
44 examination and treatment by one or more physicians, dentists,
45 psychologists, or other medical practitioners, and which is located
46 in a municipality with a Municipal Revitalization Index distress
47 score of at least 50, a distressed municipality, or a qualified
48 incentive tract.

1 "Hospitality establishment" means a hotel, motel, or any
2 business, however organized, that sells food, beverages, or both for
3 consumption by patrons on the premises.

4 "Incentive area" means an aviation district; a port district; an
5 area designated pursuant to the "State Planning Act," P.L.1985,
6 c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan),
7 Planning Area 2 (Suburban), **[or]** a Designated Center, **[provided**
8 an area designated as Planning Area 2 (Suburban) or a Designated
9 Center shall be located within a one-half mile radius of the mid-
10 point, with bicycle and pedestrian connectivity, of a New Jersey
11 Transit Corporation, Port Authority Transit Corporation, or Port
12 Authority Trans-Hudson Corporation rail, bus, or ferry station,
13 including all light rail stations, or a high-frequency bus stop as
14 certified by the New Jersey Transit Corporation **]** or an Endorsed
15 Plan; an area designated as a brownfield site pursuant to the
16 "Brownfield and Contaminated Site Remediation Act," sections 23
17 through 43 and section 45 of P.L.1993, c.139 (C.58:10B-1 et seq.);
18 and an area of not less than 100 acres for which a licensed site
19 remediation professional has certified environmental remediation
20 costs, as defined in this section and in accordance with the "Site
21 Remediation Reform Act," sections 1 through 29 of P.L.2009, c.60
22 (C.58:10C-1 et seq.), in an amount not less than \$10,000,000,
23 provided that any portion of such area is located in an area that
24 otherwise qualifies as an incentive area.

25 "Incentive award" means an award of tax credits to reimburse a
26 developer for all or a portion of the project financing gap of a
27 redevelopment project pursuant to the provisions of sections 54
28 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335).

29 "Incentive award agreement" means the contract executed
30 between a developer and the authority pursuant to section 60 of
31 P.L.2020, c.156 (C.34:1B-328), which sets forth the terms and
32 conditions under which the developer may receive the incentive
33 awards authorized pursuant to the provisions of sections 54 through
34 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335).

35 "Incubator facility" means a commercial property, which
36 contains 5,000 or more square feet of office, laboratory, or
37 industrial space, which is located near, and presents opportunities
38 for collaboration with, a research institution, teaching hospital,
39 college, or university, and within which at least 75 percent of the
40 gross leasable area is restricted for use by one or more technology
41 startup companies.

42 "Individuals with special needs" means individuals with mental
43 illness, individuals with physical or developmental disabilities, and
44 individuals in other emerging special needs groups identified by the
45 authority, based on guidelines established for the administration of
46 the Special Needs Housing Trust Fund established pursuant to
47 section 1 of P.L.2005, c.163 (C.34:1B-21.25a) or developed in
48 consultation with other State agencies.

1 "Labor harmony agreement" means an agreement between a
2 business that serves as the owner or operator of a retail
3 establishment, hospitality establishment, or distribution center and
4 one or more labor organizations, which requires, for the duration of
5 the agreement: that any participating labor organization and its
6 members agree to refrain from picketing, work stoppages, boycotts,
7 or other economic interference against the business; and that the
8 business agrees to maintain a neutral posture with respect to efforts
9 of any participating labor organization to represent employees at an
10 establishment or other unit in the retail establishment, hospitality
11 establishment, or distribution center, agrees to permit the labor
12 organization to have access to the employees, and agrees to
13 guarantee to the labor organization the right to obtain recognition as
14 the exclusive collective bargaining representatives of the employees
15 in an establishment or unit at the retail establishment, hospitality
16 establishment, or distribution center by demonstrating to the New
17 Jersey State Board of Mediation, Division of Private Employment
18 Dispute Settlement, or a mutually agreed-upon, neutral, third party
19 that a majority of workers in the unit have shown their preference
20 for the labor organization to be their representative by signing
21 authorization cards indicating that preference. The labor
22 organization or organizations shall be from a list of labor
23 organizations which have requested to be on the list and which the
24 Commissioner of Labor and Workforce Development has
25 determined represent substantial numbers of retail establishment,
26 hospitality establishment, or distribution center employees in the
27 State.

28 "Low-income housing" means housing affordable according to
29 federal Department of Housing and Urban Development or other
30 recognized standards for home ownership and rental costs and
31 occupied or reserved for occupancy by households with a gross
32 household income equal to 50 percent or less of the median gross
33 household income for households of the same size within the
34 housing region in which the housing is located.

35 "Major cultural institution" means a public or nonprofit
36 institution, not including an institution of higher education, within
37 this State that engages in the cultural, intellectual, scientific,
38 environmental, educational, or artistic enrichment of the people of
39 this State, and which institution is designated by the board as a
40 major cultural institution.

41 "Major rail station" means a railroad station that is located within
42 a qualified incentive area and that provides to the public access to a
43 minimum of six rail passenger service lines operated by the New
44 Jersey Transit Corporation.

45 "Minimum environmental and sustainability standards" means
46 standards established by the authority in accordance with the green
47 building manual prepared by the Commissioner of Community
48 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6),

1 regarding the use of renewable energy, energy-efficient technology,
2 and non-renewable resources to reduce environmental degradation
3 and encourage long-term cost reduction.

4 "Mixed-use project" means a redevelopment project that includes
5 both a residential component and a nonresidential component.

6 "Moderate-income housing" means housing affordable according
7 to federal Department of Housing and Urban Development or other
8 recognized standards for home ownership and rental costs and
9 occupied or reserved for occupancy by households with a gross
10 household income equal to more than 50 percent, but less than 80
11 percent, of the median gross household income for households of
12 the same size within the housing region in which the housing is
13 located.

14 "Municipal Revitalization Index" means the index by the
15 Department of Community Affairs ranking New Jersey's
16 municipalities according to eight separate indicators that measure
17 diverse aspects of social, economic, physical, and fiscal conditions
18 in each locality.

19 "Port district" means the portions of a qualified incentive area
20 that are located within:

21 a. the "Port of New York District" of the Port Authority of
22 New York and New Jersey, as defined in Article II of the Compact
23 Between the States of New York and New Jersey of 1921; or

24 b. a 15-mile radius of the outermost boundary of each marine
25 terminal facility established, acquired, constructed, rehabilitated, or
26 improved by the South Jersey Port District established pursuant to
27 "The South Jersey Port Corporation Act," P.L.1968, c.60
28 (C.12:11A-1 et seq.).

29 "Program" means the New Jersey Aspire Program established by
30 section 56 of P.L.2020, c.156 (C.34:1B-324).

31 "Project cost" or "total project cost" means the costs incurred in
32 connection with a redevelopment project by a developer until the
33 issuance of a permanent certificate of occupancy, or until such other
34 time specified by the authority, for a specific investment or
35 improvement, including the costs relating to lands, except the cost
36 of acquiring such lands, buildings, improvements, real or personal
37 property, or any interest therein, including leases discounted to
38 present value, including lands under water, riparian rights, space
39 rights, and air rights acquired, owned, developed or redeveloped,
40 constructed, reconstructed, rehabilitated, or improved, any
41 environmental remediation costs, plus costs not directly related to
42 construction, including capitalized interest paid to third parties, of
43 an amount not to exceed 20 percent of the total costs and the cost of
44 infrastructure improvements, including ancillary infrastructure
45 projects. When 100 percent of the residential units constructed in a
46 residential project are reserved for occupancy by low- and
47 moderate-income households, the term "project cost" shall also
48 include the developer fees paid before acquiring permanent

1 financing, as well as the deferred developer fees approved pursuant
2 to the rules established by the agency. In addition to the foregoing,
3 the term "project cost" shall include the following costs when
4 incurred by a developer for a redevelopment project located in a
5 government restricted municipality: any development,
6 redevelopment, and relocation costs, including, but not limited to,
7 land and building acquisition costs; any soft costs, including
8 engineering, legal, accounting, and other professional services
9 required for the completion of the project; any environmental
10 remediation costs; and any infrastructure improvement for the
11 project area, including, but not limited to, costs of on- and off-site
12 utility, road, pier, wharf, bulkhead, or sidewalk construction or
13 repair. The fees associated with the application or administration of
14 a grant under sections 54 through 67 of P.L.2020, c.156
15 (C.34:1B-322 through 34:1B-335) shall not constitute a project
16 cost, regardless of the location of the redevelopment project.

17 "Project financing gap" means the part of the total project cost,
18 including reasonable and appropriate return on investment, that
19 remains to be financed after all other sources of capital have been
20 accounted for, including, but not limited to developer contributed
21 capital, which shall not be less than 20 percent of the total project
22 cost, and investor or financial entity capital or loans for which the
23 developer, after making all good faith efforts to raise additional
24 capital, certifies that additional capital cannot be raised from other
25 sources on a non-recourse basis; provided, however, that for a
26 redevelopment project located in a government-restricted
27 municipality, the developer contributed capital shall not be less than
28 10 percent of the total project cost. Developer contributed capital
29 may consist of cash, deferred development fees, costs for project
30 feasibility incurred within the 12 months prior to application,
31 property value less any mortgages when the developer owns the
32 project site, and any other investment by the developer in the
33 project deemed acceptable by the authority, as provided by
34 regulations promulgated by the authority. Property value shall be
35 valued at the lesser of: (i) the purchase price, provided the property
36 was purchased pursuant to an arm's length transaction within 12
37 months of application; or (ii) the value as determined by a current
38 appraisal.

39 "Project labor agreement" means a form of pre-hire collective
40 bargaining agreement covering terms and conditions of a specific
41 project that satisfies the requirements set forth in section 5 of
42 P.L.2002, c.44 (C.52:38-5).

43 "Qualified incentive tract" means (i) a population census tract
44 having a poverty rate of 20 percent or more; or (ii) a census tract in
45 which the median family income for the census tract does not
46 exceed 80 percent of the greater of the Statewide median family
47 income or the median family income of the metropolitan statistical
48 area in which the census tract is situated.

1 "Quality childcare facility" is a child care center licensed by the
2 Department of Children and Families or a registered family child
3 care home with the Department of Human Services, operating
4 continuously, which has not been subject to an enforcement action,
5 and which has and maintains a licensed capacity for children age 13
6 years or younger who attend for less than 24 hours a day.

7 "Reasonable and appropriate return on investment" means the
8 discount rate at which the present value of the future cash flows of
9 an investment equals the cost of the investment. In determining the
10 "reasonable and appropriate return on investment," an investment
11 shall not include any federal, State, or local tax credits. For a
12 residential project that utilizes federal low-income housing tax
13 credits awarded by the agency, the "reasonable and appropriate
14 return on investment" shall be based on the approval of deferred
15 developer fees pursuant to the rules established by the agency. In
16 the event that a residential project, which utilizes federal low-
17 income housing tax credits awarded by the agency, generates
18 returns on equity other than federal or local grants or proceeds from
19 the sale of federal or local tax credits, the "reasonable and
20 appropriate return on investment" shall be based on both the
21 discount rate at which the present value of the future cash flows of
22 an investment equal the cost of the investment for the entire project,
23 and when evaluating only the units financed with federal low-
24 income housing tax credits awarded by the agency, the approval of
25 deferred developer fees pursuant to the rules established by the
26 agency.

27 "Redevelopment project" means a specific construction project
28 or improvement or phase of a project or improvement undertaken
29 by a developer, owner or tenant, or both, and any ancillary
30 infrastructure project. A redevelopment project may involve
31 construction or improvement upon lands, buildings, improvements,
32 or real and personal property, or any interest therein, including
33 lands under water, riparian rights, space rights, and air rights,
34 acquired, owned, developed or redeveloped, constructed,
35 reconstructed, rehabilitated, or improved.

36 "Residential project" means a redevelopment project that is
37 predominantly residential, intended for multi-family residency, and
38 may include a parking component.

39 "SDA district" means an SDA district as defined in section 3 of
40 P.L.2000, c.72 (C.18A:7G-3).

41 "SDA municipality" means a municipality in which an SDA
42 district is situated.

43 "Stranded asset" means any building previously used for
44 commercial, retail, office space, manufacturing, or industrial
45 purposes, which building is no longer used for such purposes, and
46 which has been abandoned, experienced significant vacancies for at
47 least two consecutive years, or has fallen into such disrepair as to be
48 untenantable.

1 "Technology startup company" means a for-profit business that
2 has been in operation fewer than seven years at the time that it
3 initially occupies or expands in a qualified business facility and is
4 developing or possesses a proprietary technology or business
5 method of a high technology or life science-related product,
6 process, or service, which proprietary technology or business
7 method the business intends to move to commercialization. The
8 business shall be deemed to have begun operation on the date that
9 the business first hired at least one employee in a full-time position.

10 "Total **[project]** development cost" or "total redevelopment cost"
11 means the costs incurred in connection with the redevelopment
12 project by the developer until the issuance of a permanent
13 certificate of occupancy, or upon such other event evidencing
14 project completion as set forth in the incentive grant agreement, for
15 a specific investment or improvement.

16 "Tourism destination project" means a non-gaming business
17 facility that will be among the most visited privately owned or
18 operated tourism or recreation sites in the State, and which has been
19 determined by the authority to be in an area appropriate for
20 development and in need of economic development incentive
21 assistance, including a non-gaming business within an established
22 Tourism District with a significant impact on the economic viability
23 of that district.

24 "Transit hub" means an urban transit hub, as defined in section 2
25 of P.L.2007, c.346 (C.34:1B-208), that is located within an eligible
26 municipality, as defined in section 2 of P.L.2007, c.346
27 (C.34:1B-208) and is located within a qualified incentive area.

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

37 "Transit Village" means a municipality that has been designated
38 as a transit village by the Commissioner of Transportation and the
39 Transit Village Task Force established pursuant to P.L.1985, c.398
40 (C.27:1A-5).

41 (cf: P.L.2023, c.98, s.1)

42

43 2. Section 56 of P.L.2020, c.156 (C.34:1B-324) is amended to
44 read as follows:

45 56. a. (1) The New Jersey Aspire Program is hereby established
46 as a program under the jurisdiction of the New Jersey Economic
47 Development Authority. The authority shall administer the
48 program to encourage redevelopment projects through the provision

1 of incentive awards to reimburse developers for certain project
2 financing gap costs. The board may approve the award of an
3 incentive award to a developer upon application to the authority
4 pursuant to sections 58 and 59 of P.L.2020, c.156 (C.34:1B-326 and
5 C.34:1B-327). The value of all tax credits approved by the
6 authority pursuant to sections 54 through 67 of P.L.2020, c.156
7 (C.34:1B-322 through 34:1B-335) shall be subject to the limitations
8 set forth in section 98 of P.L.2020, c.156 (C.34:1B-362).

9 (2) The authority, in consultation with the agency, shall adopt
10 rules and regulations, pursuant to subsection b. of section 67 of
11 P.L.2020, c.156 (C.34:1B-335), concerning the establishment and
12 administration of the affordability controls that shall apply to the
13 residential units constructed for occupancy by low- and moderate-
14 income households under the program, including, but not limited to,
15 residential units within residential projects that utilize federal low-
16 income housing tax credits awarded by the agency.
17 Notwithstanding any provision of law or regulation to the contrary,
18 the affordability controls shall, at a minimum, be consistent with the
19 affordability controls established in the rules and regulations
20 adopted pursuant to the "Fair Housing Act," P.L.1985, c.222
21 (C.52:27D-301 et al.), as in effect immediately prior to the effective
22 date of P.L.2023, c.98 (C.34:1B-335.1 et al.), including, but not
23 limited to, any requirements concerning the **【bedroom**
24 **distributions,】** affordability averages, affirmative marketing, and
25 long-term deed restrictions of residential units constructed for
26 occupancy by low- and moderate-income households, except not
27 including the bedroom distribution requirements for three-bedroom
28 housing units.

29 b. The chief executive officer of the authority shall designate
30 one staff member per government-restricted municipality in order to
31 keep the municipality informed on activities within the municipality
32 and to coordinate economic development initiatives.
33 (cf: P.L.2023, c.98, s.2)

34
35 3. Section 57 of P.L.2020, c.156 (C.34:1B-325) is amended to
36 read as follows:

37 57. a. Prior to March 1, 2029, a developer shall be eligible to
38 receive an incentive award for a redevelopment project only if the
39 developer demonstrates to the authority at the time of application
40 that:

41 (1) without the incentive award, the redevelopment project is
42 not economically feasible;

43 (2) a project financing gap exists, or the authority determines
44 that the redevelopment project will generate a below market rate of
45 return;

46 (3) the redevelopment project, except a film studio, professional
47 stage, television studio, recording studio, screening room, or other

1 infrastructure used for film production, is located in the incentive
2 area;

3 (4) except for demolition and site remediation activities, the
4 developer has not commenced any construction at the site of the
5 redevelopment project prior to submitting an application, unless the
6 authority determines that the redevelopment project would not be
7 completed otherwise or, in the event the redevelopment project is to
8 be undertaken in phases, the requested incentive award is limited to
9 only phases for which construction has not yet commenced;

10 (5) the redevelopment project shall comply with minimum
11 environmental and sustainability standards;

12 (6) the redevelopment project shall comply with the authority's
13 affirmative action requirements, adopted pursuant to section 4 of
14 P.L.1979, c.303 (C.34:1B-5.4);

15 (7) (a) during the eligibility period, each worker employed to
16 perform construction work at the redevelopment project shall be
17 paid not less than the prevailing wage rate for the worker's craft or
18 trade, as determined by the Commissioner of Labor and Workforce
19 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
20 and P.L.2005, c.379 (C.34:11-56.58 et seq.);

21 (b) during the eligibility period, each worker employed to
22 perform building services work at the redevelopment project,
23 whether pursuant to contract by the developer or a commercial
24 tenant, commercial subtenant, or other commercial occupant, shall
25 be paid not less than the prevailing wage rate for the worker's craft
26 or trade, as determined by the Commissioner of Labor and
27 Workforce Development pursuant to P.L.1963, c.150
28 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.),
29 except that this requirement shall not apply to workers employed to
30 perform building services work by **[a]** any residential tenant or any
31 commercial tenant, commercial subtenant, or other commercial
32 occupant that has a leasehold interest or other occupancy right in a
33 redevelopment project, which leasehold interest or other occupancy
34 right encompasses less than 5,000 square feet of space within the
35 project. The developer shall include in all commercial leases or
36 other commercial occupancy agreements, and shall require that all
37 subleases or other commercial occupancy agreements applicable to
38 the redevelopment project include, a provision setting forth the
39 requirements of this subparagraph, which provision shall be in a
40 form acceptable to the authority. Notwithstanding any provisions
41 of law to the contrary, if a commercial tenant, commercial
42 subtenant, or other commercial occupant violates this provision due
43 to the underpayment of the required prevailing wage rate, then the
44 issuance of tax credits to the developer and any co-applicant shall
45 be delayed until such time as documentation demonstrating
46 compliance has been provided to the Commissioner of Labor and
47 Workforce Development, subsequently reviewed and approved by
48 the Commissioner of Labor and Workforce Development, and

1 verified by the authority, which reviews and verification shall be
2 completed. If a violation is not cured, or is not capable of being
3 cured, within one year of receipt of notice of the violation, then the
4 developer and any co-applicant shall forfeit 50 percent of the tax
5 credits otherwise authorized for the tax period in which the notice
6 of violation was issued. If the violation is not cured on or before
7 the conclusion of that tax period, the developer and any co-
8 applicant shall forfeit up to 100 percent of the tax credits otherwise
9 authorized, as determined by the authority, in each subsequent tax
10 period until the first tax period for which documentation
11 demonstrating compliance has been provided to the Commissioner
12 of Labor and Workforce Development, subsequently reviewed and
13 approved by the Commissioner of Labor and Workforce
14 Development, and verified by the authority, which reviews and
15 verifications shall be completed. In this event, the developer and
16 any co-applicant shall be allowed the full tax credit amount
17 beginning in the tax period in which documentation of compliance
18 was reviewed and approved by the Commissioner of Labor and
19 Workforce Development and verified by the authority, including
20 each subsequent tax period in which the tax credits are otherwise
21 authorized;

22 (c) in the event a redevelopment project, or any portion thereof,
23 is undertaken by a tenant pursuant to a contract and the tenant has a
24 leasehold of more than 55 percent of space in the building owned or
25 controlled by the developer, the requirement that each worker
26 employed to perform building service work at the building be paid
27 not less than the prevailing wage shall apply to the entire building,
28 except as otherwise provided in subparagraph (b) of this paragraph
29 for all residential tenants and all commercial tenants, commercial
30 subtenants, or other commercial occupants with a leasehold interest
31 or other occupancy right encompassing less than 5,000 square feet;

32 (8) (a) the redevelopment project shall be completed, and the
33 developer shall be issued a certificate of occupancy for the
34 redevelopment project facilities by the applicable enforcing agency,
35 within four years of executing the incentive award agreement, or in
36 the case of a redevelopment project with a project cost in excess of
37 \$50,000,000, the incentive phase agreement corresponding to the
38 redevelopment project; or

39 (b) in the discretion of the authority, a redevelopment project
40 with a project cost in excess of \$50,000,000, and that is authorized
41 to be completed in phases, may be allowed no more than six years
42 from the date on which the incentive award agreement is executed
43 to be issued a certificate of occupancy by the applicable
44 enforcement agency;

45 (9) the developer has complied with all requirements for filing
46 tax and information returns and for paying or remitting required
47 State taxes and fees by submitting, as a part of the application, a tax

1 clearance certificate, as described in section 1 of P.L.2007, c.101
2 (C.54:50-39); and

3 (10)the developer is not more than 24 months in arrears at the
4 time of application.

5 b. In addition to the requirements set forth in subsection a. of
6 this section, for a commercial project to qualify for an incentive
7 award the developer shall demonstrate that the developer shall
8 contribute capital of at least 20 percent of the total project cost,
9 except that if a redevelopment project is located in a government-
10 restricted municipality, the developer shall contribute capital of at
11 least 10 percent of the total project cost.

12 c. In addition to the requirements set forth in subsection a. of
13 this section, for a residential project or a commercial project
14 comprised solely of a health care or health service center to qualify
15 for an incentive award, the residential project or health care or
16 health service center shall:

17 (1) have a total project cost of at least \$17,500,000, if the project
18 is located in a municipality with a population greater than 200,000
19 according to the latest federal decennial census;

20 (2) have a total project cost of at least \$10,000,000 if the project
21 is located in a municipality with a population less than 200,000
22 according to the latest federal decennial census; or

23 (3) have a total project cost of at least \$5,000,000 if the project is
24 in a qualified incentive tract or government-restricted municipality.

25 d. In addition to the requirements set forth in subsections a. and
26 c. of this section, for a residential project consisting of newly-
27 constructed residential units to qualify for an incentive award, the
28 developer shall reserve at least 20 percent of the residential units
29 constructed for occupancy by low- and moderate-income
30 households with affordability controls as adopted by the authority,
31 in consultation with the agency, in accordance with paragraph (2) of
32 subsection a. of section 56 of P.L.2020, c.156 (C.34:1B-324),
33 except that a residential project receiving a federal historic
34 rehabilitation tax credit pursuant to section 47 of the federal
35 Internal Revenue Code of 1986, 26 U.S.C. s.47, or a tax credit
36 pursuant to the "Historic Property Reinvestment Act," sections 2
37 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276),
38 shall be exempt from the affordability controls related to bedroom
39 distribution.

40 e. Prior to the board considering an application submitted by a
41 developer, the authority shall confirm with the Department of Labor
42 and Workforce Development, the Department of Environmental
43 Protection, and the Department of the Treasury whether the
44 developer is in substantial good standing with the respective
45 department, or has entered into an agreement with the respective
46 department that includes a practical corrective action plan for the
47 developer. The developer shall certify that any contractors or
48 subcontractors that will perform work at the redevelopment project:

1 (1) are registered as required by "The Public Works Contractor
2 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.); (2) have
3 not been debarred by the Department of Labor and Workforce
4 Development from engaging in or bidding on Public Works
5 Contracts in the State; and (3) possess a tax clearance certificate
6 issued by the Division of Taxation in the Department of the
7 Treasury. The authority may also contract with an independent
8 third party to perform a background check on the developer.

9 f. Beginning on the third year following the date of issuance of
10 a final certificate of occupancy for a commercial project, and
11 through the conclusion of the eligibility period, if the average
12 occupancy rate of the commercial project is less than 60 percent
13 during any applicable tax period, the developer and co-applicant
14 shall forfeit all credits otherwise allowed for the tax period and for
15 each subsequent tax period until the authority verifies
16 documentation, submitted by the developer or co-applicant,
17 demonstrating that the average occupancy rate has reached or
18 surpassed 60 percent for the tax period. The full amount of credit
19 shall be allowed to a developer and any co-applicant for the tax
20 period in which the average occupancy rate reaches or surpasses 60
21 percent. Occupancy for the tax period shall be determined by the
22 average of the monthly occupancy for the applicable tax period.
23 The occupancy requirement in this subsection shall not apply to
24 residential projects.

25 (cf: P.L.2023, c.98, s.3)

26

27 4. Section 60 of P.L.2020, c.156 (C.34:1B-328) is amended to
28 read as follows:

29 60. a. (1) Following approval and selection of an application
30 pursuant to sections 58 and 59 of P.L.2020, c.156 (C.34:1B-326 and
31 C.34:1B-327), the authority shall enter into an incentive award
32 agreement with the developer. The chief executive officer of the
33 authority shall negotiate the terms and conditions of the incentive
34 award agreement on behalf of the State.

35 (2) For a phased project, the incentive phase agreement shall set
36 forth, for each phase of the project and for the total project, the
37 capital investment requirements and the time periods in which each
38 phase of the project shall be commenced and completed. The
39 awarding of tax credits shall be conditioned on the developer's
40 compliance with the requirements of the agreement. A
41 redevelopment project may be completed in phases in accordance
42 with rules adopted by the authority if the redevelopment project has
43 a total project cost in excess of \$50,000,000.

44 b. An incentive award agreement shall specify the amount of
45 the incentive award the authority shall award to the developer and
46 the duration of the eligibility period. The duration of the eligibility
47 period **【shall not exceed 15 years for a commercial or mixed-use**
48 **project and】** shall not exceed 10 years for a commercial project,

1 mixed-use project, or residential project, except that [to] the
2 authority shall consider reducing the eligibility period if a shorter
3 period would reduce the total value of tax credits needed to
4 reimburse a developer for all or part of the project financing gap of
5 a redevelopment project, [the authority may, in its discretion,
6 approve a duration for the eligibility period that is shorter than the
7 applicable maximum periods] enhance access to tax credit
8 monetization on cost effective terms, or otherwise enhance the
9 effectiveness of the program. The incentive award agreement shall
10 provide an estimated date of completion and include a requirement
11 for periodic progress reports, including the submittal of executed
12 financing commitments and documents that evidence site control;
13 provided however, that the developer may sell one or more
14 buildings during the eligibility period, provided that such sale is: an
15 arms-length transaction to an unrelated party, or for an amount at
16 least equal to fair market value based on an appraisal conducted
17 within one year; and subject to the purchaser's assumption of all
18 obligations relating to the buildings pursuant to sections 54 through
19 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335). If the
20 authority does not receive periodic progress reports, or if the
21 progress reports demonstrate unsatisfactory progress, then the
22 authority may rescind the incentive award. If the authority rescinds
23 an incentive award in the same calendar year in which the authority
24 approved the incentive award, then the authority may assign the
25 incentive award to another applicant. The incentive award
26 agreement may also provide for a verification of the financing gap
27 at the time the developer provides executed financing commitments
28 to the authority and a verification of the developer's projected cash
29 flow at the time of certification that the project is completed.

30 c. To ensure the protection of taxpayer money, if the authority
31 determines at project certification that the actual capital financing
32 approach utilized by the project has resulted in a financing gap that
33 is smaller than the financing gap determined at board approval, the
34 authority shall reduce the amount of the tax credit or accept
35 payment from the developer on a pro rata basis. If there is no
36 project financing gap due to the actual capital financing approach
37 utilized by the project, then the developer shall forfeit the incentive
38 award. At the end of the seventh year of the eligibility period, the
39 authority shall evaluate the developer's rate of return on investment
40 and compare that rate of return on investment to the reasonable and
41 appropriate rate of return at the time of board approval. If the
42 actual rate of return on investment exceeds the reasonable and
43 appropriate rate of return on investment at the time of board
44 approval by more than 15 percent, the authority shall require the
45 developer to pay up to 20 percent of the amount in excess of the
46 reasonable and appropriate rate of return on investment. The
47 authority shall require an escrow account to be held by the authority
48 until the end of the eligibility period. Following the final year of

1 the eligibility period, the authority shall determine if the developer's
2 rate of return exceeded the reasonable and appropriate rate of return
3 determined at board approval. If the final rate of return does not
4 exceed the reasonable and appropriate rate of return determined at
5 board approval, the authority shall release to the developer the
6 escrowed funds. If the project final rate of return exceeds the
7 reasonable and appropriate rate of return determined at board
8 approval, the authority shall require the developer to pay up to 20
9 percent of the amount of the excess, which shall include the funds
10 held in escrow, and such funds shall be deposited in the State
11 General Fund.

12 d. The incentive award agreement shall include a requirement
13 that the authority confirm with the Department of Environmental
14 Protection, the Department of Labor and Workforce Development,
15 and the Department of the Treasury that the developer is in
16 substantial good standing with the respective department, or the
17 developer has entered into an agreement with the respective
18 department that includes a practical corrective action for the
19 developer, and the developer shall confirm that each contractor or
20 subcontractor performing work at the redevelopment project: (1) is
21 registered as required by "The Public Works Contractor
22 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.); (2) has
23 not been debarred by the Department of Labor and Workforce
24 Development from engaging in or bidding on Public Works
25 Contracts in the State; and (3) possesses a tax clearance certificate
26 issued by the Division of Taxation in the Department of the
27 Treasury. The incentive award agreement shall also include a
28 provision that the developer shall forfeit the incentive award in any
29 year in which the developer is neither in substantial good standing
30 with each department nor has entered into a practical corrective
31 action. The incentive award agreement shall also require a
32 developer to engage in on-site consultations with the Division of
33 Workplace Safety and Health in the Department of Health.

34 e. (1) Except as provided in paragraph (2) of this subsection, the
35 authority shall not enter into an incentive award agreement for a
36 redevelopment project that includes at least one retail establishment
37 which will have more than 10 employees, at least one distribution
38 center which will have more than 20 employees, or at least one
39 hospitality establishment which will have more than 10 employees,
40 unless the incentive award agreement includes a precondition that
41 any business that serves as the owner or operator of the retail
42 establishment, distribution center, or hospitality establishment
43 enters into a labor harmony agreement with a labor organization or
44 cooperating labor organizations which represent retail
45 establishment, hospitality establishment, or distribution center
46 employees in the State.

47 (2) A labor harmony agreement shall be required only if the State
48 has a proprietary interest in the redevelopment project and shall

1 remain in effect for as long as the State acts as a market participant
2 in the redevelopment project. The authority may enter into an
3 incentive award agreement with a developer without the labor
4 harmony agreement required under paragraph (1) of this subsection
5 if the authority determines that the redevelopment project would not
6 be able to go forward if a labor harmony agreement is required.
7 The authority shall support the determination by a written finding,
8 which provides the specific basis for the determination.

9 (3) (Deleted by amendment, P.L.2023, c.98)

10 f. (1) Except for a residential project that is located in a
11 government-restricted municipality, and in which 100 percent of the
12 residential units constructed in the residential project are reserved
13 for occupancy by low- and moderate-income households, for a
14 redevelopment project whose total project cost equals or exceeds
15 \$10 million, in addition to the incentive award agreement, a
16 developer shall enter into a community benefits agreement with the
17 authority and the county or municipality in which the
18 redevelopment project is located. The agreement may include, but
19 shall not be limited to, requirements for training, employment, and
20 youth development and free services to underserved communities in
21 and around the community in which the redevelopment project is
22 located. Prior to entering a community benefits agreement, the
23 governing body of the county or municipality in which the
24 redevelopment project is located shall hold at least one public
25 hearing at which the governing body shall hear testimony from
26 residents, community groups, and other stakeholders on the needs
27 of the community that the agreement should address.

28 (2) The community benefits agreement shall provide for the
29 creation of a community advisory committee to oversee the
30 implementation of the agreement, monitor successes, ensure
31 compliance with the terms of the agreement, and produce an annual
32 public report. The community advisory committee created pursuant
33 to this paragraph shall be comprised of representatives of diverse
34 community groups and residents of the county or municipality in
35 which the redevelopment project is located.

36 (3) At the time the developer submits the annual report required
37 pursuant to section 62 of P.L.2020, c.156 (C.34:1B-330) to the
38 authority, the developer shall certify, under the penalty of perjury,
39 that it is in compliance with the terms of the community benefits
40 agreement. If the developer fails to provide the certification
41 required pursuant to this paragraph or the authority determines that
42 the developer is not in compliance with the terms of the community
43 benefits agreement based on the reports submitted by the
44 community advisory committee pursuant to paragraph (2) of this
45 subsection, then the authority may rescind an award or recapture all
46 or part of any tax credits awarded.

47 (4) Notwithstanding any requirement of this subsection to the
48 contrary, a developer shall be considered to have met the

- 1 requirements of a community benefits agreement **[pursuant to this**
2 **subsection]**, and the requirements of paragraphs (2) and (3) of this
3 subsection shall not apply, if the developer submits to the authority:
- 4 (a) a copy of either the developer's approval letter from the
5 authority or a redevelopment agreement applicable to the qualified
6 business facility, provided that the approval letter is certified by the
7 municipality or the redevelopment agreement is [certified] adopted
8 by resolution at a public meeting by the municipality in which the
9 redevelopment project is located, and includes provisions that meet
10 **[or exceed] the [standards] community benefit required [for]**
11 under a community benefits agreement in this subsection **[**, as
12 determined by the chief executive officer pursuant to rules adopted
13 by the authority**]**; or
- 14 (b) a resolution adopted by the governing body of the
15 municipality in which the redevelopment project is located, which
16 resolution shall be adopted after at least one public hearing at which
17 the governing body provides an opportunity for residents,
18 community groups, and other stakeholders to testify, and which
19 resolution shall state that the governing body has determined that
20 the redevelopment project will provide economic and social benefits
21 to the community that fulfill the purposes of this subsection, which
22 benefits render a separate community benefit agreement
23 unnecessary, and explain the reasons supporting the governing
24 body's determination.
- 25 g. A developer shall submit, prior to the first disbursement of
26 tax credits under the incentive award agreement, but no later than
27 six months following project completion, satisfactory evidence of
28 actual project costs, as certified by a certified public accountant,
29 evidence of a temporary certificate of occupancy, or other event
30 evidencing project completion that begins the eligibility period
31 indicated in the incentive award agreement. The developer, or an
32 authorized agent of the developer, shall certify that the information
33 provided pursuant to this subsection is true under the penalty of
34 perjury. Claims, records, or statements submitted by a developer to
35 the authority in order to receive tax credits shall not be considered
36 claims, records, or statements made in connection with State tax
37 laws.
- 38 h. The incentive award agreement shall include a provision
39 allowing the authority to extend, in individual cases, the deadline
40 for any annual reporting or certification requirement.
- 41 i. The incentive award agreement shall include one or more
42 provisions, as determined by the authority, concerning the terms
43 and conditions for default and the remedies for the developer of a
44 redevelopment project in the event of default. The incentive award
45 agreement shall not allow the authority to declare a cross-default
46 when the developer of a redevelopment project, including any
47 business affiliate of the developer or any other entity with common

1 principals as the developer, is in default with any other assistance
2 program administered by the authority.

3 (cf: P.L.2023, c.98, s.6)

4

5 5. Section 61 of P.L.2020, c.156 (C.34:1B-329) is amended to
6 read as follows:

7 61. a. Up to the limits established in subsection b. of this section
8 and in accordance with an incentive award agreement, beginning
9 upon the receipt of occupancy permits for any portion of the
10 redevelopment project, or upon any other event evidencing project
11 completion as set forth in the incentive award agreement, a
12 developer shall be allowed a total tax credit **【that shall not exceed】**
13 as follows, subject to the enhancements set forth in subsection c. of
14 this section:

15 (1) 80 percent of the total project cost for a redevelopment
16 project that is located in a government-restricted municipality;

17 (2) 60 percent of the total project cost for a residential project
18 that receives a four-percent allocation from the federal Low Income
19 Housing Tax Credit Program administered by the agency or a
20 redevelopment project that is located in a qualified incentive tract,
21 enhanced area, or a municipality with a Municipal Revitalization
22 Index score of at least 50; or

23 (3) 50 percent of the total project cost for any other
24 redevelopment project.

25 b. The value of all tax credits approved by the authority under
26 the program for a redevelopment project phase shall not exceed:

27 (1) \$120,000,000 per redevelopment project or phase for a
28 redevelopment project that is located in a government-restricted
29 municipality;

30 (2) \$90,000,000 per redevelopment project or phase for a
31 redevelopment project that is allowed a tax credit under paragraph
32 (2) of subsection a. of this section; and

33 (3) \$60,000,000 for any other redevelopment project or phase.

34 c. Notwithstanding the limitations set forth in subsection a. of
35 this section, but subject to the limitations of subsections b. and d. of
36 this section and the demonstration of a financing gap, a developer
37 shall be eligible for each of the following enhancements to the total
38 tax credit award:

39 (1) for a redevelopment project that includes the redevelopment
40 of a stranded asset, an enhancement of up to 10 percent of the
41 project cost of the redevelopment project;

42 (2) for a residential project that meets the three-bedroom
43 distribution requirement under the Uniform Housing Affordability
44 Controls, an enhancement of up to five percent of the project cost of
45 the residential project; and

46 (3) for a redevelopment project that meets local first source
47 hiring requirements for residents in the municipality or county

1 where the project is located, an enhancement of up to three percent
2 of the project cost of the redevelopment project.

3 d. Except for a redevelopment project that is located in a
4 government restricted municipality:

5 (1) the total tax credits awarded for the redevelopment project,
6 together with all tax credits awarded under any other program
7 administered by the authority, shall not exceed 80 percent of the
8 project cost of the redevelopment project; and

9 (2) for a redevelopment project that receives tax credits under
10 the Federal Low-Income Housing Tax Credit Program, the total tax
11 credits awarded for the redevelopment project, together with all tax
12 credits awarded under any other program administered by the
13 authority and under the Federal Low-Income Housing Tax Credit
14 Program, shall not exceed 90 percent of the project cost.

15 (cf: P.L.2023, c.98, s.7)

16

17 6. Section 62 of P.L.2020, c.156 (C.34:1B-330) is amended to
18 read as follows:

19 62. a. A developer approved for an incentive award pursuant to
20 sections 58 and 59 of P.L.2020, c.156 (C.34:1B-326 and
21 C.34:1B-327) and that enters an incentive award agreement
22 pursuant to section 60 of P.L.2020, c.156 (C.34:1B-328) shall
23 submit annually, commencing in the year in which the incentive
24 award is issued and for the remainder of the eligibility period, a
25 report indicating whether the developer is aware of any condition,
26 event, or act that would cause the developer not to be in compliance
27 with the incentive award agreement or the provisions of sections 54
28 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335)
29 and any additional reporting requirements contained in the incentive
30 award agreement or tax credit certificate. The developer, or an
31 authorized agent of the developer, shall certify that the information
32 provided pursuant to this subsection is true under the penalty of
33 perjury.

34 b. (1) Upon receipt and review of each report submitted during
35 the eligibility period, the authority shall provide to the developer
36 and the director a certificate of compliance indicating the amount of
37 tax credits that the developer may apply against the developer's tax
38 liability.

39 (2) Upon receipt by the director of the certificate of compliance,
40 the director shall allow the developer a credit against the tax
41 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). A
42 developer shall apply the credit awarded against the developer's
43 liability under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2
44 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1
45 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 for the privilege
46 period **【during】** identified in the tax credit certificate which the
47 director **【allows】** issues to the developer **【a tax credit】** pursuant to
48 this subsection, or within the three successive tax periods

1 immediately following the tax period in which the tax credit
2 certificate is received by the developer. A developer may carry
3 forward an unused credit resulting from the limitations of paragraph
4 (3) of this subsection, if necessary, for use in the seven privilege
5 periods next following the privilege period for which the credits are
6 **[awarded]** applied. Credits granted to a partnership shall be passed
7 through to the partners, members, or owners, respectively, pro-rata,
8 or pursuant to an executed agreement among the partners, members,
9 or owners documenting an alternate distribution method provided to
10 the director accompanied by any additional information as the
11 director may prescribe.

12 (3) The director shall prescribe the order of priority of the
13 application of the credit allowed under this section and any other
14 credits allowed by law against the tax imposed under section 5 of
15 P.L.1945, c.162 (C.54:10A-5). The amount of the credit applied
16 under this section against the tax imposed pursuant to section 5 of
17 P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with
18 any other credits allowed by law, shall not reduce the tax liability to
19 an amount less than the statutory minimum provided in subsection
20 (e) of section 5 of P.L.1945, c.162 (C.54:10A-5).
21 (cf: P.L.2022, c.46, s.1)

22
23 7. Section 63 of P.L.2020, c.156 (C.34:1B-331) is amended to
24 read as follows:

25 63. a. A developer may apply to the director and the chief
26 executive officer of the authority for a tax credit transfer certificate,
27 covering one or more years, in lieu of the developer being allowed
28 any amount of the credit against the tax liability of the developer.
29 The tax credit transfer certificate, upon receipt thereof by the
30 developer from the director and the chief executive officer of the
31 authority, may be sold or assigned, in full or in part in an amount
32 not less than \$25,000, in the privilege period during which the
33 developer receives the tax credit transfer certificate from the
34 director, to another person, who may apply the credit against a tax
35 liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
36 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3),
37 section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The
38 certificate provided to the developer shall include a statement
39 waiving the developer's right to claim the amount of the credit that
40 the developer has elected to sell or assign against the developer's
41 tax liability.

42 b. The developer shall not sell or assign, including a collateral
43 assignment, a tax credit transfer certificate allowed under this
44 section for consideration received by the developer of less than 85
45 percent of the transferred credit amount before considering any
46 further discounting to present value which shall be permitted,
47 except a developer of a residential project consisting of newly-
48 constructed residential units may assign a tax credit transfer

1 certificate for consideration of less than 85 percent subject to the
2 submission of a plan to the authority and the agency to use the
3 proceeds derived from the assignment of tax credits to complete the
4 residential project, except a developer of a residential project
5 consisting of newly-constructed residential units that has received
6 federal low income housing tax credits under 26 U.S.C.
7 s.42(b)(1)(B)(i) may assign a tax credit transfer certificate for
8 consideration of no less than 65 percent subject to the submission of
9 a plan to the authority and the New Jersey Housing and Mortgage
10 Finance Agency to use the proceeds derived from the assignment of
11 tax credits to complete the residential project. The tax credit
12 transfer certificate issued to a developer by the director shall be
13 subject to any limitations and conditions imposed on the application
14 of State tax credits pursuant to sections 54 through 67 of P.L.2020,
15 c.156 (C.34:1B-322 through 34:1B-335) and any other terms and
16 conditions that the director may prescribe; provided, however, that
17 the holder of a tax credit certificate may transfer all or part of the
18 tax credit amount, within the three successive tax periods
19 immediately following the tax period in which the tax credit
20 certificate is received by the developer, on or after the date of
21 issuance of the tax credit transfer certificate, for use by the
22 transferee in the tax period for which it was issued or within the
23 three successive tax periods immediately following the tax period in
24 which the tax credit transfer certificate is received by the transferee,
25 and the transferee may carry forward all or part of the tax credit
26 amount in any of the next five successive tax periods after the tax
27 period for which it was used. Notwithstanding any provision of this
28 section to the contrary, the amount of tax credits that may be
29 claimed by the transferee in any tax period shall not exceed the total
30 tax credit amount divided by the duration of the eligibility period in
31 years.

32 c. A purchaser or assignee of a tax credit transfer certificate
33 pursuant to this section shall not make any subsequent transfers,
34 assignments, or sales of the tax credit transfer certificate.

35 d. The authority shall publish on its Internet website the
36 following information concerning each tax credit transfer certificate
37 approved by the authority and the director pursuant to this section:

- 38 (1) the name of the transferor;
- 39 (2) the name of the transferee;
- 40 (3) the value of the tax credit transfer certificate; and
- 41 (4) the consideration received by the transferor.

42 e. When a tax credit certificate is issued to a developer after
43 the tax period in which all or part of the tax credits may be used by
44 the developer or a holder of the credit transfer certificate, the
45 developer or transferee shall be allowed to use the tax credit for the
46 same tax period specified in the tax credit certificate, or within the
47 three successive tax periods immediately following the tax period in
48 which the certificate is received by the developer or transferee. In

1 this circumstance, the developer or transferee shall not be required
2 to amend its tax return for the tax period in which it applies the tax
3 credit or for a tax period preceding the tax period in which the tax
4 credit is applied.

5 (cf: P.L.2023, c.98, s.8)

6

7 8. Section 65 of P.L.2020, c.156 (C.34:1B-333) is amended to
8 read as follows:

9 65. a. As used in this section, "transformative project" means a
10 redevelopment project: that has a project financing gap; that has a
11 total project cost of at least \$150,000,000; that, subject to the
12 provisions of subsection h. of this section, includes 200,000 or more
13 square feet of new or substantially renovated industrial,
14 commercial, or residential space for a project located in a
15 government-restricted municipality, that includes 250,000 or more
16 square feet of film studios, professional stages, television studios,
17 recording studios, screening rooms, or other infrastructure for film
18 production, that includes 300,000 or more square feet of new or
19 substantially renovated industrial, commercial, or residential space
20 for a project located in an enhanced area, or that includes 500,000
21 or more square feet of new or substantially renovated industrial,
22 commercial, or residential space for any other project; and, for a
23 commercial project, that is of special economic importance as
24 measured by the level of new jobs, new capital investment,
25 opportunities to leverage leadership in a high-priority targeted
26 industry, or other state priorities as determined by the authority
27 pursuant to rules and regulations promulgated to implement this
28 section. Notwithstanding the provisions of subsection b. of section
29 14 of P.L.2023, c.98 (C.34:1B-335.1) to the contrary, for
30 applications submitted on and after the effective date of P.L.2023,
31 c.98 (C.34:1B-335.1 et al.), if the redevelopment project is located
32 entirely on land designated by the Department of Environmental
33 Protection as a brownfield development area pursuant to section 7
34 of P.L.2005, c.223 (C.58:10B-25.1), and the project cost of the
35 redevelopment project includes at least \$15,000,000 in
36 environmental remediation costs, the redevelopment project shall
37 constitute a project of special economic importance. A
38 transformative project may be completed in phases, which phases
39 may be determined by the authority based on factors such as written
40 architectural plans and specifications completed before or during
41 the physical work, certificates of occupancy, or financial and
42 operational plans. The criteria developed by the authority shall
43 include, but shall not be limited to:

44 (1) the extent to which the proposed transformative project
45 would create modern facilities that enhance the State's
46 competitiveness in attracting targeted industries;

47 (2) (a) for a residential project, the construction of 700 or more
48 new residential units;

1 (b) for a residential project containing ~~【less】~~ fewer than 700
2 new residential units, the construction of 200 or more new
3 residential units if the project is located in a government-restricted
4 municipality, 300 or more residential units if the project is located
5 in an enhanced area, or 400 or more residential units for all other
6 mixed-use projects;

7 (c) for a residential project containing ~~【less】~~ fewer than 700
8 new residential units, the construction of ~~【50,000】~~ 20,000 square
9 feet or more of commercial space, which commercial space may
10 include retail space; and

11 (d) for a residential project, 20 percent of the new residential
12 units shall be constructed for occupancy by low- and moderate-
13 income households with affordability controls as adopted by the
14 authority, in consultation with the agency, in accordance with
15 paragraph (2) of subsection a. of section 56 of P.L.2020, c.156
16 (C.34:1B-324), except that a residential project receiving a federal
17 historic rehabilitation tax credit pursuant to section 47 of the federal
18 Internal Revenue Code of 1986, 26 U.S.C. s.47, or a tax credit
19 pursuant to the "Historic Property Reinvestment Act," sections 2
20 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276),
21 shall be exempt from the affordability controls related to bedroom
22 distribution; and

23 (3) the extent to which the proposed project would leverage the
24 competitive economic development advantages of the State's mass
25 transit assets, higher education assets, and other economic
26 development assets in attracting or retaining both employers and
27 skilled workers generally or in targeted industries.

28 A "transformative project" shall not include a redevelopment
29 project at which more than 50 percent of the premises is occupied
30 by one or more businesses engaged in final point of sale retail.

31 b. (1) The authority may award incentive awards to
32 transformative projects in accordance with the provisions of
33 sections 55 through 67 of P.L.2020, c.156 (C.34:1B-323 through
34 34:1B-335).

35 (2) (a) For transformative projects completed in phases, the
36 developer shall enter into a transformative phase agreement with the
37 authority.

38 (b) As used in this subsection, "transformative phase agreement"
39 shall mean a sub-agreement of the incentive award agreement that
40 governs the timing, capital investment, and other applicable details
41 of the respective phase of a phased project.

42 (3) Notwithstanding the provisions of section 57 of P.L.2020,
43 c.156 (C.34:1B-325), or any other section of P.L.2020, c.156
44 (C.34:1B-269 et al.) to the contrary, a transformative project shall
45 be completed, and the developer shall be issued a certificate of
46 occupancy for the transformative project facilities by the applicable
47 enforcing agency, within five years of executing the incentive
48 award agreement, except that the authority may, in its discretion,

1 extend this deadline by up to one additional year. For
2 transformative projects completed in phases, the transformative
3 project shall be completed, and the developer shall be issued
4 certificates of occupancy for all phases of the transformative project
5 facilities by the applicable enforcing agency, within 10 years of
6 executing either the incentive award agreement or the first
7 transformative phase agreement corresponding to the transformative
8 project.

9 (4) Notwithstanding the provisions of sections 55 and 60 of
10 P.L.2020, c.156 (C.34:1B-323 and C.34:1B-328), or any other
11 section of P.L.2020, c.156 (C.34:1B-269 et al.) to the contrary, each
12 phase of a transformative project completed in phases shall have a
13 separate eligibility period. After completing each phase, the
14 developer shall submit a certification that the phase is completed.
15 If the authority approves the certification, the tax credit allowed to
16 the developer shall be increased by the tax credit amount
17 corresponding to that phase. Notwithstanding the different
18 eligibility periods for each phase, all conditions and requirements
19 applicable during an eligibility period pursuant to sections 55
20 through 67 of P.L.2020, c.156 (C.34:1B-323 through 34:1B-335)
21 shall apply to the entire transformative project until the end of the
22 eligibility period for the last phase.

23 (5) Notwithstanding the provisions of section 60 of P.L.2020,
24 c.156 (C.34:1B-328), or any other section of P.L.2020, c.156
25 (C.34:1B-269 et al.) to the contrary, for a transformative project
26 completed in phases, a review of the project financing gap shall be
27 performed at the certification of completion of each phase, and the
28 authority shall re-evaluate the developer's rate of return in the
29 seventh year and at the end of the eligibility period for the last
30 phase, provided that the authority may also re-evaluate the
31 developer's rate of return during the fifth year of any earlier phase.

32 (6) A transformative project receiving an incentive award
33 pursuant to this section, other than a project that includes 250,000
34 or more square feet of film studios, professional stages, television
35 studios, recording studios, screening rooms or other infrastructure
36 for film production, shall be located in an incentive area, a
37 distressed municipality, a government-restricted municipality, or an
38 enhanced area. A transformative project receiving an incentive
39 award pursuant to this section that includes 250,000 or more square
40 feet of film studios, professional stages, television studios,
41 recording studios, screening rooms or other infrastructure for film
42 production may be located anywhere in the State. The authority
43 shall not consider an application for a transformative project unless
44 the applicant submits with its application a letter evidencing support
45 for the transformative project from the governing body of the
46 municipality in which the transformative project is located.

47 c. The authority shall review the transformative project cost,
48 evaluate and validate the project financing gap estimated by the

1 developer, and conduct a State fiscal impact analysis to ensure that
2 the overall public assistance provided to the transformative project
3 will result in a net positive benefit to the State. In determining
4 whether a transformative project will result in a net positive benefit
5 to the State, the authority shall not consider the value of any taxes
6 exempted, abated, rebated, or retained under the "Five-Year
7 Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et
8 seq.), the "Long Term Tax Exemption Law," P.L.1991, c.431
9 (C.40A:20-1 et al.), the "New Jersey Urban Enterprise Zones Act,"
10 P.L.1983, c.303 (C.52:27H-60 et seq.), or any other law that has the
11 effect of lowering or eliminating the developer's State or local tax
12 liability. The determination made pursuant to this subsection shall
13 be based on the potential tax liability of the developer without
14 regard for potential tax losses if the developer were to locate in
15 another state. The authority shall assess the cost of these reviews to
16 the applicant. A developer shall pay to the authority the full
17 amount of the direct costs of an analysis concerning the developer's
18 application for an incentive award that a third party retained by the
19 authority performs, if the authority deems such retention to be
20 necessary. The authority shall evaluate the net economic benefits
21 on a present value basis under which the requested tax credit
22 allocation amount is discounted to present value at the same
23 discount rate as the projected benefits from the implementation of
24 the proposed transformative project for which an award of tax
25 credits is being sought. Projects that are predominantly residential
26 shall be excluded from the calculation of the net benefit test
27 required pursuant to this subsection.

28 d. In determining net benefits for any business or person
29 considering locating in a transformative project and applying to
30 receive from the authority any other economic development
31 incentive subsequent to the award of transformative project tax
32 credits pursuant to section 65 of P.L.2020, c.156 (C.34:1B-333), the
33 authority shall not credit the business or person with any benefit
34 that was previously credited to the transformative project pursuant
35 to section 65 of P.L.2020, c.156 (C.34:1B-333).

36 e. The authority shall administer the credits awarded pursuant
37 to this section in accordance with the provisions of sections 62 and
38 63 of P.L.2020, c.156 (C.34:1B-330 and C.34:1B-331).

39 f. Prior to allocating an incentive award to a developer, the
40 authority shall confirm with the Department of Labor and
41 Workforce Development, the Department of Environmental
42 Protection, and the Department of the Treasury that the developer is
43 in substantial good standing with the respective department, or the
44 developer has entered into an agreement with the respective
45 department that includes a practical corrective action plan, and the
46 developer shall certify that each contractor or subcontractor
47 performing work at the transformative project: (1) is registered as
48 required by "The Public Works Contractor Registration Act,"

1 P.L.1999, c.238 (C.34:11-56.48 et seq.); (2) has not been debarred
2 by the Department of Labor and Workforce Development from
3 engaging in or bidding on Public Works Contracts in the State; and
4 (3) possesses a tax clearance certificate issued by the Division of
5 Taxation in the Department of the Treasury. The authority may also
6 contract with an independent third party to perform a background
7 check on the developer.

8 g. Notwithstanding the limitation on incentive awards set forth
9 in subsection b. of section 61 and section 98 of P.L.2020, c.156
10 (C.34:1B-329 and C.34:1B-362) to the contrary, the authority may
11 allow a developer of a transformative project a tax credit in an
12 amount not to exceed the lesser of:

13 (1) (a) 80 percent of the total project cost for a transformative
14 project that is located in a government-restricted municipality;

15 (b) 60 percent of the total project cost for a residential
16 transformative project that receives a four-percent allocation from
17 the federal Low Income Housing Tax Credit Program administered
18 by the agency or a transformative project that is located in a
19 qualified incentive tract, enhanced area, or a municipality with a
20 Municipal Revitalization Index score of at least 50; or

21 (c) 50 percent of the total project cost for any other
22 transformative project;

23 (2) the total value of the project financing gap; or

24 (3) \$400,000,000, except that for a transformative project that is
25 developed in phases, the \$400,000,000 limitation on incentive
26 awards set forth in this paragraph shall apply to the total aggregate
27 award for all phases of the transformative project.

28 h. (1) The parking component of a transformative project shall
29 be included in the calculation of the total square footage of the
30 project, provided that the parking component shall be constructed in
31 conformity with local zoning, planning, or similar requirements and
32 up to the amount required by the Residential Site Improvement
33 Standards. Any portion of the parking component that exceeds the
34 local parking requirements or the Residential Site Improvement
35 Standards shall not be included in the calculation of the total square
36 footage of the project.

37 (2) Notwithstanding any provision of paragraph (1) of this
38 subsection to the contrary, the entire parking component of a
39 project located in a government restricted municipality shall be
40 included in the calculation of the total square footage of the project.

41 (cf: P.L.2023, c.98, s.9)

42

43 9. Section 14 of P.L.2023, c.98 (C.34:1B-335.1) is amended to
44 read as follows:

45 14. a. (1) Except as otherwise provided in subsection b. of this
46 section, all program applications **【completed after】** submitted to the
47 authority on or after the date six months prior to the effective date
48 of **【P.L.2023, c.98 (C.34:1B-335.1 et al.)】** P.L. , c. (C.)

1 (pending before the Legislature as this bill) shall be subject to the
2 "New Jersey Aspire Program Act," sections 54 through 67 of
3 P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), as amended as
4 supplemented by P.L.2023, c.98 (C.34:1B-335.1 et al.), and as
5 further amended and supplemented by P.L. , c. (C.)
6 (pending before the Legislature as this bill), including the rules and
7 regulations adopted pursuant to subsection b. of section 67 of
8 P.L.2020, c.156 (C.34:1B-335), except that applications submitted
9 to the authority prior to the effective date of P.L. , c. (C.)
10 (pending before the Legislature as this bill) shall be subject to the
11 rules and regulations concerning application fees that were in effect
12 immediately before the effective date of P.L. , c. (C.)
13 (pending before the Legislature as this bill).

14 (2) **【**Except as otherwise provided in subsection b. of this
15 section, all program applications completed on or before the
16 effective date of P.L.2023, c.98 (C.34:1B-335.1 et al.) shall be
17 subject to the provisions of the "New Jersey Aspire Program Act,"
18 sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through
19 34:1B-335), as such provisions remained in effect immediately
20 before the effective date of P.L.2023, c.98 (C.34:1B-335.1 et al.),
21 including the rules and regulations adopted pursuant to subsection
22 a. of section 67 of P.L.2020, c.156 (C.34:1B-335).**】** (Deleted by
23 amendment, P.L. , c. (pending before the Legislature as this bill)

24 b. Notwithstanding any provision of P.L.2020, c.156
25 (C.34:1B-269 et al.) to the contrary, if a completed application for a
26 residential project is submitted to the authority on or before the
27 121st calendar day next following effective date of P.L.2023, c.98
28 (C.34:1B-335.1 et al.), the applicant for the residential project has
29 received all applicable approvals pursuant to the "Municipal Land
30 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) on or before the
31 121st calendar day next following the effective date of P.L.2023,
32 c.98 (C.34:1B-335.1 et al.), and the applicant submits written notice
33 to the authority, before the authority's approval or denial of the
34 application, electing for the application to be governed under the
35 provisions of this subsection, then the residential units constructed
36 for occupancy by low- and moderate-income households within the
37 residential project shall not be subject to the affordability controls
38 adopted by the authority, in consultation with the agency, pursuant
39 to paragraph (2) of subsection a. of section 56 of P.L.2020, c.156
40 (C.34:1B-324) and subsection b. of section 67 of P.L.2020, c.156
41 (C.34:1B-335). In this event, the application for the residential
42 project shall be reviewed, approved, and administered in accordance
43 with the provisions of the "New Jersey Aspire Program Act,"
44 sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through
45 34:1B-335), as such provisions remained in effect immediately
46 before the effective date of P.L.2023, c.98 (C.34:1B-335.1 et al.),
47 including the rules and regulations adopted pursuant to subsection

1 a. of section 67 of P.L.2020, c.156 (C.34:1B-335), except that the
2 application shall be subject to:

3 (1) the determination of a reasonable and appropriate return on
4 investment, as defined in section 55 of P.L.2020, c.156
5 (C.34:1B-323), as amended by P.L.2023, c.98 (C.34:1B-335.1 et
6 al.); and

7 (2) the limitation on tax credit awards set forth in subsection b.
8 of section 61 of P.L.2020, c.156 (C.34:1B-329) and subsection g. of
9 section 65 of P.L.2020, c.156 (C.34:1B-333), respectively, as
10 amended by P.L.2023, c.98 (C.34:1B-335.1 et al.).

11 (cf: P.L.2023, c.98, s.14)

12

13 10. (New section) The authority shall promulgate a schedule of
14 application and other fees imposed under the program, which fees
15 shall be limited to the coverage of actual direct costs of
16 administering the program, the coverage of reasonable indirect costs
17 of administering the program, and the maintenance of reasonable
18 reserves for administering the program. Any application fee or
19 other fee charged by the authority shall be proportional to the tax
20 credit amount awarded for a redevelopment project under the
21 program.

22

23 11. (New section) a. The authority shall establish, as part of the
24 program, a "Redevelopment Project Bridge Financing Program" to
25 facilitate the ability of a developer to secure financing for a
26 redevelopment project until such time as tax credits are issued
27 pursuant to the "New Jersey Aspire Program Act," sections 54
28 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335),
29 as amended as supplemented. Through the program, the authority
30 shall provide full or partial loans or loan guarantees, at the
31 authority's discretion, to the developers of redevelopment projects
32 for the purpose of ensuring the completion of the redevelopment
33 projects. As determined by the authority, the Redevelopment
34 Project Bridge Financing Program may consist of:

35 (1) the issuance of redevelopment project bridge financing
36 loans, subject to the provisions of subsection b. of this section; and

37 (2) the provision of redevelopment project loan guarantees,
38 subject to the provisions of subsection c. of this section.

39 b. (1) The authority may issue a redevelopment project bridge
40 financing loan to the developer of an approved redevelopment
41 project, upon application by the developer, provided that the
42 authority determines that:

43 (a) a project financing gap continues to exist after the award of
44 tax credits to the developer of the redevelopment project; and

45 (b) the redevelopment project bridge financing loan will enable
46 the completion of the redevelopment project.

1 (2) A developer who seeks a redevelopment project bridge
2 financing loan shall submit an application to the authority, which
3 application shall include:

- 4 (a) a proposed loan principle and interest amount;
- 5 (b) a proposed repayment schedule;
- 6 (c) an accounting of the remaining project financing gap; and
- 7 (d) any other information as the authority shall require.

8 (3) The authority may issue the redevelopment project bridge
9 financing loan in such amount as it deems appropriate, subject to
10 such terms, including, but not limited to, interest rates, collateral,
11 and repayment or release schedules, as the authority shall deem
12 reasonable and appropriate.

13 c. (1) The authority may provide a loan guarantee to the
14 developer of an approved redevelopment project, upon application
15 by the developer, provided that the authority determines that:

16 (a) a project financing gap continues to exist after the initial
17 award of tax credits to the developer of the redevelopment project;
18 and

19 (b) the loan guarantee will enable the developer to access the
20 financing needed to complete the redevelopment project.

21 (2) A developer who seeks a loan guarantee shall submit an
22 application to the authority, which application shall include:

- 23 (a) a proposed loan guarantee amount and terms;
- 24 (b) an accounting of the remaining project financing gap; and
- 25 (c) any other information as the authority shall require.

26 (3) The authority may issue the loan guarantees in such amounts
27 as it deems appropriate, subject to such terms as the authority
28 deems reasonable and appropriate.

29 d. (1) The authority shall establish a Redevelopment Project
30 Bridge Financing Revolving Fund from which the authority shall
31 provide all loans issued pursuant to subsection b. of this section and
32 provide all loan guarantees issued pursuant to subsection c. of this
33 section. All monies received from payments of the principle and
34 interest for loans issued pursuant to this section shall be deposited
35 into the Redevelopment Project Bridge Financing Revolving Fund,
36 which fund shall remain until the authority determines that there no
37 longer remains a need for bridge financing or until December 31,
38 2028, whichever occurs first. After the fund is no longer needed, or
39 upon its expiration, all monies in the fund shall be deposited into
40 the General Fund.

41 (2) Within 90 days after the effective date of P.L. ,
42 c. (C.) (pending before the Legislature as this bill), the
43 authority shall submit a recommendation to the Governor and to the
44 Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
45 19.1), for the amount of appropriations needed to fund the
46 Redevelopment Project Bridge Financing Program.

1 12. (New section) a. To facilitate the efficient monetization of
2 tax credits awarded under the program, the Department of the
3 Treasury shall, at such times as the department deems necessary,
4 redeem the tax credits awarded to a developer for a redevelopment
5 project at a discount from face value. The tax credit redemptions
6 shall be made at such discounts as the State Treasurer deems
7 appropriate, except that the discount shall not exceed 10 percent of
8 the face value of the tax credits.

9 b. The tax credit redemptions shall be paid in the same manner
10 as refunds of tax payable under section 5 of P.L.1945, c.162
11 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and
12 C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or
13 N.J.S.17B:23-5, notwithstanding that such tax is not applicable to
14 the person or entity seeking the redemption. The State Treasurer
15 shall allow the proceeds of the tax credit redemption to be issued
16 over one or more tax periods, but not to exceed the applicable
17 eligibility period.

18
19 13. Section 89 of P.L.2020, c.156 (C.52:18A-263) is amended to
20 read as follows:

21 89. a. The Director of the Division of Taxation in the
22 Department of the Treasury may purchase unused tax credits
23 awarded under a program listed in subsection b. of this section,
24 including tax credit transfer certificates issued by the director in
25 lieu of a tax credit allowed under such programs. The director shall
26 not pay consideration in excess of 75 percent of the credit amount
27 to be purchased, except for a credit awarded under:

28 (1) the "Emerge Program Act," sections 68 through 81 of
29 P.L.2020, c.156 (C.34:1B-336 et al.), which shall be subject to the
30 provisions of paragraph (4) of subsection d. of section 77 of
31 P.L.2020, c.156 (C.34:1B-345); or

32 (2) the "New Jersey Aspire Program Act," sections 54 through
33 67 (C.34:1B-222 through C.34:1B-335), as amended and
34 supplemented, which shall be subject to the provisions of section 12
35 of P.L. , c. (C.) (pending before the Legislature as this
36 bill).

37 b. The Director of the Division of Taxation in the Department
38 of the Treasury may purchase tax credits awarded under the
39 following:

40 (1) the "Historic Property Reinvestment Act," sections 1 through
41 8 of P.L.2020, c.156 (C.34:1B-269 through C.34:1B-276);

42 (2) the "Brownfield Redevelopment Incentive Program Act,"
43 sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through
44 C.34:1B-287);

45 (3) the "New Jersey Innovation Evergreen Act," sections 20
46 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302);

47 (4) the "Food Desert Relief Act," sections 35 through 42 of
48 P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310);

- 1 (5) the "New Jersey Community-Anchored Development Act,"
2 sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through
3 C.34:1B-321);
- 4 (6) the "New Jersey Aspire Program Act," sections 54 through
5 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335);
- 6 (7) the " Emerge Program Act," sections 68 through 81 of
7 P.L.2020, c.156 (C.34:1B-336 et al.);
- 8 (8) the Grow New Jersey Assistance Program established
9 pursuant to section 3 of P.L.2011, c.149 (C.34:1B-244);
- 10 (9) section 6 of P.L.2010, c.57 (C.34:1B-209.4);
- 11 (10)the State Economic Redevelopment and Growth Grant
12 program established pursuant to section 5 of P.L.2009, c.90
13 (C.52:27D-489e);
- 14 (11)section 1 of P.L.2018, c.56 (C.54:10A-5.39b); and
- 15 (12)section 2 of P.L.2018, c.56 (C.54A:4-12b).
- 16 (cf: P.L.2020, c.156, s.89)

17

18 14. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to
19 read as follows:

20 4. For the purposes of this act, unless the context requires a
21 different meaning:

22 (a) "Commissioner" or "director" shall mean the Director of the
23 Division of Taxation of the State Department of the Treasury.

24 (b) "Allocation factor" shall mean the proportionate part of a
25 taxpayer's net worth or entire net income used to determine a
26 measure of its tax under this act.

27 (c) "Corporation" shall mean any corporation, joint-stock
28 company or association and any business conducted by a trustee or
29 trustees wherein interest or ownership is evidenced by a certificate
30 of interest or ownership or similar written instrument, any other
31 entity classified as a corporation for federal income tax purposes,
32 and any state or federally chartered building and loan association or
33 savings and loan association.

34 (d) "Net worth" shall mean the aggregate of the values disclosed
35 by the books of the corporation for (1) issued and outstanding
36 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
37 undivided profits, and (4) surplus reserves which can reasonably be
38 expected to accrue to holders or owners of equitable shares, not
39 including reasonable valuation reserves, such as reserves for
40 depreciation or obsolescence or depletion. Notwithstanding the
41 foregoing, net worth shall not include any deduction for the amount
42 of the excess depreciation described in paragraph (2) (F) of
43 subsection (k) of this section. The foregoing aggregate of values
44 shall be reduced by 50% of the amount disclosed by the books of
45 the corporation for investment in the capital stock of one or more
46 subsidiaries, which investment is defined as ownership (1) of at
47 least 80% of the total combined voting power of all classes of stock
48 of the subsidiary entitled to vote and (2) of at least 80% of the total

1 number of shares of all other classes of stock except nonvoting
2 stock which is limited and preferred as to dividends. In the case of
3 investment in an entity organized under the laws of a foreign
4 country, the foregoing requisite degree of ownership shall effect a
5 like reduction of such investment from the net worth of the
6 taxpayer, if the foreign entity is considered a corporation for any
7 purpose under the United States federal income tax laws, such as
8 (but not by way of sole examples) for the purpose of supplying
9 deemed paid foreign tax credits or for the purpose of status as a
10 controlled foreign corporation. In calculating the net worth of a
11 taxpayer entitled to reduction for investment in subsidiaries, the
12 amount of liabilities of the taxpayer shall be reduced by such
13 proportion of the liabilities as corresponds to the ratio which the
14 excluded portion of the subsidiary values bears to the total assets of
15 the taxpayer.

16 In the case of banking corporations which have international
17 banking facilities as defined in subsection (n), the foregoing
18 aggregate of values shall also be reduced by retained earnings of the
19 international banking facility. Retained earnings means the earnings
20 accumulated over the life of such facility and shall not include the
21 distributive share of dividends paid and federal income taxes paid
22 or payable during the tax year.

23 If in the opinion of the director, the corporation's books do not
24 disclose fair valuations the director may make a reasonable
25 determination of the net worth which, in his opinion, would reflect
26 the fair value of the assets, exclusive of subsidiary investments as
27 defined aforesaid, carried on the books of the corporation, in
28 accordance with sound accounting principles, and such
29 determination shall be used as net worth for the purpose of this act.

30 (e) (Deleted by amendment, P.L.1998, c.114.)

31 (f) "Investment company" shall mean any corporation whose
32 business during the period covered by its report consisted, to the
33 extent of at least 90 percent thereof of holding, investing and
34 reinvesting in stocks, bonds, notes, mortgages, debentures, patents,
35 patent rights and other securities for its own account, but this shall
36 not include any corporation which: (1) is a merchant or a dealer of
37 stocks, bonds and other securities, regularly engaged in buying the
38 same and selling the same to customers; or (2) had less than 90
39 percent of its average gross assets in New Jersey, at cost, invested
40 in stocks, bonds, debentures, mortgages, notes, patents, patent rights
41 or other securities or consisting of cash on deposit during the period
42 covered by its report; or (3) is a banking corporation, a savings
43 institution, or a financial business corporation as defined in the
44 Corporation Business Tax Act.

45 (g) "Regulated investment company" shall mean any corporation
46 which for a period covered by its report, is registered and regulated
47 under the Investment Company Act of 1940 (54 Stat. 789), as
48 amended.

1 (h) "Taxpayer" shall mean any corporation, any combined group
2 filing a mandatory or elective New Jersey combined return, and any
3 partnership required, or consenting, to report or to pay taxes,
4 interest or penalties under this act. "Taxpayer" shall not include a
5 partnership that is listed on a United States national stock exchange.

6 (i) "Fiscal year" shall mean an accounting period ending on any
7 day other than the last day of December on the basis of which the
8 taxpayer is required to report for federal income tax purposes.

9 (j) Except as herein provided, "privilege period" shall mean the
10 calendar or fiscal accounting period for which a tax is payable
11 under this act.

12 (k) "Entire net income" shall mean total net income from all
13 sources, whether within or without the United States, and shall
14 include the gain derived from the employment of capital or labor, or
15 from both combined, as well as profit gained through a sale or
16 conversion of capital assets.

17 For the purpose of this act, the amount of a taxpayer's entire net
18 income shall be deemed prima facie to be equal in amount to the
19 taxable income, before net operating loss deduction and special
20 deductions, which the taxpayer is required to report, or, if the
21 taxpayer is classified as a partnership for federal tax purposes,
22 would otherwise be required to report, to the United States Treasury
23 Department for the purpose of computing its federal income tax,
24 provided however, that in the determination of such entire net
25 income,

26 (1) Entire net income shall exclude for the periods set forth in
27 paragraph (2)(F)(i) of this subsection, any amount, except with
28 respect to qualified mass commuting vehicles as described in
29 section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect
30 immediately prior to January 1, 1984, which is included in a
31 taxpayer's federal taxable income solely as a result of an election
32 made pursuant to the provisions of paragraph (8) of that section.

33 (2) Entire net income shall be determined without the exclusion,
34 deduction or credit of:

35 (A) The amount of any exemption or credit allowed in any law
36 of the United States imposing any tax on or measured by the income
37 of corporations.

38 (B) Any part of any income from dividends or interest on any
39 kind of stock, securities or indebtedness, except as provided in
40 paragraph (5) of subsection (k) of this section.

41 (C) Taxes paid or accrued to the United States, a possession or
42 territory of the United States, a state, a political subdivision thereof,
43 or the District of Columbia, or to any foreign country, state,
44 province, territory or subdivision thereof, on or measured by profits
45 or income, or business presence or business activity, or the tax
46 imposed by this act, or any tax paid or accrued with respect to
47 subsidiary dividends excluded from entire net income as provided
48 in paragraph (5) of subsection (k) of this section.

1 (D) (Deleted by amendment, P.L.1985, c.143.)

2 (E) (Deleted by amendment, P.L.1995, c.418.)

3 (F) (i) The amount by which depreciation reported to the United
4 States Treasury Department for property placed in service on and
5 after January 1, 1981, but prior to taxpayer fiscal or calendar
6 accounting years beginning on and after the effective date of
7 P.L.1993, c.172, for purposes of computing federal taxable income
8 in accordance with section 168 of the Internal Revenue Code in
9 effect after December 31, 1980, exceeds the amount of depreciation
10 determined in accordance with the Internal Revenue Code
11 provisions in effect prior to January 1, 1981, but only with respect
12 to a taxpayer's accounting period ending after December 31, 1981;
13 provided, however, that where a taxpayer's accounting period
14 begins in 1981 and ends in 1982, no modification shall be required
15 with respect to this paragraph (F) for the report filed for such period
16 with respect to property placed in service during that part of the
17 accounting period which occurs in 1981. The provisions of this
18 subparagraph shall not apply to assets placed in service prior to
19 January 1, 1998 of a gas, gas and electric, and electric public utility
20 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
21 seq.) prior to 1998.

22 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
23 (2) of this subsection, any amount, except with respect to qualified
24 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
25 the Internal Revenue Code as in effect immediately prior to January
26 1, 1984, which the taxpayer claimed as a deduction in computing
27 federal income tax pursuant to a qualified lease agreement under
28 paragraph (8) of that section.

29 The director shall promulgate rules and regulations necessary to
30 carry out the provisions of this section, which rules shall provide,
31 among others, the manner in which the remaining life of property
32 shall be reported.

33 (G) (i) The amount of any civil, civil administrative, or criminal
34 penalty or fine, including a penalty or fine under an administrative
35 consent order, assessed and collected for a violation of a State or
36 federal environmental law, an administrative consent order, or an
37 environmental ordinance or resolution of a local governmental
38 entity, and any interest earned on the penalty or fine, and any
39 economic benefits having accrued to the violator as a result of a
40 violation, which benefits are assessed and recovered in a civil, civil
41 administrative, or criminal action, or pursuant to an administrative
42 consent order. The provisions of this paragraph shall not apply to a
43 penalty or fine assessed or collected for a violation of a State or
44 federal environmental law, or local environmental ordinance or
45 resolution, if the penalty or fine was for a violation that resulted
46 from fire, riot, sabotage, flood, storm event, natural cause, or other
47 act of God beyond the reasonable control of the violator, or caused

1 by an act or omission of a person who was outside the reasonable
2 control of the violator.

3 (ii) The amount of treble damages paid to the Department of
4 Environmental Protection pursuant to subsection a. of section 7 of
5 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
6 department in removing, or arranging for the removal of, an
7 unauthorized discharge upon failure of the discharger to comply
8 with a directive from the department to remove, or arrange for the
9 removal of, the discharge.

10 (H) The amount of any sales and use tax paid by a utility vendor
11 pursuant to section 71 of P.L.1997, c.162.

12 (I) With respect to privilege periods ending before July 31,
13 2023, interest paid, accrued or incurred for the privilege period to a
14 related member, as defined in section 5 of P.L.2002, c.40
15 (C.54:10A-4.4), except that a deduction shall be permitted to the
16 extent that the taxpayer establishes by clear and convincing
17 evidence, as determined by the director, that: (i) a principal purpose
18 of the transaction giving rise to the payment of the interest was not
19 to avoid taxes otherwise due under Title 54 of the Revised Statutes
20 or Title 54A of the New Jersey Statutes, (ii) the interest is paid
21 pursuant to arm's length contracts at an arm's length rate of interest,
22 and (iii)(aa) the related member was subject to a tax on its net
23 income or receipts in this State or another state or possession of the
24 United States or in a foreign nation, (bb) a measure of the tax
25 includes the interest received from the related member, and (cc) the
26 rate of tax applied to the interest received by the related member is
27 equal to or greater than a rate three percentage points less than the
28 rate of tax applied to taxable interest by this State pursuant to
29 section 5 of P.L.1945, c.162 (C.54:10A-5).

30 With respect to privilege periods ending before July 31, 2023, a
31 deduction shall also be permitted if the taxpayer establishes by clear
32 and convincing evidence, as determined by the director, that the
33 disallowance of a deduction is unreasonable, or the taxpayer and the
34 director agree in writing to the application or use of an alternative
35 method of apportionment under section 8 of P.L.1945, c.162
36 (C.54:10A-8); nothing in this subsection shall be construed to limit
37 or negate the director's authority to otherwise enter into agreements
38 and compromises otherwise allowed by law.

39 With respect to privilege periods ending before July 31, 2023, a
40 deduction shall also be permitted to the extent that the taxpayer
41 establishes by a preponderance of the evidence, as determined by
42 the director, that the interest is directly or indirectly paid, accrued
43 or incurred to (i) a related member in a foreign nation which has in
44 force a comprehensive income tax treaty with the United States and
45 the related member (aa) was subject to tax in the foreign nation on a
46 tax base that included the payment paid, accrued, or incurred; and
47 (bb) under which the related member's income received from the
48 transaction was taxed at an effective tax rate equal to or greater than

1 a rate of three percentage points less than the rate of tax applied to
2 taxable interest by the State of New Jersey pursuant to section 5 of
3 P.L.1945, c.162 (C.54:10A-5), provided however that the taxpayer
4 shall disclose on its return for the privilege period the name of the
5 related member, the amount of the interest, the relevant foreign
6 nation, and such other information as the director may prescribe or
7 (ii) to an independent lender and the taxpayer guarantees the debt
8 on which the interest is required. The adjustments required by this
9 subparagraph shall not apply to transactions between related
10 members included in a combined group reported on a New Jersey
11 combined return.

12 (J) (i) Amounts deducted for federal tax purposes pursuant to
13 section 199 of the federal Internal Revenue Code of 1986, 26
14 U.S.C. s.199, except that this exclusion shall not apply to amounts
15 deducted pursuant to that section that are exclusively based upon
16 domestic production gross receipts of the taxpayer which are
17 derived only from any lease, rental, license, sale, exchange, or other
18 disposition of qualifying production property which the taxpayer
19 demonstrates to the satisfaction of the director was manufactured or
20 produced by the taxpayer in whole or in significant part within the
21 United States but not qualified production property that was grown
22 or extracted by the taxpayer. "Manufactured or produced" as used in
23 this paragraph shall be limited to performance of an operation or
24 series of operations the object of which is to place items of tangible
25 personal property in a form, composition, or character different
26 from that in which they were acquired. The change in form,
27 composition, or character shall be a substantial change, and result in
28 a transformation of property into a different or substantially more
29 usable product.

30 (ii) For privilege periods beginning after December 31, 2017,
31 notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-1 et
32 seq.) or any other law to the contrary, for the purposes of
33 determining the amount of income pursuant to P.L.1945, c.162
34 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be
35 taken as a deduction pursuant to section 199A of the Internal
36 Revenue Code (26 U.S.C. s.199A).

37 (K) (i) For privilege periods beginning after December 31, 2017
38 and ending before July 31, 2022, the interest deduction limitation in
39 subsection (j) of section 163 of the Internal Revenue Code
40 (26 U.S.C. s.163), shall apply on a pro-rata basis to interest paid to
41 both related and unrelated parties, regardless of whether the related
42 parties are subject to the add-back provision of either subparagraph
43 (I) of paragraph (2) of this subsection or in section 5 of P.L.2002,
44 c.40 (C.54:10A-4.4).

45 (ii) For privilege periods beginning after December 31, 2017
46 and ending on and after July 31, 2022, the interest deduction
47 limitation in subsection (j) of section 163 of the Internal Revenue
48 Code (26 U.S.C. s.163), shall apply to a combined group as though

1 the combined group filed a federal consolidated return; provided,
2 however, for the purposes of applying the limitation in subsection
3 (j) of section 163 of the Internal Revenue Code (26 U.S.C. s.163),
4 with regard to affiliates that were members of the federal
5 consolidated return but were not members of the combined group
6 included on the New Jersey combined return, the combined group
7 and the affiliates will also be treated as having filed one federal
8 consolidated return.

9 (3) The director may, whenever necessary to properly reflect the
10 entire net income of any taxpayer, determine the year or period in
11 which any item of income or deduction shall be included, without
12 being limited to the method of accounting employed by the
13 taxpayer.

14 (4) There shall be allowed as a deduction from entire net income
15 of a banking corporation, to the extent not deductible in
16 determining federal taxable income, the eligible net income of an
17 international banking facility determined as follows:

18 (A) The eligible net income of an international banking facility
19 shall be the amount remaining after subtracting from the eligible
20 gross income the applicable expenses;

21 (B) Eligible gross income shall be the gross income derived by
22 an international banking facility, which shall include, but not be
23 limited to, gross income derived from:

24 (i) Making, arranging for, placing or carrying loans to foreign
25 persons, provided, however, that in the case of a foreign person
26 which is an individual, or which is a foreign branch of a domestic
27 corporation (other than a bank), or which is a foreign corporation or
28 foreign partnership which is controlled by one or more domestic
29 corporations (other than banks), domestic partnerships or resident
30 individuals, all the proceeds of the loan are for use outside of the
31 United States;

32 (ii) Making or placing deposits with foreign persons which are
33 banks or foreign branches of banks (including foreign subsidiaries)
34 or foreign branches of the taxpayers or with other international
35 banking facilities;

36 (iii) Entering into foreign exchange trading or hedging
37 transactions related to any of the transactions described in this
38 paragraph; or

39 (iv) Such other activities as an international banking facility
40 may, from time to time, be authorized to engage in;

41 (C) Applicable expenses shall be any expense or other
42 deductions attributable, directly or indirectly, to the eligible gross
43 income described in subparagraph (B) of this paragraph.

44 (5) (A) (i) Entire net income shall exclude 100% of dividends
45 which were included in computing such taxable income for federal
46 income tax purposes, paid to the taxpayer by one or more
47 subsidiaries owned by the taxpayer to the extent of the 80% or more

1 ownership of investment described in subsection (d) of this section
2 for privilege periods beginning on or before December 31, 2016.

3 (ii) For privilege periods beginning after December 31, 2016
4 and before January 1, 2019, entire net income shall exclude 95% of
5 dividends which were included in computing such taxable income
6 for federal income tax purposes, paid or deemed paid, to the
7 taxpayer by one or more subsidiaries owned by the taxpayer to the
8 extent of the 80% or more ownership of investment described in
9 subsection (d) of this section. For the purposes of calculating the
10 tax liability owed for the paid or deemed paid dividends included in
11 entire net income by this subsubparagraph (ii), the taxpayer shall
12 use either their three-year average allocation factor for the
13 taxpayer's 2014 through 2016 tax years reported on the taxpayer's
14 tax returns or 3.5 percent, whichever is lower.

15 (iii) For privilege periods beginning on and after January 1, 2019
16 and ending before July 31, 2023, entire net income shall exclude
17 95% of dividends which were included in computing such taxable
18 income for federal income tax purposes, paid or deemed paid to the
19 taxpayer by one or more subsidiaries owned by the taxpayer to the
20 extent of the 80% or more ownership of investment described in
21 subsection (d) of this section.

22 (iv) For privilege periods ending on and after July 31, 2023,
23 entire net income shall exclude 100 percent of dividends and
24 deemed dividends that were included in computing such taxable
25 income for federal income tax purposes, paid or deemed paid to the
26 taxpayer by one or more subsidiaries owned by the taxpayer to the
27 extent of the 80 percent or more ownership of investment described
28 in subsection (d) of this section.

29 (B) Entire net income shall exclude 50% of dividends which
30 were included in computing such taxable income for federal income
31 tax purposes, paid or deemed paid to the taxpayer by one or more
32 subsidiaries owned by the taxpayer to the extent of 50% or more
33 ownership of investment, such ownership of investment calculated
34 in the same manner as the 80% or more of ownership of investment
35 is calculated as described in subsection (d) of this section.

36 (C) To the extent a subsidiary received dividends from other
37 subsidiaries and included those dividends in its entire net income
38 for the purposes of determining its tax liability pursuant to section 5
39 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,
40 the taxpayer receiving those same dividends from the subsidiary
41 shall exclude those dividends from its entire net income based on
42 the subsidiary's allocation factor used by the subsidiary in
43 determining its tax liability pursuant to section 5 of P.L.1945, c.162
44 (C.54:10A-5). This subparagraph (C) shall not apply to privilege
45 periods ending on and after July 31, 2019.

46 (D) For privilege periods ending on and after July 31, 2019 but
47 before July 31, 2020, to the extent a subsidiary received dividends
48 from other subsidiaries and included those dividends in its entire net

1 income for the purposes of determining its tax liability pursuant to
2 section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those
3 dividends, the taxpayer receiving those same dividends from the
4 subsidiary shall exclude those dividends from its entire net income.

5 (E) For privilege periods ending on and after July 31, 2020, for
6 purposes of this paragraph (5), the members of a combined group
7 filing a New Jersey combined return shall be treated as one taxpayer
8 with regard to dividends and deemed dividends that were received
9 as part of the unitary business of the combined group.

10 (F) For privilege periods ending on and after July 31, 2023:

11 (i) The exclusion provided by this paragraph (5) shall be
12 deducted from entire net income after the State modifications that
13 increase federal entire net income but before the other State
14 modifications that reduce entire net income and before the
15 allocation of entire net income to this State.

16 (ii) In computing the total amount of the dividends and deemed
17 dividends excluded by this paragraph (5) for privilege periods
18 ending on and after July 31, 2023, the amount of dividends and
19 deemed dividends excluded shall be reduced by the amount of the
20 expenses and deductions that are attributable to those dividends and
21 deemed dividends. For purposes of this paragraph (5), expenses
22 and deductions related to dividends shall equal five percent of all
23 dividends and deemed dividends received by a taxpayer during an
24 income year.

25 (G) For privilege periods ending on and after July 31, 2023, for
26 the purposes of this paragraph (5) and for subsection d. of section
27 18 of P.L.2018, c.48 (C.54:10A-4.6), the income amounts required
28 to be included in federal taxable income pursuant to 26 U.S.C.
29 s.951A, shall be considered a dividend.

30 (6) (A) Net operating loss deduction. For privilege periods
31 ending before July 31, 2019, there shall be allowed as a deduction
32 for the privilege period the net operating loss carryover to that
33 period.

34 (B) Net operating loss carryover. A net operating loss for any
35 privilege period ending after June 30, 1984 shall be a net operating
36 loss carryover to each of the seven privilege periods following the
37 period of the loss and a net operating loss for any privilege period
38 ending after June 30, 2009 shall be a net operating loss carryover to
39 each of the twenty privilege periods following the period of the
40 loss. The entire amount of the net operating loss for any privilege
41 period (the "loss period") shall be carried to the earliest of the
42 privilege periods to which the loss may be carried. The portion of
43 the loss which shall be carried to each of the other privilege periods
44 shall be the excess, if any, of the amount of the loss over the sum of
45 the entire net income, computed without the exclusions permitted in
46 paragraphs (4) and (5) of this subsection or the net operating loss
47 deduction provided by subparagraph (A) of this paragraph, for each
48 of the prior privilege periods to which the loss may be carried.

1 (C) Net operating loss. For purposes of this paragraph the term
2 "net operating loss" means the excess of the deductions over the
3 gross income used in computing entire net income without the net
4 operating loss deduction provided for in subparagraph (A) of this
5 paragraph and the exclusions in paragraphs (4) and (5) of this
6 subsection.

7 (D) Change in ownership. Where there is a change in 50% or
8 more of the ownership of a corporation because of redemption or
9 sale of stock and the corporation changes the trade or business
10 giving rise to the loss, no net operating loss sustained before the
11 changes may be carried over to be deducted from income earned
12 after such changes. In addition where the facts support the premise
13 that the corporation was acquired under any circumstances for the
14 primary purpose of the use of its net operating loss carryover, the
15 director may disallow the carryover.

16 (E) Notwithstanding the provisions of this paragraph (6) of
17 subsection (k) of this section to the contrary, for privilege periods
18 beginning during calendar year 2002 and calendar year 2003, no
19 deduction for any net operating loss carryover shall be allowed and
20 for privilege periods beginning during calendar year 2004 and
21 calendar year 2005, there shall be allowed as a deduction for the
22 privilege period so much of the net operating loss carryover as
23 reduces entire net income otherwise calculated by 50%. If and only
24 to the extent that any net operating loss carryover deduction is
25 disallowed by reason of this subparagraph (E), the date on which
26 the amount of the disallowed net operating loss carryover deduction
27 would otherwise expire shall be extended by a period equal to the
28 period for which application of the net operating loss was
29 disallowed by this subparagraph.

30 Provided, that this subparagraph (E) shall not restrict the
31 surrender or acquisition of corporation business tax benefit
32 certificates pursuant to section 1 of P.L.1997, c.334
33 (C.34:1B-7.42a) and shall not restrict the application of corporation
34 business tax benefit certificates pursuant to section 2 of P.L.1997,
35 c.334 (C.54:10A-4.2).

36 (F) Reduction for discharge of indebtedness. A net operating
37 loss for any privilege period ending after June 30, 2014, and any net
38 operating loss carryover to such privilege period, shall be reduced
39 by the amount excluded from federal taxable income under
40 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
41 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),
42 for the privilege period of the discharge of indebtedness.

43 (7) The entire net income of gas, electric and gas and electric
44 public utilities that were subject to, or would have been subject to
45 tax if doing business in this State, the provisions of P.L.1940, c.5
46 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
47 substituting the New Jersey depreciation allowance for federal tax
48 depreciation with respect to assets placed in service prior to January

1 1, 1998. For gas, electric, and gas and electric public utilities that
2 were subject to, or would have been subject to tax if doing business
3 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
4 prior to 1998, the New Jersey depreciation allowance shall be
5 computed as follows: All depreciable assets placed in service prior
6 to January 1, 1998 shall be considered a single asset account. The
7 New Jersey tax basis of this depreciable asset account shall be an
8 amount equal to the carryover adjusted basis for federal income tax
9 purposes on December 31, 1997 of all depreciable assets in service
10 on December 31, 1997, increased by the excess, of the "net carrying
11 value," defined to be adjusted book basis of all assets and liabilities,
12 excluding deferred income taxes, recorded on the public utility's
13 books of account on December 31, 1997, over the carryover
14 adjusted basis for federal income tax purposes on December 31,
15 1997 of all assets and liabilities owned by the gas, electric, or gas
16 and electric public utility as of December 31, 1997. "Books of
17 account" for gas, gas and electric, and electric public utilities means
18 the uniform system of accounts as promulgated by the Federal
19 Energy Regulatory Commission and adopted by the Board of Public
20 Utilities. The following adjustments to entire net income shall be
21 made pursuant to this section:

22 (A) Depreciation for property placed in service prior to January
23 1, 1998 shall be adjusted as follows:

24 (i) Depreciation for federal income tax purposes shall be
25 disallowed in full.

26 (ii) A deduction shall be allowed for the New Jersey
27 depreciation allowance. The New Jersey depreciation allowance
28 shall be computed for the single asset account described above
29 based on the New Jersey tax basis as adjusted above as if all assets
30 in the single asset account were first placed in service on January 1,
31 1998. Depreciation shall be computed using the straight line method
32 over a thirty-year life. A full year's depreciation shall be allowed in
33 the initial tax year. No half-year convention shall apply. The
34 depreciable basis of the single account shall be reduced by the
35 adjusted federal tax basis of assets sold, retired, or otherwise
36 disposed of during any year on which gain or loss is recognized for
37 federal income tax purposes as described in subparagraph (B) of
38 this paragraph.

39 (B) Gains and losses on sales, retirements and other dispositions
40 of assets placed in service prior to January 1, 1998 shall be
41 recognized and reported on the same basis as for federal income tax
42 purposes.

43 (C) The Director of the Division of Taxation shall promulgate
44 regulations describing the methodology for allocating the single
45 asset account in the event that a portion of the utility's operations
46 are separated, spun-off, transferred to a separate company or
47 otherwise desegregated.

1 (8) In the case of taxpayers that are gas, electric, gas and
2 electric, or telecommunications public utilities as defined pursuant
3 to subsection (q) of this section, the director shall have authority to
4 promulgate rules and issue guidance correcting distortions and
5 adjusting timing differences resulting from the adoption of
6 P.L.1997, c.162 (C.54:10A-5.25 et al.).

7 (9) Notwithstanding paragraph (1) of this subsection, entire net
8 income shall not include the income derived by a corporation
9 organized in a foreign country from the international operation of a
10 ship or ships, or from the international operation of aircraft, if such
11 income is exempt from federal taxation pursuant to section 883 of
12 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

13 (10)Entire net income shall exclude all income of an alien
14 corporation the activities of which are limited in this State to
15 investing or trading in stocks and securities for its own account,
16 investing or trading in commodities for its own account, or any
17 combination of those activities, within the meaning of section 864
18 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in
19 effect on December 31, 1998. Notwithstanding the previous
20 sentence, if an alien corporation undertakes one or more infrequent,
21 extraordinary or non-recurring activities, including but not limited
22 to the sale of tangible property, only the income from such
23 infrequent, extraordinary or non-recurring activity shall be subject
24 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
25 seq.), and that amount of income subject to tax shall be determined
26 without regard to the allocation to that specific transaction of any
27 general business expense of the taxpayer and shall be specifically
28 assigned to this State for taxation by this State without regard to
29 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this
30 paragraph, "alien corporation" means a corporation organized under
31 the laws of a jurisdiction other than the United States or its political
32 subdivisions.

33 (11)No deduction shall be allowed for research and experimental
34 expenditures, to the extent that those research and experimental
35 expenditures are qualified research expenses or basic research
36 payments for which an amount of credit is claimed pursuant to
37 section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research
38 and experimental expenditures are also used to compute a federal
39 credit claimed pursuant to section 41 of the federal Internal
40 Revenue Code of 1986, 26 U.S.C. s.41; provided, however, for
41 privilege periods beginning on and after January 1, 2022, a
42 deduction for research and experimental expenditures shall be
43 allowed during the same privilege period for which a credit is
44 claimed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24),
45 notwithstanding the timing schedule required by the federal Internal
46 Revenue Code of 1986, 26 U.S.C. s.174, for the deduction of
47 specified research and experimental expenditures.

1 (12)(A) Notwithstanding the provisions of subsection (k) of
2 section 168 of the federal Internal Revenue Code of 1986, 26
3 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
4 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
5 law, for property acquired after September 10, 2001, the
6 depreciation deduction otherwise allowed pursuant to section 167 of
7 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
8 be determined pursuant to the provisions of the federal Internal
9 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
10 December 31, 2001.

11 (B) The director shall prescribe the rules and regulations
12 necessary to carry out the provisions of this paragraph, including,
13 among others, those for determining the adjusted basis of the
14 acquired property for the purposes of the Corporation Business Tax
15 Act (1945), P.L.1945, c.162.

16 (13)(A) Notwithstanding the provisions of section 179 of the
17 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
18 property placed in service on or after January 1, 2004, the costs that
19 a taxpayer may otherwise elect to treat as an expense which is not
20 chargeable to a capital account shall be determined pursuant to the
21 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.
22 s.1 et seq.) in effect on December 31, 2002.

23 (B) The director shall prescribe the rules and regulations
24 necessary to carry out the provisions of this paragraph, including,
25 among others, those for determining the adjusted basis of the
26 acquired property for the purposes of the Corporation Business Tax
27 Act (1945), P.L.1945, c.162.

28 (14)Notwithstanding the provisions of subsection (i) of section
29 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
30 for privilege periods beginning after December 31, 2008 and before
31 January 1, 2011, entire net income shall include the amount of
32 discharge of indebtedness income excluded for federal income tax
33 purposes pursuant to subsection (i) of section 108 of the federal
34 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
35 periods beginning on or after January 1, 2014 and before January 1,
36 2019, entire net income shall exclude the amount of discharge of
37 indebtedness income included for federal income tax purposes,
38 pursuant to subsection (i) of section 108 of the federal Internal
39 Revenue Code of 1986 (26 U.S.C. s.108).

40 (15)Entire net income shall exclude the gain or income derived
41 from the sale or assignment of a tax credit transfer certificate
42 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) **[and]**,
43 section 10 of P.L.2014, c.63 (C.34:1B-251), or the "New Jersey
44 Economic Recovery Act of 2020," P.L.2020, c.156 (C.34:1B-269 et
45 al.), as amended and supplemented.

46 (16)(A) There shall be allowed as a deduction an amount
47 computed in accordance with this paragraph.

1 (B) For purposes of this paragraph, "net deferred tax liability"
2 means deferred tax liabilities that exceed the deferred tax assets of
3 the combined group, as computed in accordance with generally
4 accepted accounting principles, and "net deferred tax asset" means
5 that deferred tax assets exceed the deferred tax liabilities of the
6 combined group, as computed in accordance with generally
7 accepted accounting principles.

8 (C) Only publicly traded companies, including affiliated
9 corporations participating in the filing of a publicly traded
10 company's financial statements prepared in accordance with
11 generally accepted accounting principles, as of the effective date of
12 this paragraph, shall be eligible for this deduction.

13 (D) If the provisions of sections 18 through 23 of P.L.2018, c.48
14 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to
15 the members' net deferred tax liability or an aggregate decrease to
16 the members' net deferred tax asset, or an aggregate change from a
17 net deferred tax asset to a net deferred tax liability, the combined
18 group shall be entitled to a deduction, as determined in this
19 paragraph.

20 (E) (i) Beginning with the combined group's first privilege
21 period on or after January 1 of the fifth year after the effective date
22 of P.L.2018, c.48 (C.54:10A-5.41 et al.), a combined group shall be
23 entitled to a deduction from combined group entire net income
24 equal to one-tenth of the amount necessary to offset the increase in
25 the net deferred tax liability or decrease in the net deferred tax
26 asset, or aggregate change from a net deferred tax asset to a net
27 deferred tax liability, according to the schedule provided by
28 subparagraphs (ii) and (iii) of this subparagraph (E). Such
29 increase in the net deferred tax liability or decrease in the net
30 deferred tax asset or the aggregate change from a net deferred tax
31 asset to a net deferred tax liability shall be computed based on the
32 change that would result from the imposition of the unitary
33 reporting requirements under sections 1 and 18 through 23 of
34 P.L.2018, c.48 (C.54:10A-5.41 and C.54:10A-4.6 to
35 C.54:10A-4.11) but for the deduction provided under this paragraph
36 as of the effective date of this paragraph.

37 (ii) For group privilege periods beginning on and after January
38 1, 2023, but before January 1, 2030, the combined group may
39 deduct one percent of the amount necessary to offset the increase in
40 the net deferred tax liability or decrease in the net deferred tax
41 asset, or aggregate change from a net deferred tax asset to a net
42 deferred tax liability, during a group privilege period. Such
43 increase in the net deferred tax liability or decrease in the net
44 deferred tax asset or the aggregate change from a net deferred tax
45 asset to a net deferred tax liability shall be computed based on the
46 change that would result from the imposition of the unitary
47 reporting requirements under sections 1 and 18 through 23 of
48 P.L.2018, c.48 (C.54:10A-5.41 and C.54:10A-4.6 to C.54:10A-

1 4.11) but for the deduction provided under this paragraph as of the
2 effective date of this paragraph.

3 (iii) For group privilege periods beginning on and after January
4 1, 2030, the combined group may deduct up to five percent of any
5 remaining unused amount of the deduction during the group
6 privilege period, until the group privilege period in which the total
7 deduction amount has been fully utilized. Such increase in the net
8 deferred tax liability or decrease in the net deferred tax asset or the
9 aggregate change from a net deferred tax asset to a net deferred tax
10 liability shall be computed based on the change that would result
11 from the imposition of the unitary reporting requirements under
12 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and
13 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided
14 under this paragraph as of the effective date of this paragraph.

15 (F) The deferred tax impact determined in subparagraph (E) of
16 this paragraph must be converted to the annual Deferred Tax
17 Deduction amount, as follows:

18 (i) the deferred tax impact determined in subparagraph (E) of
19 this paragraph shall be divided by the rate determined under section
20 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
21 c.48 (C.54:10A-5.41 et al.);

22 (ii) the resulting amount shall be further divided by the New
23 Jersey unitary business allocation factor that was used by the
24 combined group in the calculation of the deferred tax assets and
25 deferred tax liabilities as described in subparagraph (E) of this
26 paragraph;

27 (iii) the resulting amount represents the total net Deferred Tax
28 Deduction available over the period as described in subparagraph
29 (E) of this paragraph.

30 (G) The deduction calculated under this paragraph shall not be
31 adjusted as a result of any events happening subsequent to such
32 calculation, including, but not limited to, any disposition or
33 abandonment of assets. Such deduction shall be calculated without
34 regard to the federal tax effect and shall not alter the tax basis of
35 any asset. If the deduction under this section is greater than
36 combined group entire net income, any excess deduction shall be
37 carried forward and applied as a deduction to combined group entire
38 net income in future privilege periods until fully utilized.

39 (H) Any combined group intending to claim a deduction under
40 this paragraph shall file a statement with the director on or before
41 July 1 of the year subsequent to the first privilege period for which
42 a combined return is required. Such statement shall specify the total
43 amount of the deduction which the combined group claims on such
44 form and in such manner as prescribed by the director. No
45 deduction shall be allowed under this paragraph for any privilege
46 period except to the extent claimed on such timely filed statement
47 in accordance with this paragraph.

1 (17)(A) In the case of a taxpayer that is a cannabis licensee,
2 there shall be allowed as a deduction an amount equal to any
3 expenditure that is eligible to be claimed as a federal income tax
4 deduction but is disallowed because cannabis is a controlled
5 substance under federal law, and income shall be determined
6 without regard to section 280E of the Internal Revenue Code (26
7 U.S.C. s.280E) for cannabis licensees.

8 (B) In the case of a taxpayer that is a cannabis licensee, there
9 shall be allowed as a deduction an amount equal to any expenditure
10 that would qualify as a specified research or experimental
11 expenditure pursuant to section 174 of the Internal Revenue Code
12 but is disallowed as a deduction for federal tax purposes because
13 cannabis is a controlled substance under federal law. Any
14 expenditure that is claimed as a deduction pursuant to this
15 subparagraph may also be claimed as a qualified research expense
16 for purposes of the credit allowed pursuant to section 1 of P.L.1993,
17 c.175 (C.54:10A-5.24).

18 (C) For purposes of this paragraph, "licensee" means the same as
19 that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

20 (18)For privilege periods ending on and after July 31, 2022:

21 (A) Notwithstanding subparagraph (A) of paragraph (2) of this
22 subsection or any other law or treaty to the contrary, for a
23 corporation that is incorporated or formed in a foreign nation with a
24 comprehensive tax treaty with the United States, and that is not a
25 member of a world-wide group combined return filed pursuant to
26 subsection b. of section 23 of P.L.2018, c.48 (C.54:10A-4.11),
27 entire net income shall not include an item of income or loss
28 excluded or exempted from federal taxable income under the terms
29 of the treaty, and no other deduction, exclusion, or elimination shall
30 be permitted for an item of income or loss excluded by this
31 paragraph.

32 (B) For a non-U.S. corporation that files a federal tax return and
33 is not a member of a combined group filing a New Jersey combined
34 return on a world-wide basis pursuant to subsection b. of section 23
35 of P.L.2018, c.48 (C.54:10A-4.11), the non-U.S. corporation shall
36 only include its income or loss included in federal taxable income,
37 which shall be limited to only the non-U.S. corporation's effectively
38 connected income or loss, as modified by the provisions of the
39 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
40 et seq.), and the items of expense and the allocation factor receipts
41 attributable to such items of income or loss.

42 (l) "Real estate investment trust" shall mean any corporation,
43 trust or association qualifying and electing to be taxed as a real
44 estate investment trust under federal law.

45 (m) "Financial business corporation" shall mean any corporate
46 enterprise which is (1) in substantial competition with the business
47 of national banks and which (2) employs moneyed capital with the
48 object of making profit by its use as money, through discounting

1 and negotiating promissory notes, drafts, bills of exchange and
2 other evidences of debt; buying and selling exchange; making of or
3 dealing in secured or unsecured loans and discounts; dealing in
4 securities and shares of corporate stock by purchasing and selling
5 such securities and stock without recourse, solely upon the order
6 and for the account of customers; or investing and reinvesting in
7 marketable obligations evidencing indebtedness of any person,
8 copartnership, association or corporation in the form of bonds,
9 notes or debentures commonly known as investment securities; or
10 dealing in or underwriting obligations of the United States, any
11 state or any political subdivision thereof, or of a corporate
12 instrumentality of any of them. This shall include, without
13 limitation of the foregoing, business commonly known as industrial
14 banks, dealers in commercial paper and acceptances, sales finance,
15 personal finance, small loan and mortgage financing businesses, as
16 well as any other enterprise employing moneyed capital coming
17 into competition with the business of national banks; provided that
18 the holding of bonds, notes, or other evidences of indebtedness by
19 individual persons not employed or engaged in the banking or
20 investment business and representing merely personal investments
21 not made in competition with the business of national banks, shall
22 not be deemed financial business. Nor shall "financial business"
23 include national banks, production credit associations organized
24 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
25 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
26 insurance companies duly authorized to transact business in this
27 State, security brokers or dealers or investment companies or
28 bankers not employing moneyed capital coming into competition
29 with the business of national banks, real estate investment trusts, or
30 any of the following entities organized under the laws of this State:
31 credit unions, savings banks, savings and loan and building and
32 loan associations, pawnbrokers, and State banks and trust
33 companies.

34 (n) "International banking facility" shall mean a set of asset and
35 liability accounts segregated on the books and records of a
36 depository institution, United States branch or agency of a foreign
37 bank, or an Edge or Agreement Corporation that includes only
38 international banking facility time deposits and international
39 banking facility extensions of credit as such terms are defined in
40 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
41 board of governors of the Federal Reserve System, 12 CFR Part
42 204, effective December 3, 1981. In the event that the United States
43 enacts a law, or the board of governors of the Federal Reserve
44 System adopts a regulation which amends the present definition of
45 international banking facility or of such facilities' time deposits or
46 extensions of credit, the Commissioner of Banking and Insurance
47 shall forthwith adopt regulations defining such terms in the same
48 manner as such terms are set forth in the laws of the United States

1 or the regulations of the board of governors of the Federal Reserve
2 System. The regulations of the Commissioner of Banking and
3 Insurance shall thereafter provide the applicable definitions.

4 (o) "S corporation" means a corporation that has elected to be an
5 "S corporation" pursuant to section 1361 of the federal Internal
6 Revenue Code of 1986, 26 U.S.C. s.1361, for the taxable year.

7 (p) "New Jersey S corporation" means a taxpayer that has made
8 a valid election to be an S corporation for federal tax purposes, and
9 that has not made a valid election pursuant to subsection d. of
10 section 20 of P.L.2022, c.133 (C.54:10A-5.22).

11 (q) "Public Utility" means "public utility" as defined in
12 R.S.48:2-13.

13 (r) "Qualified investment partnership" means a partnership
14 under this act that has more than 10 members or partners with no
15 member or partner owning more than a 50% interest in the entity
16 and that derives at least 90% of its gross income from dividends,
17 interest, payments with respect to securities loans, and gains from
18 the sale or other disposition of stocks or securities or foreign
19 currencies or commodities or other similar income (including but
20 not limited to gains from swaps, options, futures or forward
21 contracts) derived with respect to its business of investing or
22 trading in those stocks, securities, currencies or commodities, but
23 "investment partnership" shall not include a "dealer in securities"
24 within the meaning of section 1236 of the federal Internal Revenue
25 Code of 1986, 26 U.S.C. s.1236.

26 (s) "Savings institution" means a state or federally chartered
27 building and loan association, savings and loan association, or
28 savings bank.

29 (t) "Partnership" means an entity classified as a partnership for
30 federal income tax purposes.

31 (u) "Prior net operating loss conversion carryover" means a net
32 operating loss incurred in a privilege period ending prior to July 31,
33 2019 and converted from a pre-allocation net operating loss to a
34 post-allocation net operating loss as follows:

35 (1) As used in this subsection:

36 "Base year" means the last privilege period ending prior to July
37 31, 2019.

38 "Base year BAF" means the taxpayer's business allocation factor
39 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
40 6 through C.54:10A-10) for purposes of calculating entire net
41 income for the base year, as such section was in effect for the last
42 privilege period ending prior to July 31, 2019.

43 "UNOL" means the unabsorbed portion of net operating loss as
44 calculated under paragraph (6) of subsection (k) of this section as
45 such paragraph was in effect for the last privilege period ending
46 prior to July 31, 2019, that was not deductible in previous privilege
47 periods and was eligible for carryover on the last day of the base
48 year subject to the limitations for deduction under such subsection,

1 including any net operating loss sustained by the taxpayer during
2 the base year.

3 (2) The prior net operating loss conversion carryover shall be
4 calculated as follows:

5 (A) The taxpayer shall first calculate the tax value of its UNOL
6 for the base year and for each preceding privilege period for which
7 there is a UNOL. The value of the UNOL for each privilege period
8 is equal to the product of (I) the amount of the taxpayer's UNOL for
9 a privilege period, and (II) the taxpayer's base year BAF. This result
10 shall equal the taxpayer's prior net operating loss conversion
11 carryover.

12 (B) The taxpayer shall continue to carry over its prior net
13 operating loss conversion carryover to offset its allocated entire net
14 income as provided in sections 6 through 10 of P.L.1945, c.162
15 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
16 and after July 31, 2019. Such carryover periods shall not exceed the
17 twenty privilege periods following the privilege period of the initial
18 loss. The entire amount of the prior net operating loss conversion
19 carryover for any privilege period shall be carried to the earliest of
20 the privilege periods to which the loss may be carried. The portion
21 of the prior net operating loss conversion carryover which shall be
22 carried to each of the other privilege periods shall be the excess, if
23 any, of the amount of the prior net operating loss conversion
24 carryover over the sum of the entire net income, computed without
25 the exclusions permitted in paragraphs (4) and (5) of subsection (k)
26 of this section allocated to this State. For privilege periods ending
27 on and after July 31, 2023, for the purpose of computing taxable net
28 income for a current privilege period, the amount of the prior net
29 operating loss conversion carryover shall be subtracted from entire
30 net income allocated to this State, after the application of
31 paragraphs (4) and (5) of subsection (k) of this section against
32 current privilege period income when the entire net income
33 allocated to this State for the privilege period is greater than zero.

34 (C) The prior net operating loss conversion carryover computed
35 under this subsection shall be applied against the entire net income
36 allocated to this State before the net operating loss carryover
37 computed under subsection (v) of this section.

38 (v) "Net operating loss deduction" means the amount allowed as
39 a deduction for the net operating loss carryover to the privilege
40 period, calculated as follows:

41 (1) Net operating loss carryover. A net operating loss for any
42 privilege period ending on or after July 31, 2019, shall be a net
43 operating loss carryover to each of the twenty privilege periods
44 following the period of the loss. The entire amount of the net
45 operating loss for any privilege period shall be carried to the earliest
46 of the privilege periods to which the loss may be carried. For
47 privilege periods ending before July 31, 2023, the portion of the
48 loss which shall be carried to each of the other privilege periods

1 shall be the excess, if any, of the amount of the loss over the sum of
2 the entire net income, computed without the exclusions permitted in
3 paragraphs (4) and (5) of subsection (k) of this section allocated to
4 this State. For privilege periods ending on and after July 31, 2023,
5 the portion of the loss that shall be carried to each of the other
6 privilege periods shall be the excess, if any, of the amount of the
7 loss over the sum of the entire net income, after the application of
8 paragraphs (4) and (5) of subsection (k) of this section allocated to
9 this State; provided, however, for the purpose of computing taxable
10 net income for the privilege period, the net operating loss carryover
11 shall only be subtracted from entire net income allocated to this
12 State when the entire net income allocated to this State is greater
13 than zero.

14 (2) Net operating loss. For purposes of this paragraph the term
15 "net operating loss" means the excess of the deductions over the
16 gross income used in computing entire net income, without regard
17 to any net operating loss carryover, and for privilege periods ending
18 before July 31, 2023, computed without the exclusions in
19 paragraphs (4) and (5) of subsection (k) of this section, and for
20 privilege periods ending on and after July 31, 2023, computed after
21 the application of paragraphs (4) and (5) of subsection (k) of this
22 section, allocated to this State pursuant to sections 6 through 10 of
23 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

24 (3) Reduction for discharge of indebtedness. A net operating
25 loss for any privilege period ending on or after July 31, 2019, and
26 any net operating loss carryover to such privilege period, shall be
27 reduced by the amount excluded from federal taxable income under
28 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
29 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108,
30 for the privilege period of the discharge of indebtedness.

31 (4) A net operating loss carryover shall not include any net
32 operating loss incurred during any privilege period ending prior to
33 July 31, 2019.

34 (5) Change in ownership. Where there is a change in 50% or
35 more of the ownership of a corporation because of redemption or
36 sale of stock and the corporation changes the trade or business
37 giving rise to the loss, no net operating loss sustained before the
38 changes may be carried over to be deducted from income earned
39 after such changes. In addition, where the facts support the premise
40 that the corporation was acquired under any circumstances for the
41 primary purpose of the use of its net operating loss carryover, the
42 director may disallow the carryover; provided, however, this
43 paragraph shall not apply between members of a combined group
44 reported on a New Jersey combined return.

45 (w) "Taxable net income" means entire net income allocated to
46 this State as calculated pursuant to sections 6 through 8 of
47 P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as modified by
48 subtracting any prior net operating loss conversion carryforward

1 calculated pursuant to subsection (u) of this section, and any net
2 operating loss calculated pursuant to subsection (v) of this section;
3 provided, however, for privilege periods ending on and after July
4 31, 2023, when subtracting any net operating losses calculated
5 pursuant to subsection (v) of this section or the combined group net
6 operating losses calculated pursuant to subsection h. of section 18
7 of P.L.2018, c.48 (C.54:10A-4.6), the limitation set forth in
8 paragraph (2) of subsection (a) of Internal Revenue Code Section
9 172 (26 U.S.C. s.172(a)(2)) shall apply, except that August 1, 2023
10 is substituted for the reference to January 1, 2018 in subparagraph
11 (A) of paragraph (2) of subsection a. of Internal Revenue Code
12 Section 172 (26 U.S.C. s.172), and July 31, 2023 is substituted for
13 the reference to December 31, 2017 in subparagraph (B) of
14 paragraph (2) of subsection (a) of Internal Revenue Code Section
15 172 (26 U.S.C. s.172). For privilege periods ending on and after
16 July 31, 2023, for a combined group, before subtracting the prior
17 net operating loss conversion carryforwards and subtracting the net
18 operating losses of the combined group when computing the total
19 taxable net income, the combined group shall first add together the
20 allocated entire net income from the unitary business of the
21 combined group and the portion of allocated entire net income of
22 members with activities independent of the group, and then subtract
23 the prior net operating loss conversion carryforwards and then the
24 net operating losses.

25 (x) "Affiliated group" means, for purposes of section 23 of
26 P.L.2018, c.48 (C.54:10A-4.11), an affiliated group as defined in
27 section 1504 of the federal Internal Revenue Code, 26 U.S.C.
28 s.1504, except such affiliated group shall include all U.S. domestic
29 corporations that are commonly owned, directly or indirectly, by
30 any member of such affiliated group, without regard to whether the
31 affiliated group includes (1) corporations included in more than one
32 federal consolidated return, (2) corporations engaged in one or more
33 unitary businesses, or (3) corporations that are not engaged in a
34 unitary business with any other member of the affiliated group.

35 For purposes of this subsection:

36 "U.S. domestic corporations" means: (1) business entities
37 wherever incorporated or formed that are U.S. domestic
38 corporations, are deemed to be, or are treated as U.S. domestic
39 corporations under the provisions of the federal Internal Revenue
40 Code; or (2) any entities incorporated or formed under the laws of a
41 foreign nation that are required to file federal tax returns if such
42 entities have effectively connected income within the meaning of
43 the federal Internal Revenue Code; and

44 "Commonly owned" means that more than 50 percent of the
45 voting control of each member of an affiliated group is directly or
46 indirectly owned by a common owner or owners, either corporate or
47 non-corporate, whether or not the owner or owners are members of
48 the affiliated group. Whether voting control is indirectly owned

1 shall be determined in accordance with section 318 of the federal
2 Internal Revenue Code (26 U.S.C. s.318).

3 (y) "Combinable captive insurance company" means an entity
4 that is treated as an association taxable as a corporation under the
5 federal Internal Revenue Code:

6 (1) more than 50% of the voting stock of which is owned or
7 controlled, directly or indirectly, by a single entity that is treated as
8 an association taxable as a corporation under the federal Internal
9 Revenue Code, and not exempt from federal income tax;

10 (2) that is licensed as a captive insurance company under the
11 laws of this State or another jurisdiction;

12 (3) whose business includes providing, directly and indirectly,
13 insurance or reinsurance covering the risks of its parent, members
14 of its affiliated group, or both; and

15 (4) 50% or less of whose gross receipts for the privilege period
16 consist of premiums from arrangements that constitute insurance for
17 federal income tax purposes.

18 A combinable captive insurance company shall not be exempt
19 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
20 insurance company that does not meet the definition of combinable
21 captive insurance company shall be excluded as provided in
22 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
23 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

24 For purposes of this definition:

25 "Affiliated group" shall have the same meaning as that term is
26 given by section 1504 of the federal Internal Revenue Code, 26
27 U.S.C. s.1504, except that the term "common parent corporation" as
28 used in section 1504 of the federal Internal Revenue Code, 26
29 U.S.C. s.1504, shall mean any person, as defined in section 7701 of
30 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references
31 to "at least 80%" in section 1504 of the federal Internal Revenue
32 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section
33 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall
34 be read without regard to the exclusions provided for in subsection
35 (b) of that section.

36 "Gross receipts" includes the amounts included in gross receipts
37 for purposes of paragraph (15) of subsection (c) of section 501 of
38 the federal Internal Revenue Code, 26 U.S.C. s.501, except that
39 those amounts also include all premiums.

40 "Premiums" includes consideration for annuity contracts and
41 excludes any part of the consideration for insurance, reinsurance, or
42 annuity contracts that do not provide bona fide insurance,
43 reinsurance, or annuity benefits.

44 (z) "Combined group" means the group of all companies that
45 have common ownership and are engaged in a unitary business,
46 where at least one company is subject to tax under this chapter, and
47 shall include all business entities, except as provided for under any

1 section of the Corporation Business Tax Act (1945), P.L.1945,
2 c.162 (C.54:10A-1 et seq.).

3 A combined group shall be treated, for privilege periods ending
4 on and after July 31, 2020, as one taxpayer for purposes of
5 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162
6 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for
7 the income derived from the unitary business; provided however,
8 with regard to the surtax imposed pursuant to section 1 of P.L.2018,
9 c.48 (C.54:10A-5.41) and for that purpose only, the portion of
10 income that is attributable to a member which is a public utility
11 exempt from the surtax shall not be included when computing the
12 surtax due.

13 (aa) "Common ownership" means that more than 50% of the
14 voting control of each member of a combined group is directly or
15 indirectly owned by a common owner or owners, either corporate or
16 non-corporate, whether or not the owner or owners are members of
17 the combined group. Whether voting control is indirectly owned
18 shall be determined in accordance with section 318 of the federal
19 Internal Revenue Code, 26 U.S.C. s.318.

20 (bb) "Group privilege period" means, if two or more members in
21 the combined group file in the same federal consolidated tax return,
22 the same income year as that used on the federal consolidated tax
23 return and, in all other cases, the privilege period of the managerial
24 member.

25 (cc) "Managerial member" means if the combined group has a
26 common parent corporation and that common parent corporation is
27 a taxable member, the managerial member shall be the common
28 parent corporation. In other cases, the combined group shall select a
29 taxable member as its managerial member or, in the discretion of
30 the director or upon failure of the combined group to select its
31 managerial member, the director shall designate a taxable member
32 of the combined group as managerial member.

33 (dd) "Member" means a business entity that is a part of a
34 combined group.

35 A corporation exempt pursuant to section 3 of P.L.1945, c.162
36 (C.54:10A-3) from the tax imposed by P.L.1945, c.162 (C.54:10A-1
37 et seq.) shall not be a member of a combined group.

38 (ee) "Nontaxable member" means a member that is: (i) not
39 subject to tax pursuant to the Corporation Business Tax Act (1945),
40 P.L.1945, c.162 (C.54:10A-1 et seq.); or (ii) (deleted by
41 amendment, P.L.2020, c.118 (C.54:10A-5.46 et al.).

42 (ff) "Taxable member" means a member that is subject to tax
43 pursuant to the Corporation Business Tax Act (1945), P.L.1945,
44 c.162 (C.54:10A-1 et seq.).

45 A New Jersey S corporation shall only be included as a taxable
46 member of a combined group filing a New Jersey combined return
47 if the New Jersey S Corporation elects to be included as a member
48 and taxed at the same rate as the other members of the combined

1 group. A New Jersey S corporation that does not elect to be
2 included shall be excluded as a member of the combined return and
3 shall file a separate return.

4 (gg)"Unitary business" means, for privilege periods ending
5 before July 31, 2023, a single economic enterprise that is made up
6 either of separate parts of a single business entity or of a group of
7 business entities under common ownership that are sufficiently
8 interdependent, integrated, and interrelated through their activities
9 so as to provide a synergy and mutual benefit that produces a
10 sharing or exchange of value among them and a significant flow of
11 value among the separate parts. For privilege periods ending on
12 and after July 31, 2023, "unitary business" means a single economic
13 enterprise that is made up either of separate parts of a single
14 business entity or of a group of business entities under common
15 ownership that are sufficiently interdependent, integrated, or
16 interrelated through their activities so as to provide a synergy and
17 mutual benefit that produces a sharing or exchange of value among
18 them and a significant flow of value among the separate parts.
19 "Unitary business" shall be construed to the broadest extent
20 permitted under the Constitution of the United States. A business
21 conducted by a partnership which is in a unitary business with the
22 combined group shall be treated as the business of the partners that
23 are members of the combined group, whether the partnership
24 interest is held directly or indirectly through a series of
25 partnerships, to the extent of a partner's distributive share of
26 partnership income. The amount of partnership income to be
27 included in the partner's entire net income shall be determined in
28 accordance with subsection a. of section 3 of P.L.2001, c.136
29 (C.54:10A-15.6) or subsection a. of section 4 of P.L.2001, c.136
30 (C.54:10A-15.7), as applicable. A business conducted directly or
31 indirectly by one corporation is unitary with that portion of a
32 business conducted by another corporation through its direct or
33 indirect interest in a partnership.

34 (hh)"Captive investment company" shall mean, for privilege
35 periods ending on and after July 31, 2023, an investment company
36 that is not regularly traded on an established securities market and
37 of which more than 50 percent of the voting stock is owned or
38 controlled, directly or indirectly, by a single corporation, other than
39 an investment company, that is not exempt from federal income tax.
40 For purposes of this subsection, a captive investment company shall
41 not include any captive investment company of which at least 50
42 percent of the shares, by vote or value, is owned or controlled,
43 directly or indirectly, by a state or federally chartered bank, savings
44 bank, or savings and loan association with assets that do not exceed
45 \$15 billion.

46 For privilege periods ending on and after July 31, 2023, any
47 voting stock in an investment company that is held in a segregated
48 asset account of a life insurance corporation, as described in section

1 817 of the Internal Revenue Code, shall not be taken into account
2 for purposes of determining whether an investment company is a
3 captive regulated investment company.

4 For privilege periods ending on and after July 31, 2023, a captive
5 investment company shall be taxed in the same manner as a C
6 corporation, and subsection d. of section 5 of P.L. 1945, c. 162 (C.
7 54:10A-5) shall not apply. A captive investment company shall not
8 be permitted to claim any deductions or expenses that were
9 permitted for federal purposes, solely as a result of the entity being
10 an investment company, when computing federal taxable net
11 income. A captive investment company shall be a member of a
12 combined group and shall be included as a member on the
13 combined return.

14 (ii) "Captive real estate investment trust" shall mean, for
15 privilege periods ending on and after July 31, 2023, a real estate
16 investment trust that is not regularly traded on an established
17 securities market and of which more than 50 percent of the voting
18 stock is owned or controlled, directly or indirectly, by a single
19 entity that is treated as an association taxable as a corporation under
20 the Internal Revenue Code, is not exempt from federal income tax,
21 and is not a real estate investment trust. For purposes of this
22 subsection, a captive real estate investment trust shall not include
23 any captive real estate investment trust of which at least 50 percent
24 of the shares, by vote or value, is owned or controlled, directly or
25 indirectly, by a state or federally chartered bank, savings bank, or
26 savings and loan association with assets that do not exceed \$15
27 billion.

28 For privilege periods ending on and after July 23, 2023, any
29 voting stock in a real estate investment trust that is held in a
30 segregated asset account of a life insurance corporation, as
31 described in section 817 of the Internal Revenue Code (26 U.S.C.
32 s.817), shall not be taken into account for purposes of determining
33 whether a real estate investment trust is a captive real estate
34 investment trust. For purposes of this subsection, an association
35 taxable as a corporation shall not include any listed Australian
36 property trust or any qualified foreign entity.

37 For privilege periods ending on and after July 31, 2023, a captive
38 real estate investment trust shall be taxed in the same manner as a C
39 corporation, and subsection d. of section 5 of P.L.1945, c.162
40 (C.54:10A-5) shall not apply. A captive real estate investment trust
41 shall not be permitted to claim any deductions or expenses that were
42 permitted for federal purposes, solely as a result of the entity being
43 a real estate investment trust, when computing federal taxable net
44 income. A captive real estate investment trust shall be a member of
45 a combined group and shall be included as a member on the
46 combined return.

47 As used in this subsection:

1 "Australian property trust" means an Australian unit trust that is
2 registered as a managed investment scheme under the Australian
3 Corporations Act, and in which the principal class of units is listed
4 on a recognized stock exchange in Australia and is regularly traded
5 on an established securities market; or an entity organized as a trust,
6 provided that a listed Australian property trust owns or controls,
7 directly or indirectly, 75 percent or more of the voting power or
8 value of the beneficial interests of shares of the trust.

9 "Qualified foreign entity" means a corporation, trust, association,
10 or partnership that is organized outside the laws of the United States
11 and that satisfies the following criteria:

12 (1) At least 75 percent of the entity's total asset value at the
13 close of its taxable year is represented by real estate assets, as
14 defined at subparagraph (B) of paragraph (5) of subsection (c) of
15 section 856 of the Internal Revenue Code (26 U.S.C. s.856),
16 including shares or certificates of beneficial interest in any real
17 estate investment trust, cash and cash equivalents, and United States
18 Government securities;

19 (2) The entity is not subject to tax on amounts distributed to its
20 beneficial owners, or is exempt from entity-level taxation;

21 (3) The entity distributes, on an annual basis, at least 85 percent
22 of its taxable income, as computed in the jurisdiction in which it is
23 organized, to the holders of its shares or certificates of beneficial
24 interest;

25 (4) No more than 10 percent of the voting power or value in the
26 entity is held directly, indirectly, or constructively by a single entity
27 or individual, or the shares or certificates of beneficial interests of
28 the entity are regularly traded on an established securities market;
29 and

30 (5) The entity is organized in a country that has a tax treaty with
31 the United States.

32 (jj) "Captive regulated investment company" shall mean, for
33 privilege periods ending on and after July 31, 2023, a regulated
34 investment company that is not regularly traded on an established
35 securities market, and of which more than 50 percent of the voting
36 stock is owned or controlled, directly or indirectly, by a single
37 corporation, other than a regulated investment company, that is not
38 exempt from federal income tax. For purposes of this subsection, a
39 captive regulated investment company shall not include any captive
40 regulated investment company of which at least 50 percent of the
41 shares, by vote or value, is owned or controlled, directly or
42 indirectly, by a state or federally chartered bank, savings bank, or
43 savings and loan association with assets that do not exceed \$15
44 billion.

45 For privilege periods ending on and after July 31, 2023, any
46 voting stock in a regulated investment company that is held in a
47 segregated asset account of a life insurance corporation, as
48 described in section 817 of the Internal Revenue Code (26 U.S.C.

1 s.817), shall not be taken into account for purposes of determining
2 whether a regulated investment company is a captive regulated
3 investment company.

4 For privilege periods ending on and after July 31, 2023, a captive
5 regulated investment company shall be taxed in the same manner as
6 a C corporation and subsection d. of section 5 of P.L.1945, c.162
7 (C.54:10A-5) shall not apply. A captive real estate investment
8 company shall not be permitted to claim any deductions or expenses
9 that were permitted for federal purposes, solely as a result of the
10 entity being a regulated investment company, when computing
11 federal taxable net income. A captive regulated investment
12 company shall be a member of a combined group and shall be
13 included as a member on the combined return.

14 (kk) "World-wide basis" and "world-wide group" shall mean, for
15 privilege periods ending on and after July 31, 2022, for the
16 purposes of sections 18 through 23 of P.L.2018, c.48 (C.54:10A-4.6
17 through C.54:10A-4.11) and for the purposes of combined reporting
18 in general under the Corporation Business Tax Act (1945),
19 P.L.1945, c.162 (C.54:10A-1 et seq.), that the combined group shall
20 include all of the members of the combined group, wherever located
21 or formed. For privilege periods ending on and after July 31, 2022,
22 the combined group shall include all of the income and attributes of
23 those members regardless of how or whether those members file
24 federal returns or report or include their income in federal taxable
25 income for federal purposes, and without regard to any exemption
26 or exclusion from federal taxable income under the terms of a tax
27 treaty; provided, however, any deductions that are allowed under
28 the federal Internal Revenue Code that are also allowable under the
29 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
30 et seq.), that would apply to a U.S. corporation, but that a non-U.S.
31 corporation is prohibited from claiming for federal corporation
32 income tax purposes because the corporation's income was not
33 included in federal taxable income for any reason or because the
34 corporation is a non-U.S. corporation, shall be allowed for the non-
35 U.S. corporation members of the combined group for New Jersey
36 corporation business tax purposes as though those non-U.S.
37 corporation members were U.S. corporations.

38 (cf: P.L.2023, c.96, s.1)

39

40 15. N.J.S.54A:5-1 is amended to read as follows:

41 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
42 income shall consist of the following categories of income:

43 a. Salaries, wages, tips, fees, commissions, bonuses, and other
44 remuneration received for services rendered whether in cash or in
45 property, and amounts paid or distributed, or deemed paid or
46 distributed, out of a medical savings account that are not excluded
47 from gross income pursuant to section 5 of P.L.1997, c.414
48 (C.54A:6-27).

1 b. Net profits from business. The net income from the
2 operation of a business, profession or other activity after provision
3 for all costs and expenses incurred in the conduct thereof,
4 determined either on a cash or accrual basis in accordance with the
5 method of accounting allowed for federal income tax purposes but
6 without deduction of the amount of:

7 (1) taxes based on income;
8 (2) a civil, civil administrative, or criminal penalty or fine,
9 including a penalty or fine under an administrative consent order,
10 assessed and collected for a violation of a State or federal
11 environmental law, an administrative consent order, or an
12 environmental ordinance or resolution of a local governmental
13 entity, and any interest earned on the penalty or fine, and any
14 economic benefits having accrued to the violator as a result of a
15 violation, which benefits are assessed and recovered in a civil, civil
16 administrative, or criminal action, or pursuant to an administrative
17 consent order. The provisions of this paragraph shall not apply to a
18 penalty or fine assessed or collected for a violation of a State or
19 federal environmental law, or local environmental ordinance or
20 resolution, if the penalty or fine was for a violation that resulted
21 from fire, riot, sabotage, flood, storm event, natural cause, or other
22 act of God beyond the reasonable control of the violator, or caused
23 by an act or omission of a person who was outside the reasonable
24 control of the violator; and

25 (3) treble damages paid to the Department of Environmental
26 Protection pursuant to subsection a. of section 7 of P.L.1976, c.141
27 (C.58:10-23.11f) for costs incurred by the department in removing,
28 or arranging for the removal of, an unauthorized discharge upon the
29 failure of the discharger to comply with a directive from the
30 department to remove, or arrange for the removal of, a discharge.

31 c. Net gains or income from disposition of property. Net gains
32 or net income, less net losses, derived from the sale, exchange or
33 other disposition of property, including real or personal, whether
34 tangible or intangible as determined in accordance with the method
35 of accounting allowed for federal income tax purposes. For the
36 purpose of determining gain or loss, the basis of property shall be
37 the adjusted basis used for federal income tax purposes, except as
38 expressly provided for under this act, but without a deduction for
39 penalties, fines, or economic benefits excepted pursuant to
40 paragraph (2), or for treble damages excepted pursuant to paragraph
41 (3) of subsection b. of this section.

42 A taxpayer's net gain or loss on the sale, exchange or other
43 disposition of a share of an S corporation shall be calculated by
44 increasing the adjusted basis of the share by an amount equal to the
45 shareholder's net losses and deductions in respect of the share
46 allowed and deducted from income for federal income tax purposes,
47 not including any personal net operating loss deductions, to the
48 extent that such net losses were not offset by the taxpayer's pro rata

1 share of S corporation income otherwise subject to taxation
2 pursuant to subsection p. of this section in respect of another S
3 corporation, subject to rules of priority and assignment determined
4 by the director.

5 For the tax year 1976, any taxpayer with a tax liability under this
6 subsection, or under the "Tax on Capital Gains and Other Unearned
7 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be
8 subject to payment of an amount greater than the amount he would
9 have paid if either return had covered all capital transactions during
10 the full tax year 1976; provided, however, that the rate which shall
11 apply to any capital gain shall be that in effect on the date of the
12 transaction. To the extent that any loss is used to offset any gain
13 under P.L.1975, c.172, it shall not be used to offset any gain under
14 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

15 The term "net gains or income" shall not include gains or income
16 derived from obligations which are referred to in clause (1) or (2) of
17 N.J.S.54A:6-14 of this act or from securities which evidence
18 ownership in a qualified investment fund as defined in section 2 of
19 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or income"
20 shall not include gains or income derived from the sale or
21 assignment of a tax credit transfer certificate pursuant to section 7
22 of P.L.2011, c.149 (C.34:1B-248) **[and]**, section 10 of P.L.2014,
23 c.63 (C.34:1B-251), or the "New Jersey Economic Recovery Act of
24 2020," P.L.2020, c.156 (C.34:1B-269 et al.), as amended and
25 supplemented, from any sale or assignment of a tax credit issued
26 pursuant to an award of tax credits approved by the New Jersey
27 Economic Development Authority **[prior to July 1, 2018]**,
28 regardless of when such sale or assignment occurs. The term "net
29 gains or net income" shall not include gains or income from
30 transactions to the extent to which nonrecognition is allowed for
31 federal income tax purposes. The term "sale, exchange or other
32 disposition" shall not include the exchange of stock or securities in
33 a corporation a party to a reorganization in pursuance of a plan of
34 reorganization, solely for stock or securities in such corporation or
35 in another corporation a party to the reorganization and the transfer
36 of property to a corporation by one or more persons solely in
37 exchange for stock or securities in such corporation if immediately
38 after the exchange such person or persons are in control of the
39 corporation. For purposes of this clause, stock or securities issued
40 for services shall not be considered as issued in return for property.

41 For purposes of this clause, the term "reorganization" means **[--]**:

- 42 (i) A statutory merger or consolidation;
43 (ii) The acquisition by one corporation, in exchange solely for
44 all or part of its voting stock (or in exchange solely for all or a part
45 of the voting stock of a corporation which is in control of the
46 acquiring corporation) of stock of another corporation if,
47 immediately after the acquisition, the acquiring corporation has

1 control of such other corporation (whether or not such acquiring
2 corporation had control immediately before the acquisition);

3 (iii) The acquisition by one corporation, in exchange solely for
4 all or part of its voting stock (or in exchange solely for all or a part
5 of the voting stock of a corporation which is in control of the
6 acquiring corporation), of substantially all of the properties of
7 another corporation, but in determining whether the exchange is
8 solely for stock the assumption by the acquiring corporation of a
9 liability of the other, or the fact that property acquired is subject to
10 a liability, shall be disregarded;

11 (iv) A transfer by a corporation of all or a part of its assets to
12 another corporation if immediately after the transfer the transferor,
13 or one or more of its shareholders (including persons who were
14 shareholders immediately before the transfer), or any combination
15 thereof, is in control of the corporation to which the assets are
16 transferred;

17 (v) A recapitalization;

18 (vi) A mere change in identity, form, or place of organization
19 however effected; or

20 (vii) The acquisition by one corporation, in exchange for stock of
21 a corporation (referred to in this subclause as "controlling
22 corporation") which is in control of the acquiring corporation, of
23 substantially all of the properties of another corporation which in
24 the transaction is merged into the acquiring corporation shall not
25 disqualify a transaction under subclause (i) if such transaction
26 would have qualified under subclause (i) if the merger had been into
27 the controlling corporation, and no stock of the acquiring
28 corporation is used in the transaction;

29 (viii) A transaction otherwise qualifying under subclause (i) shall
30 not be disqualified by reason of the fact that stock of a corporation
31 (referred to in this subclause as the "controlling corporation") which
32 before the merger was in control of the merged corporation is used
33 in the transaction, if after the transaction, the corporation surviving
34 the merger holds substantially all of its properties and of the
35 properties of the merged corporation (other than stock of the
36 controlling corporation distributed in the transaction); and in the
37 transaction, former shareholders of the surviving corporation
38 exchanged, for an amount of voting stock of the controlling
39 corporation, an amount of stock in the surviving corporation which
40 constitutes control of such corporation.

41 For purposes of this clause, the term "control" means the
42 ownership of stock possessing at least 80% of the total combined
43 voting power of all classes of stock entitled to vote and at least 80%
44 of the total number of shares of all other classes of stock of the
45 corporation.

46 For purposes of this clause, the term "a party to a reorganization"
47 includes a corporation resulting from a reorganization, and both
48 corporations, in the case of a reorganization resulting from the

1 acquisition by one corporation of stock or properties of another. In
2 the case of a reorganization qualifying under subclause (i) by reason
3 of subclause (vii) the term "a party to a reorganization" includes the
4 controlling corporation referred to in such subclause (vii).

5 Notwithstanding any provisions hereof, upon every such
6 exchange or conversion, the taxpayer's basis for the stock or
7 securities received shall be the same as the taxpayer's actual or
8 attributed basis for the stock, securities or property surrendered in
9 exchange therefor.

10 d. Net gains or net income derived from or in the form of rents,
11 royalties, patents, and copyrights.

12 e. Interest, except interest referred to in clause (1) or (2) of
13 N.J.S.54A:6-14, or distributions paid by a qualified investment fund
14 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the
15 extent provided in that section.

16 f. Dividends. "Dividends" means any distribution in cash or
17 property made by a corporation, association or business trust that is
18 not an S corporation, (1) out of accumulated earnings and profits, or
19 (2) out of earnings and profits of the year in which such dividend is
20 paid and any distribution in cash or property made by an S
21 corporation, as specifically determined pursuant to section 16 of
22 P.L.1993, c.173 (C.54A:5-14).

23 The term "dividends" shall not include distributions paid by a
24 qualified investment fund as defined in section 2 of P.L.1987, c.310
25 (C.54A:6-14.1), to the extent provided in that section.

26 g. Gambling winnings.

27 h. Net gains or income derived through estates or trusts.

28 i. Income in respect of a decedent.

29 j. Amounts distributed or withdrawn from an employee trust
30 attributable to contributions to the trust which were excluded from
31 gross income under the provisions of chapter 6 of Title 54A of the
32 New Jersey Statutes, amounts rolled over from an IRA, as defined
33 pursuant to subsection (a) of section 408 of the federal Internal
34 Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as
35 defined pursuant to subsection b. of section 2 of P.L.1998,c.57
36 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and
37 annuities except to the extent of exclusions in N.J.S.54A:6-10
38 hereunder, notwithstanding the provisions of N.J.S.18A:66-51,
39 P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53
40 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965,
41 c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22
42 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954,
43 c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60),
44 R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44,
45 and P.L.1943, c.189, s.5 (C.43:13-37.5).

46 k. Distributive share of partnership income, excluding the gain
47 or income derived from the sale or assignment of a tax credit
48 transfer certificate pursuant to section 7 of P.L.2011, c.149

1 (C.34:1B-248) **[and]**, section 10 of P.L.2014, c.63 (C.34:1B-251),
2 or the "New Jersey Economic Recovery Act of 2020," P.L.2020,
3 c.156 (C.34:1B-269 et al.), as amended and supplemented, from any
4 sale or assignment of a tax credit issued pursuant to an award of tax
5 credits approved by the New Jersey Economic Development
6 Authority **[prior to July 1, 2018]**, regardless of when such sale or
7 assignment occurs.

8 l. Amounts received as prizes and awards, except as provided
9 in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

10 m. Rental value of a residence furnished by an employer or a
11 rental allowance paid by an employer to provide a home.

12 n. Alimony and separate maintenance payments to the extent
13 that such payments are required to be made under a decree of
14 divorce or separate maintenance but not including payments for
15 support of minor children.

16 o. Income, gain or profit derived from acts or omissions
17 defined as crimes or offenses under the laws of this State or any
18 other jurisdiction.

19 p. Net pro rata share of S corporation income, excluding the
20 gain or income derived from the sale or assignment of a tax credit
21 transfer certificate pursuant to section 7 of P.L.2011, c.149
22 (C.34:1B-248) **[and]**, section 10 P.L.2014, c.63 (C.34:1B-251), or
23 the "New Jersey Economic Recovery Act of 2020," P.L.2020, c.156
24 (C.34:1B-269 et al.), as amended and supplemented, from any sale
25 or assignment of a tax credit issued pursuant to an award of tax
26 credits approved by the New Jersey Economic Development
27 Authority **[prior to July 1, 2018]**, regardless of when such sale or
28 assignment occurs.

29 (cf: P.L.2018, c.131, s.8)

30
31 16. This act shall take effect immediately.

32 33 34 STATEMENT

35
36 This bill amends and supplements the "New Jersey Aspire
37 Program Act" (Aspire Program) and provides for certain related
38 changes to the New Jersey Gross Income Tax and Corporation
39 Business Tax.

40 41 *Aspire Program Definitions*

42 The bill revises the definition of a "commercial project" to
43 include space that is predominantly used for warehouse distribution
44 or fulfillment centers. The bill amends the definition of an
45 "incentive area" to include an endorsed plan and removes certain
46 transportation connectivity requirements that exist under current
47 law. The bill defines a "mixed-use project" as a redevelopment

1 project including a residential component and a nonresidential
2 component.

3 The bill also clarifies that the definition of the term “project
4 cost” also applies to the term “total project cost.” The definition for
5 “total project cost” under current law instead applies for the term
6 “total development cost” or “total redevelopment cost” under the
7 bill.

8 The bill provides that for a redevelopment project that is located
9 in a government restricted municipality, the following costs are also
10 included in the “project cost” or “total project cost”: the costs of
11 land and building acquisition, professional services, environmental
12 remediation, and infrastructure improvements.

13

14 *Aspire Program Changes Concerning Residential Projects*

15 The bill provides that the New Jersey Economic Development
16 Authority’s (authority) housing affordability controls are to be
17 consistent with those in the “Fair Housing Act,” except not
18 including the bedroom distribution requirements for three-bedroom
19 housing units.

20 The bill provides that, in addition to the exemption for certain
21 commercial tenants, commercial subtenants, or other commercial
22 occupants with rights in a redevelopment project, any residential
23 tenant of a redevelopment project is also exempt from the
24 requirement to pay the prevailing wage rate for each worker’s craft
25 or trade when that worker is employed to perform building services
26 work at the redevelopment project.

27

28 *Sale of Buildings Under the Aspire Program*

29 A developer is permitted, under the bill, to sell one or more
30 buildings during the eligibility period if the sale is an arms-length
31 sale and is subject to the purchaser’s assumption of all obligations
32 under the Aspire Program.

33

34 *Aspire Program Community Benefit Requirement*

35 The bill amends current law to exempt the developers of certain
36 projects from the requirements of a community benefits agreement
37 once the host municipality certifies the approval letter or adopts the
38 redevelopment agreement at a public meeting, which documents are
39 required to state that the community benefit under a community
40 benefits agreement has been met.

41

42 *Aspire Program Occupancy Requirement*

43 Beginning on the third year following the date of issuance of a
44 final certificate of occupancy during the eligibility period of a
45 commercial project and through the eligibility period, the developer
46 and any co-applicant is required to maintain at least 60 percent
47 occupancy or to forfeit all tax credits for the tax period in which
48 occupancy falls below this minimum requirement. Tax credits are

1 allowed in full upon restoration of 60 percent or greater occupancy.
2 Occupancy is to be measured by the average occupancy rate during
3 the relevant tax period. Residential projects are exempt from this
4 requirement.

5

6 *Eligibility Period Under Aspire Program*

7 The bill reduces the maximum duration of an eligibility period
8 for a commercial project, mixed-use project, or residential project
9 to 10 years. Under current law, the maximum duration of an
10 eligibility period for a commercial or mixed-use project is 15 years,
11 and for a residential project is 10 years. The bill adds that the
12 authority may determine a shorter eligibility period if this reduction
13 would enhance access to tax credit monetization or otherwise
14 enhance the effectiveness of the program.

15

16 *Total Tax Credit Eligibility Under Aspire Program*

17 The bill increases the amount of tax credits that may be awarded
18 to a developer in certain circumstances. Specifically, the bill
19 provides that a developer may be allowed each of the following
20 enhancements to the developer's total tax credit award: (1) for a
21 redevelopment project that includes redevelopment of a stranded
22 asset, an increase of up to 10 percent of the project cost. Under the
23 bill, a "stranded asset" is defined as any building previously used
24 for commercial, retail, office space, manufacturing, or industrial
25 purposes, which building is no longer used for such purposes, and
26 which has been abandoned, experienced significant vacancies for at
27 least two consecutive years, or has fallen into such disrepair as to be
28 untenable; (2) for a residential project meeting the three-
29 bedroom distribution requirements of the Uniform Housing
30 Affordability Controls, an increase of up to five percent of the
31 project cost; or (3) for a redevelopment project meeting local first
32 source hiring requirements for the municipality or county where the
33 project is located, an increase of up to three percent of the project
34 cost.

35 However, except for any redevelopment project that is located in
36 a government restricted municipality, the bill limits a developer's
37 total tax credits awarded under the Aspire Program, together with
38 any program administered by the authority for a redevelopment
39 project, to: 90 percent of the project cost for redevelopment projects
40 that receive tax credits under the federal Low-Income Housing Tax
41 Credit Program; and 80 percent of the project cost for all other
42 redevelopment projects.

43

44 *Aspire Program Tax Credit Carry Forward and Transfer*

45 Under current law, a developer is required to apply tax credits
46 during the tax periods approved by the authority. This bill
47 additionally authorizes a developer to apply tax credits within the
48 three successive tax periods immediately following the tax period in

1 which the tax credit certificate is received by the developer.
2 Similarly, a developer is authorized under the bill to transfer the tax
3 credits, and a transferee is authorized to use the tax credits, within
4 the three successive tax periods immediately following the tax
5 period in which the tax credit certificate is received by the
6 developer.

7

8 *Transformative Projects Under Aspire Program*

9 This bill amends current requirements for certain transformative
10 projects. Under current law, a residential project with fewer than
11 700 new residential units is required to include the construction of
12 50,000 square feet or more of commercial space to qualify as a
13 transformative project. Under this bill, this requirement is reduced
14 to 20,000 or more of commercial space, which may include retail
15 space.

16 Additionally, the bill permits a parking component to be included
17 in the calculation of the total square footage of a transformative
18 project, but only if constructed in agreement with local zoning,
19 planning, or similar requirements and with the Residential Site
20 Improvement Standards. Portions of a parking component that
21 exceed local parking requirements or the Residential Site
22 Improvement Standards are not to be included in these calculations.
23 However, if the project is located within a government restricted
24 municipality, the entire parking component is required to be
25 included in the calculation of square footage requirements for a
26 transformative project, regardless of agreement with local
27 requirements or Residential Site Improvement Standards.

28

29 *Aspire Program Fees*

30 The bill requires that the fees charged by the authority under the
31 program be proportional to tax credit amount allowed for a
32 redevelopment project. The authority is required to promulgate a
33 schedule of fees that are limited to coverage of actual direct costs of
34 administering the program, coverage of reasonable indirect costs of
35 administering the program, and maintenance of reasonable reserves
36 for administering the program.

37 The bill provides that applications submitted prior to the
38 effective date of this bill remain subject to the authority's fees in
39 effect immediately prior to the effective date of this bill.

40

41 *Applicability to Aspire Program Applications Already Received*

42 The bill provides that any application submitted on or after the
43 date six months prior to the bill's effective date is subject to the
44 new requirements provided for in the bill, except for the fees
45 imposed on applications that precede the effective date of the bill.

1 *Redevelopment Project Bridge Financing Program Under Aspire*
2 *Program*

3 The bill provides for the establishment of a “Redevelopment
4 Project Bridge Financing Program” for the purpose of offering
5 loans or loan guarantees, at the discretion of the authority, to
6 developers whose redevelopment projects have an outstanding
7 financing gap. The purpose of the Redevelopment Project Bridge
8 Financing Program is to offer additional financing to the developer
9 of a redevelopment project, prior to the issuance of tax credits under
10 the Aspire Program, to ensure the completion of the project.

11 To apply for a loan under the program, the developer is required
12 to submit to the authority a proposed loan and interest amount, a
13 repayment plan, an accounting of the remaining project financing
14 gap, and any other information the authority requires. To apply for
15 a loan guarantee, the developer is required to submit to the authority
16 a proposed loan guarantee amount and terms, an accounting of the
17 remaining project gap, and any other information the authority
18 requires.

19 The bill authorizes the authority to issue loans and loan
20 guarantees using a “Redevelopment Project Bridge Financing
21 Revolving Fund,” into which all monies received from loan
22 repayments are to be deposited. All monies received in the fund are
23 to support the program until such time as the authority determines
24 there remains no need for bridge financing, or until December 31,
25 2028, whichever occurs first, at which point the monies in the
26 Redevelopment Project Bridge Financing Revolving Fund are to be
27 deposited into the General Fund.

28 The bill requires that the authority recommend to the Governor
29 and the Legislature an amount for appropriation, which amount is
30 necessary for the administration of the Redevelopment Project
31 Bridge Financing Program.

32

33 *Aspire Program Tax Credit Redemption*

34 The bill requires the Department of the Treasury to redeem
35 unused tax credits, as the department deems necessary. The bill
36 authorizes the department to purchase such certificates at a discount
37 of their face value, which discount may not exceed 10 percent. The
38 tax credit redemptions are to be paid in the same manner as tax
39 refunds, except that the proceeds of the redemption may be issued
40 over one or more tax periods, but not to exceed the eligibility
41 period.

42

43 *Changes to Corporate Business Tax and Gross Income Tax*

44 The bill amends current law to exclude gains from the transfer of
45 tax credits issued pursuant to the “New Jersey Economic Recovery
46 Act of 2020” from the calculation of “entire net income” under the
47 New Jersey Corporate Business Tax and “gross income” under the
48 New Jersey Gross Income Tax.