SENATE, No. 1323

STATE OF NEW JERSEY

221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:
Senator NELLIE POU
District 35 (Bergen and Passaic)
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District 36 (Bergen and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Economic Growth Committee with technical review.

(Sponsorship Updated As Of: 6/6/2024)

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

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

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

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

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

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

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

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

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

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

"Collaborative workspace" means coworking, accelerator, incubator, or other shared working environments that promote collaboration, interaction, socialization, and coordination among tenants through the clustering of multiple businesses or individuals. For this purpose, the collaborative workspace shall be the greater of: 2,500 of dedicated square feet or 10 percent of the total property on which the redevelopment project is situated. The collaborative workspace shall

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.

include a community manager, be focused on collaboration among the community members, and include regularly scheduled education events for the community members. The collaborative workspace shall also include a physical open space that supports the engagement of its community members.

"Commercial project" means a redevelopment project, which is predominantly commercial and, if located in a government-restricted municipality, contains 25,000 or more square feet, or if located in any other municipality, contains 50,000 or more square feet of office and retail space, industrial space <u>including, but not limited to, any industrial space that is predominantly used for warehouse distribution or fulfillment centers and has at least $10 million in environmental remediation costs</u>, or film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, and may include a parking component. The term "commercial project" includes a redevelopment project comprised solely of a health care or health services center, which contains not less than 10,000 square feet devoted to health care or health services, and which may include a parking component.

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

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

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

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

"Eligibility period" means the period not to exceed 15 years for a commercial or mixed-use project or the period not to exceed 10 years for a residential project specified in an incentive award agreement during which a developer may claim a tax credit under the program, as such period shall be determined by the authority pursuant to subsection b. of section 60 of P.L.2020, c.156 (C.34:1B-328).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Minimum environmental and sustainability standards" means standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction.

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

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

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

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

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

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

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

"Project cost" <u>or "total project cost"</u> means the costs incurred in connection with a redevelopment project by a developer until the issuance of a permanent certificate of occupancy, or until such other time specified by the authority, for a specific investment or improvement, including the costs relating to lands, except the cost of acquiring such lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus costs not directly related to construction, including capitalized interest paid to third parties, of an amount not to exceed 20 percent of the total costs and the cost of infrastructure improvements, including ancillary infrastructure projects. When 100 percent of the residential units constructed in a residential project are reserved for occupancy by low- and moderate-income households, the term "project cost" shall also include the developer fees paid before acquiring permanent financing, as well as the deferred developer fees approved pursuant to the rules established by the agency. <u>In addition to the foregoing, the term "project cost" shall include the following costs when incurred by a developer for a redevelopment project located in a government restricted municipality: any development, redevelopment, and relocation costs, including, but not limited to, land and building acquisition costs; any soft costs, including engineering, legal, accounting, and other professional services required for the completion of the project; any environmental remediation costs; and any infrastructure improvement for the project area, including, but not limited to, costs of on- and off-site utility, road, pier, wharf, bulkhead,</u>

or sidewalk construction or repair. The fees associated with the application or administration of a grant under sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335) shall not constitute a project cost, regardless of the location of the redevelopment project.

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

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

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

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

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

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

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

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

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

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

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

"Total ⟦project⟧ <u>development</u> cost" <u>or "total redevelopment cost"</u> means the costs incurred in connection with the redevelopment project by the developer until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, for a specific investment or improvement.

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

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

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

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

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

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

56. a. (1) The New Jersey Aspire Program is hereby established as a program under the jurisdiction of the New Jersey Economic Development Authority. The authority shall administer the program to encourage redevelopment projects through the provision of incentive awards to reimburse developers for certain project financing gap costs. The board may approve the award of an incentive award to a developer upon application to the authority pursuant to sections 58 and 59 of P.L.2020, c.156 (C.34:1B-326 and C.34:1B-327). The value of all tax credits approved by the authority pursuant to sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335) shall be subject to the limitations set forth in section 98 of P.L.2020, c.156 (C.34:1B-362).

(2) The authority, in consultation with the agency, shall adopt rules and regulations, pursuant to subsection b. of section 67 of P.L.2020, c.156 (C.34:1B-335), concerning the establishment and administration of the affordability controls that shall apply to the residential units constructed for occupancy by low- and moderate-income households under the program, including, but not limited to, residential units within residential projects that utilize federal low-income housing tax credits awarded by the agency. Notwithstanding any provision of law or regulation to the contrary, the affordability controls shall, at a minimum, be consistent with the affordability controls established in the rules and regulations adopted pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as in

effect immediately prior to the effective date of P.L.2023, c.98 (C.34:1B-335.1 et al.), including, but not limited to, any requirements concerning the ⟦bedroom distributions,⟧ affordability averages, affirmative marketing, and long-term deed restrictions of residential units constructed for occupancy by low- and moderate-income households<u>, except not including the bedroom distribution requirements for three-bedroom housing units</u>.

b. The chief executive officer of the authority shall designate one staff member per government-restricted municipality in order to keep the municipality informed on activities within the municipality and to coordinate economic development initiatives.

(cf: P.L.2023, c.98, s.2)

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

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

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

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

(3) the redevelopment project, except a film studio, professional stage, television studio, recording studio, screening room, or other infrastructure used for film production, is located in the incentive area;

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

<u>(b) if the developer has commenced demolition and site remediation activities at the site of the redevelopment project prior to submitting an application, all construction workers employed to undertake demolition and site remediation activities at the site were paid not less than the prevailing wage rate for the worker’s craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.);</u>

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

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

(7) (a) during the eligibility period, each worker employed to perform construction work at the redevelopment project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as

determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.);

(b) during the eligibility period, each worker employed to perform building services work at the redevelopment project, whether pursuant to contract by the developer or a commercial tenant, commercial subtenant, or other commercial occupant, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.), except that this requirement shall not apply to workers employed to perform building services work by 【a】 <u>any residential tenant or any</u> commercial tenant, commercial subtenant, or other commercial occupant that has a leasehold interest or other occupancy right in a redevelopment project, which leasehold interest or other occupancy right encompasses less than 5,000 square feet of space within the project. The developer shall include in all commercial leases or other commercial occupancy agreements, and shall require that all subleases or other commercial occupancy agreements applicable to the redevelopment project include, a provision setting forth the requirements of this subparagraph, which provision shall be in a form acceptable to the authority. Notwithstanding any provisions of law to the contrary, if a commercial tenant, commercial subtenant, or other commercial occupant violates this provision due to the underpayment of the required prevailing wage rate, then the issuance of tax credits to the developer and any co-applicant shall be delayed until such time as documentation demonstrating compliance has been provided to the Commissioner of Labor and Workforce Development, subsequently reviewed and approved by the Commissioner of Labor and Workforce Development, and verified by the authority, which reviews and verification shall be completed. If a violation is not cured, or is not capable of being cured, within one year of receipt of notice of the violation, then the developer and any co-applicant shall forfeit 50 percent of the tax credits otherwise authorized for the tax period in which the notice of violation was issued. If the violation is not cured on or before the conclusion of that tax period, the developer and any co-applicant shall forfeit up to 100 percent of the tax credits otherwise authorized, as determined by the authority, in each subsequent tax period until the first tax period for which documentation demonstrating compliance has been provided to the Commissioner of Labor and Workforce Development, subsequently reviewed and approved by the Commissioner of Labor and Workforce Development, and verified by the authority, which reviews and verifications shall be completed. In this event, the developer and any co-applicant shall be allowed the full tax credit amount beginning in the tax period in which documentation of compliance was reviewed and approved by the Commissioner of Labor and Workforce Development and verified by the authority, including each subsequent tax period in which the tax credits are otherwise authorized;

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

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

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

(9) the developer has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 of P.L.2007, c.101 (C.54:50-39); and

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

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

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

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

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

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

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

e. Prior to the board considering an application submitted by a developer, the authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury whether the developer is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan for the developer. The developer shall certify that any contractors or subcontractors that will perform work at the redevelopment project: (1) are registered as required by "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.); (2) have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and (3) possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. The authority may also contract with an independent third party to perform a background check on the developer.

f. Beginning on the third year following the date of issuance of a final certificate of occupancy for a commercial project, and through the conclusion of the eligibility period, if the average occupancy rate of the commercial project is less than 60 percent during any applicable tax period, the developer and co-applicant shall forfeit all credits otherwise allowed for the tax period and for each subsequent tax period until the authority verifies documentation, submitted by the developer or co-applicant, demonstrating that the average occupancy rate has reached or surpassed 60 percent for the tax period. The full amount of credit shall be allowed to a developer and any co-applicant for the tax period in which the average occupancy rate reaches or surpasses 60 percent. Occupancy for the tax period shall be determined by the average of the

monthly occupancy for the applicable tax period. The occupancy requirement in this subsection shall not apply to residential projects.
(cf: P.L.2023, c.98, s.3)

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

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

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

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

c. To ensure the protection of taxpayer money, if the authority determines at project certification that the actual capital financing approach utilized by the project has resulted in a financing gap that is smaller than the financing gap determined at board approval, the authority shall reduce the amount of the tax credit or accept payment from the developer on a pro rata basis. If there is no project financing gap due to the actual capital financing approach utilized by the project, then the developer shall forfeit the incentive award. At the end of the seventh year of the eligibility period, the authority shall evaluate the developer's rate of return on investment and compare that rate of return on investment to the reasonable and appropriate rate of return at the time of board approval. If the actual rate of return on investment exceeds the reasonable and appropriate rate of return on investment at the time of board approval by more than 15 percent, the authority shall require the developer to pay up to 20 percent of the amount in excess of the reasonable and appropriate rate of return on investment. The authority shall require an escrow account to be held by the authority until the end of the eligibility period. Following the final year of the eligibility period, the authority shall determine if the developer's rate of return exceeded the reasonable and appropriate rate of return determined at board approval. If the final rate of return does not exceed the reasonable and appropriate rate of return determined at board approval, the authority shall release to the developer the escrowed funds. If the project final rate of return exceeds the reasonable and appropriate rate of return determined at board approval, the authority shall require the developer to pay up to 20 percent of the amount of the excess, which shall include the funds held in escrow, and such funds shall be deposited in the State General Fund.

d. The incentive award agreement shall include a requirement that the authority confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury that the developer is in substantial good standing with the respective department, or the developer has entered into an agreement with the respective department that includes a practical corrective action for the developer, and the developer shall confirm that each contractor or subcontractor performing work at the redevelopment project: (1) is registered as required by "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.); (2) has not been debarred, suspended, or disqualified by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, or been debarred, suspended, or disqualified by a federal agency from engaging in federally-funded construction projects or bidding on federal contracting

<u>opportunities</u>; and (3) possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. The incentive award agreement shall also include a provision that the developer shall forfeit the incentive award in any year in which the developer is neither in substantial good standing with each department nor has entered into a practical corrective action. The incentive award agreement shall also require a developer to engage in on-site consultations with the Division of Workplace Safety and Health in the Department of Health.

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

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

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

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

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

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

(4) Notwithstanding any requirement of this subsection to the contrary, a developer shall be considered to have met the requirements of a community benefits agreement ⟦pursuant to this subsection⟧<u>, and the requirements of paragraphs (2) and (3) of this subsection shall not apply,</u> if the developer submits to the authority:

(a) a copy of either the developer's approval letter from the authority or a redevelopment agreement applicable to the qualified business facility, provided that the approval letter <u>is certified by the municipality</u> or <u>the</u> redevelopment agreement is ⟦certified⟧ <u>adopted by resolution at a public meeting</u> by the municipality in which the redevelopment project is located, and includes provisions that meet ⟦or exceed⟧ the ⟦standards⟧ <u>community benefit</u> required ⟦for⟧ <u>under</u> a community benefits agreement in this subsection ⟦, as determined by the chief executive officer pursuant to rules adopted by the authority⟧; or

(b) a resolution adopted by the governing body of the municipality in which the redevelopment project is located, which resolution shall be adopted after at least one public hearing at which the governing body provides an opportunity for residents, community groups, and other stakeholders to testify, and which resolution shall state that the governing body has determined that the redevelopment project will provide economic and social benefits to the community that fulfill the purposes of this subsection, which benefits render a separate community benefit agreement unnecessary, and explain the reasons supporting the governing body's determination.

g. A developer shall submit, prior to the first disbursement of tax credits under the incentive award agreement, but no later than six months following project completion, satisfactory evidence of actual project costs, as certified by a certified public accountant, evidence of a temporary certificate of occupancy, or other event evidencing project completion that begins the eligibility period indicated in the incentive award agreement. The developer, or an authorized agent of the developer, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury. Claims, records, or statements submitted by a developer to the authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws.

h. The incentive award agreement shall include a provision allowing the authority to extend, in individual cases, the deadline for any annual reporting or certification requirement.

i. The incentive award agreement shall include one or more provisions, as determined by the authority, concerning the terms and conditions for default and the remedies for the developer of a redevelopment project in the event of default. The incentive award agreement shall not allow the authority to declare a cross-default when the developer of a redevelopment project, including any business affiliate of the developer or any other entity with common principals as the developer, is in default with any other assistance program administered by the authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) for a redevelopment project that meets local first source hiring requirements for residents in the municipality or county in which the project is located and in surrounding municipalities, as appropriate, an enhancement of up to three percent of the project cost of the redevelopment project.

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

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

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

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

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

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

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

(2) Upon receipt by the director of the certificate of compliance, the director shall allow the developer a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). A developer shall apply the credit awarded against the developer's liability under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 for the privilege period [during] identified in the tax credit certificate which the director [allows] issues to the developer [a tax credit] pursuant to this subsection, or within the three successive tax periods immediately following the tax period in which the tax credit certificate is received by the developer. A developer may carry forward an unused credit resulting from the limitations of paragraph (3) of this subsection, if necessary, for use in the seven privilege periods next following the privilege period for which the credits are [awarded] applied. Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the director accompanied by any additional information as the director may prescribe.

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

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

63. a. A developer may apply to the director and the chief executive officer of the authority for a tax credit transfer certificate, covering one or more years, in lieu of the developer being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer from the director and the chief executive officer of the authority, may be sold or assigned, in full or in part in an amount not less than $25,000, in the privilege period during which the developer receives the tax credit transfer certificate from the director, to another

person, who may apply the credit against a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The certificate provided to the developer shall include a statement waiving the developer's right to claim the amount of the credit that the developer has elected to sell or assign against the developer's tax liability.

b. The developer shall not sell or assign, including a collateral assignment, a tax credit transfer certificate allowed under this section for consideration received by the developer of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted, except a developer of a residential project consisting of newly-constructed residential units may assign a tax credit transfer certificate for consideration of less than 85 percent subject to the submission of a plan to the authority and the agency to use the proceeds derived from the assignment of tax credits to complete the residential project, except a developer of a residential project consisting of newly-constructed residential units that has received federal low income housing tax credits under 26 U.S.C. s.42(b)(1)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 65 percent subject to the submission of a plan to the authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project. The tax credit transfer certificate issued to a developer by the director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335) and any other terms and conditions that the director may prescribe; provided, however, that the holder of a tax credit certificate may transfer all or part of the tax credit amount, within the three successive tax periods immediately following the tax period in which the tax credit certificate is received by the developer, on or after the date of issuance of the tax credit transfer certificate, for use by the transferee in the tax period for which it was issued or within the three successive tax periods immediately following the tax period in which the tax credit transfer certificate is received by the transferee, and the transferee may carry forward all or part of the tax credit amount in any of the next five successive tax periods after the tax period for which it was used. Notwithstanding any provision of this section to the contrary, the amount of tax credits that may be claimed by the transferee in any tax period shall not exceed the total tax credit amount divided by the duration of the eligibility period in years.

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

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

(1) the name of the transferor;

(2) the name of the transferee;

(3) the value of the tax credit transfer certificate; and

(4) the consideration received by the transferor.

e. When a tax credit certificate is issued to a developer after the tax period in which all or part of the tax credits may be used by the developer or a holder of the credit transfer certificate, the developer or transferee shall be allowed to use the tax credit for the same tax period specified in the tax credit certificate, or within the three successive tax periods immediately following the tax period in which the certificate is received by the developer or transferee. In this circumstance, the developer or transferee shall not be required to amend its tax return for the tax period in which it applies the tax credit or for a tax period preceding the tax period in which the tax credit is applied.

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

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

65. a. As used in this section, "transformative project" means a redevelopment project: that has a project financing gap; that has a total project cost of at least $150,000,000; that, subject to the provisions of subsection h. of this section, includes 200,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in a government-restricted municipality, that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, that includes 300,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in an enhanced area, or that includes 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for any other project; and, for a commercial project, that is of special economic importance as measured by the level of new jobs, new capital investment, opportunities to leverage leadership in a high-priority targeted industry, or other state priorities as determined by the authority pursuant to rules and regulations promulgated to implement this section. Notwithstanding the provisions of subsection b. of section 14 of P.L.2023, c.98 (C.34:1B-335.1) to the contrary, for applications submitted on and after the effective date of P.L.2023, c.98 (C.34:1B-335.1 et al.), if the redevelopment project is located entirely on land designated by the Department of Environmental Protection as a brownfield development area pursuant to section 7 of P.L.2005, c.223 (C.58:10B-25.1), and the project cost of the redevelopment project includes at least $15,000,000 in environmental remediation costs, the

redevelopment project shall constitute a project of special economic importance. A transformative project may be completed in phases, which phases may be determined by the authority based on factors such as written architectural plans and specifications completed before or during the physical work, certificates of occupancy, or financial and operational plans. The criteria developed by the authority shall include, but shall not be limited to:

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

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

(b) for a residential project containing **[**less**]** fewer than 700 new residential units, the construction of 200 or more new residential units if the project is located in a government-restricted municipality, 300 or more residential units if the project is located in an enhanced area, or 400 or more residential units for all other mixed-use projects; or

(c) for a residential project containing **[**less**]** fewer than 700 new residential units, the construction of **[**50,000**]** 20,000 square feet or more of commercial space, which commercial space may include retail space; and

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

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

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

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

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

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

(3) Notwithstanding the provisions of section 57 of P.L.2020, c.156 (C.34:1B-325), or any other section of P.L.2020, c.156 (C.34:1B-269 et al.) to the contrary, a transformative project shall be completed, and the developer shall be issued a certificate of occupancy for the transformative project facilities by the applicable enforcing agency, within five years of executing the incentive award agreement, except that the authority may, in its discretion, extend this deadline by up to one additional year. For transformative projects completed in phases, the transformative project shall be completed, and the developer shall be issued certificates of occupancy for all phases of the transformative project facilities by the applicable enforcing agency, within 10 years of executing either the incentive award agreement or the first transformative phase agreement corresponding to the transformative project.

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

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

(6) A transformative project receiving an incentive award pursuant to this section, other than a project that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms or other infrastructure for film production, shall be located in an incentive area, a distressed municipality, a government-restricted municipality, or an enhanced area. A transformative project receiving an incentive award pursuant to this section that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms or other infrastructure for film production may be located

anywhere in the State. The authority shall not consider an application for a transformative project unless the applicant submits with its application a letter evidencing support for the transformative project from the governing body of the municipality in which the transformative project is located.

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

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

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

f. Prior to allocating an incentive award to a developer, the authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer is in substantial good standing with the respective department, or the developer has entered into an agreement with the respective department that includes a practical corrective action plan, and the developer shall certify that each contractor or subcontractor performing work at the transformative project: (1) is registered as required by "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.); (2) has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and (3) possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. The authority may also contract with an independent third party to perform a background check on the developer.

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

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

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

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

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

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

h. Notwithstanding the limitations set forth in subsection g. of this section, a developer of a transformative project shall be eligible for each of the following enhancements to the total tax credit award:

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

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

(3) for a transformative project that meets local first source hiring requirements for residents in the municipality or county in which the project is located and in surrounding municipalities, as appropriate, an enhancement of up to three percent of the project cost of the transformative project.

i. (1) The parking component of a transformative project shall be included in the calculation of the total square footage of the project, provided that the parking component shall be constructed in conformity with local zoning, planning, or similar requirements, or up to the amount required by the Residential Site Improvement Standards, regardless of whether the Residential Site Improvement Standards apply to the parking component. Any portion of the parking component that exceeds the local parking requirements or the Residential Site Improvement Standards shall not be included in the calculation of the total square footage of the project.

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

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

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

14. a. (1) Except as otherwise provided in subsection b. of this section, all program applications **[**completed after**]** submitted to the authority on or after the date six months prior to the effective date of **[**P.L.2023, c.98 (C.34:1B-335.1 et al.)**]** P.L. , c. (C.) (pending before the Legislature as this bill) shall be subject to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), as amended as supplemented by P.L.2023, c.98 (C.34:1B-335.1 et al.), and as further amended and supplemented by P.L. , c. (C.) (pending before the Legislature as this bill), including the rules and regulations adopted pursuant to subsection b. of section 67 of P.L.2020, c.156 (C.34:1B-335), except that applications submitted to the authority prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be subject to the rules and regulations concerning application fees that were in effect immediately before the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

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

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

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

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

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

completion of the redevelopment projects. As determined by the authority, the Redevelopment Project Bridge Financing Program may consist of:

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

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

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

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

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

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

(a) a proposed loan principle and interest amount;

(b) a proposed repayment schedule;

(c) an accounting of the remaining project financing gap; and

(d) any other information as the authority shall require.

(3) The authority may issue the redevelopment project bridge financing loan in such amount as it deems appropriate, subject to such terms, including, but not limited to, interest rates, collateral, and repayment or release schedules, as the authority shall deem reasonable and appropriate, except that each worker employed to perform construction work on the redevelopment project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

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

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

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

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

(a) a proposed loan guarantee amount and terms;

(b) an accounting of the remaining project financing gap; and

(c) any other information as the authority shall require.

(3) The authority may issue the loan guarantees in such amounts as it deems appropriate, subject to such terms as the authority deems reasonable and appropriate, except that each worker employed to perform construction work on the redevelopment project shall be paid

not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

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

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

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

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

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

89. a. The Director of the Division of Taxation in the Department of the Treasury may purchase unused tax credits awarded under a program listed in subsection b. of this section, including tax credit transfer certificates issued by the director in lieu of a tax credit allowed under such programs. The director shall not pay

consideration in excess of 75 percent of the credit amount to be purchased, except for a credit awarded under:

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

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

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

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

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

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

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

(5) the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321);

(6) the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335);

(7) the " Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.);

(8) the Grow New Jersey Assistance Program established pursuant to section 3 of P.L.2011, c.149 (C.34:1B-244);

(9) section 6 of P.L.2010, c.57 (C.34:1B-209.4);

(10) the State Economic Redevelopment and Growth Grant program established pursuant to section 5 of P.L.2009, c.90 (C.52:27D-489e);

(11) section 1 of P.L.2018, c.56 (C.54:10A-5.39b); and

(12) section 2 of P.L.2018, c.56 (C.54A:4-12b).

(cf: P.L.2020, c.156, s.89)

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

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

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

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

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

(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in paragraph (2) (F) of subsection (k) of this section. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from the net worth of the taxpayer, if the foreign entity is considered a corporation for any purpose under the United States federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed paid foreign tax credits or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.

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

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

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

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

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

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

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

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

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

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

(1) Entire net income shall exclude for the periods set forth in paragraph (2)(F)(i) of this subsection, any amount, except with

respect to qualified mass commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which is included in a taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of paragraph (8) of that section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

With respect to privilege periods ending before July 31, 2023, a deduction shall also be permitted to the extent that the taxpayer establishes by a preponderance of the evidence, as determined by the director, that the interest is directly or indirectly paid, accrued or incurred to (i) a related member in a foreign nation which has in force a comprehensive income tax treaty with the United States and the related member (aa) was subject to tax in the foreign nation on a tax base that included the payment paid, accrued, or incurred; and (bb) under which the related member's income received from the transaction was taxed at an effective tax rate equal to or greater than a rate of three percentage points less than the rate of tax applied to taxable interest by the State of New Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), provided however that the taxpayer shall disclose on its return for the privilege period the name of the related member, the amount of the interest, the relevant foreign nation, and such other information as the director may prescribe or (ii) to an independent lender and the taxpayer guarantees the debt on which the interest is required. The adjustments required by this subparagraph shall not apply to transactions between related members included in a combined group reported on a New Jersey combined return.

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

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

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

(ii) For privilege periods beginning after December 31, 2017 and ending on and after July 31, 2022, the interest deduction limitation in subsection (j) of section 163 of the Internal Revenue Code (26 U.S.C. s.163), shall apply to a combined group as though the combined group filed a federal consolidated return; provided, however, for the purposes of applying the limitation in subsection (j) of section 163 of the Internal Revenue Code (26 U.S.C. s.163), with regard to affiliates that were members of the federal consolidated return but were not members of the combined group included on the New Jersey combined return, the combined group and the affiliates will also be treated as having filed one federal consolidated return.

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

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

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

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

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

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

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

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

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

(5) (A) (i) Entire net income shall exclude 100% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section for privilege periods beginning on or before December 31, 2016.

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

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

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

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

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

(D) For privilege periods ending on and after July 31, 2019 but before July 31, 2020, to the extent a subsidiary received dividends from other subsidiaries and included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends, the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) No deduction shall be allowed for research and experimental expenditures, to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research

and experimental expenditures are also used to compute a federal credit claimed pursuant to section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41; provided, however, for privilege periods beginning on and after January 1, 2022, a deduction for research and experimental expenditures shall be allowed during the same privilege period for which a credit is claimed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), notwithstanding the timing schedule required by the federal Internal Revenue Code of 1986, 26 U.S.C. s.174, for the deduction of specified research and experimental expenditures.

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

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

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

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

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

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

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

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

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

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

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

(ii) For group privilege periods beginning on and after January 1, 2023, but before January 1, 2030, the combined group may deduct one percent of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability, during a group privilege period. Such increase in the net deferred tax liability or decrease in the net deferred tax asset or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the unitary reporting requirements under sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided under this paragraph as of the effective date of this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) "Financial business corporation" shall mean any corporate enterprise which is (1) in substantial competition with the business of national banks and which (2) employs moneyed capital with the object of making profit by its use as money, through discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts; dealing in securities and shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers; or investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or dealing in or underwriting obligations of the United States, any state or any political subdivision thereof, or of a corporate instrumentality of any of them. This shall include, without limitation of the foregoing, business commonly known as industrial banks, dealers in commercial paper and acceptances, sales finance, personal finance, small loan and mortgage financing businesses, as well as any other enterprise employing moneyed capital coming into competition with the business of national banks; provided that the holding of bonds, notes, or other evidences of indebtedness by individual persons not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with the business of national banks, shall not be deemed financial business. Nor shall "financial business" include national banks, production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual insurance companies duly authorized to transact business in this State, security brokers or dealers or investment companies or bankers not employing moneyed capital coming into competition with the business of national banks, real estate investment trusts, or any of the following entities organized under the laws of this State: credit unions, savings banks, savings and loan and building and loan associations, pawnbrokers, and State banks and trust companies.

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

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

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

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

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

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

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

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

(1) As used in this subsection:

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

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

"UNOL" means the unabsorbed portion of net operating loss as calculated under paragraph (6) of subsection (k) of this section as such paragraph was in effect for the last privilege period ending prior to July 31, 2019, that was not deductible in previous privilege periods and was eligible for carryover on the last day of the base year subject to the limitations for deduction under such subsection, including any net operating loss sustained by the taxpayer during the base year.

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

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

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

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

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

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

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

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

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

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

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

(w) "Taxable net income" means entire net income allocated to this State as calculated pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as modified by subtracting any prior net operating loss conversion carryforward calculated pursuant to subsection (u) of this section, and any net operating loss calculated pursuant to subsection (v) of this section; provided, however, for privilege periods ending on and after July 31, 2023, when subtracting any net operating losses calculated pursuant to subsection (v) of this section or the combined group net operating losses calculated pursuant to subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6), the limitation set forth in paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. s.172(a)(2)) shall apply, except that August 1, 2023 is substituted for the reference to January 1, 2018 in subparagraph (A) of paragraph (2) of subsection a. of Internal Revenue Code Section 172 (26 U.S.C. s.172), and July 31, 2023 is substituted for the reference to December 31, 2017 in subparagraph (B) of paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. s.172). For privilege periods ending on and after July 31, 2023, for a combined group, before subtracting the prior net operating loss conversion carryforwards and subtracting the net operating losses of the combined group when computing the total taxable net income, the combined group shall first add together the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group, and then subtract the prior net operating loss conversion carryforwards and then the net operating losses.

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

For purposes of this subsection:

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

"Commonly owned" means that more than 50 percent of the voting control of each member of an affiliated group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the affiliated group. Whether voting control is indirectly owned shall be determined in accordance with section 318 of the federal Internal Revenue Code (26 U.S.C. s.318).

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

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

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

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

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

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

For purposes of this definition:

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

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

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

(z) "Combined group" means the group of all companies that have common ownership and are engaged in a unitary business, where at least one company is subject to tax under this chapter, and shall include all business entities, except as provided for under any section of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).

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

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

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

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

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

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

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

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

A New Jersey S corporation shall only be included as a taxable member of a combined group filing a New Jersey combined return if the New Jersey S Corporation elects to be included as a member and taxed at the same rate as the other members of the combined group. A New Jersey S corporation that does not elect to be included shall be excluded as a member of the combined return and shall file a separate return.

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

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

For privilege periods ending on and after July 31, 2023, any voting stock in an investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code, shall not be taken into account for purposes of determining whether an investment company is a captive regulated investment company.

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

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

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

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

As used in this subsection:

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

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

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

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

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

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

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

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

For privilege periods ending on and after July 31, 2023, any voting stock in a regulated investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code (26 U.S.C. s.817), shall not be taken into account for purposes of determining whether a regulated investment company is a captive regulated investment company.

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

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

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

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

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

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

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

(1) taxes based on income;

(2) a civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order,

assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator; and

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

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

A taxpayer's net gain or loss on the sale, exchange or other disposition of a share of an S corporation shall be calculated by increasing the adjusted basis of the share by an amount equal to the shareholder's net losses and deductions in respect of the share allowed and deducted from income for federal income tax purposes, not including any personal net operating loss deductions, to the extent that such net losses were not offset by the taxpayer's pro rata share of S corporation income otherwise subject to taxation pursuant to subsection p. of this section in respect of another S corporation, subject to rules of priority and assignment determined by the director.

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

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

For purposes of this clause, the term "reorganization" means⟦--⟧:

(i) A statutory merger or consolidation;

(ii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

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

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

(v) A recapitalization;

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

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

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

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

For purposes of this clause, the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under subclause (i) by reason of subclause (vii) the term "a party to a reorganization" includes the controlling corporation referred to in such subclause (vii).

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

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

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

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

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

g. Gambling winnings.

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

i. Income in respect of a decedent.

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

k. Distributive share of partnership income, excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) **[**and**]**, section 10 of P.L.2014, c.63 (C.34:1B-251), or the "New Jersey Economic Recovery Act of 2020," P.L.2020, c.156 (C.34:1B-269 et al.), as amended and supplemented, from any sale or assignment of a tax credit issued pursuant to an award of tax credits approved by the New Jersey Economic Development Authority **[**prior to July 1, 2018**]**, regardless of when such sale or assignment occurs.

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

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

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

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

p. Net pro rata share of S corporation income, excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) ⟦and⟧, section 10 P.L.2014, c.63 (C.34:1B-251), or the "New Jersey Economic Recovery Act of 2020," P.L.2020, c.156 (C.34:1B-269 et al.), as amended and supplemented, from any sale or assignment of a tax credit issued pursuant to an award of tax credits approved by the New Jersey Economic Development Authority ⟦prior to July 1, 2018⟧, regardless of when such sale or assignment occurs.
(cf: P.L.2018, c.131, s.8)

16. Section 1 of P.L.1979, c.303 (C.34:1B-5.1) is amended to read as follows:

1. a. The New Jersey Economic Development Authority shall adopt rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of any construction contract, including contracts for millwork fabrication, undertaken in connection with authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.), or undertaken to fulfill any condition of receiving authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of authority financial assistance, unless the work performed under the contract is performed on a facility owned by a landlord of the entity receiving the assistance and less than 35 percent of the facility is leased by the entity at the time of the contract and under any agreement to subsequently lease the facility. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). For the purposes of this section, "authority financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance that is approved, funded, authorized, administered or provided by the authority to any entity and is provided before, during or after completion of a project, including but not limited to, all authority financial assistance received by the entity pursuant to the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.) that enables the entity to engage in a construction contract, but this section shall not be construed as requiring the payment of the prevailing wage for construction commencing more than two years after an entity has executed with the authority a commitment letter regarding authority

financial assistance and the first payment or other provision of the assistance is received.

b. The New Jersey Economic Development Authority shall adopt rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of any contract, for construction, demolition, remediation, removal of hazardous substances, alteration, custom fabrication, repair work, or maintenance work, including painting and decorating, or excavation, grading, pile driving, concrete form, or other types of foundation work in connection with the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335), and the "New Jersey Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.). The requirements of this subsection shall apply to any site preparation work performed 24 months prior to and during the incentive eligibility period of any project receiving tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321), the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335), and the "New Jersey Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), and to projects receiving financial assistance under the “Redevelopment Project Bridge Financing Program,” established pursuant to section 11 of P.L. , c. (C.) (pending before the Legislature as this bill), in which there is a continuity of ownership in the site of the redevelopment project, including work undertaken to fulfill any condition of receiving tax credits under the programs. Work that is subject to the requirements of this subsection shall include the performance of any contract for construction, demolition, remediation, removal of hazardous substances, alteration, custom fabrication, repair work, or maintenance work, including painting and decorating, or excavation, grading, pile driving, concrete form, or other types of foundation work undertaken on a facility for operations which are necessary for the receipt of tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321), the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335), and the "New Jersey Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), or the receipt of financial assistance under the “Redevelopment Project Bridge Financing Program,” established pursuant to section 11 of P.L. , c. (C.) (pending before the Legislature as this bill), unless the work performed under the contract is performed on a facility owned by a landlord of the entity receiving the tax credit and less than 35 percent of the facility is leased by the entity at the time of the contract and under any agreement to subsequently lease the facility. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.), and all contractors and subcontractors subject to the prevailing wage requirement set forth in this section shall be registered with the Department of Labor and Workforce Development pursuant to the provisions of section 5 of P.L.1999, c.238 (C.34:11-56.52). An applicant for tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321), the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335), and the "New Jersey Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), shall certify under penalty of perjury as part of its application that all construction contracts undertaken on any project in connection with an award under the programs comply with the prevailing wage requirements of this subsection. If at any time the authority determines that the developer made a material misrepresentation regarding compliance with the provisions of this subsection on the developer's application, the developer shall forfeit 35 percent of the tax credits allowed under the programs, and pay to the affected workers back wages in an amount that compensates the workers at the prevailing wage rate for the work performed.

(cf: P.L.2020, c.156, s.112)

17. This act shall take effect immediately.