34:1B-237

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2008 **CHAPTER:** 112

NJSA: 34:1B-237 (Establishes the InvestNJ Business Grant Program in NJEDA to stimulate certain capital investment and job creation in New Jersey during a limited period, makes appropriations)

BILL NO: A3294 (substituted for S6)

SPONSOR(S) Milam and others

DATE INTRODUCED: October 6, 2008

COMMITTEE: **ASSEMBLY:** Commerce and Economic Development
Appropriations

SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** November 17, 2008

SENATE: November 24, 2008

DATE OF APPROVAL: December 9, 2008

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (assembly committee substitute enacted)

A3294

SPONSOR'S STATEMENT: (Begins on page 12 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes Com. & Eco. Dev; 10-6-08
Approp. 11-13-08

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

S6/S2213

SPONSOR'S STATEMENT S6: (Begins on page 6 of original bill) Yes

SPONSOR' S STATEMENT S2213: (Begins on page 12 or original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or mailto:refdesk@njstatelib.org.

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Corzine signs business stimulus bill," Burlington County Times, 12-10-08, p.B3
"Financial Stimulation," The Trentonian, 12-10-08, p.18
"Corzine signs stimulus bill," Courier-Post, 12-10-08, p.9D
"NJ governor signs business stimulus bill," Home News Tribune, 12-10-08, p.B8
"Corzine signs promised bill to stimulate N.J.'s economy," The Press, 12-10-08, p.C4
Corzine signs stimulus bill aimed at revitalizing business," Courier News, 12-10-08, p.A11
"NJ gov to sign business stimulus bill," Courier News, 12-10-08, p.B5
"State offers twist on employee bonuses," The Star Ledger, 12-10-08, p.061
"Law encourages new jobs," Herald News, 12-10-08, p.C12
"New law encourages job creation," The Record, 12-10-08, p.B01E
"Gov signs bill to encourage business to hire, invest," Asbury Park Press, 12-10-08, p.A1

LAW/RWH 3/6/09

§§1-5 –
C.34:1B-237
to 34:1B-241
§§6,7 - Approp.

P.L. 2008, CHAPTER 112, ***approved December 9, 2008***
Assembly Committee Substitute for
Assembly, No. 3294

AN ACT establishing a grant program to stimulate certain capital investment and job creation in New Jersey during a limited period, supplementing P.L.1974, c.80 (C.34:1B-1 et seq.) and making appropriations.

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

1. This act shall be known and may be cited as the "InvestNJ Business Grant Program Act."

2. As used in this act:

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

"Business" means any entity including, but not limited to a corporation, an S corporation, limited liability corporation, partnership, limited liability partnership, and sole proprietorship, and shall include all entities related by common ownership or control.

"Capital investment" means expenses of at least $5,000 incurred for the direct use and operation of a business for (1) the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property; and (2) obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility. Provided however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.168). "Capital investment" shall also include remediation of a business facility site, but only to the extent the remediation has not received financial assistance from another federal, State or local government funding source.

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Eligible position" means a full-time position filled by an individual whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. An eligible position shall include only a position for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes. An eligible position shall not include an independent contractor or a consultant.

3. a. There is established the Invest in New Jersey Business Grant Program to be administered by the New Jersey Economic Development Authority. The program shall include an investment grant component to provide an incentive to businesses, during the current national economic crisis, to encourage capital investments by the award of grants of up to 7 percent of the qualifying capital investment made by a business in New Jersey during a limited period.

b. The Chief Executive Officer shall approve the issuance of a grant to a business that:

(1) has operated continuously for at least two years prior to filing an application for a grant;

(2) employs at least 5 full-time employees; and

(3) makes a capital investment in New Jersey after the effective date of P.L. , c. (C.) (now pending before the Legislature as this bill) but prior to January 1, 2011.

c. A business seeking to participate in the investment grant component shall submit an application in such form as required by the Chief Executive Officer. Such application shall include such information as the officer shall determine is necessary to administer the grant program. All applications shall be submitted prior to January 1, 2011.

d. The Chief Executive Officer shall review and may approve an application for the grant program. The Chief Executive Officer shall issue payment of the grant amount pursuant to a series of scheduled payments as the Chief Executive Officer may determine and subject to the submission of proof by an approved applicant of the expenditures contributing to the capital investment. A grantee that fails to comply with a grant agreement that shall be made as a condition of a grant award shall repay any grant amount received and, if so determined by the Chief Executive Officer, shall pay a penalty not in excess of ten percent of the grant amount.

e. The value of the grant shall be 7 percent of the capital investment provided that no grantee shall receive more than $1,000,000 pursuant to this section. Provided further, that the sum of grants awarded pursuant to this section shall not exceed $70,000,000 of which not more than $20,000,000 shall be allocated for capital investment grants described under paragraph (2) of "capital investment" as defined in section 1 of this act.

f. For the purpose of determining eligibility for a grant pursuant to this section, the authority shall exclude any expenses incurred at a site for which the business is receiving a business employment incentive grant pursuant to the provisions of P.L.1996, c.26 (C.34:1B-124 et seq.), a business retention and relocation assistance grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) or an urban transit hub tax credit pursuant to P.L.2007, c.346 (C.34:1B- 207 et seq.), and shall exclude any expenses covered by a retail sales purchase exemption pursuant to section 20 of P.L.1983, c.303 (52:27H-79), section 25 of P.L.1980, c.105 (C.54:32B-8.13), section 26 of P.L.1980, c.105 (C.54:32B-8.14), section 28 of P.L.1980, c.105 (C.54:32B-8.16), section 41 of P.L.1980, c.105 (C.54:32B-8.29), section 45 of P.L.1980, c.105 (C.54:32B-8.33), or section 11 of P.L.1981, c.546 (C.54:32B-8.36).

4. a. There is also established under the Invest in New Jersey Business Grant Program to be administered by the New Jersey Economic Development Authority, an employment grant component to provide an incentive to businesses, during the current national economic crisis, to create full-time jobs that are retained for at least one year by the award of a grant of $3,000 to qualified businesses for each eligible position created.

b. The Chief Executive Officer shall approve the issuance of a grant to a business that:

(1) has operated continuously in this State for at least two years prior to filing an application for a grant;

(2) employs at least 5 full-time employees;

(3) adds an eligible position created in New Jersey after December 1, 2008 and before January 1, 2011, for a period of at least 12 consecutive months in this State; and

(4) the applicant has experienced a net increase in employment of eligible positions in this State during the same 12 consecutive months.

c. A business seeking to participate in the grant program shall submit an application in such form as required by the Chief Executive Officer. Such application shall include such information as the Chief Executive Officer shall determine is necessary to administer the grant program. All applications shall be submitted prior to January 1, 2011.

d. The Chief Executive Officer shall review and may approve an application for the grant program. The Chief Executive Officer shall issue payment of the grant upon the submission of proof by an approved applicant of the employment of an individual in the eligible position during a period of at least 12 consecutive months in this State and proof of the other requirements set forth in subsection b. of this section. Such submission shall be subject to review and audit by the Department of Labor and Workforce Development.

e. The value of the grant shall be $3,000 for each eligible position, provided that no grantee shall receive more than $500,000 in grants pursuant to this section. Provided further, that the sum of grants awarded pursuant to this section shall not exceed $50,000,000**.**

f. For the purpose of determining eligibility for a grant pursuant to this section, the authority shall not include any position that is included in the calculation of a business employment incentive grant pursuant to the provisions of P.L.1996, c.26 (C.34:1B-124 et seq.), a business retention and assistance relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) or an urban transit hub tax credit pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.).

5. The authority may promulgate rules and regulations necessary for the effective implementation of this P.L. , c. (C.) (now pending before the Legislature as this bill). Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the authority may adopt, immediately upon filing with the Office of Administrative Law, such regulations as are necessary to implement the provisions of P.L. , c. (C.) (now pending before the Legislature as this bill), which shall be effective for a period not to exceed 12 months following enactment, and may thereafter be amended, adopted, or readopted by the authority in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Such regulations may include, but shall not be limited to: examples of and the determination of capital investment; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital investments; and the promulgation of procedures and forms necessary to apply for a benefit under P.L. , c. (C.) (now pending before the Legislature as this bill).

6. Notwithstanding the provisions of P.L.2008, c.22 (C.52:9H-2.1 et al.), there is appropriated from the Long Term Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority a sum of up to $400,000 for the purpose of

defraying reasonable and necessary administrative expenses incurred in carrying out the provisions of this act, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury.

7. Notwithstanding the provisions of P.L.2008, c.22 (C.52:9H-2.1 et al.), there are appropriated from the Long Term Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority, such sums as are necessary, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury, to effectuate the purposes of this act.

8. This act shall take effect immediately.

Establishes the InvestNJ Business Grant Program in NJEDA to stimulate certain capital investment and job creation in New Jersey during a limited period, makes appropriations.

ASSEMBLY, No. 3294

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED OCTOBER 6, 2008

Sponsored by:
Assemblyman MATTHEW W. MILAM
District 1 (Cape May, Atlantic and Cumberland)
Assemblyman NELSON T. ALBANO
District 1 (Cape May, Atlantic and Cumberland)
Assemblyman JOSEPH VAS
District 19 (Middlesex)
Assemblyman LOUIS D. GREENWALD
District 6 (Camden)
Assemblywoman LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

Co-Sponsored by:
Assemblywoman Vainieri Huttle, Assemblymen Diegnan, Chivukula and Assemblywoman Pou

SYNOPSIS

Provides certain enhancements to Business Retention and Relocation Assistance Grant Program.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 11/14/2008)

AN ACT concerning enhancements to the Business Retention and Relocation Assistance Grant Program and amending P.L.1996, c.25 and P.L.2004, c.65.

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

1. Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to read as follows:

2. As used in this act:

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

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

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

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

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

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge;

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

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 <u>thus</u> is new matter.

person with headquarters or base of operations located in New Jersey and engaged in providing services or products necessary for such research, development, production, or provision;

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

["Commissioner" means the Executive Director of the New Jersey Commerce Commission;

"Department" means the New Jersey Commerce Commission;]

"Business" means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and which is subject to the provisions of R.S.43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State;

"Commitment duration" means five years from the date specified in the project agreement entered into pursuant to section 5 of P.L.1996, c.25 (C.34:1B-116);

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

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

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices;

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

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

"Executive Director" means the Executive Director of the New Jersey Economic Development Authority;

"Full-time employee" means a person who is employed for consideration for at least thirty-five hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and who is determined by the ⟦commissioner⟧ executive director to be employed in a permanent position according to criteria as the ⟦Board of Directors of the New Jersey Commerce Commission⟧ authority may prescribe. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. "Full-time employee" shall not include a child, grandchild, parent, or spouse of an individual who has direct or indirect ownership of at least 5% of the profits, capital, or value of the business;

"Headquarters" of a business means the single location that serves as the national administrative center of the business, at which the primary office of the chief executive officer or chief operating officer of the business, as well as the offices of the management officials responsible for key ⟦businesswide⟧ business-wide functions such as finance, legal, marketing, and human resources, are located;

"High-technology business" means an advanced computing company, advanced materials company, electronic device technology company, environmental technology company or medical device technology company;

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

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

"New business location" means the premises that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than eight years from the date of relocation;

"Manufacturing facility" means a business location at which more than 50% of the business personal property that is housed in the facility is eligible for the sales tax exemption pursuant to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13) for machinery, apparatus or equipment used in the production of tangible personal property;

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

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

"Research and development facility" means a business location at which more than 50% of the business personal property that is purchased for the facility is eligible for the sales tax exemption pursuant to section 26 of P.L.1980, c.105 (C.54:32B-8.14) for property used in research and development;

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of the members of a "controlled group of corporations" as defined pursuant to section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, shall be considered the eligible positions of a single employer; and

"Total allowable relocation costs" means ⟦$1,500⟧ $2,500 times the number of retained full-time jobs, or $4,000 times the number of full-time jobs if the business relocates 2,000 or more full-time jobs from outside of a designated urban center to one or more new locations within a designated urban center. "Total allowable relocation costs" does not include the amount of any bonus award authorized pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1).

(cf: P.L.2007, c.253, s.14)

2. Section 3 of P.L.1996, c.25 (C.34:1B-114) is amended to read as follows:

3. The Business Retention and Relocation Assistance Grant Program is hereby established as a program under the jurisdiction of the New Jersey ⟦Commerce Commission⟧ Economic Development Authority and shall be administered by the New Jersey ⟦Commerce Commission⟧ Economic Development Authority. The purpose of the program is to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which

are in danger of being relocated to premises outside of the State. To implement that purpose, and to the extent that funding for the program is available, the program may provide grants of tax credits but in no case shall the amount of an individual grant of tax credits exceed 80% of the projected State tax revenues from the retained full-time jobs covered by the project agreement of an applicant for a grant of tax credits.
(cf: P.L.2007, c.253, s.15)

3. Section 4 of P.L.1996, c.25 (C.34:1B-115) is amended to read as follows:

4. a. To qualify for a grant of tax credits, a business shall enter into an agreement to undertake a project to:

(1) relocate a minimum of 50 retained full-time jobs from one or more locations within this State to a new business location or locations in this State, or maintain a minimum of 50 full-time jobs at an existing business location or locations in this State, without relocating to another location or locations in the State, if the business provides evidence to the authority of a demonstrable risk that the business might leave the State for such business reasons as lease expirations, competing proposals from other states, a competitive cost advantage in favor of out-of-State locations, or other factors; and

(2) maintain the retained full-time jobs pursuant to the project agreement for the commitment duration.

b. A project that consists solely of point-of-final-purchase retail facilities shall not be eligible for a grant of tax credits. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this section, catalog distribution centers shall not be considered point-of-final-purchase retail facilities.
(cf: P.L.2007, c.310, s.1)

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

7. a. The total value of the grants of tax credits issued pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) shall not exceed an aggregate annual limit of $20,000,000 for a fiscal year. A tax credit issued pursuant to P.L.1996, c.25 may be applied against liability arising in the tax period in which the tax credit is issued and the tax period next following, and shall expire thereafter.

b. Grants of tax credits shall be awarded and issued to qualifying businesses as follows, subject to the limitations of subsection c. of this section:

(1) for a project that covers a business relocating a minimum of 500 full-time employees, a grant of tax credits made pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) shall equal total allowable relocation costs plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and shall be issued immediately upon the entry of the project agreement between the **[**commissioner**]** <u>executive director</u> and the business with an approved project, up to the aggregate annual limit; and

(2) for a project that covers a business relocating between 50 and 499 full-time employees, a grant of tax credits shall not be issued until the end of the fiscal year in which the application is approved.

c. If the sum of the amount of tax credits issued pursuant to paragraph (1) of subsection b. of this section in a fiscal year, plus the amount of tax credits approved pursuant to paragraph (2) of subsection b. of this section exceeds the $20,000,000 aggregate annual limit, the **[**commissioner**]** <u>executive director</u> shall reduce, on a pro rata basis, the award to each business receiving a grant of tax credits pursuant to paragraph (2) of subsection b. as necessary to comply with the aggregate annual limit.

(cf: P.L.2007, c.310, s.2)

5. Section 5 of P.L.1996, c.25 (C.34:1B-116) is amended to read as follows:

5. Each business seeking a grant of tax credits for a project shall submit an application for approval of the project to the **[**commissioner**]** <u>executive director</u> in a form and manner prescribed in regulations adopted by the **[**commissioner**]** <u>authority</u>. The application must be submitted to the **[**commissioner**]** <u>executive director</u> for approval at least 45 days prior to moving to the new business location; provided however, a business relocating 1,500 or more retained full-time jobs to one or more new locations within a designated urban center shall, if relocating to a leased location, submit an application within six months of executing its lease. The application for approval of a project shall include:

a. A schedule of short-term and long-term employment projections of the business in the State based upon the relocation;

b. (Deleted by amendment, P.L.2004, c.65.)

c. Terms of any lease agreements or details of the purchase or building of the new business location;

d. An estimate of the projected retained State tax revenues resulting from the relocation;

e. A description of the type of contribution the business can make to the long-term growth of the State's economy and a description of the potential impact on the State's economy if the jobs are not retained;

f. Evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of the application;

g. Evidence of alternative relocation plans, such as an analysis of the cost effectiveness of remaining in this State versus relocation under the alternative plans;

h. A written commitment by the business to maintain 95% of the retained full-time jobs for at least the first two years of the commitment duration, and to maintain a minimum of 90% of the retained full-time jobs for the commitment duration; and

i. Any other necessary and relevant information as determined by the **[**commissioner**]** executive director.

The **[**commissioner**]** executive director may provide whatever assistance the **[**commissioner**]** executive director deems appropriate in the preparation of an application for approval of a project and may issue grants of tax credits pursuant to the project agreement entered between the **[**commissioner**]** executive director and the business with an approved project at the **[**commissioner's**]** executive director's discretion subject to the provisions of P.L.1996, c.25 (C.34:1B-112 et seq.).

The project agreement shall include terms establishing the starting date, or event that will determine the starting date, of the commitment duration and any other terms or conditions as determined by the **[**commissioner**]** executive director.

(cf: P.L.2004, c.65, s.8)

6. Section 11 of P.L.2004, c.65 (C.34:1B-118.1) is amended to read as follows:

11. In determining the amount of any grant of tax credits made pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), the **[**commissioner**]** executive director shall consider, as part of the **[**commissioner's**]** executive director's overall calculation process, the following factors:

a. The number of full-time jobs retained;

b. The quality of the full-time jobs retained, including but not limited to the salaries and benefits provided to retained full-time employees;

c. Any capital investments made by the business at the new business location;

d. The nature of the business' operations, including but not limited to whether the business is a designated industry;

e. The potential impact on the State if the business were to relocate to another state;

f. The site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L.1985, c.398 (C.52:18A-200);

g. Whether positions average at least 1.5 times the minimum hourly wage during the commitment duration; and

h. The duration and extent of past operations by the business in New Jersey and any other information indicating the business' level of commitment to the State and the likelihood that the business will continue to operate in this State in the future.

(cf: P.L.2004, c.65, s.11)

7. Section 8 of P.L.1996, c.25 (C.34:1B-119) is amended to read as follows:

8. The **[**commissioner**]** <u>authority</u> shall, after consultation with the Director of the Division of Taxation, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations necessary to govern the proper conduct and operation of the program consistent with the provisions of P.L.1996, c.25 (C.34:1B-112 et seq.) including, but not limited to, a procedure for recapturing relocation grants of tax credits awarded pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) in those cases in which the **[**commissioner**]** <u>executive director</u> determines that the business receiving the grant of tax credits fails to meet or comply with any condition or requirement attached by the **[**commissioner**]** <u>executive director</u> to the receipt of the grant of tax credits or included in rules and regulations adopted by the **[**commissioner**]** <u>authority</u> governing the implementation of the program. The Director of the Division of Taxation is authorized to promulgate such rules and regulations as may be necessary to effect the tax-related provisions of the program.

(cf: P.L.2004, c.65, s.12)

8. Section 9 of P.L.1996, c.25 (C.34:1B-120) is amended to read as follows:

9. As determined by the **[**commissioner**]** <u>executive director</u>, a business which is awarded a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st of each year, commencing the year following the calendar year in which the business was approved for the grant of tax credits and for the remainder of the commitment duration, a copy of the State tax return for the business showing business income or activity, appropriate to its form of ownership together with an annual report listing the full-time employees in eligible positions employed at the location or locations approved for the grant of tax credits, to the **[**commissioner**]** <u>executive director</u>. Failure to submit a copy of its annual report or submission of the annual report without the information required above, may result in the forfeiture of any grant of tax credits to be received by the business and the recapture of any tax credits issued to the business unless the **[**commissioner**]** <u>executive director</u> determines that there

are extenuating circumstances excusing the business from the timely filing required.

(cf: P.L.2004, c.65, s.13)

9. Section 14 of P.L.2004, c.65 (C.34:1B-120.1) is amended to read as follows:

14. The [commissioner] authority shall adopt rules for the recapture of all, or a portion of, the grant of tax credits, based on criteria established by the [commissioner] authority pursuant to regulation or under the terms of the project agreement if the business fails to maintain the retained full-time jobs at the location or locations approved for the grant of tax credits for the commitment duration or fails to meet or comply with any condition or requirement under the terms of the project agreement or included in rules and regulations adopted by the [commissioner] authority governing the implementation of the program. The rules shall allow for the [commissioner] authority to notify the Director of the Division of Taxation in the Department of the Treasury, who shall issue a recapture assessment which shall be based upon the proportionate value of the grant of tax credits that corresponds to the amount and period of noncompliance. The recapture of funds shall be subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. Recaptured funds shall be deposited in the General Fund of the State.

(cf: P.L.2004, c.65, s.14)

10. Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is amended to read as follows:

17. a. The [commissioner] authority shall establish a corporation business tax credit and insurance premiums tax credit certificate transfer program to allow businesses in this State with unused amounts of tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and otherwise allowable, that cannot be applied by the business to which originally issued before the expiration of the credit, to surrender those tax credits for use by other corporation business and insurance premiums taxpayers in this State, provided that the taxpayer receiving the surrendered tax credits is not affiliated with the business that is surrendering its tax credits. For the purposes of this section, the test of affiliation is whether the same entity directly or indirectly owns or controls 5% or more of the voting rights or 5% or more of the value of all classes of stock of both the taxpayer receiving the tax credits and the business that is surrendering the tax credits. The tax credits may be used on the corporation business tax and insurance premiums tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer or insurance premiums taxpayer that is the recipient of the

corporation business tax credit certificate or insurance premiums tax credit certificate to assist in the funding of costs incurred by the relocating business.

b. The [commissioner] executive director, in cooperation with the Director of the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and by taxpayers under the taxes imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5 to acquire surrendered tax benefits, which shall be issued in the form of corporation business tax credit and insurance premiums tax credit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least 75% of the amount of the surrendered tax credit of a business relocating in the State. The private financial assistance shall assist in funding expenses incurred in connection with the operation of the business in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the [commissioner] executive director to be necessary to carry out the purposes of P.L.1996, c.25 (C.34:1B-112 et seq.).

c. The [commissioner] executive director shall coordinate the applications for surrender and acquisition of unused but otherwise allowable tax credits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to businesses in this State.

d. The [commissioner] executive director shall, in consultation with the Director of the Division of Taxation, develop criteria for the approval or disapproval of applications.

(cf: P.L.2004, c.65, s.17)

11. Section 10 of P.L.1996, c.25 (C.34:1B-121) is amended to read as follows:

10. The [commissioner] executive director shall prepare and transmit to the Governor and the Legislature on or before November 1st of each year, a report concerning the impact of the program on job retention in the State.

(cf: P.L.2004, c.65, s.15)

12. Section 11 of P.L.1996, c.25 (C.34:1B-122) is amended to read as follows:

11. The [department] authority shall conduct a study to determine the minimum funding level required to successfully implement this program. The study shall fully consider the rate of

return for each job relocation in the State as a result of the relocation grants.
(cf: P.L.1996, c.25, s.11)

13. Section 12 of P.L.1996, c.25 (C.34:1B-123) is amended to read as follows:
12. There is appropriated to the New Jersey ⟦Commerce and Economic Growth Commission⟧ Economic Development Authority from the General Fund such sums as may be necessary, as certified by the ⟦commissioner⟧ executive director and the Director of the Division of Budget and Accounting, to fund business retention and relocation grants of tax credits made under P.L.1996, c.25 (C.34:1B-112 et seq.), the amount of which shall not exceed the retained State tax revenues as defined in section 2 of P.L.1996, c.25 (C.34:1B-113).
(cf: P.L.2004, c.65, s.16)

14. This act shall take effect immediately and apply to grant years beginning on or after the date of enactment.

STATEMENT

This bill modifies the provisions of the "Business Retention and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.) ("BRRA act") to enhance the benefits of the BRRA act to certain businesses.

Specifically, the bill amends the BRRA act to: 1) extend eligibility to businesses that pose a demonstrable flight risk due to lease expirations, competing proposals, a competitive cost advantage in favor of out-of-State locations, or other factors, without requiring relocation to another facility in New Jersey as a prerequisite; and 2) increase the one-time base tax credit amount from $1,500 to $2,500 per retained full-time job and from $1,500 to $4,000 per job if those jobs a) number 2,000 or more, and b) are being located from outside any designated urban center to areas within such a center.

Under the provisions of the BRRA act, a "designated urban center" is an urban area that meets the criteria for designated urban centers under the State Development and Redevelopment Plan adopted by the State Planning Commission (the "commission") in accordance with the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.). According to the current plan, nine urban areas meet the criteria adopted by the commission and would be affected by changes to the incentive program under the bill. These urban areas include: Atlantic City, Camden, Newark, Jersey City, Trenton, New Brunswick, Paterson, Elizabeth, and Asbury Park.

Further, the bill replaces the New Jersey Commerce Commission with the New Jersey Economic Development Authority (the "authority") as the agency to oversee the BRRA act program, given that the New Jersey Commerce Commission has been abolished and its responsibilities in connection with the program have been transferred to the authority.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3294

STATE OF NEW JERSEY

DATED: OCTOBER 6, 2008

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 3294.

This bill modifies the provisions of the "Business Retention and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.) ("BRRA act") to enhance the benefits of the BRRA act to certain businesses.

Specifically, the bill amends the BRRA act to: 1) extend eligibility to businesses that pose a demonstrable flight risk due to lease expirations, competing proposals, a competitive cost advantage in favor of out-of-State locations, or other factors, without requiring relocation to another facility in New Jersey as a prerequisite; and 2) increase the one-time base tax credit amount from $1,500 to $2,500 per retained full-time job and from $1,500 to $4,000 per job if those jobs a) number 2,000 or more, and b) are being located from outside any designated urban center to areas within such a center.

Under the provisions of the BRRA act, a "designated urban center" is an urban area that meets the criteria for designated urban centers under the State Development and Redevelopment Plan adopted by the State Planning Commission (the "commission") in accordance with the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.). According to the current plan, nine urban areas meet the criteria adopted by the commission and would be affected by changes to the incentive program under the bill. These urban areas include: Atlantic City, Camden, Newark, Jersey City, Trenton, New Brunswick, Paterson, Elizabeth, and Asbury Park.

Further, the bill replaces the New Jersey Commerce Commission with the New Jersey Economic Development Authority (the "authority") as the agency to oversee the BRRA act program, given that the New Jersey Commerce Commission has been abolished and its responsibilities in connection with the program have been transferred to the authority.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3294

STATE OF NEW JERSEY

DATED: NOVEMBER 13, 2008

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3294.

This substitute establishes the InvestNJ Business Grant Program in the New Jersey Economic Development Authority (NJEDA). During the current national economic crisis the NJEDA grant program will stimulate certain capital investment and job creation in New Jersey during a specified period. The program has a capital investment grant component and a job creation grant component. The program is based on the Governor's recently proposed State Investment For Short-Term Solutions package that is part of the New Jersey Economic Assistance and Recovery Plan presented to the Legislature in Joint Session.

The investment grant component will provide an incentive to businesses during the current national economic crisis, encouraging capital investments by the award of grants of up to 7 percent of the qualifying capital investment of at least $5,000 made by a business in New Jersey during the period prior to January 1, 2011. These grants will provide businesses with the equivalent of the State sales tax that may be paid on their capital investment expenses. The substitute requires qualified businesses that apply for capital investment grants to have operated continuously for at least two years prior to filing an application for a grant and must employ at least 5 full-time employees. The substitute makes available up to $70,000,000 through an appropriation to the NJEDA for capital investment grants, of which up to $50,000,000 are allocated for investment grants for capital investments involving expenses for the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property; and of which up to $20,000,000 are allocated for obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility.

The job creation grant component will provide an incentive to similarly qualified businesses that have operated continuously in this State for at least two years, to create full-time jobs that are provide with health benefit coverage and that are retained for at least one year.

The substitute makes each position created eligible for a $3,000 grant to the qualified businesses if business has experienced a net increase in employment of eligible positions in this State during the same 12 consecutive months. Positions that are included in calculations of other grant award programs are not eligible for grant awards under this bill. The substitute makes up to $50,000,000 available through an appropriation to the NJEDA for employment grants.

FISCAL IMPACT:

The substitute authorizes a total of $120 million in grants and makes appropriations from the Long Term Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury for that percentage of the grants that will be awarded during Fiscal Year 2009. The expenditure of up to $70 million for capital investment grants will occur in Fiscal Years 2009, 2010, and 2011. The expenditure of up to $50 million for job creation grants will occur in Fiscal Years 2010 and 2011. The substitute also appropriates from the Long Term Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority a sum of up to $400,000 for the purpose of defraying reasonable and necessary administrative expenses.

LEGISLATIVE FISCAL ESTIMATE

ASSEMBLY, No. 3294

STATE OF NEW JERSEY
213th LEGISLATURE

DATED: OCTOBER 27, 2008

SUMMARY

Synopsis:	Provides certain enhancements to Business Retention and Relocation Assistance Grant Program.
Type of Impact:	Annual Foregone State General Fund Revenue and Indeterminate Annual State General Fund Revenue Gain.
Agencies Affected:	New Jersey Economic Development Authority; Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	**Fiscal Year 2009**	**Fiscal Year 2010**	**Fiscal Year 2011**
Direct State Revenue Loss	Up to $14,000,000 per year		
Indirect State Revenue Gain	Indeterminate - See comments below		

- The Office of Legislative Services (OLS) cannot gauge the legislation's fiscal impact, for it lacks insights into businesses' future use of the expanded Business Retention and Relocation Assistance Grant (BRRAG) program. Nonetheless, given that BRRAG tax credits are subject to an annual $20 million cap and that the State issued $6.1 million in such tax credits in fiscal year 2008, the OLS surmises that the bill's direct fiscal impact would be an annual State revenue loss of no more than $14 million.

- The OLS cannot project the value of positive secondary economic and fiscal activity that would offset, in whole or in part, any direct revenue loss and opportunity cost the State would incur in granting additional BRRAG tax credits.

BILL DESCRIPTION

Assembly Bill No. 3294 of 2008 modifies the corporation business tax credit and insurance premium tax credit offered under the BRRAG program. It extends eligibility to businesses that pose a demonstrable flight risk due to lease expirations, competing proposals, a competitive cost advantage in favor of out-of-State locations, or other factors, without requiring relocation to another facility in New Jersey as a prerequisite. The bill also increases the one-time base tax credit amount from $1,500 to $2,500 per retained full-time job and from $1,500 to $4,000 per job if those jobs number 2,000 or more and are being located from outside any designated urban center to areas within such a center.

Nine urban areas currently meet the criteria of a “designated urban center”: Atlantic City, Camden, Newark, Jersey City, Trenton, New Brunswick, Paterson, Elizabeth, and Asbury Park.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot assess the legislation’s fiscal impact, as it lacks information on businesses’ future use of the expanded BRRAG program. Nonetheless, given that BRRAG tax credits are subject to an annual $20 million cap and that the State issued $6.1 million in such tax credits in fiscal year 2008, the OLS surmises that the bill’s direct fiscal impact would be an annual revenue loss of no more than $14 million to the State General Fund. In addition, the office notes that positive secondary economic and fiscal activity would offset, in whole or in part, any direct revenue loss and opportunity cost the State would incur in granting additional BRRAG tax credits.

Direct Fiscal Impact: The OLS cannot forecast the additional cost that passage of this bill would entail, as it is unclear how many tax credits the State would issue under the expanded BRRAG program. The OLS only gauges that the direct cost would not rise by more than $14 million, taking into account that the annual amount of BRRAG grants is statutorily restricted to $20 million and that the New Jersey Economic Development Authority issued $6.1 million in tax credits to seven businesses in fiscal year 2008. Assuming that $6 million constitutes the average annual program cost under current specifications, $14 million would remain for the program expansion.

Indirect Fiscal Impact: The OLS estimates that the bill would accrue an indeterminate indirect revenue gain to the State that would offset, in whole or in part, the direct cost of awarding additional BRRAG tax credits. Since the office cannot reliably project the number of creditable future jobs retained, however, it cannot quantify the tax credit’s secondary effects.

In general, any indirect revenue gain would result from the economic ramifications of tax credit-induced behavior changes. As these ramifications flow through the economy, they affect State revenue collections. Indirect fiscal effects encompass tax credit-induced input purchases by credit claimants from their suppliers and tax credit-induced spending by employees of all impacted firms.

Nonetheless, the OLS cautions that not all of the tax credit’s economic and fiscal feedback effects may represent a gain. Only the ripple effects caused by credit-induced spending shifts should enter the fiscal estimate, while those from creditable spending that would have occurred absent the tax credit must be excluded. The exclusion takes into account that tax credits have no economic impact whenever they are awarded to businesses that would have retained the jobs anyway. At best, credits given in these circumstances would yield a marginal additional benefit to the State if the recipient spent the credit amount in New Jersey. The State, however, would only incur the cost of subsidizing positions that the employer would have retained in New Jersey regardless of the credit award.

Any estimate of the tax credits' New Jersey feedback effects must also exclude from the total feedback effects the portion of the tax credit-induced spending that would leak into other jurisdictions. A New York resident holding a job retained in Elizabeth, for example, would have a New Jersey income tax liability, but most of the New Yorker's private spending might not occur in this State.

Net Fiscal Impact: Even if the OLS was able to estimate the bill's indirect fiscal impact, doing so would ignore that the decision to subsidize job retention would divert resources from the policy alternatives to which they would have been applied absent the tax credit. The OLS, however, cannot gauge this opportunity cost, which constitutes a crucial component of the bill's *net* fiscal impact.

The bill's opportunity cost would only be zero if the State's investment in BRAGG tax credits did not displace or forestall other spending (thereby setting the bill's fiscal feedback effects equal to its *net* fiscal feedback effects). In actuality, given the State's finite resources and its balanced budget requirement, the bill's *net* fiscal impact would be the bill's fiscal feedback effects minus its opportunity cost (or the total of the bill's direct and indirect effects *less* the equivalent effects of the alternative uses of monies the legislation would preempt). For example, if, instead of this legislation, the State invested $14 million annually in road construction, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on job retention and that of the foregone road construction investment.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Thomas Koenig* *Senior Fiscal Analyst*
Approved:	*David J. Rosen* *Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-1 et seq.).

SENATE, No. 6

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED NOVEMBER 13, 2008

Sponsored by:
Senator BARBARA BUONO
District 18 (Middlesex)
Senator SHIRLEY K. TURNER
District 15 (Mercer)

SYNOPSIS

Establishes the InvestNJ Business Grant Program in NJEDA to stimulate certain capital investment and job creation in New Jersey during a limited period, makes appropriations.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 11/14/2008)

AN ACT establishing a grant program to stimulate certain capital investment and job creation in New Jersey during a limited period, supplementing P.L.1974, c.80 (C.34:1B-1 et seq.) and making appropriations.

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

1. This act shall be known and may be cited as the "InvestNJ Business Grant Program Act."

2. As used in this act:

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

"Business" means any entity including, but not limited to a corporation, an S corporation, limited liability corporation, partnership, limited liability partnership, and sole proprietorship, and shall include all entities related by common ownership or control.

"Capital investment" means expenses of at least $5,000 incurred for the direct use and operation of a business for (1) the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property; and (2) obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility. Provided however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.168). "Capital investment" shall also include remediation of a business facility site, but only to the extent the remediation has not received financial assistance from another federal, State or local government funding source.

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Eligible position" means a full-time position filled by an individual whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. An eligible position shall include only a position for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined under section 1 of P.L.1992, c.162

(C.17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes. An eligible position shall not include an independent contractor or a consultant.

3. a. There is established the Invest in New Jersey Business Grant Program to be administered by the New Jersey Economic Development Authority. The program shall include an investment grant component to provide an incentive to businesses, during the current national economic crisis, to encourage capital investments by the award of grants of up to 7 percent of the qualifying capital investment made by a business in New Jersey during a limited period.

b. The Chief Executive Officer shall approve the issuance of a grant to a business that:

(1) has operated continuously for at least two years prior to filing an application for a grant;

(2) employs at least 5 full-time employees; and

(3) makes a capital investment in New Jersey after the effective date of P.L. , c. (C.) (now pending before the Legislature as this bill) but prior to January 1, 2011.

c. A business seeking to participate in the investment grant component shall submit an application in such form as required by the Chief Executive Officer. Such application shall include such information as the officer shall determine is necessary to administer the grant program. All applications shall be submitted prior to January 1, 2011.

d. The Chief Executive Officer shall review and may approve an application for the grant program. The Chief Executive Officer shall issue payment of the grant amount pursuant to a series of scheduled payments as the Chief Executive Officer may determine and subject to the submission of proof by an approved applicant of the expenditures contributing to the capital investment. A grantee that fails to comply with a grant agreement that shall be made as a condition of a grant award shall repay any grant amount received and, if so determined by the Chief Executive Officer, shall pay a penalty not in excess of ten percent of the grant amount.

e. The value of the grant shall be 7 percent of the capital investment provided that no grantee shall receive more than $1,000,000 pursuant to this section. Provided further, that the sum of grants awarded pursuant to this section shall not exceed $70,000,000 of which not more than $20,000,000 shall be allocated for capital investment grants described under paragraph (2) of "capital investment" as defined in section 1 of this act.

f. For the purpose of determining eligibility for a grant pursuant to this section, the authority shall exclude any expenses incurred at a site for which the business is receiving a business employment incentive grant pursuant to the provisions of P.L.1996, c.26

(C.34:1B-124 et seq.), a business retention relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) or an urban transit hub tax credit pursuant to P.L.2007, c.346 (C.34:1B- 207 et seq.), and shall exclude any expenses covered by a retail sales purchase exemption pursuant to section 20 of P.L.1983, c.303 (52:27H-79), section 25 of P.L.1980, c.105 (C.54:32B-8.13), section 26 of P.L.1980, c.105 (C.54:32B-8.14), section 28 of P.L.1980, c.105 (C.54:32B-8.16), section 41 of P.L.1980, c.105 (C.54:32B-8.29), section 45 of P.L.1980, c.105 (C.54:32B-8.33), or section 11 of P.L.1981, c.546 (C.54:32B-8.36).

4. a. There is also established under the Invest in New Jersey Business Grant Program to be administered by the New Jersey Economic Development Authority, an employment grant component to provide an incentive to businesses, during the current national economic crisis, to create full-time jobs that are retained for at least one year by the award of a grant of $3,000 to qualified businesses for each eligible position created.

b. The Chief Executive Officer shall approve the issuance of a grant to a business that:

(1) has operated continuously in this State for at least two years prior to filing an application for a grant;

(2) employs at least 5 full-time employees;

(3) adds an eligible position created in New Jersey after December 1, 2008 and before January 1, 2011, for a period of at least 12 consecutive months in this State; and

(4) the applicant has experienced a net increase in employment of eligible positions in this State during the same 12 consecutive months.

c. A business seeking to participate in the grant program shall submit an application in such form as required by the Chief Executive Officer. Such application shall include such information as the Chief Executive Officer shall determine is necessary to administer the grant program. All applications shall be submitted prior to January 1, 2011.

d. The Chief Executive Officer shall review and may approve an application for the grant program. The Chief Executive Officer shall issue payment of the grant upon the submission of proof by an approved applicant of the employment of an individual in the eligible position during a period of at least 12 consecutive months in this State and proof of the other requirements set forth in subsection b. of this section. Such submission shall be subject to review and audit by the Department of Labor and Workforce Development.

e. The value of the grant shall be $3,000 for each eligible position, provided that no grantee shall receive more than $500,000 in grants pursuant to this section. Provided further, that the sum of grants awarded pursuant to this section shall not exceed $50,000,000**.**

f. For the purpose of determining eligibility for a grant pursuant to this section, the authority shall not include any position that is included in the calculation of a business employment incentive grant pursuant to the provisions of P.L.1996, c.26 (C.34:1B-124 et seq.), a business retention relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) or an urban transit hub tax credit pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.).

5. The authority may promulgate rules and regulations necessary for the effective implementation of this P.L. , c. (C.) (now pending before the Legislature as this bill). Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the authority may adopt, immediately upon filing with the Office of Administrative Law, such regulations as are necessary to implement the provisions of P.L. , c. (C.) (now pending before the Legislature as this bill), which shall be effective for a period not to exceed 12 months following enactment, and may thereafter be amended, adopted, or readopted by the authority in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Such regulations may include, but shall not be limited to: examples of and the determination of capital investment; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital investments; and the promulgation of procedures and forms necessary to apply for a benefit under P.L. , c. (C.) (now pending before the Legislature as this bill).

6. Notwithstanding the provisions of P.L.2008, c.22 (C.52:9H-2.1 et al.), there is appropriated from the Long Term Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority a sum of up to $400,000 for the purpose of defraying reasonable and necessary administrative expenses incurred in carrying out the provisions of this act, subject to the approval of the Director of the Division of Budget and Accounting.

7. Notwithstanding the provisions of P.L.2008, c.22 (C.52:9H-2.1 et al.), there are appropriated from the Long Term Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority, such sums as are necessary, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury, to effectuate the purposes of this act.

8. This act shall take effect immediately.

STATEMENT

This bill establishes the InvestNJ Business Grant Program in the New Jersey Economic Development Authority (NJEDA). During the current national economic crisis the NJEDA grant programs will stimulate certain capital investment and job creation in New Jersey during a limited period. The program will have a capital investment grant component and a job creation grant component. The program is based upon the Governor's recently proposed State Investment For Short-Term Solutions package that is part of a New Jersey Economic Assistance and Recovery Plan presented to the Legislature in Joint Session.

The investment grant component will provide an incentive to businesses, during the current national economic crisis, to encourage capital investments by the award of grants of up to 7 percent of the qualifying capital investment of at least $5,000 made by a business in New Jersey during a limited period prior to January 1, 2011. These grants will provide businesses with the equivalent of the State sales tax that may be paid on their capital investment expenses. Qualified businesses that may apply for capital investment grants must have operated continuously for at least two years prior to filing an application for a grant and must employ at least 5 full-time employees. Up to $70,000,000 will be made available through an appropriation to the NJEDA for capital investment grants, of which up to $50,000,000 will be allocated for investment grants for capital investments involving expenses for the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property; and of which up to $20,000,000 will be allocated for obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility.

The job creation grant component will provide an incentive to similarly qualified businesses that have operated continuously in this State for at least two years, to create full-time jobs that are provide with health benefit coverage and that are retained for at least one year. Each position created will be eligible for a $3,000 grant to the qualified businesses if business has experienced a net increase in employment of eligible positions in this State during the same 12 consecutive months. Positions that are included in calculations of other grant award programs are not eligible for grant awards under this bill. Up to $50,000,000 will be made available through an appropriation to the NJEDA for employment grants.

The bill authorizes a total of $120 million in grants and makes appropriations from the Long Term Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority, subject to the approval of the Director of the Division of

Budget and Accounting in the Department of the Treasury for that percentage of the grants that will be awarded during Fiscal Year 2009. The expenditure of up to $70 million for capital investment grants will occur in Fiscal Years 2009, 2010, and 2011. The expenditure of up to $50 million for job creation grants will occur in Fiscal Years 2010 and 2011. The bill also appropriates from the Long Term Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority a sum of up to $400,000 for the purpose of defraying reasonable and necessary administrative expenses.

SENATE, No. 2213

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED OCTOBER 16, 2008

Sponsored by:
Senator JEFF VAN DREW
District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Provides certain enhancements to Business Retention and Relocation Assistance Grant Program.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning enhancements to the Business Retention and Relocation Assistance Grant Program and amending P.L.1996, c.25 and P.L.2004, c.65.

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

1. Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to read as follows:

2. As used in this act:

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

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

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

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

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

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge;

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

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 <u>thus</u> is new matter.

person with headquarters or base of operations located in New Jersey and engaged in providing services or products necessary for such research, development, production, or provision;

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

["Commissioner" means the Executive Director of the New Jersey Commerce Commission;

"Department" means the New Jersey Commerce Commission;]

"Business" means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and which is subject to the provisions of R.S.43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State;

"Commitment duration" means five years from the date specified in the project agreement entered into pursuant to section 5 of P.L.1996, c.25 (C.34:1B-116);

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

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

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices;

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

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

"Executive Director" means the Executive Director of the New Jersey Economic Development Authority;

"Full-time employee" means a person who is employed for consideration for at least thirty-five hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and who is determined by the **[**commissioner**]** executive director to be employed in a permanent position according to criteria as the **[**Board of Directors of the New Jersey Commerce Commission**]** authority may prescribe. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. "Full-time employee" shall not include a child, grandchild, parent, or spouse of an individual who has direct or indirect ownership of at least 5% of the profits, capital, or value of the business;

"Headquarters" of a business means the single location that serves as the national administrative center of the business, at which the primary office of the chief executive officer or chief operating officer of the business, as well as the offices of the management officials responsible for key **[**businesswide**]** business-wide functions such as finance, legal, marketing, and human resources, are located;

"High-technology business" means an advanced computing company, advanced materials company, electronic device technology company, environmental technology company or medical device technology company;

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

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

"New business location" means the premises that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than eight years from the date of relocation;

"Manufacturing facility" means a business location at which more than 50% of the business personal property that is housed in the facility is eligible for the sales tax exemption pursuant to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13) for machinery, apparatus or equipment used in the production of tangible personal property;

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

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

"Research and development facility" means a business location at which more than 50% of the business personal property that is purchased for the facility is eligible for the sales tax exemption pursuant to section 26 of P.L.1980, c.105 (C.54:32B-8.14) for property used in research and development;

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of the members of a "controlled group of corporations" as defined pursuant to section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, shall be considered the eligible positions of a single employer; and

"Total allowable relocation costs" means [$1,500] $2,500 times the number of retained full-time jobs, or $4,000 times the number of full-time jobs if the business relocates 2,000 or more full-time jobs from outside of a designated urban center to one or more new locations within a designated urban center. "Total allowable relocation costs" does not include the amount of any bonus award authorized pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1).

(cf: P.L.2007, c.253, s.14)

2. Section 3 of P.L.1996, c.25 (C.34:1B-114) is amended to read as follows:

3. The Business Retention and Relocation Assistance Grant Program is hereby established as a program under the jurisdiction of the New Jersey [Commerce Commission] Economic Development Authority and shall be administered by the New Jersey [Commerce Commission] Economic Development Authority. The purpose of the program is to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which

are in danger of being relocated to premises outside of the State. To implement that purpose, and to the extent that funding for the program is available, the program may provide grants of tax credits but in no case shall the amount of an individual grant of tax credits exceed 80% of the projected State tax revenues from the retained full-time jobs covered by the project agreement of an applicant for a grant of tax credits.
(cf: P.L.2007, c.253, s.15)

3. Section 4 of P.L.1996, c.25 (C.34:1B-115) is amended to read as follows:

4. a. To qualify for a grant of tax credits, a business shall enter into an agreement to undertake a project to:

(1) relocate a minimum of 50 retained full-time jobs from one or more locations within this State to a new business location or locations in this State, or maintain a minimum of 50 full-time jobs at an existing business location or locations in this State, without relocating to another location or locations in the State, if the business provides evidence to the authority of a demonstrable risk that the business might leave the State for such business reasons as lease expirations, competing proposals from other states, a competitive cost advantage in favor of out-of-State locations, or other factors; and

(2) maintain the retained full-time jobs pursuant to the project agreement for the commitment duration.

b. A project that consists solely of point-of-final-purchase retail facilities shall not be eligible for a grant of tax credits. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this section, catalog distribution centers shall not be considered point-of-final-purchase retail facilities.
(cf: P.L.2007, c.310, s.1)

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

7. a. The total value of the grants of tax credits issued pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) shall not exceed an aggregate annual limit of $20,000,000 for a fiscal year. A tax credit issued pursuant to P.L.1996, c.25 may be applied against liability arising in the tax period in which the tax credit is issued and the tax period next following, and shall expire thereafter.

b. Grants of tax credits shall be awarded and issued to qualifying businesses as follows, subject to the limitations of subsection c. of this section:

(1) for a project that covers a business relocating a minimum of 500 full-time employees, a grant of tax credits made pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) shall equal total allowable relocation costs plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and shall be issued immediately upon the entry of the project agreement between the 【commissioner】 <u>executive director</u> and the business with an approved project, up to the aggregate annual limit; and

(2) for a project that covers a business relocating between 50 and 499 full-time employees, a grant of tax credits shall not be issued until the end of the fiscal year in which the application is approved.

c. If the sum of the amount of tax credits issued pursuant to paragraph (1) of subsection b. of this section in a fiscal year, plus the amount of tax credits approved pursuant to paragraph (2) of subsection b. of this section exceeds the $20,000,000 aggregate annual limit, the 【commissioner】 <u>executive director</u> shall reduce, on a pro rata basis, the award to each business receiving a grant of tax credits pursuant to paragraph (2) of subsection b. as necessary to comply with the aggregate annual limit.

(cf: P.L.2007, c.310, s.2)

5. Section 5 of P.L.1996, c.25 (C.34:1B-116) is amended to read as follows:

5. Each business seeking a grant of tax credits for a project shall submit an application for approval of the project to the 【commissioner】 <u>executive director</u> in a form and manner prescribed in regulations adopted by the 【commissioner】 <u>authority</u>. The application must be submitted to the 【commissioner】 <u>executive director</u> for approval at least 45 days prior to moving to the new business location; provided however, a business relocating 1,500 or more retained full-time jobs to one or more new locations within a designated urban center shall, if relocating to a leased location, submit an application within six months of executing its lease. The application for approval of a project shall include:

a. A schedule of short-term and long-term employment projections of the business in the State based upon the relocation;

b. (Deleted by amendment, P.L.2004, c.65.)

c. Terms of any lease agreements or details of the purchase or building of the new business location;

d. An estimate of the projected retained State tax revenues resulting from the relocation;

e. A description of the type of contribution the business can make to the long-term growth of the State's economy and a description of the potential impact on the State's economy if the jobs are not retained;

f. Evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of the application;

g. Evidence of alternative relocation plans, such as an analysis of the cost effectiveness of remaining in this State versus relocation under the alternative plans;

h. A written commitment by the business to maintain 95% of the retained full-time jobs for at least the first two years of the commitment duration, and to maintain a minimum of 90% of the retained full-time jobs for the commitment duration; and

i. Any other necessary and relevant information as determined by the [commissioner] executive director.

The [commissioner] executive director may provide whatever assistance the [commissioner] executive director deems appropriate in the preparation of an application for approval of a project and may issue grants of tax credits pursuant to the project agreement entered between the [commissioner] executive director and the business with an approved project at the [commissioner's] executive director's discretion subject to the provisions of P.L.1996, c.25 (C.34:1B-112 et seq.).

The project agreement shall include terms establishing the starting date, or event that will determine the starting date, of the commitment duration and any other terms or conditions as determined by the [commissioner] executive director.

(cf: P.L.2004, c.65, s.8)

6. Section 11 of P.L.2004, c.65 (C.34:1B-118.1) is amended to read as follows:

11. In determining the amount of any grant of tax credits made pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), the [commissioner] executive director shall consider, as part of the [commissioner's] executive director's overall calculation process, the following factors:

a. The number of full-time jobs retained;

b. The quality of the full-time jobs retained, including but not limited to the salaries and benefits provided to retained full-time employees;

c. Any capital investments made by the business at the new business location;

d. The nature of the business' operations, including but not limited to whether the business is a designated industry;

e. The potential impact on the State if the business were to relocate to another state;

f. The site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L.1985, c.398 (C.52:18A-200);

g. Whether positions average at least 1.5 times the minimum hourly wage during the commitment duration; and

h. The duration and extent of past operations by the business in New Jersey and any other information indicating the business' level of commitment to the State and the likelihood that the business will continue to operate in this State in the future.

(cf: P.L.2004, c.65, s.11)

7. Section 8 of P.L.1996, c.25 (C.34:1B-119) is amended to read as follows:

8. The [commissioner] authority shall, after consultation with the Director of the Division of Taxation, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations necessary to govern the proper conduct and operation of the program consistent with the provisions of P.L.1996, c.25 (C.34:1B-112 et seq.) including, but not limited to, a procedure for recapturing relocation grants of tax credits awarded pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) in those cases in which the [commissioner] executive director determines that the business receiving the grant of tax credits fails to meet or comply with any condition or requirement attached by the [commissioner] executive director to the receipt of the grant of tax credits or included in rules and regulations adopted by the [commissioner] authority governing the implementation of the program. The Director of the Division of Taxation is authorized to promulgate such rules and regulations as may be necessary to effect the tax-related provisions of the program.

(cf: P.L.2004, c.65, s.12)

8. Section 9 of P.L.1996, c.25 (C.34:1B-120) is amended to read as follows:

9. As determined by the [commissioner] executive director, a business which is awarded a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st of each year, commencing the year following the calendar year in which the business was approved for the grant of tax credits and for the remainder of the commitment duration, a copy of the State tax return for the business showing business income or activity, appropriate to its form of ownership together with an annual report listing the full-time employees in eligible positions employed at the location or locations approved for the grant of tax credits, to the [commissioner] executive director. Failure to submit a copy of its annual report or submission of the annual report without the information required above, may result in the forfeiture of any grant of tax credits to be received by the business and the recapture of any tax credits issued to the business unless the [commissioner] executive director determines that there

are extenuating circumstances excusing the business from the timely filing required.

(cf: P.L.2004, c.65, s.13)

9. Section 14 of P.L.2004, c.65 (C.34:1B-120.1) is amended to read as follows:

14. The [commissioner] <u>authority</u> shall adopt rules for the recapture of all, or a portion of, the grant of tax credits, based on criteria established by the [commissioner] <u>authority</u> pursuant to regulation or under the terms of the project agreement if the business fails to maintain the retained full-time jobs at the location or locations approved for the grant of tax credits for the commitment duration or fails to meet or comply with any condition or requirement under the terms of the project agreement or included in rules and regulations adopted by the [commissioner] <u>authority</u> governing the implementation of the program. The rules shall allow for the [commissioner] <u>authority</u> to notify the Director of the Division of Taxation in the Department of the Treasury, who shall issue a recapture assessment which shall be based upon the proportionate value of the grant of tax credits that corresponds to the amount and period of noncompliance. The recapture of funds shall be subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. Recaptured funds shall be deposited in the General Fund of the State.

(cf: P.L.2004, c.65, s.14)

10. Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is amended to read as follows:

17. a. The [commissioner] <u>authority</u> shall establish a corporation business tax credit and insurance premiums tax credit certificate transfer program to allow businesses in this State with unused amounts of tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and otherwise allowable, that cannot be applied by the business to which originally issued before the expiration of the credit, to surrender those tax credits for use by other corporation business and insurance premiums taxpayers in this State, provided that the taxpayer receiving the surrendered tax credits is not affiliated with the business that is surrendering its tax credits. For the purposes of this section, the test of affiliation is whether the same entity directly or indirectly owns or controls 5% or more of the voting rights or 5% or more of the value of all classes of stock of both the taxpayer receiving the tax credits and the business that is surrendering the tax credits. The tax credits may be used on the corporation business tax and insurance premiums tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer or insurance premiums taxpayer that is the recipient of the

corporation business tax credit certificate or insurance premiums tax credit certificate to assist in the funding of costs incurred by the relocating business.

b. The [commissioner] executive director, in cooperation with the Director of the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and by taxpayers under the taxes imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5 to acquire surrendered tax benefits, which shall be issued in the form of corporation business tax credit and insurance premiums tax credit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least 75% of the amount of the surrendered tax credit of a business relocating in the State. The private financial assistance shall assist in funding expenses incurred in connection with the operation of the business in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the [commissioner] executive director to be necessary to carry out the purposes of P.L.1996, c.25 (C.34:1B-112 et seq.).

c. The [commissioner] executive director shall coordinate the applications for surrender and acquisition of unused but otherwise allowable tax credits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to businesses in this State.

d. The [commissioner] executive director shall, in consultation with the Director of the Division of Taxation, develop criteria for the approval or disapproval of applications.

(cf: P.L.2004, c.65, s.17)

11. Section 10 of P.L.1996, c.25 (C.34:1B-121) is amended to read as follows:

10. The [commissioner] executive director shall prepare and transmit to the Governor and the Legislature on or before November 1st of each year, a report concerning the impact of the program on job retention in the State.

(cf: P.L.2004, c.65, s.15)

12. Section 11 of P.L.1996, c.25 (C.34:1B-122) is amended to read as follows:

11. The [department] authority shall conduct a study to determine the minimum funding level required to successfully implement this program. The study shall fully consider the rate of

return for each job relocation in the State as a result of the relocation grants.
(cf: P.L.1996, c.25, s.11)

13. Section 12 of P.L.1996, c.25 (C.34:1B-123) is amended to read as follows:

12. There is appropriated to the New Jersey **[**Commerce and Economic Growth Commission**]** <u>Economic Development Authority</u> from the General Fund such sums as may be necessary, as certified by the **[**commissioner**]** <u>executive director</u> and the Director of the Division of Budget and Accounting, to fund business retention and relocation grants of tax credits made under P.L.1996, c.25 (C.34:1B-112 et seq.), the amount of which shall not exceed the retained State tax revenues as defined in section 2 of P.L.1996, c.25 (C.34:1B-113).
(cf: P.L.2004, c.65, s.16)

14. This act shall take effect immediately and apply to grant years beginning on or after the date of enactment.

STATEMENT

This bill modifies the provisions of the "Business Retention and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.) ("BRRA act") to enhance the benefits of the BRRA act to certain businesses.

Specifically, the bill amends the BRRA act to: 1) extend eligibility to businesses that pose a demonstrable flight risk due to lease expirations, competing proposals, a competitive cost advantage in favor of out-of-State locations, or other factors, without requiring relocation to another facility in New Jersey as a prerequisite; and 2) increase the one-time base tax credit amount from $1,500 to $2,500 per retained full-time job and from $1,500 to $4,000 per job if those jobs a) number 2,000 or more, and b) are being located from outside any designated urban center to areas within such a center.

Under the provisions of the BRRA act, a "designated urban center" is an urban area that meets the criteria for designated urban centers under the State Development and Redevelopment Plan adopted by the State Planning Commission (the "commission") in accordance with the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.). According to the current plan, nine urban areas meet the criteria adopted by the commission and would be affected by changes to the incentive program under the bill. These urban areas include: Atlantic City, Camden, Newark, Jersey City, Trenton, New Brunswick, Paterson, Elizabeth, and Asbury Park.

Further, the bill replaces the New Jersey Commerce Commission with the New Jersey Economic Development Authority (the "authority") as the agency to oversee the BRRA act program, given that the New Jersey Commerce Commission has been abolished and its responsibilities in connection with the program have been transferred to the authority.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 6 and 2213

STATE OF NEW JERSEY

DATED: NOVEMBER 13, 2008

The Senate Budget and Appropriations Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 6 and 2213.

The Senate Committee Substitute for Senate Bill, Nos. 6 and 2213 establishes the InvestNJ Business Grant Program in the New Jersey Economic Development Authority (NJEDA). During the current national economic crisis the NJEDA grant programs will stimulate certain capital investment and job creation in New Jersey during a limited period. The program will have a capital investment grant component and a job creation grant component. The program is based upon the Governor's recently proposed State Investment For Short-Term Solutions package that is part of a New Jersey Economic Assistance and Recovery Plan presented to the Legislature in Joint Session on October 18, 2008.

The investment grant component will provide an incentive to businesses, during the current national economic crisis, to encourage capital investments by the award of grants of up to 7 percent of the qualifying capital investment of at least $5,000 made by a business in New Jersey during a limited period prior to January 1, 2011. These grants will provide businesses with the equivalent of the State sales tax that may be paid on their capital investment expenses. Qualified businesses that may apply for capital investment grants must have operated continuously for at least two years prior to filing an application for a grant and must employ at least 5 full-time employees. Up to $70,000,000 will be made available through an appropriation to the NJEDA for capital investment grants, of which up to $50,000,000 will be allocated for investment grants for capital investments involving expenses for the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property; and of which up to $20,000,000 will be allocated for obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility.

The job creation grant component will provide an incentive to similarly qualified businesses that have operated continuously in this State for at least two years, to create full-time jobs that are provide with health benefit coverage and that are retained for at least one year. Each position created will be eligible for a $3,000 grant to the qualified businesses if business has experienced a net increase in employment of eligible positions in this State during the same 12 consecutive months. Positions that are included in calculations of other grant award programs are not eligible for grant awards under this bill. Up to $50,000,000 will be made available through an appropriation to the NJEDA for employment grants.

As reported, this Senate Committee Substitute is identical to Assembly Bill No. 3294 (ACS).

FISCAL IMPACT:

The bill authorizes a total of $120 million in grants and makes appropriations from the Long Term Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury for that percentage of the grants that will be awarded during Fiscal Year 2009. The expenditure of up to $70 million for capital investment grants will occur in Fiscal Years 2009, 2010, and 2011. The expenditure of up to $50 million for job creation grants will occur in Fiscal Years 2010 and 2011. The bill also appropriates from the Long Term Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority a sum of up to $400,000 for the purpose of defraying reasonable and necessary administrative expenses.

JON S. CORZINE
Governor

For Immediate Release:
Date: December 9, 2008

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Governor Signs Invest NJ Legislation

Program will spur job creation and capital investment

Iselin – To help New Jersey businesses face the fiscal challenges of the current national economic crisis, Governor Jon S. Corzine today signed legislation creating the Invest NJ Program. The bill, A3294/S6, establishes the program within the New Jersey Economic Development Authority and authorizes $120 million in grants to stimulate capital investment and job creation in the Garden State for a two-year period.

"We can either wait for the economic cycle to take its course, or we can act now to mitigate the effects of the recession, curtail its duration, and better position New Jersey to take advantage of the recovery," Governor Corzine said during his address at the New Jersey Business & Industry Public Policy Forum. "We must regard this downturn as an opportunity to re-align our priorities and improve the business environment.

"With the Invest NJ bill that I am signing today, we are taking a necessary step to get New Jersey businesses investing again to make capital investments that spark economic growth throughout this state."

The program, part of Governor Corzine's Economic Assistance and Recovery Plan presented to the Legislature in October, is comprised of several facets.

One component provides a $3,000 grant to New Jersey businesses for each new job created and retained for one year. To be eligible, businesses must have operated continuously in New Jersey for at least the prior two years and must employ at least five full-time workers.

"The signing of this bill signifies the State's commitment to help improve its own economic status at a time when the financial stability of the nation is in question," said Senator Barbara Buono, (D-Middlesex), who chairs the Senate Budget and Appropriations Committee. "With this law, we are picking ourselves up by our own bootstraps, and providing resources for home-grown businesses to grow and thrive in the Garden State."

The job creation grant component will provide up to $50 million, not to exceed $500,000 per grantee, for each eligible position created after Dec. 1, 2008 and before Jan. 1, 2011 by qualified businesses that experience a net increase in employment of eligible positions in the state during the same 12 consecutive months.

"In these tough economic times businesses are going to be looking to cut costs and consolidate anywhere they can, which could translate to an even higher number of lay-offs for New Jerseyans," said Senator Shirley Turner, (D-Mercer). "Through this new law we are easing some of the financial burden on local businesses, and laying a strong foundation for them to be able to flourish, and for New Jerseyans to be able to remain employed."

"Employees and employers both need confidence that much-needed jobs will remain in New Jersey," said Assemblyman Nelson Albano (D-Cumberland/Atlantic/CapeMay). "With this measure in place, we can ensure they will."

Another component of the program authorizes the payment of grants equal to seven percent of a business's qualifying capital investment of at least $5,000 made prior to January 1, 2011. Up to $70 million is available for capital investment grants, not to exceed $1 million per grantee, to fund expenses for the direct use and operation of a business.

These expenses may cover site preparation, construction, renovations, improvements, and the purchase of fixtures, machinery and equipment. Under certain conditions, site remediation costs may also be included. To be eligible, business must have operated continuously for at least the prior two years, and must employ at least five full-time workers.

"Businesses need this comprehensive program to both spur job development and help retain their employees here in the Garden State," said Assemblyman Matt Milam (D-Cumberland/Atlantic/Cape May).

"The current status of the economy, on both a national and local level, has left too many New Jerseyans searching for employment," said Senator Jeff Van Drew, (D-Atlantic and Cape May). "Through this incentive program, the State will be able to help fill the void left by the numerous business closures and lay-offs, and provide opportunities for New Jersey's workers to support themselves and their families."

Primary sponsors of the bill in the Senate were Senators Barbara Buono (D-Middlesex), Shirley Turner (D-Mercer) and Jeff Van Drew (D- Atlantic and Cape May). In the Assembly, primary bill sponsors include Assemblymen Matthew W. Milan (D-Cape May, Atlantic, Cumberland), Nelson T. Albano (Cape May, Atlantic, Cumberland), Joseph Vas (D-Middlesex), Louis D. Greenwald (D-Camden) and Assemblywoman Linda R. Greenstein (D-Mercer, Middlesex).

The New Jersey Economic Development Authority (EDA) will administer the program. For more information, visit www.njeda.com.

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Photos from Governor Corzine's public events are available in the Governor's Newsroom section on the State of New Jersey web page, http://www.nj.gov/governor/news/

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