

27:26A-1 to 27:26A-13

LEGISLATIVE HISTORY CHECKLIST  
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(Traffic Congestion & Air  
Pollution Control Act)

NJSA: 27:26A-1 to 27:26A-13

LAWS OF: 1992 CHAPTER: 32

BILL NO: S35

SPONSOR(S) Rand

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: ---

SENATE: Transportation; Budget & Appropriations

AMENDED DURING PASSAGE: Yes Amendments during passage  
denoted by asterisks

DATE OF PASSAGE: ASSEMBLY: June 29, 1992

SENATE: June 29, 1992

DATE OF APPROVAL: June 30, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes 3-23-92 & 6-8-92

FISCAL NOTE: Yes

\* STATEMENT ON SENATE FLOOR AMENDMENTS

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

Public hearing on similar bill during previous session.

974.90 New Jersey. Legislature. Senate. Transportation & Public  
Utilities Committee.

Y764  
1190h Discussion of S348-S353. November 8, 1990. Trenton, 1990.

~~See newspaper clippings attached.~~

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P.L.1992, CHAPTER 32, *approved June 30, 1992*  
1992 Senate No. 35 (*Third Reprint*)

1 AN ACT concerning traffic congestion and air pollution control,  
2 amending R.S.39:1-1 and <sup>2</sup>[N.J.S.54A:5-1] <sup>3</sup>[N.J.S.54A:7-2<sup>2</sup>],<sup>3</sup>  
3 <sup>2</sup>[and supplementing] creating chapter 26A of<sup>2</sup> Title 27 of the  
4 Revised Statutes <sup>3</sup>[and <sup>2</sup>supplementing<sup>2</sup> Title 54A of the New  
5 Jersey Statutes].<sup>3</sup>

6

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

9 1. (New section) <sup>2</sup>[This amendatory and supplementary]  
10 Sections 1 through 13 and <sup>3</sup>[sections 17 and 18] section 15<sup>3</sup> of  
11 this<sup>2</sup> act shall be known and may be cited as the "New Jersey  
12 Traffic Congestion and Air Pollution Control Act"

13 2. (New section) The Legislature finds and declares that:

14 a. In recent years New Jersey has experienced tremendous  
15 growth in certain regions of the State, often along highway  
16 routes. This growth, as well as other factors, has led to an  
17 increase in vehicular traffic on the highways of the State,  
18 resulting in traffic congestion in various parts of the State,  
19 reaching very high levels on certain highways, resulting in  
20 "gridlock" conditions. This traffic congestion has generally  
21 outpaced the capacity of the highways of this State to deal with  
22 it, particularly so in the most highly congested areas. It  
23 interferes with the safe and efficient movement of traffic and  
24 creates constraints on future economic development.

25 b. This high level of traffic congestion, particularly during  
26 peak hour periods, results in various economic, social and  
27 environmental costs and effects. The direct costs of congestion  
28 that affect business production costs include additional labor  
29 costs associated with longer trips made by employees during  
30 business hours, higher vehicle operating costs, and less than  
31 optimal vehicle use. Indirect costs of traffic congestion include  
32 increases in accidents and insurance premiums, the degradation  
33 or loss of employee productivity, and increases in delivery costs,  
34 employee turnover, and recruiting problems. Reliance on the use  
35 of single occupancy vehicles for commutation purposes is costly  
36 to commuters and increases the consumption of gasoline, thereby  
37 rendering this State and Nation more dependent on foreign energy  
38 sources. The use of alternative means of commuting will reduce  
39 this energy dependence and render the State less vulnerable to  
40 possible interruption of gasoline supplies. This would support the  
41 national goal of energy conservation.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate STR committee amendments adopted March 23, 1992.

<sup>2</sup> Senate SBA committee amendments adopted June 8, 1992.

<sup>3</sup> Senate floor amendments adopted June 25, 1992.

1 There are also various social costs incurred as a result of  
2 excessive levels of congestion, particularly as they affect  
3 commuters. Excessive amounts of time spent in daily  
4 commutation affect the amount of time available to commuters  
5 for necessary recreational and family-related activities, and  
6 under certain conditions may cause excessive stress leading to  
7 increases in heart rate, blood pressure and heart rate  
8 irregularities, and may lead to employees arriving at work feeling  
9 annoyed and being therefore less productive.

10 c. Levels of traffic congestion in this State are related to  
11 levels of air pollution, particularly ozone, carbon monoxide and  
12 particulate matter. The federal Clean Air Act, 42 U.S.C. § 7401  
13 et seq., as amended in 1990 by Public Law 101-549, sets  
14 attainment standards for these various pollutants. New Jersey is  
15 considered as a non-attainment area in terms of level of ozone  
16 while parts of the State in which there is severe traffic  
17 congestion have failed to attain the federally mandated carbon  
18 monoxide levels. In New Jersey, 50% of the ozone pollution and  
19 almost 90% of the carbon monoxide pollution is caused by mobile  
20 sources, such as cars and trucks.

21 The major source of elevated concentrations of carbon  
22 monoxide in the air is motor vehicle exhaust. Carbon monoxide is  
23 a colorless, odorless, and tasteless gas. This gas interferes with  
24 oxygen carrying capacity in the blood, and, depending upon the  
25 concentration, may cause reduced awareness, dizziness, headache  
26 and fatigue, loss of consciousness, and possibly death.

27 Ozone is a gas formed when volatile organic substances and  
28 nitrogen oxides react in the presence of sunlight. It is a major  
29 component of smog. This respiratory irritant causes coughing,  
30 chest discomfort, upper respiratory illness, increases asthmatic  
31 problems, and reduces pulmonary functions.

32 The Clean Air Act:

33 (1) Sets deadlines for achieving attainment levels for each  
34 pollutant;

35 (2) Mandates clean fuel, vehicle, and State Implementation  
36 Plan (SIP) requirements for each pollutant; and

37 (3) Authorizes the Environmental Protection Agency (EPA) to  
38 use sanctions against those states not meeting the requirements  
39 or deadlines.

40 d. Section 182(d)(1)(B) of the Clean Air Act requires the states  
41 which are in severe non-attainment areas for ozone to submit a  
42 revision to their State Implementation Plans (SIP's) by November  
43 15, 1992 requiring that employers in the area implement  
44 programs to reduce work related vehicle trips and miles travelled  
45 by employees. The revision is to be developed in accordance with  
46 guidance issued by the EPA pursuant to section 108(f) of the  
47 Clean Air Act, "Transportation Control Measures," and shall, at a  
48 minimum, require that each employer of 100 or more persons in  
49 such area <sup>2</sup>[increase] achieve<sup>2</sup> average passenger occupancy  
50 <sup>2</sup>[(AVO)] (APO)<sup>2</sup> per vehicle in commuting trips between home  
51 and the workplace during peak travel periods <sup>3</sup>[by] of<sup>3</sup> not less  
52 than 25% above the average vehicle occupancy <sup>2</sup>(AVO)<sup>2</sup> for all  
53 such trips in the area. <sup>2</sup>Every effort should be made to ensure  
54 that the minimum federal standards are not exceeded.<sup>2</sup> The

1 State Implementation Plan must document how the State plans to  
2 implement the AVO requirement. In addition, the Clean Air Act  
3 requires affected employers to submit a plan by November 15,  
4 1994 which "convincingly demonstrates compliance" by  
5 November 15, 1996.

6 e. In order to deal with the economic, social and  
7 environmental costs and effects enumerated above and to avoid  
8 or delay expensive or environmentally costly new highway  
9 construction and to preclude the withholding of federal funds for  
10 New Jersey's infrastructure, it is in the public interest for the  
11 State of New Jersey to develop a comprehensive program of  
12 transportation control measures to deal with traffic congestion  
13 and air pollution. In furtherance of this policy it is the intent of  
14 the Legislature that the Department of Transportation:

15 (1) Take steps to analyze already existing data related to  
16 commutation patterns and to engage in or analyze comprehensive  
17 traffic congestion studies in order to provide for a more complete  
18 and detailed picture of the level and sources of congestion on the  
19 State's roads and highways.

20 (2) Place special emphasis on the completion of "missing  
21 links" in the State's highway system, the adoption of  
22 transportation control measures intended to facilitate the smooth  
23 flow of traffic, such as improved signage, synchronization of  
24 traffic lights, resurfacing of highways, the use of "intelligent  
25 vehicle" highways that incorporate electronic monitoring and  
26 traffic warning systems, electronic toll management systems, the  
27 maximum possible use of public transportation, and other  
28 appropriate measures.

29 (3) Establish by regulation a Travel Demand Management  
30 Program, as a result of recommendations made from  
31 representatives of government and the private sector which  
32 would require employers employing 100 or more persons at one  
33 location in <sup>2</sup>[highly polluted and congested] affected<sup>2</sup> areas of  
34 the State to undertake <sup>2</sup>[at least a biennial survey] surveys<sup>2</sup> of  
35 the commutation patterns of their employees and to prepare <sup>2</sup>[a  
36 biennial]<sup>2</sup> compliance <sup>2</sup>[plan] plans<sup>2</sup>. The survey shall, at a  
37 minimum, document the employer's average passenger vehicle  
38 occupancy rate during designated peak hours. The plan shall  
39 identify what transportation demand management strategies are  
40 being initiated or are in place by the employer. The employer  
41 shall sponsor travel demand management programs and offer  
42 incentives as necessary to reduce the number of single occupancy  
43 vehicles at the employer's work locations and as a general rule  
44 increase the average vehicle occupancy rate by not less than 25%  
45 above the average vehicle occupancy for all such trips in the  
46 region not later than November 15, 1996. However, as a matter  
47 of equity it is the Legislature's intent to give credit to employers  
48 who have instituted travel demand management programs prior to  
49 the State's institution of such a program and not to penalize  
50 them for their current or past travel demand management  
51 practices. Therefore, no employer is expected to attain a higher  
52 average <sup>2</sup>[vehicle] passenger<sup>2</sup> occupancy <sup>2</sup>[(AVO)] (APO)<sup>2</sup> rate  
53 greater than <sup>2</sup>25% above<sup>2</sup> the average vehicle occupancy <sup>2</sup>[rate]  
54 (AVO)<sup>2</sup> set for the region as a whole.

1 3. (New section) As used in this amendatory and  
2 supplementary act:

3 "Affected area" means a geographic area designated by  
4 regulation of the department pursuant to section 5 of this  
5 amendatory and supplementary act which is considered a highly  
6 congested area or is a non-attainment area for which  
7 transportation control measures are required under the Clean Air  
8 Act.

9 "Affected employer" means an employer which employs 100 or  
10 more employees at a work location and which is required by this  
11 amendatory and supplementary act to file a compliance plan.

12 "Alternative means of commuting" means travel between a  
13 person's place of residence and place of employment or termini  
14 near those places, other than in a motor vehicle occupied by one  
15 person. Alternative means of commuting include, but are not  
16 limited to, public transportation, carpools, vanpools, buspools,  
17 ferries, bicycling, telecommuting and walking, which may be used  
18 in conjunction with such strategies as flextime, staggered work  
19 hours, compressed work weeks and like measures.

20 <sup>2</sup>"Average Passenger Occupancy" or "(APO)" means the  
21 average passenger occupancy of vehicles commuting to an  
22 employer's worksite during peak periods, as specified by formula  
23 or formulas prescribed by regulation of the department.<sup>2</sup>

24 "Average Vehicle Occupancy" <sup>2</sup>[(AVO)] or "(AVO)"<sup>2</sup> means the  
25 average <sup>2</sup>[passenger]<sup>2</sup> vehicle occupancy of <sup>2</sup>the region as a  
26 whole of<sup>2</sup> vehicles commuting to <sup>2</sup>[work] worksites<sup>2</sup> during peak  
27 periods, as specified by a formula or formulas prescribed by  
28 regulation of the department.

29 "Buspool" means a bus service, usually administered by an  
30 employer, with limited pickup at destination stops, guaranteed  
31 seats, and advanced ticket purchase. Club buses are buspools  
32 administered by the riders.

33 "Carpool" means a group of two or more persons commuting on  
34 a regular basis to and from work by means of a vehicle with a  
35 seating capacity of nine passengers or less.

36 "Clean Air Act" means the federal Clean Air Act, as amended  
37 by Pub. L. 101-549 (42 U.S.C. § 7401 et seq.) and as subsequently  
38 amended or supplemented.

39 "Commissioner" means the Commissioner of Transportation.

40 "Commuter transportation benefit" means the cost to  
41 employers of providing benefits to an employee for utilizing a  
42 alternative means of commuting and the cost of providing  
43 services and facilities which would encourage or facilitate use by  
44 employees of alternative means of commuting. The benefit shall  
45 include the costs of parking by employees at park-and-ride lots.

46 "Compliance plan" or "plan" means the plan required by  
47 section 5 of this amendatory and supplementary act and any  
48 regulations issued thereunder.

49 "Department" means the New Jersey Department of  
50 Transportation.

51 "Employee" means an employee hired or employed by the  
52 employer and who reports to the employer's work location, as  
53 specified by regulation of the department.

54 "Employee vehicle" means a motor vehicle used by employees

1 in commutation to work.

2 "Employer" means any person, partnership, association,  
3 corporation, trust, legal representative or any organized group of  
4 persons which hires or employs employees and shall also include  
5 all public and quasi-public employers, including without  
6 limitation the United States and any of its governmental  
7 instrumentalities, the State of New Jersey and its  
8 instrumentalities and subdivisions, and all State and bi-State  
9 authorities, corporations, commissions, boards and like bodies.

10 "Government employer" means the United States and any of its  
11 governmental instrumentalities, the State of New Jersey and any  
12 of its instrumentalities and subdivisions, except independent  
13 government employers.

14 <sup>2</sup>"High occupancy vehicle" means a vehicle which is used to  
15 transport two or more persons and shall include public  
16 transportation, car pool, van pool and other vehicles as  
17 determined by regulation of the department."<sup>2</sup>

18 "Independent government employer" means an independent or  
19 semi-autonomous State authority, corporation, commission, board  
20 or like body which does not receive State appropriations and shall  
21 also include any bi-State authority which has work locations  
22 within the State and the South Jersey Port Corporation  
23 notwithstanding that it may receive a State appropriation.

24 "Peak periods" means those hours of peak travel as designated  
25 by regulation of the department.

26 "Program" means the Travel Demand Management Program to  
27 be established pursuant to section 5 of this amendatory and  
28 supplementary act.

29 "Public transportation" means rail passenger service, motorbus  
30 regular route service, paratransit service, and motorbus charter  
31 service or other transportation services available to the traveling  
32 public whose purpose is to carry passengers between two or more  
33 points, as may be determined by regulation of the department.

34 "Region" means a geographic area in which the level of  
35 average vehicle occupancy is determined by the department and  
36 may be coterminous or not with an affected area.

37 "State department or agency" means a department or agency  
38 of the Executive, Legislative or Judicial branches of State  
39 Government other than independent government employers.

40 "Transportation management association" means a nonprofit  
41 corporation approved by the department as coordinating  
42 transportation services, including but not limited to public  
43 transportation, vanpools, carpools, bicycling and pedestrian  
44 modes, as well as strategies such as flex-time, staggered work  
45 hours, and compressed work weeks, for corporations, employees,  
46 developers, individuals and other groups.

47 "Travel demand management" or "TDM" means a system of  
48 actions whose purpose is to alleviate traffic-related problems  
49 through improved management of vehicle trip demand. These  
50 actions, which are primarily directed at commuter travel, are  
51 structured to reduce the dependence on and use of single  
52 occupancy vehicles, or to alter the timing of travel to other, less  
53 congested time periods or both.

54 "Vanpool" means seven or more persons commuting on a

1 regular basis to and from work by means of a vehicle with a  
2 seating arrangement designed to carry not more than 15 adult  
3 passengers <sup>2</sup>[and which is registered as a commuter van pursuant  
4 to section 2 of P.L.1981, c.139 (C.39:3-27.19).]<sup>2</sup>

5 "Work location" or "location" means an area, building,  
6 grouping of buildings or set of contiguous buildings or portion  
7 thereof, under the ownership, operation, or control of a single  
8 employer where employees perform work.

9 4. (New section) a. To the end that the problems of traffic  
10 congestion and its attendant economic, social and environmental  
11 costs and effects shall be dealt with in a comprehensive manner,  
12 the department shall analyze already existing data related to  
13 commutation patterns, including origin-destination data; and  
14 shall engage in or analyze comprehensive traffic congestion  
15 studies in order to provide for a more complete and detailed  
16 picture of the level and sources of congestion on State highways,  
17 county and municipal roads, as well as toll bridges and toll roads.

18 b. Based upon this analysis or study, the department shall  
19 develop a comprehensive strategy of transportation control  
20 measures to deal with congestion and air pollution problems in  
21 the State, including but not limited to placing special emphasis on  
22 the completion of "missing links" in the State highway system,  
23 use of high occupancy vehicle lanes, priority treatment of  
24 <sup>2</sup>[multiple-occupancy] high-occupancy<sup>2</sup> vehicles, the adoption of  
25 traffic system management, such as improved signage,  
26 synchronization of traffic lights, resurfacing of highway  
27 pavements, the use of "intelligent vehicle" highways, the  
28 maximum possible use of public transportation and other  
29 appropriate measures to facilitate the smooth flow of traffic in  
30 the State. <sup>2</sup>No high occupancy vehicle lanes shall be established  
31 on a highway unless public transit alternatives are evaluated and  
32 marketed for that highway.<sup>2</sup>

33 5. (New section) a. Based upon the analysis or study provided  
34 for in subsection a. of section 4 of this amendatory and  
35 supplementary act and in conjunction with the transportation  
36 control measures to be developed pursuant to subsection b. of  
37 section 4 of this amendatory and supplementary act, the  
38 Department of Transportation<sup>1,1</sup> in consultation with the  
39 Department of Environmental Protection<sup>1,1</sup> shall establish by  
40 regulations adopted pursuant to the provisions of the  
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
42 et seq.), a Travel Demand Management Program to reduce the  
43 demand for travel on the State's highway system by reducing the  
44 number of trips and mileage travelled by vehicles on that system,  
45 and managing their flow on the State's transportation system <sup>1</sup>,  
46 with a copy of any notice of proposed filing of any such  
47 regulation to be submitted to the Senate Transportation  
48 Committee and the Assembly Transportation and  
49 Communications Committee at least 60 days before it is  
50 submitted to the Office of Administrative Law for publication in  
51 the New Jersey Register<sup>1 2</sup>; the committee shall review the  
52 proposed regulations and provide written comments thereon  
53 within 60 days of the receipt thereof<sup>2</sup>. These goals <sup>2</sup>[can] may<sup>2</sup>  
54 be accomplished in part by the implementation of various

1 requirements intended to increase the use by commuters of  
2 alternative means of commuting and the management of  
3 commuter arrival and departure times by the use of work hours  
4 management, telecommuting and other methods. The program  
5 shall be designed to bring New Jersey into compliance with the  
6 Clean Air Act.

7 b. As part of the program, the Department of Transportation,  
8 in consultation with the Department of Environmental Protection  
9 and pursuant to provisions of the Clean Air Act<sup>1,1</sup> shall, not later  
10 than one year after the effective date of this amendatory and  
11 supplementary act, designate those affected areas of the State in  
12 which the program is to be implemented <sup>1</sup>[and] <sup>1</sup>,<sup>1</sup> determine the  
13 average vehicle occupancy level in designated regions in the  
14 State and set an average <sup>2</sup>[vehicle] passenger<sup>2</sup> occupancy rate to  
15 be achieved <sup>2</sup>by employers<sup>2</sup> in those regions. Those areas and  
16 regions so designated are to be listed in the comprehensive  
17 master plan required to be developed pursuant to subsection (a) of  
18 section 5 of P.L.1966, c.301 (C.27:1A-5).

19 c. Within 120 days of the designation <sup>1</sup>of affected areas<sup>1</sup>  
20 provided for by subsection b. of this section, the Department of  
21 Transportation shall prepare a notice and registration form to be  
22 mailed annually to employers. The notice and form may be  
23 revised from time to time. The notice and form shall, at the  
24 request of the Department of Transportation, be mailed by the  
25 Department of Labor, as specified by the Department of  
26 Transportation. <sup>2</sup>At least the first annual mailing shall be by  
27 certified mail.<sup>2</sup> The Department of Labor shall annually provide  
28 the Department of Transportation with the mailing list of  
29 notified employers and shall include the name and address of the  
30 employer and number of employees employed by the employer at  
31 the employer's work locations. The notice shall inform each  
32 employer that an employer having 100 or more employees at a  
33 work location in an affected area shall submit to the Department  
34 of Transportation the following information, or such information  
35 as may be required by the Department of Transportation, on the  
36 registration form mailed to the employer within 60 days of the  
37 receipt thereof:

38 (1) Name and address of the employer.

39 (2) Name and address of a designated person, or persons, to  
40 receive the survey form required by subsection d. of this section,  
41 and who may be contacted by the department.

42 (3) The address of each work location employing 100 or more  
43 employees and the number of employees at such work location.

44 Notwithstanding that an employer may not have been mailed or  
45 received the notice or form from the Department of Labor, an  
46 employer employing 100 or more employees at a work location  
47 shall in any event complete the prescribed form, copies of which  
48 may be obtained upon request from the Department of  
49 Transportation. The form so obtained shall be submitted to the  
50 Department of Transportation no later than the time prescribed  
51 in a general informational notice to all employers concerning this  
52 requirement to be published annually in at least six newspapers  
53 having circulation in various parts of the State.

54 d. Within 180 days of the receipt of the initial form required

1 to be submitted pursuant to subsection c. of this section, the  
2 department shall notify, in the manner provided in this  
3 subsection, each affected employer that the employer shall cause  
4 a survey or surveys to be done of the commutation patterns of  
5 the employees <sup>1</sup>[of] at<sup>1</sup> each work location having 100 or more  
6 employees, the results of which are to be included as part of a  
7 compliance plan to be submitted to the department. The  
8 department shall include with the notification a copy of the  
9 survey form or forms which shall be used by the employer. It is  
10 the intent of the Legislature that such forms be as simple as  
11 possible, not include information not actually required by the  
12 program, and not be unduly burdensome to employers filing  
13 them. The forms shall be prescribed by the department and shall  
14 include but not be limited to the following information:

15 (1) Name and address of the employer.

16 (2) Name and telephone number of a person who may be  
17 contacted by the department.

18 (3) Number of employees employed at the location.

19 (4) The number of employees absent from work on the day the  
20 survey was done. An absentee count shall not include employees  
21 working at home during the time the survey was completed.

22 (5) The mode of travel used by employees in commutation to  
23 work, including the use of single occupancy vehicles, carpools,  
24 vanpools, public transportation, bus pools and other alternative  
25 means of commuting. Subject to departmental guidelines, a  
26 employer may, in addition to surveying the commutation patterns  
27 of employees at each work location, count the number of vehicles  
28 entering or leaving the work location during peak periods. The  
29 department shall prescribe the form of the survey and the method  
30 of obtaining the count and the employer shall provide a  
31 description of how the count was obtained. <sup>2</sup>Handicapped persons  
32 who require the use of a single occupancy vehicle for  
33 commutation to work shall not be included in the survey.<sup>2</sup>

34 <sup>2e.</sup><sup>2</sup> The employer shall prepare and submit a compliance plan  
35 which shall conform to regulations issued by the department, a  
36 copy of which shall be included with the notice required by this  
37 subsection. The plan shall include the following, or such  
38 information as may be required by the department:

39 (1) A summary of the survey results, including a description of  
40 the method used, and the current average <sup>2</sup>[vehicle] passenger<sup>2</sup>  
41 occupancy <sup>2</sup>[(AVO)] (APO)<sup>2</sup> at each work location.

42 (2) A list of transportation demand management strategies  
43 presently used by the employer.

44 (3) Identification of employees' use of telecommuting,  
45 flextime, staggered work hours, compressed work weeks, or other  
46 techniques employed to reduce traffic congestion or air pollution.

47 (4) A list and description of additional transportation demand  
48 management strategies planned.

49 <sup>3</sup><sup>2</sup>(5) A list of those tax credits claimed pursuant to section  
50 17 of this amendatory and supplementary act, a description of  
51 what these credits were used for, and how expenditures for which  
52 the credit was taken will bring the employer into compliance with  
53 this amendatory and supplementary act.<sup>2</sup><sup>3</sup>

54 The compliance plan shall contain the name, title and signature

1 of the person preparing the plan who shall attest to the  
2 correctness of the information supplied. In addition, the plan  
3 shall be certified as to its accuracy and efficacy by an employee  
4 of a transportation management association who shall be  
5 <sup>1</sup>[certified] approved<sup>1</sup> by the department as being qualified to  
6 certify <sup>2</sup>[to]<sup>2</sup> the accuracy and efficacy of the compliance plan,  
7 or by another person or entity independent of the employer who is  
8 also so <sup>1</sup>[certified] approved<sup>1</sup>.

9 The compliance plan shall also contain the name, title and  
10 signature of the employer, or of a person designated by the  
11 employer, who shall certify that the employer intends to  
12 implement the <sup>1</sup>additional<sup>1</sup> transportation demand management  
13 strategies planned. The person designated by the employer may  
14 be the transportation coordinator required to be appointed  
15 pursuant to this amendatory and supplementary act or another  
16 officer of the employer, as provided by regulation.

17 An employer shall <sup>2</sup>[have no more than 180 days from the date  
18 of notification to]<sup>2</sup> return the completed plan to the department  
19 <sup>3</sup>not later than November 15, 1994<sup>3</sup> along with the appropriate  
20 filing fee, as provided in section 10 of this amendatory and  
21 supplementary act. <sup>2</sup>The department shall notify an employer  
22 not later than May 1, 1994, <sup>3</sup>[and the employer shall respond not  
23 later than November 15, 1994] of the survey and plan  
24 requirements<sup>3</sup>. <sup>3</sup>[The] In any event the<sup>3</sup> department shall give  
25 each employer at least 180 days to complete the compliance plan  
26 upon notification.<sup>2</sup>

27 <sup>2</sup>[ e. Following the submittal of the initial plan, each affected  
28 employer shall at least biennially submit a plan in accordance  
29 with regulations issued by the department unless a more frequent  
30 submittal is required by federal regulation. Each such plan shall  
31 document the average vehicle occupancy at each work location  
32 and any other information deemed necessary by the department.]

33 f. Following the submittal of the initial plan, each affected  
34 employer shall submit a subsequent compliance plan by November  
35 15, 1996 in accordance with regulations issued by the department  
36 unless a more frequent submittal is required by federal  
37 guidelines. Each such plan shall document the average passenger  
38 occupancy at each work location and any other information  
39 deemed necessary by the department.

40 After November 15, 1996, additional compliance plans shall be  
41 required if mandated by the federal Environmental Protection  
42 Agency, or if required by the Department of Environmental  
43 Protection to comply with the federal Environmental Protection  
44 Agency's mandated State Implementation Plan requirements, or  
45 if an affected employer is not in compliance with the required  
46 average passenger occupancy rate increase. Employers not in  
47 compliance by November 15, 1996, shall be required to file an  
48 amended plan pursuant to subsection g of this section and shall be  
49 further required to document their average passenger occupancy  
50 rate to the department at the end of the year covered by the  
51 amended plan in compliance with the regulations established by  
52 the department.<sup>2</sup>

53 <sup>2</sup>[f.] g.<sup>2</sup> Except as otherwise provided in this amendatory and  
54 supplementary act, within three years of the submission of the

1 initial compliance plan, or by November 15, 1996, whichever is  
2 first, each affected employer shall <sup>2</sup>[increase the] achieve an<sup>2</sup>  
3 average <sup>2</sup>[vehicle] passenger<sup>2</sup> occupancy rate <sup>3</sup>[by] of<sup>3</sup> not less  
4 than 25% above the average vehicle occupancy rate set for all  
5 such trips in the region.

6 <sup>2</sup>[g.] h.<sup>2</sup> Affected employers submitting a plan shall have the  
7 plan evaluated <sup>1</sup>by the department within 180 days of submittal<sup>1</sup>  
8 for completeness and consistency with the regulations <sup>1</sup>[by the  
9 department within 180 days of submittal]<sup>1</sup>, and any plan shall be  
10 returned to the employer for resubmittal if the department  
11 determines that it is incomplete or inconsistent with the rules  
12 and regulations promulgated pursuant to this amendatory and  
13 supplementary act. <sup>2</sup>The department shall specify what aspects  
14 of the plan are incomplete or inconsistent.<sup>2</sup> An incomplete or  
15 inconsistent plan returned to an employer shall be resubmitted to  
16 the department by the affected employer within 60 days of the  
17 notice that the plan is deemed incomplete or inconsistent, the  
18 notice having been issued not later than the end of the 180-day  
19 period. A plan not returned within the 180-day period shall be  
20 deemed approved.

21 The plan may, however, also be returned by the department  
22 within the 180-day period if the department determines that it is  
23 not in compliance with the required average <sup>2</sup>[vehicle] passenger<sup>2</sup>  
24 occupancy rate <sup>2</sup>[increase]<sup>2</sup> required to be achieved pursuant to  
25 this amendatory and supplementary act. The plan shall be  
26 resubmitted to the department in amended form within 90 days of  
27 the notice that the plan is deemed in noncompliance, the notice  
28 having been issued not later than the end of the 180-day period.  
29 The amended plan shall include a full description of the  
30 employer's current efforts to <sup>2</sup>[increase] achieve the required<sup>2</sup>  
31 average <sup>2</sup>[vehicle] passenger<sup>2</sup> occupancy, documenting the  
32 employer's "good faith" efforts and shall specifically identify  
33 how the employer plans to <sup>3</sup>[increase] achieve<sup>3</sup> the <sup>2</sup>required<sup>2</sup>  
34 average <sup>2</sup>[vehicle] passenger<sup>2</sup> occupancy rate <sup>2</sup>[to the required  
35 standard]<sup>2</sup> within one year of the date of submittal. The  
36 amended plan shall be certified by a transportation management  
37 association employee or another person or entity <sup>1</sup>[certified]  
38 approved<sup>1</sup> by the department, as in the original plan, and shall be  
39 approved by the department to avoid non-compliance penalties  
40 established in section 13 of this amendatory and supplementary  
41 act.

42 <sup>2</sup>[h.] i.<sup>2</sup> An affected employer may elect to comply with the  
43 provisions of this amendatory and supplementary act by  
44 participating in a consolidated plan with other employers in the  
45 surrounding area or in a development or complex, in accordance  
46 with guidelines established by the department.

47 <sup>2</sup>[i.] j.<sup>2</sup> The department is authorized to prescribe what  
48 records relating to the program shall be preserved by the  
49 employer and for what length of time. The department is  
50 authorized to inspect, verify and audit these records, subject to  
51 the privacy and confidentiality laws of the State, in order to  
52 determine compliance with the program, as provided by  
53 regulation. <sup>3</sup>[<sup>2</sup>To ensure that any tax credits claimed pursuant to  
54 section 17 of P.L. . c. (C. ) (now before the Legislature as

1 this bill) were spent in relation to increasing the employer's  
2 average passenger occupancy rate and in meeting the  
3 requirements of this amendatory and supplementary act, the  
4 department shall also review the employer provided employee  
5 commuter transportation benefits of an affected employer and  
6 forward the review, together with such other information as may  
7 be prescribed by the Director of the Division of Taxation, in the  
8 Department of the Treasury, to the Director of the Division of  
9 Taxation for the audit and verification of any such tax credits  
10 claimed by the employer.<sup>2</sup><sup>3</sup>

11 <sup>2</sup>[j.] k.<sup>2</sup> Employers required to submit compliance plans after  
12 November 15, 1996 shall conform to regulations to be adopted by  
13 the department dealing with the requirements of the program  
14 after that date <sup>2</sup>[and an] . An<sup>2</sup> employer who has been found by  
15 the department to be in compliance with respect to two  
16 successive plan submissions may, after November 15, 1996, itself  
17 certify the plan's accuracy and efficacy.

18 An employer not required to submit an initial compliance plan  
19 by November 15, 1994 but who is required to submit such a plan  
20 on or before November 15, 1996 shall receive a grace period of  
21 one year before being required to comply with the average  
22 <sup>2</sup>[vehicle] passenger<sup>2</sup> occupancy requirements of the program in  
23 effect on the date of initial submittal.

24 <sup>2</sup>l. Affected employers <sup>3</sup>[shall] are encouraged<sup>3</sup>, where  
25 feasible, <sup>3</sup>to<sup>3</sup> reduce the number of parking spaces available for  
26 employees at work locations and <sup>3</sup>[shall]<sup>3</sup> reserve the most  
27 desirable parking spaces for high occupancy vehicles. The  
28 provisions of this subsection shall not be construed as affecting  
29 those spaces reserved for handicapped persons. <sup>3</sup>[In addition,  
30 owners or operators of shopping malls or other places having  
31 commercial parking shall provide preferential parking for high  
32 occupancy vehicles.]<sup>3</sup> The department shall work with the  
33 Director of the Division of Motor Vehicles in developing  
34 regulations which would authorize the issuance of high occupancy  
35 vehicle (HOV) license plates for uses and classes of operators to  
36 be specified by regulation.<sup>2</sup>

37 6. (New section) a. There is established in the Department of  
38 Transportation a Travel Demand Management Advisory Council  
39 which shall consist of the following voting members: the  
40 Commissioner of Transportation, the Executive Director of the  
41 New Jersey Transit Corporation, the Commissioner of  
42 Environmental Protection, the Commissioner of Commerce,  
43 Energy and Economic Development, <sup>1</sup>[and]<sup>1</sup> the Commissioner of  
44 Labor, <sup>1</sup>and the Commissioner of Personnel,<sup>1</sup> ex officio or their  
45 designees, and four representatives <sup>2</sup>[of business, industry,] from  
46 the following: one each from an affected employer having  
47 between 100 and 500 employees, an affected employer having  
48 more than 500 employees, a<sup>2</sup> labor <sup>2</sup>interest group<sup>2</sup> and <sup>2</sup>an<sup>2</sup>  
49 environmental interest <sup>2</sup>[groups] group<sup>2</sup>, appointed for a term of  
50 five years by the Governor with the advice and consent of the  
51 Senate within 180 days of the effective date of this amendatory  
52 and supplementary act. Any vacancies in the membership of the  
53 council from among the appointed members shall be filled in  
54 same manner as the original appointment but for the unexpired

1 term only. The chairman of the council shall be selected by the  
2 members. The members of the council shall not receive  
3 compensation for their services as members of the council.

4 b. It shall be the duty of the council to study and make  
5 recommendations to the department concerning the Travel  
6 Demand Management Program to be established pursuant to this  
7 amendatory and supplementary act. The department shall submit  
8 preliminary drafts of regulations to be adopted under this  
9 amendatory and supplementary act to the council for comment.  
10 In addition, the council shall receive a copy of any notice of  
11 proposed filing of the regulation at least 60 days before it is  
12 submitted to the Office of Administrative Law for publication in  
13 the New Jersey Register. 2In its evaluation of the regulations,  
14 the council shall consider the environmental and economic  
15 interests of the State.<sup>2</sup>

16 c. The council shall be dissolved upon the determination of the  
17 commissioner that it has fully discharged its advisory functions  
18 but in no event earlier than five years after the effective date of  
19 this amendatory and supplementary act.

20 d. The council shall establish a Travel Demand Management  
21 Technical Advisory Committee to consist of <sup>1</sup>[10] 11<sup>1</sup> members  
22 and may establish such other advisory committees as it deems  
23 appropriate. The Travel Demand Management Technical  
24 Advisory Committee shall consist of one designee from each of  
25 the ex-officio members of the Travel Demand Management  
26 Advisory Council, a representative of the New Jersey Business  
27 and Industry Association, a representative of the New Jersey  
28 Chamber of Commerce, and three members chosen by a majority  
29 vote of the Travel Demand Management Advisory Council. The  
30 chairman of the committee shall be the person serving as the  
31 designee of the Commissioner of Transportation. The committee  
32 is charged with the responsibility of advising the department  
33 concerning the survey forms and the compliance plans to be  
34 developed by the department so that they are kept as simple as  
35 possible for the employer and are in compliance with this  
36 amendatory and supplementary act and the Clean Air Act. The  
37 committee shall make such recommendations to the Department  
38 of Transportation no later than one year after the effective date  
39 of this amendatory and supplementary act.

40 7. (New section) The following are the duties and  
41 responsibilities of various public and private entities in relation  
42 to the Travel Demand Management Program, in addition to the  
43 duties and responsibilities otherwise provided for these entities in  
44 this amendatory and supplementary act:

45 a. The Department of Transportation shall serve as the  
46 primary implementer of this program and to this end shall ensure  
47 that the department's resources are sufficient to meet the  
48 demands of the program. The department shall approve  
49 transportation management associations, or other persons or  
50 entities who would serve as primary resources to employers in  
51 carrying out their responsibilities under this program. In the case  
52 of State departments and agencies the department may serve as  
53 the primary resource, assisted by those departments and agencies  
54 of State government whose assistance the department shall deem

1 appropriate.

2 b. Both the Department of Environmental Protection and the  
3 Department of Transportation shall coordinate their policies  
4 relating to the State Implementation Plan and any revisions  
5 thereto required under the Clean Air Act. <sup>2</sup>The Department of  
6 Transportation shall obtain the approval of the federal  
7 Environmental Protection Agency, through the Department of  
8 Environmental Protection, on all aspects of the Travel Demand  
9 Management Program to avoid potential conflicts with the Clean  
10 Air Act and to avoid the imposition of sanctions.<sup>2</sup>

11 c. The Commissioner of Labor, upon request of the  
12 Commissioner of Transportation, shall supply such information  
13 and make such mailings as are necessary to assist the Department  
14 of Transportation to carry out its responsibilities under this  
15 amendatory and supplementary act and may make any  
16 stipulations as to confidentiality of this information as the  
17 Commissioner of Labor deems advisable.

18 d. The New Jersey Transit Corporation, in consultation with  
19 the Department of Transportation, shall implement policies to  
20 make available, where feasible, public transportation services,  
21 programs and activities which support public transportation  
22 services, technical assistance, or any other activity authorized by  
23 the "New Jersey Public Transportation Act of 1979," P.L.1979,  
24 c.150 (C.27:25-1 et seq.) or approved by the Board of Directors of  
25 the New Jersey Transit Corporation.

26 e. If a county or municipality has adopted a travel demand  
27 management ordinance or similar measure prior to the effective  
28 date of this amendatory and supplementary act, which is certified  
29 by the department as being in substantial compliance with this  
30 amendatory and supplementary act, an affected employer  
31 meeting the requirements of the ordinance or similar measure  
32 shall be eligible to apply for exemption from the requirements of  
33 this amendatory and supplementary act, in accordance with  
34 procedures provided for by regulation.

35 f. Transportation management associations, or other persons  
36 or entities approved by the department are to serve as primary  
37 resources to employers at the employer's request, to assist the  
38 employers in carrying out their responsibilities under the  
39 program. They also shall be responsible for coordinating any  
40 assistance needed from the State, county or municipal  
41 government or from the New Jersey Transit Corporation.

42 g. Affected employers shall carry out in good faith the  
43 compliance plan submitted to and approved by the department.  
44 They shall, in addition, appoint a Transportation Coordinator at  
45 each work location employing 100 or more employees, who shall  
46 make efforts to inform employees of the travel demand  
47 management strategies available to them and to offer them  
48 incentives for the use of these strategies. The employer may  
49 enter into a contract or agreement with a transportation  
50 management association or other approved person or entity to  
51 assist in the development and preparation of a plan but the  
52 responsibility of submitting and implementing the plan shall be  
53 that of the employer. <sup>1</sup>Employers, as well as employees, are  
54 encouraged, wherever possible, to utilize alternative <sup>2</sup>[energy]

1 fuel<sup>2</sup> vehicles in order to reduce air pollution levels in this State,  
 2 and that utilization shall receive appropriate recognition in the  
 3 regulations adopted by the department pursuant to this  
 4 amendatory and supplementary act. The <sup>2</sup>[department]  
 5 Department of Environmental Protection<sup>2</sup> shall also determine,  
 6 in consultation with the <sup>2</sup>[Department of Environmental  
 7 Protection and the]<sup>2</sup> United States Environmental Protection  
 8 Agency <sup>2</sup>and the Department of Transportation<sup>2</sup>, whether the use  
 9 of alternative <sup>2</sup>[energy] fuel<sup>2</sup> vehicles may be considered as  
 10 offsetting any portion of the <sup>3</sup>[increase in]<sup>3</sup> <sup>2</sup>[AVO] (APO)<sup>2</sup>  
 11 <sup>3</sup>rate<sup>3</sup> required by this amendatory and supplementary act. As  
 12 used in this subsection, "alternative <sup>2</sup>[energy] fuel<sup>2</sup> vehicle"  
 13 means a vehicle fueled or propelled by energy sources <sup>2</sup>[other  
 14 than gasoline or diesel fuel and] which<sup>2</sup> shall include, but not be  
 15 limited to, <sup>2</sup>[vehicles propelled by]<sup>2</sup> electricity, <sup>2</sup>[or fueled by  
 16 alternative fuels such as]<sup>2</sup> natural gas, <sup>2</sup>and<sup>2</sup> propane <sup>2</sup>[or other  
 17 less polluting fuels]<sup>2,1</sup>

18 8. (New section) The department, in cooperation with the  
 19 Department of Commerce, Energy and Economic Development,  
 20 the Department of Environmental Protection, and the  
 21 Department of Education, shall develop a comprehensive public  
 22 education program on the benefits of travel demand  
 23 management. The public education program shall focus its  
 24 efforts on the driving public and it shall be an element of the  
 25 travel demand management program.

26 9. (New section) There is created in the General Fund a  
 27 special nonlapsing account to be known as the "Travel Demand  
 28 Management Program Account." All moneys from penalties and  
 29 fees collected pursuant to the provisions of this amendatory and  
 30 supplementary act or otherwise appropriated to the account shall  
 31 be deposited in the account. Moneys in the account shall be  
 32 administered exclusively by the department to implement the  
 33 program and may be used by the department for all costs of  
 34 implementing the program as well as for grants to transportation  
 35 management associations or other public or private entities  
 36 whose activities in the opinion of the department would  
 37 contribute to the implementation of the program throughout the  
 38 State.

39 10. (New section) a. An affected employer filing a  
 40 compliance plan as required pursuant to section 5 of this  
 41 amendatory and supplementary act shall pay a fee to the  
 42 Department of Transportation in accordance with the following  
 43 schedule:

44 For locations with 1000 or more employees, \$800 for an initial  
 45 filing and \$1,600 for each subsequent biennial filing.

46 For locations with 750 to 999 employees, \$600 for the initial  
 47 filing, and \$1,200 for each subsequent biennial filing.

48 For locations with 500 to 749 employees, \$400 for the initial  
 49 filing, and \$800 for each subsequent biennial filing.

50 For locations with 100 to 499 employees, \$200 for the initial  
 51 filing, and \$400 for each subsequent biennial filing.

52 In the event that subsequent filings are annual rather than  
 53 biennial, the fee for those filings shall be the same as the initial  
 54 filing.

1 b. Notwithstanding the provisions of subsection a. of this  
2 section, for an employer which has more than five locations  
3 subject to the filing requirement, the maximum aggregate total  
4 amount of the fees that an employer shall be subject to shall not  
5 be greater than \$4,000 for the initial or annual filing and \$8,000  
6 for each subsequent biennial filing.

7 c. The department may by regulation revise the schedule of  
8 fees provided for by subsections a. and b. of this section after  
9 four years following the effective date of this amendatory and  
10 supplementary act.

11 d. Government employers other than independent government  
12 employers shall be exempt from the payment of fees under this  
13 amendatory and supplementary act.

14 11. (New section) The commissioner is authorized <sup>2</sup>,in  
15 consultation with the Commissioner of Environmental  
16 Protection,<sup>2</sup> to establish by regulation procedures for affected  
17 employers to make application for exemption from, or waiver of,  
18 the provisions of this amendatory and supplementary act or of the  
19 other regulations issued thereunder. The regulations shall specify  
20 those classifications of affected employers which would be  
21 eligible to make application for such relief and may include but  
22 not be limited to employers who would suffer extreme hardship or  
23 would be unable to comply with the provisions of this amendatory  
24 and supplementary act or of the regulations <sup>2</sup>despite the affected  
25 employer's demonstration of good faith efforts to comply<sup>2</sup>. The  
26 department may charge an application fee not in excess of \$250,  
27 a portion of which may be refunded to the applicant in an amount  
28 to be determined by the department if the application is  
29 favorably acted upon. All fees charged by the department  
30 pursuant to this section may be waived, reduced or refunded by  
31 the department in its discretion.

32 12. (New section) In the event that any provision of this  
33 amendatory and supplementary act or any regulation issued  
34 thereunder is determined by the Environmental Protection  
35 Agency not to be in compliance with the requirements of the  
36 Clean Air Act or the regulations issued thereunder, the  
37 commissioner is authorized to adopt regulations to the extent  
38 required to comply with the Clean Air Act and regulations issued  
39 thereunder. However, this section shall not be construed <sup>3</sup>[as  
40 affecting <sup>2</sup>[sections] section<sup>2</sup> 15 <sup>2</sup>[and]of P.L. , c. (C. )  
41 (now pending before the legislature as this bill), the amendments  
42 to N.J.S.54A:7-2 made by section<sup>2</sup> 16 of this amendatory and  
43 supplementary act <sup>2</sup>or section 17 of this amendatory and  
44 supplementary act<sup>2</sup> or]<sup>3</sup> as permitting the commissioner to take  
45 any action prohibited by law or regulation or as exceeding any  
46 commitment made to the federal government in a revised State  
47 Implementation Plan.

48 13. (New section) An employer other than a government  
49 employer which fails to comply with the provisions of this  
50 amendatory and supplementary act or of any of the regulations  
51 issued thereunder shall be subject to a civil administrative  
52 penalty of not more than \$250 for each violation except that in  
53 the case of the following violations the following penalties are  
54 prescribed:

1 a. A penalty of not more than <sup>2</sup>\$250 a month for the first two  
2 months and not more than<sup>2</sup> \$500 a month <sup>2</sup>thereafter<sup>2</sup> for each  
3 work location for which an employer fails to submit a registration  
4 form as required by subsection c. of section 5 of this amendatory  
5 and supplementary act.

6 b. A penalty of not more than \$1,000 a month for each work  
7 location for which an employer has not filed a plan as required by  
8 section 5 of this amendatory and supplementary act.

9 c. A penalty of not more than \$5,000 a month for each work  
10 location which fails to achieve the average <sup>2</sup>[vehicle] passenger<sup>2</sup>  
11 occupancy rate as required by the provisions of section 5 of this  
12 amendatory and supplementary act.

13 <sup>1</sup>[The department may by regulation revise the schedule of  
14 fines provided for by this section.]<sup>1</sup>

15 The commissioner is authorized to assess in the commissioner's  
16 discretion the civil administrative penalties provided for in this  
17 section, taking into account the nature, seriousness and  
18 circumstances of the violation, whether there is a pattern of  
19 noncompliance, and efforts which are being made by the  
20 employer to achieve compliance.

21 These penalties shall be deposited in the account created by  
22 section 9 of this amendatory and supplementary act. Each month  
23 of noncompliance with the provisions of the amendatory and  
24 supplementary act cited in this section shall constitute an  
25 additional, separate and distinct offense. However, no initial  
26 penalty shall be imposed by the commissioner during one year  
27 following the date of adoption of the regulation establishing the  
28 program, unless the employer has received a notice of the  
29 violation, has been given a 30-day grace period from the date of  
30 transmittal of the notice to comply with the provisions of the  
31 amendatory and supplementary act, and has failed to do so within  
32 that period. An employer filing a plan during the grace period  
33 shall be subject to a \$100 late filing fee.

34 An employer filing an amended plan pursuant to subsection  
35 <sup>2</sup>[g.] h.<sup>2</sup> of section 5 of this amendatory and supplementary act  
36 which is approved by the department shall not be subject to the  
37 \$5,000 penalty for noncompliance provided for in subsection c. of  
38 this section until the expiration of one year from the last date on  
39 which the amended plan is required to be filed, or from the date  
40 on which it is filed, if not later than the required date.

41 An employer which has been found to be in noncompliance with  
42 this amendatory and supplementary act and which has been  
43 assessed a civil administrative penalty may appeal such penalty  
44 upon submission of the appropriate application accompanied by an  
45 application fee set by regulation.

46 A government employer failing to comply with the provisions  
47 of this amendatory and supplementary act or of any regulations  
48 issued hereunder shall, in the case of the State departments or  
49 agencies, receive a notice of violation addressed to the head of  
50 the department or agency in question. Upon receipt of the notice  
51 the head of the department or agency shall consult with the  
52 Commissioner of Transportation as to actions to be taken by the  
53 department or agency to comply with the amendatory and  
54 supplementary act, and <sup>1,1</sup> failing appropriate action by the

1 department or agency <sup>1,1</sup> the commissioner may recommend to  
2 the Attorney General that action be taken to effect compliance  
3 as is provided in the case of government employers other than  
4 State departments or agencies. In the case of government  
5 employers other than State departments or agencies, the  
6 department may request the Attorney General to institute civil  
7 proceedings in the Superior Court to enjoin the government  
8 employers to comply with the provisions of this amendatory and  
9 supplementary act or the regulations issued hereunder, and the  
10 court is authorized to impose fines for continued noncompliance  
11 <sup>1in</sup> the same <sup>1amount</sup> as the civil administrative penalties  
12 provided for in this section which are in effect for employers  
13 other than government employers at the time the fines are  
14 imposed.

15 14. R.S.39:1-1 is amended to read as follows:

16 39:1-1. Words and phrases defined

17 As used in this subtitle, unless other meaning is clearly  
18 apparent from the language or context, or unless inconsistent  
19 with the manifest intention of the Legislature:

20 "Alley" means a public highway wherein the roadway does not  
21 exceed 12 feet in width.

22 "Authorized emergency vehicles" means vehicles of the fire  
23 department, police vehicles and such ambulances and other  
24 vehicles as are approved by the Director of the Division of Motor  
25 Vehicles in the Department of Law and Public Safety when  
26 operated in response to an emergency call.

27 "Automobile" includes all motor vehicles except motorcycles.

28 "Berm" means that portion of the highway exclusive of  
29 roadway and shoulder, bordering the shoulder but not to be used  
30 for vehicular travel.

31 "Business district" means that portion of a highway and the  
32 territory contiguous thereto, where within any 600 feet along  
33 such highway there are buildings in use for business or industrial  
34 purposes, including but not limited to hotels, banks, office  
35 buildings, railroad stations, and public buildings which occupy at  
36 least 300 feet of frontage on one side or 300 feet collectively on  
37 both sides of the roadway.

38 "Carpool" means two or more persons commuting on a daily  
39 basis to and from work by means of a vehicle with a seating  
40 capacity of nine passengers or less.

41 "Commercial motor vehicle" includes every type of  
42 motor-driven vehicle used for commercial purposes on the  
43 highways, such as the transportation of goods, wares and  
44 merchandise, excepting such vehicles as are run only upon rails or  
45 tracks and vehicles of the passenger car type used for touring  
46 purposes or the carrying of farm products and milk, as the case  
47 may be.

48 "Commissioner" means the Director of the Division of Motor  
49 Vehicles in the Department of Law and Public Safety of this  
50 State.

51 "Commuter van" means a motor vehicle having a seating  
52 capacity of not less than [eight] seven nor more than 15 adult  
53 passengers, in which [eight] seven or more persons commute on a  
54 daily basis to and from work and which vehicle may also be

1 operated by the driver or other designated persons for their  
2 personal use.

3 "Crosswalk" means that part of a highway at an intersection  
4 included within the connections of the lateral lines of the  
5 sidewalks on opposite sides of the highway measured from the  
6 curbs or, in the absence of curbs, from the edges of the shoulder,  
7 or, if none, from the edges of the roadway; also, any portion of a  
8 highway at an intersection or elsewhere distinctly indicated for  
9 pedestrian crossing by lines or other marking on the surface.

10 "Dealer" includes every person actively engaged in the business  
11 of buying, selling or exchanging motor vehicles or motorcycles  
12 and who has an established place of business.

13 "Department" means the Division of Motor Vehicles in the  
14 Department of Law and Public Safety of this State acting  
15 directly or through its duly authorized officers or agents.

16 "Deputy commissioner" means deputy director of the Division  
17 of Motor Vehicles in the Department of Law and Public Safety.

18 "Deputy director" means deputy director of the Division of  
19 Motor Vehicles in the Department of Law and Public Safety.

20 "Director" means the Director of the Division of Motor  
21 Vehicles in the Department of Law and Public Safety.

22 "Division" means the Division of Motor Vehicles in the  
23 Department of Law and Public Safety acting directly or through  
24 its duly authorized officers or agents.

25 "Driver" means the rider or driver of a horse, bicycle or  
26 motorcycle or the driver or operator of a motor vehicle, unless  
27 otherwise specified.

28 "Explosives" means any chemical compound or mechanical  
29 mixture that is commonly used or intended for the purpose of  
30 producing an explosion and which contains any oxidizing and  
31 combustive units or other ingredients in such proportions,  
32 quantities or packing that an ignition by fire, friction, by  
33 concussion, by percussion, or by detonator of any part of the  
34 compound or mixture may cause such a sudden generation of  
35 highly heated gases that the resultant gaseous pressures are  
36 capable of producing destructive effects on contiguous objects or  
37 of destroying life or limb.

38 "Farm tractor" means every motor vehicle designed and used  
39 primarily as a farm implement for drawing plows, mowing  
40 machines, and other implements of husbandry.

41 "Flammable liquid" means any liquid having a flash point below  
42 200° Fahrenheit, and a vapor pressure not exceeding 40 pounds.

43 "Gross weight" means the combined weight of a vehicle and a  
44 load thereon.

45 <sup>2</sup>"High occupancy vehicle" or "HOV" means a vehicle which is  
46 used to transport two or more persons and shall include public  
47 transportation, car pool, van pool, and other vehicles as  
48 determined by regulation of the Department of Transportation.<sup>2</sup>

49 "Highway" means the entire width between the boundary lines  
50 of every way publicly maintained when any part thereof is open  
51 to the use of the public for purposes of vehicular travel.

52 "Horse" includes mules and all other domestic animals used as  
53 draught animals or beasts of burden.

54 "Inside lane" means the lane nearest the center line of the

1 roadway.

2 "Intersection" means the area embraced within the  
3 prolongation of the lateral curb lines or, if none, the lateral  
4 boundary lines of two or more highways which join one another at  
5 an angle, whether or not one such highway crosses another.

6 "Laned roadway" means a roadway which is divided into two or  
7 more clearly marked lanes for vehicular traffic.

8 "Limited-access highway" means every highway, street, or  
9 roadway in respect to which owners or occupants of abutting  
10 lands and other persons have no legal right of access to or from  
11 the same except at such points only and in such manner as may be  
12 determined by the public authority having jurisdiction over such  
13 highway, street, or roadway; and includes any highway designated  
14 as a "freeway" or "parkway" by authority of law.

15 "Local authorities" means every county, municipal and other  
16 local board or body having authority to adopt local police  
17 regulations under the Constitution and laws of this State,  
18 including every county board of chosen freeholders with relation  
19 to county roads.

20 "Magistrate" means any municipal court and the Superior  
21 Court, and any officer having the powers of a committing  
22 magistrate and the Director of the Division of Motor Vehicles in  
23 the Department of Law and Public Safety.

24 "Manufacturer" means a person engaged in the business of  
25 manufacturing or assembling motor vehicles, who will, under  
26 normal business conditions during the year, manufacture or  
27 assemble at least 10 new motor vehicles.

28 "Metal tire" means every tire the surface of which in contact  
29 with the highway is wholly or partly of metal or other hard  
30 nonresilient material.

31 "Motorized bicycle" means a pedal bicycle having a helper  
32 motor characterized in that either the maximum piston  
33 displacement is less than 50 cc. or said motor is rated at no more  
34 than 1.5 brake horsepower and said bicycle is capable of a  
35 maximum speed of no more than 25 miles per hour on a flat  
36 surface.

37 "Motorcycle" includes motorcycles, motor bikes, bicycles with  
38 motor attached and all motor-operated vehicles of the bicycle or  
39 tricycle type, except motorized bicycles as defined in this  
40 section, whether the motive power be a part thereof or attached  
41 thereto and having a saddle or seat with driver sitting astride or  
42 upon it or a platform on which the driver stands.

43 "Motor-drawn vehicle" includes trailers, semitrailers, or any  
44 other type of vehicle drawn by a motor-driven vehicle.

45 "Motor vehicle" includes all vehicles propelled otherwise than  
46 by muscular power, excepting such vehicles as run only upon rails  
47 or tracks and motorized bicycles.

48 "Noncommercial truck" means every motor vehicle designed  
49 primarily for transportation of property, and which is not a  
50 "commercial vehicle."

51 "Official traffic control devices" means all signs, signals,  
52 markings, and devices not inconsistent with this subtitle placed or  
53 erected by authority of a public body or official having  
54 jurisdiction for the purpose of regulating, warning, or guiding

1 traffic.

2 "Omnibus" includes all motor vehicles used for the  
3 transportation of passengers for hire, except commuter vans and  
4 vehicles used in ridesharing arrangements and school buses, if the  
5 same are not otherwise used in the transportation of passengers  
6 for hire.

7 "Operator" means a person who is in actual physical control of  
8 a vehicle or street car.

9 "Outside lane" means the lane nearest the curb or outer edge  
10 of the roadway.

11 "Owner" means a person who holds the legal title of a vehicle,  
12 or if a vehicle is the subject of an agreement for the conditional  
13 sale or lease thereof with the right of purchase upon performance  
14 of the conditions stated in the agreement and with an immediate  
15 right of possession vested in the conditional vendee or lessee, or  
16 if a mortgagor of a vehicle is entitled to possession, then the  
17 conditional vendee, lessee or mortgagor shall be deemed the  
18 owner for the purpose of this subtitle.

19 "Parking" means the standing or waiting on a street, road or  
20 highway of a vehicle not actually engaged in receiving or  
21 discharging passengers or merchandise, unless in obedience to  
22 traffic regulations or traffic signs or signals.

23 "Passenger automobile" means all automobiles used and  
24 designed for the transportation of passengers, other than  
25 omnibuses and school buses.

26 "Pedestrian" means a person afoot.

27 "Person" includes natural persons, firms, copartnerships,  
28 associations, and corporations.

29 "Pneumatic tire" means every tire in which compressed air is  
30 designed to support the load.

31 "Pole trailer" means every vehicle without motive power  
32 designed to be drawn by another vehicle and attached to the  
33 towing vehicle by means of a reach, or pole, or by being boomed  
34 or otherwise secured to the towing vehicle, and ordinarily used  
35 for transporting long or irregularly shaped loads, such as poles,  
36 pipes, or structural members capable, generally, of sustaining  
37 themselves as beams between the supporting connections.

38 "Private road or driveway" means every road or driveway not  
39 open to the use of the public for purposes of vehicular travel.

40 "Railroad train" means a steam engine, electric or other  
41 motor, with or without cars coupled thereto, operated upon rails,  
42 except street cars.

43 "Residence district" means that portion of a highway and the  
44 territory contiguous thereto, not comprising a business district,  
45 where within any 600 feet along such highway there are buildings  
46 in use for business or residential purposes which occupy 300 feet  
47 or more of frontage on at least one side of the highway.

48 "Ridesharing" means the transportation of persons in a motor  
49 vehicle, with a maximum carrying capacity of not more than  
50 15 passengers, including the driver, where such transportation is  
51 incidental to the purpose of the driver. The term shall include  
52 such ridesharing arrangements known as carpools and vanpools.

53 "Right-of-way" means the privilege of the immediate use of  
54 the highway.

1 "Road tractor" means every motor vehicle designed and used  
2 for drawing other vehicles and not so constructed as to carry any  
3 load thereon either independently or any part of the weight of a  
4 vehicle or load so drawn.

5 "Roadway" means that portion of a highway improved,  
6 designed, or ordinarily used for vehicular travel, exclusive of the  
7 berm or shoulder. In the event a highway includes two or more  
8 separate roadways, the term "roadway" as used herein shall refer  
9 to any such roadway separately, but not to all such roadways,  
10 collectively.

11 "Safety zone" means the area or space officially set aside  
12 within a highway for the exclusive use of pedestrians, which is so  
13 plainly marked or indicated by proper signs as to be plainly visible  
14 at all times while set apart as a safety zone.

15 "School bus" means every motor vehicle operated by, or under  
16 contract with, a public or governmental agency, or religious or  
17 other charitable organization or corporation, or privately  
18 operated for compensation for the transportation of children to  
19 or from school for secular or religious education, which complies  
20 with the regulations of the Department of Education affecting  
21 school buses, including "School Vehicle Type I" and "School  
22 Vehicle Type II" as defined below:

23 "School Vehicle Type I" means any vehicle with a seating  
24 capacity of 17 or more, used to transport enrolled children, and  
25 adults only when serving as chaperones, to or from a school,  
26 school connected activity, day camp, summer day camp, nursery  
27 school, child care center, preschool center or other similar places  
28 of education. Such vehicle shall comply with the regulations of  
29 the Division of Motor Vehicles and either the Department of  
30 Education or the Department of Human Services, whichever is  
31 the appropriate supervising agency.

32 "School Vehicle Type II" means any vehicle with a seating  
33 capacity of 16 or less, used to transport enrolled children, and  
34 adults only when serving as chaperones, to or from a school,  
35 school connected activity, day camp, summer day camp, nursery  
36 school, child care center, preschool center or other similar places  
37 of education. Such vehicle shall comply with the regulations of  
38 the Division of Motor Vehicles and either the Department of  
39 Education or the Department of Human Services, whichever is  
40 the appropriate supervising agency.

41 "School zone" means that portion of a highway which is either  
42 contiguous to territory occupied by a school building or is where  
43 school crossings are established in the vicinity of a school, upon  
44 which are maintained appropriate "school signs" in accordance  
45 with specifications adopted by the director and in accordance  
46 with law.

47 "School crossing" means that portion of a highway where  
48 school children are required to cross the highway in the vicinity  
49 of a school.

50 "Semitrailer" means every vehicle with or without motive  
51 power, other than a pole trailer, designed for carrying persons or  
52 property and for being drawn by a motor vehicle and so  
53 constructed that some part of its weight and that of its load rests  
54 upon or is carried by another vehicle.

- 1 "Shoulder" means that portion of the highway, exclusive of and  
2 bordering the roadway, designed for emergency use but not  
3 ordinarily to be used for vehicular travel.
- 4 "Sidewalk" means that portion of a highway intended for the  
5 use of pedestrians, between the curb line or the lateral line of a  
6 shoulder, or if none, the lateral line of the roadway and the  
7 adjacent right-of-way line.
- 8 "Sign." See "Official traffic control devices."
- 9 "Slow-moving vehicle" means a vehicle run at a speed less than  
10 the maximum speed then and there permissible.
- 11 "Solid tire" means every tire of rubber or other resilient  
12 material which does not depend upon compressed air for the  
13 support of the load.
- 14 "Street" means the same as highway.
- 15 "Street car" means a car other than a railroad train, for  
16 transporting persons or property and operated upon rails  
17 principally within a municipality.
- 18 "Stop," when required, means complete cessation from  
19 movement.
- 20 "Stopping or standing," when prohibited, means any cessation  
21 of movement of a vehicle, whether occupied or not, except when  
22 necessary to avoid conflict with other traffic or in compliance  
23 with the directions of a police officer or traffic control sign or  
24 signal.
- 25 "Through highway" means every highway or portion thereof at  
26 the entrances to which vehicular traffic from intersecting  
27 highways is required by law to stop before entering or crossing  
28 the same and when stop signs are erected as provided in this  
29 chapter.
- 30 "Trackless trolley" means every motor vehicle which is  
31 propelled by electric power obtained from overhead trolley wires  
32 but not operated upon rails.
- 33 "Traffic" means pedestrians, ridden or herded animals,  
34 vehicles, street cars, and other conveyances either singly, or  
35 together, while using any highway for purposes of travel.
- 36 "Traffic control signal" means a device, whether manually,  
37 electrically, mechanically, or otherwise controlled, by which  
38 traffic is alternately directed to stop and to proceed.
- 39 "Trailer" means every vehicle with or without motive power,  
40 other than a pole trailer, designed for carrying persons or  
41 property and for being drawn by a motor vehicle and so  
42 constructed that no part of its weight rests upon the towing  
43 vehicle.
- 44 "Truck" means every motor vehicle designed, used, or  
45 maintained primarily for the transportation of property.
- 46 "Truck tractor" means every motor vehicle designed and used  
47 primarily for drawing other vehicles and not so constructed as to  
48 carry a load other than a part of the weight of the vehicle and  
49 load so drawn.
- 50 ["Vanpooling"] "Vanpooling" means [eight] seven or more  
51 persons commuting on a daily basis to and from work by means of  
52 a vehicle with a seating arrangement designed to carry [eight]  
53 seven to 15 adult passengers.
- 54 "Vehicle" means every device in, upon or by which a person or

1 property is or may be transported upon a highway, excepting  
2 devices moved by human power or used exclusively upon  
3 stationary rails or tracks or motorized bicycles.

4 (cf: P.L.1984, c.33, s.1)

5 <sup>3</sup>[15. <sup>2</sup>[N.J.S.54A:5-1 is amended to read as follows:

6 54A:5-1. New Jersey Gross Income Defined. New Jersey gross  
7 income shall consist of the following categories of income:

8 a. Salaries, wages, tips, fees, commissions, bonuses, and other  
9 remuneration received for services rendered whether in cash or in  
10 property except that gross income shall not include the value of  
11 commuter transportation benefits provided by an employer  
12 pursuant to P.L.19 , c. (C. ) (now before the Legislature as  
13 this bill).

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

20 (1) taxes based on income;

21 (2) a civil, civil administrative, or criminal penalty or fine,  
22 including a penalty or fine under an administrative consent order,  
23 assessed and collected for a violation of a State or federal  
24 environmental law, an administrative consent order, or an  
25 environmental ordinance or resolution of a local governmental  
26 entity, and any interest earned on the penalty or fine, and any  
27 economic benefits having accrued to the violator as a result of a  
28 violation, which benefits are assessed and recovered in a civil,  
29 civil administrative, or criminal action, or pursuant to an  
30 administrative consent order. The provisions of this paragraph  
31 shall not apply to a penalty or fine assessed or collected for a  
32 violation of a State or federal environmental law, or local  
33 environmental ordinance or resolution, if the penalty or fine was  
34 for a violation that resulted from fire, riot, sabotage, flood,  
35 storm event, natural cause, or other act of God beyond the  
36 reasonable control of the violator, or caused by an act or  
37 omission of a person who was outside the reasonable control of  
38 the violator; and

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

46 c. Net gains or income from disposition of property. Net gains  
47 or net income, less net losses, derived from the sale, exchange or  
48 other disposition of property, including real or personal, whether  
49 tangible or intangible as determined in accordance with the  
50 method of accounting allowed for federal income tax purposes.  
51 For the purpose of determining gain or loss, the basis of property  
52 shall be the adjusted basis used for federal income tax purposes,  
53 but without a deduction for penalties, fines, or economic benefits  
54 excepted pursuant to paragraph (2), or for treble damages

1 excepted pursuant to paragraph (3) of subsection b. of this section.

2 For the tax year 1976, any taxpayer with a tax liability under  
3 this subsection, or under the "Tax on Capital Gains and Other  
4 Unearned Income Act" (P.L.1975, c.172), shall not be subject to  
5 payment of an amount greater than the amount he would have  
6 paid if either return had covered all capital transactions during  
7 the full tax year 1976; provided, however, that the rate which  
8 shall apply to any capital gain shall be that in effect on the date  
9 of the transaction. To the extent that any loss is used to offset  
10 any gain under P.L.1975, c.172, it shall not be used to offset any  
11 gain under the "New Jersey Gross Income Tax Act" (P.L.1976,  
12 c.47).

13 The term "net gains or income" shall not include gains or  
14 income derived from obligations which are referred to in clause  
15 (1) or (2) of section 54A:6-14 of this act or from securities which  
16 evidence ownership in a qualified investment fund as defined in  
17 section 2 of P.L.1987, c.310 (C.54A:6-14.1). The term "net gains  
18 or net income" shall not include gains or income from  
19 transactions to the extent to which nonrecognition is allowed for  
20 federal income tax purposes. The term "sale, exchange or other  
21 disposition" shall not include the exchange of stock or securities  
22 in a corporation a party to a reorganization in pursuance of a plan  
23 of reorganization, solely for stock or securities in such  
24 corporation or in another corporation a party to the  
25 reorganization and the transfer of property to a corporation by  
26 one or more persons solely in exchange for stock or securities in  
27 such corporation if immediately after the exchange such person  
28 or persons are in control of the corporation. For purposes of this  
29 clause, stock or securities issued for services shall not be  
30 considered as issued in return for property.

31 For purposes of this clause, the term "reorganization" means--

32 (i) A statutory merger or consolidation;

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

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

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

54 (v) A recapitalization;

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

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

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

25 For purposes of this clause, the term "control" means the  
26 ownership of stock possessing at least 80% of the total combined  
27 voting power of all classes of stock entitled to vote and at least  
28 80% of total number of shares of all other classes of stock of the  
29 corporation.

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

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

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

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

49 f. Dividends. "Dividends" means any distribution in cash or  
50 property made by a corporation, association or business trust, (1)  
51 out of accumulated earnings and profits, or (2) out of earnings  
52 and profits of the year in which such dividend is paid.

53 The term "dividends" shall not include distributions paid by a  
54 qualified investment fund as defined in section 2 of P.L.1987,

- 1 c.310 (C.54A:6-14.1), to the extent provided in that section.
- 2 g. Gambling winnings.
- 3 h. Net gains or income derived through estates or trusts.
- 4 i. Income in respect of a decedent.
- 5 j. Amounts distributed or withdrawn from an employee trust
- 6 attributable to contributions to the trust which were excluded
- 7 from gross income under the provisions of chapter 6 of Title 54A
- 8 of the New Jersey Statutes and pensions and annuities except to
- 9 the extent of exclusions in section 54A:6-10 hereunder,
- 10 notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973,
- 11 c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53),
- 12 P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45
- 13 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22),
- 14 P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32
- 15 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60),
- 16 R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44,
- 17 and P.L.1943, c.189, s.5 (C.43:13-37.5).
- 18 k. Distributive share of partnership income.
- 19 l. Amounts received as prizes and awards, except as provided
- 20 in sections 54A:6-8 and 54A:6-11 hereunder.
- 21 m. Rental value of a residence furnished by an employer or a
- 22 rental allowance paid by an employer to provide a home.
- 23 n. Alimony and separate maintenance payments to the extent
- 24 that such payments are required to be made under a decree of
- 25 divorce or separate maintenance but not including payments for
- 26 support of minor children.
- 27 o. Income, gain or profit derived from acts or omissions
- 28 defined as crimes or offenses under the laws of this State or any
- 29 other jurisdiction.
- 30 (cf: P.L.1990, c.79, s.1)]
- 31 (New section) a. Gross income shall not include employer
- 32 provided commuter transportation benefits as defined pursuant to
- 33 section 3 of P.L. , c. (C. ) (now before the Legislature as
- 34 this bill), up to and including the limit per taxable year per
- 35 employee pursuant to subsection b. of this section. Should an
- 36 employee receive commuter transportation benefits in excess of
- 37 those limits in a taxable year, only the amount in excess of those
- 38 limits shall be included in gross income. If an employee receives
- 39 money towards commuter transportation benefits from the
- 40 employee's employer as an advance for, or a reimbursement of,
- 41 commuter transportation benefits, the employee shall furnish
- 42 suitable proof to the employer in the form of receipts, ticket
- 43 stubs or the like that the employee used the employer provided
- 44 money for alternative means of commuting as defined pursuant to
- 45 section 3 of P.L. , c. (C. ) (now before the legislature as this
- 46 bill).
- 47 b. The limit per taxable year per employee shall be \$900 for
- 48 the taxable years beginning on and after January 1, 1993 but
- 49 before January 1, 1994. For taxable years thereafter, the
- 50 director shall adjust the limit in proportion to the change in the
- 51 average consumer price index for all urban consumers in the New
- 52 York and Northeastern New Jersey and the Philadelphia areas, as
- 53 reported by the United States Department of Labor, from
- 54 calendar year 1993 to the calendar year ending immediately

1 before the taxable year.<sup>2]</sup><sup>3</sup>

2 <sup>3</sup>[<sup>2</sup>16. N.J.S.54A:7-2 is amended to read as follows:

3 54A:7-2. Information statement for employee or recipient of  
 4 other payments. Every employer or payor of a pension or annuity  
 5 required to deduct and withhold tax under this act from the  
 6 wages of an employee or from the payment of a pension or  
 7 annuity, or an employer who would have been required so to  
 8 deduct and withhold tax if an employee had claimed no more than  
 9 one withholding exemption, shall furnish to each such employee,  
 10 or pension or annuity recipient or the estate thereof, in respect  
 11 of the wages or pension or annuity payments paid by such  
 12 employer or payor to such employee or pension or annuity  
 13 recipient during the calendar year on or before February 15 of  
 14 the succeeding year, or, if his employment or pension or annuity  
 15 is terminated before the close of such calendar year, within 30  
 16 days from the date on which the last payment of the wages or  
 17 pension or annuity is made, a written statement as prescribed by  
 18 the director showing the amount of wages or pension or annuity  
 19 payments paid by the employer or payor to the employee or  
 20 pension or annuity recipient, the cost of commuter transportation  
 21 benefits, as defined pursuant to section 3 of P.L. , c. (C.  
 22 )(now before the Legislature as this bill), excludable by the  
 23 employee pursuant to section 15 of P.L. , c. (C. ) (now  
 24 before the Legislature as this bill), and not so excludable,  
 25 provided by the employer to the employee, the amount deducted  
 26 and withheld as tax, the amount deducted and withheld as worker  
 27 contributions for unemployment and disability insurance as  
 28 provided under the New Jersey Unemployment Compensation  
 29 Law, and such other information as the director shall prescribe.<sup>2</sup>  
 30 (cf: P.L.1989, c.328, s.2.)<sup>3</sup>

31 <sup>3</sup>[<sup>2</sup>[16.] 17.<sup>2</sup> (New section) a. <sup>2</sup>[Any qualified business] For  
 32 accounting or privilege periods beginning on and after January 1,  
 33 1993, but ending not later than December 31, 2004, an affected  
 34 employer that is a taxpayer<sup>2</sup> subject to the provisions of the  
 35 Corporation Business Tax Act <sup>2</sup>(1945)<sup>2</sup>, P.L.1945, c.162  
 36 (C.54:10A-1 et seq.)<sup>2</sup>, the "Financial Business Tax Law (1946),"  
 37 P.L.1946, c.174 (C.54:10B-1 et seq.), "The Savings Institution Tax  
 38 Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on  
 39 marine insurance companies, R.S.54:16-1 et seq., the tax imposed  
 40 on fire insurance companies, R.S.54:17-4 et al., the tax imposed  
 41 on insurers generally, P.L.1945, c.132 (C.54:18A-1 et seq), the  
 42 public utility franchise tax, public utilities gross receipts tax and  
 43 public utility excise tax imposed pursuant to P.L.1940, c.4, and  
 44 P.L.1940, c.5 (C.54:30A-16 et seq. and C.54:30A-49 et seq.), or  
 45 that is a taxpayer in respect of a distributive share of partnership  
 46 income under the "New Jersey Gross Income Tax Act,"  
 47 N.J.S.54A:1-1 et seq.,<sup>2</sup> which provides commuter transportation  
 48 benefits as defined in section 3 of P.L.19 , c. (C. ) (now  
 49 before the Legislature as this bill) shall be allowed <sup>2</sup>[to deduct  
 50 such commuter transportation benefits as a business expense, and  
 51 shall receive an alternate commute tax credit against the amount  
 52 of tax imposed under the Corporation Business Tax Act in an  
 53 amount provided for in subsection b. of this section.

54 b. A qualified business shall be entitled to an alternate

1 commute tax credit for each work location in an amount] a credit  
2 against that tax<sup>2</sup> equal to 10% of the <sup>2</sup>[amount spent or  
3 reimbursed to employees for] cost of employer provided  
4 employee<sup>2</sup> commuter transportation benefits <sup>2</sup>[, that credit for  
5 each fiscal or calendar accounting year] for the relevant  
6 accounting or privilege period<sup>2</sup> , as appropriate, <sup>2</sup>subject to the  
7 limitations of subsection b. of this section.

8 b. (1) The credit granted a taxpayer for an accounting or  
9 privilege period shall<sup>2</sup> not <sup>2</sup>[to]<sup>2</sup> exceed <sup>2</sup>[\$90] the per employee  
10 limit<sup>2</sup> multiplied by the number of employees participating in  
11 alternative means of commuting at the work location. <sup>2</sup>The per  
12 employee limit shall be \$90 for the accounting or privilege  
13 periods beginning on and after January 1, 1993 but before January  
14 1, 1994, and for periods thereafter the Director of the Division of  
15 Taxation, Department of the Treasury, shall adjust the limit in  
16 proportion to the change in the average consumer price index for  
17 all urban consumers in the New York and Northeastern New  
18 Jersey and the Philadelphia areas, as reported by the United  
19 States Department of Labor, from calendar year 1993 to the  
20 calendar year ending immediately before the period.

21 (2) The taxpayer may only claim a credit for providing  
22 commuter transportation benefits based upon a direct  
23 expenditure made after the taxpayer has registered with the  
24 department as prescribed in subsection c. of section 5 of this  
25 amendatory and supplementary act; provided that a taxpayer will  
26 continue to be eligible for the credit as long as the taxpayer  
27 remains in substantial compliance with subsections d., e., f. and  
28 h. of section 5 of this amendatory and supplementary act; and  
29 provided further that the commissioner may allow additional time  
30 for the taxpayer to comply with subsections d., e., f. and h. of  
31 section 5 of this amendatory and supplementary act before a  
32 credit amount is disallowed for an affected employer; however, a  
33 credit amount will be disallowed if the taxpayer fails to comply  
34 with section 5 of this amendatory and supplementary act within  
35 three years from the due date of the tax return otherwise  
36 reflecting a liability against which a credit was claimed.

37 (3) The amount of the credit allowed under this section for an  
38 accounting or privilege period shall not exceed 50% of the tax  
39 liability which would be otherwise due after first applying the  
40 credits, if any, allowed under any other law and shall not reduce  
41 the amount of tax liability to less than the statutory minimum  
42 provided in subsection (e) of section 5 of P.L.1945, c.162  
43 (C.54:10A-5), section 3 of P.L.1946, c.174 (C54:10B-3) or section  
44 3 of P.L.1973, c.31 (C.54:10D-3).

45 (4) A taxpayer having liability for more than one of the taxes  
46 enumerated in subsection a. of this section for an accounting or  
47 privilege period shall allocate the credit amount available for  
48 that period to the period liabilities in the proportion that each  
49 liability bears to the total of the liabilities for the period,  
50 provided that an amount of credit shall be applied to only one  
51 amount of liability.

52 (5) A partnership shall not be allowed the credit under this  
53 section directly, but the amount of credit of a taxpayer in  
54 respect of a distributive share of partnership income under the

1 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall  
 2 be determined by allocating to the taxpayer that proportion of  
 3 credit acquired by the partnership that is equal to the taxpayer's  
 4 share, whether or not distributed, of the total distributive income  
 5 or gain of the partnership for its taxable year ending within or  
 6 with the taxpayer's taxable year. For the purposes of paragraph  
 7 (3) of this subsection, the tax liability which would be otherwise  
 8 due of a taxpayer is that proportion of the total liability of the  
 9 taxpayer that the taxpayer's share of the partnership income or  
 10 gain included in gross income bears to the total gross income of  
 11 the taxpayer<sup>2</sup>.

12 c. Each employee who receives commuter transportation  
 13 benefits from the employee's employer and utilizes them for  
 14 alternative means of commuting shall, in the case of actual  
 15 purchases by the employee, furnish suitable proof to the  
 16 employer, in the form of receipts, ticket stubs and the like, that  
 17 the employee utilized monies provided by the employer for an  
 18 alternative means of commuting.

19 <sup>2</sup>d. For the purposes of verifying eligibility for the credit, the  
 20 commissioner shall certify to the Director of the Division of  
 21 Taxation a list of those businesses that have registered with the  
 22 department, or have an approved compliance plan or an approved  
 23 amended compliance plan. The list shall be provided to the  
 24 Director of the Division of Taxation within 90 days of  
 25 registration and within 210 days of each submission of a  
 26 compliance plan or each amended compliance plan.

27 e. The taxpayer shall file with the department a schedule of  
 28 the expenditures for which the taxpayer has claimed a credit  
 29 pursuant to this section on any tax return filed with the Director  
 30 of the Division of Taxation, in such form and pursuant to such  
 31 rules as shall be prescribed by the commissioner in consultation  
 32 with the Director of the Division of Taxation. The department  
 33 shall provide the Director of the Division of Taxation with the  
 34 review and such other information as is required pursuant to  
 35 subsection j. of section 5 of this amendatory and supplementary  
 36 act.<sup>2</sup>]<sup>3</sup>

37 <sup>2</sup>[17.] <sup>3</sup>[18.2] <sup>15.3</sup> (New section) The travel demand  
 38 management advisory council shall submit an annual progress  
 39 report to the Governor and the Legislature by October 1 of each  
 40 year covering the period of the previous State fiscal year. The  
 41 report shall cover the status of the program to be established  
 42 pursuant to this amendatory and supplementary act and any  
 43 recommendations to alter or improve the program, including any  
 44 proposed legislative changes.

45 <sup>2</sup>[18] <sup>3</sup>[19<sup>2</sup>] <sup>16.3</sup> This act shall take effect immediately <sup>3</sup>[, and  
 46 the gross income tax exclusion authorized in section 15 shall be  
 47 applicable to <sup>2</sup>[tax] taxable<sup>2</sup> years beginning on and after January  
 48 1, <sup>2</sup>[1992] 1993<sup>2</sup>]<sup>3</sup> <sup>2</sup>[and the corporation business tax benefits  
 49 authorized by section 16 shall be applicable to accounting or  
 50 privilege periods beginning on and after July 1, 1992]<sup>2</sup>.

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55 Enacts "New Jersey Traffic Congestion and Air Pollution Control  
 56 Act"; provides for DOT travel demand management regulation.

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

4 (cf: P.L.1990, c.79, s.1)

5 16. (New section) a. Any qualified business subject to the  
6 provisions of the Corporation Business Tax Act, P.L.1945, c.162  
7 (C.54:10A-1 et seq.) which provides commuter transportation  
8 benefits as defined in section 3 of P.L.19 , c. (C. ) (now  
9 before the Legislature as this bill) shall be allowed to deduct such  
10 commuter transportation benefits as a business expense, and shall  
11 receive an alternate commute tax credit against the amount of  
12 tax imposed under the Corporation Business Tax Act in an amount  
13 provided for in subsection b. of this section.

14 b. A qualified business shall be entitled to an alternate  
15 commute tax credit for each work location in an amount equal to  
16 10% of the amount spent or reimbursed to employees for  
17 commuter transportation benefits, that credit for each fiscal or  
18 calendar accounting year, as appropriate, not to exceed \$90  
19 multiplied by the number of employees participating in  
20 alternative means of commuting at the work location.

21 c. Each employee who receives commuter transportation  
22 benefits from the employee's employer and utilizes them for  
23 alternative means of commuting shall, in the case of actual  
24 purchases by the employee, furnish suitable proof to the  
25 employer, in the form of receipts, ticket stubs and the like, that  
26 the employee utilized monies provided by the employer for an  
27 alternative means of commuting.

28 17. (New section) The travel demand management advisory  
29 council shall submit an annual progress report to the Governor  
30 and the Legislature by October 1 of each year covering the period  
31 of the previous State fiscal year. The report shall cover the  
32 status of the program to be established pursuant to this  
33 amendatory and supplementary act and any recommendations to  
34 alter or improve the program, including any proposed legislative  
35 changes.

36 18. This act shall take effect immediately, and the gross  
37 income tax exclusion authorized in section 15 shall be applicable  
38 to tax years beginning on and after January 1, 1992 and the  
39 corporation business tax benefits authorized by section 16 shall  
40 be applicable to accounting or privilege periods beginning on and  
41 after July 1, 1992.

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44 *SPONSOR'S* STATEMENT  
45

46 This bill, entitled the "New Jersey Traffic Congestion and Air  
47 Pollution Control Act," deals with the twin and interrelated  
48 problems of traffic congestion and air pollution in the State and  
49 proposes a comprehensive program of transportation control  
50 measures to deal with these problems. This program, the need  
51 for which is highlighted by the 1990 amendments to the federal  
52 Clean Air Act, would require the Department of Transportation  
53 to analyze the sources and levels of traffic congestion in the  
54 State, and implement policies to alleviate this congestion, such as

1 the completion of "missing links" on the State's highway system,  
2 improved signage, synchronization of traffic lights, preferential  
3 treatment of multiple occupancy vehicles, "intelligent vehicle"  
4 highways, the maximum possible use of public transportation, and  
5 other appropriate measures. These measures will not only  
6 alleviate traffic congestion but also deal with the problem of air  
7 pollution in New Jersey which is classified as a non-attainment  
8 area for ozone. These actions are to a large degree mandated by  
9 the provisions of the federal Clean Air Act and this bill  
10 constitutes part of the effort by the State of New Jersey to  
11 comply with the provisions of that act.

12 The centerpiece of this effort to control congestion and reduce  
13 air pollution is the Travel Demand Management (TDM) Program  
14 to be established by Department of Transportation (DOT)  
15 regulation pursuant to the provisions of this bill. Sometimes  
16 called "ridesharing," the TDM approach concentrates on  
17 increasing the use of alternative means of commuting (such as  
18 car pooling, van pooling, public transportation, bicycling, walking  
19 and the like) rather than single occupancy vehicles and by  
20 staggering the arrivals of vehicles at the work site in order to  
21 reduce congestion during peak hours. In keeping with the  
22 provisions of the Clean Air Act, this program will require all  
23 employers with 100 or more employees at one work location to  
24 increase average passenger occupancy per vehicle (AVO) in  
25 commuting trips between home and the workplace during peak  
26 travel periods by not less than 25% above the average passenger  
27 occupancy per vehicle (AVO) in the region, as set by DOT.

28 The geographic scope of the program would be subject to  
29 regulatory action by DOT to designate those parts of the State in  
30 which the bill is to be implemented. Currently, eighteen of New  
31 Jersey's 21 counties are considered as in the severe  
32 non-attainment area for ozone, while the whole State is a  
33 non-attainment area for that pollutant. Similarly, the exact  
34 parameters of the definition of employee and average vehicle  
35 occupancy are left up to departmental regulation. This  
36 regulatory flexibility will enable the department to respond to  
37 final federal guidelines, which are not yet adopted, and to  
38 consider fully some of the highly detailed and technical  
39 information and opinion relevant to establishing such a wide  
40 ranging program.

41 The bill requires the DOT in consultation with the Department  
42 of Environmental Protection to adopt a regulation within one  
43 year designating those areas of the State in which the program is  
44 to be implemented. Within these areas employers, which would  
45 include all public, private, and quasi-public employers, are to be  
46 required to register with DOT, and affected employers will be  
47 required to conduct a survey or surveys of the commutation  
48 patterns of their employees and to develop a compliance plan.  
49 The compliance plan, which generally must be submitted by  
50 November 15, 1994, shall convincingly demonstrate compliance  
51 by November 15, 1996, as provided in the Clean Air Act, and  
52 employers will be expected to achieve the 25% standard with  
53 regard to increasing the rate of AVO by that later date.  
54 Substantial fines are provided for in case of failure to achieve

1 that standard. The compliance plan submitted to the department  
2 shall, during the initial years of the program, be certified as to  
3 accuracy and efficacy by an employee of a transportation  
4 management association certified for this purpose by DOT, or by  
5 another person or entity independent of the employer who is so  
6 certified. It is expected that transportation management  
7 associations, and other private sector entities certified or  
8 approved by the DOT would play a major role in implementing  
9 this program.

10 A certified plan, which after the initial plan is expected to be  
11 submitted on an biennial basis, would be reviewed by the  
12 department for completeness and consistency with the  
13 departmental regulations and could be returned for resubmittal,  
14 or in the case of a plan which is not in compliance with the AVO  
15 requirements, the filing of an amended plan approved by the  
16 department to effect compliance within one year would be  
17 required. Plans not returned within the prescribed time would be  
18 deemed approved.

19 The bill provides for filing fees and penalties, the proceeds of  
20 which would be used to fund the program. Generally, the fees  
21 range from \$800 for an annual filing to \$1600 for a biennial filing  
22 in the case of an employer of 1,000 or more employees, and \$200  
23 for an annual filing to \$400 for a biennial filing in the case of an  
24 employer with 100 to 499 employees. The penalties range up to  
25 \$5,000 a month for failure to achieve the prescribed AVO rate.  
26 The fees would be set for a period of four years while the fines  
27 would be subject to change by the department.

28 The bill provides for an incentive for compliance with the TDM  
29 program by excluding an employee's commuter transportation  
30 benefits provided by an employer from the gross income tax and  
31 by providing a deduction from the Corporation Business Tax as  
32 well as a limited tax credit for the employer's cost of providing  
33 such benefits.

34 In the event that any provisions of this bill or any regulation  
35 issued thereunder are determined by the Environmental  
36 Protection Agency not to be in compliance with the Clean Air  
37 Act or the regulations issued thereunder, the commissioner is  
38 authorized to adopt regulations to the extent required to comply.  
39 This would provide maximum flexibility, subject to certain  
40 safeguards mentioned in the bill, for DOT to respond to federal  
41 guidelines which are not yet adopted.

42 Finally, the bill provides for a Travel Demand Management  
43 Advisory Council and a Technical Advisory Committee  
44 representing both the public and private sector, to advise the  
45 department during the regulatory process which will establish this  
46 program.

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51 Enacts "New Jersey Traffic Congestion and Air Pollution Control  
52 Act"; provides for DOT travel demand management regulation.

**SENATE TRANSPORTATION COMMITTEE**

**STATEMENT TO**

**SENATE, No. 35**

with Senate committee amendments

**STATE OF NEW JERSEY**

**DATED: MARCH 23, 1992**

The Senate Transportation Committee favorably reports Senate Bill No. 35 with committee amendments.

This amended bill, entitled the "New Jersey Traffic Congestion and Air Pollution Control Act," deals with the twin and interrelated problems of traffic congestion and air pollution in the State and proposes a comprehensive program of transportation control measures to deal with these problems. This program, the need for which is highlighted by the 1990 amendments to the federal Clean Air Act, would require the Department of Transportation to analyze the sources and levels of traffic congestion in the State, and implement policies to alleviate this congestion, such as the completion of "missing links" on the State's highway system, improved signage, synchronization of traffic lights, preferential treatment of multiple occupancy vehicles, "intelligent vehicle" highways, the maximum possible use of public transportation, and other appropriate measures. These measures will not only alleviate traffic congestion but also deal with the problem of air pollution in New Jersey which is classified as a non-attainment area for ozone. These actions are to a large degree mandated by the provisions of the federal Clean Air Act and this bill constitutes part of the effort by the State of New Jersey to comply with the provisions of that act.

The centerpiece of this effort to control congestion and reduce air pollution is the Travel Demand Management (TDM) Program to be established by Department of Transportation (DOT) regulation pursuant to the provisions of this bill. Sometimes called "ridesharing," the TDM approach concentrates on increasing the use of alternative means of commuting (such as car pooling, van pooling, public transportation, bicycling, walking and the like) rather than single occupancy vehicles and by staggering the arrivals of vehicles at the work site in order to reduce congestion during peak hours. In keeping with the provisions of the Clean Air Act, this program will require all employers with 100 or more employees at one work location to increase average passenger occupancy per vehicle (AVO) in commuting trips between home and the workplace during peak travel periods by not less than 25% above the average passenger occupancy per vehicle (AVO) in the region, as set by DOT.

The geographic scope of the program would be subject to regulatory action by DOT to designate those parts of the State in which the bill is to be implemented. Currently, eighteen of New Jersey's 21 counties are considered as in the severe non-attainment area for ozone, while the whole State is a non-attainment area for that pollutant. Similarly the exact parameters of the definition of

employee and average vehicle occupancy are left up to departmental regulation. This regulatory flexibility will enable the department to respond to final federal guidelines, which are not yet adopted, and to consider fully some of the highly detailed and technical information and opinion relevant to establishing such a wide ranging program.

The bill requires the DOT in consultation with the Department of Environmental Protection to adopt regulations within one year designating those areas of the State in which the program is to be implemented. Within these areas employers, which would include all public, private, and quasi-public employers, are to be required to register with DOT, and affected employers will be required to conduct a survey or surveys of the commutation patterns of their employees and to develop a compliance plan. The compliance plan, which generally must be submitted by November 15, 1994, shall convincingly demonstrate compliance by November 15, 1996, as provided in the Clean Air Act, and employers will be expected to achieve the 25% standard with regard to increasing the rate of AVO by that later date. Substantial fines are provided for in case of failure to achieve that standard. The compliance plan submitted to the department shall, during the initial years of the program, be certified as to accuracy and efficacy by an employee of a transportation management association approved for this purpose by DOT, or by another person or entity independent of the employer who is so approved. It is expected that transportation management associations, and other private sector entities approved by the DOT, would play a major role in implementing this program.

A certified plan, which after the initial plan is expected to be submitted on a biennial basis, would be reviewed by the department for completeness and consistency with the departmental regulations and could be returned for resubmittal, or, in the case of a plan which is not in compliance with the AVO requirements, the filing of an amended plan approved by the department to effect compliance within one year. Plans not returned within the prescribed time would be deemed approved.

The bill provides for filing fees and penalties, the proceeds of which would be used to fund the program. Generally, the fees range from \$800 for an annual filing to \$1600 for a biennial filing in the case of an employer of 1,000 or more employees, and \$200 for an annual filing to \$400 for a biennial filing in the case of an employer with 100 to 499 employees. The penalties range up to \$5,000 a month for failure to achieve the prescribed AVO rate. The fees would be set for a period of four years.

The bill provides for an incentive for compliance with the TDM program by excluding an employee's commuter transportation benefits provided by an employer from the gross income tax and by providing a deduction from the Corporation Business Tax as well as a limited tax credit for the employer's cost of providing such benefits.

In the event that any provisions of this bill or any regulation issued thereunder are determined by the Environmental Protection Agency not to be in compliance with the Clean Air Act or the regulations issued thereunder, the commissioner is authorized to

adopt regulations to the extent required to comply. This would provide maximum flexibility, subject to certain safeguards mentioned in the bill, for DOT to respond to federal guidelines which are not yet adopted.

Finally, the bill provides for a Travel Demand Management Advisory Council and a Technical Advisory Committee representing both the public and private sector, to advise the department during the regulatory process which will establish this program.

The committee amended the bill to clarify that DOT would approve rather than certify persons to certify compliance plans and add the Commissioner of Personnel as an ex officio member of the Travel Demand Management Advisory Council. In addition, the amendments encourage employers, as well as employees, wherever possible to utilize alternative energy vehicles and require that that utilization shall receive appropriate recognition in the departmental regulations setting up the program. The department is to determine if the use of alternative energy vehicles could be considered as offsetting any portion of the AVO increase required by this bill. Also, the amendments delete the provision of the bill permitting the DOT to revise the schedule of fines and require the department to submit proposed regulations to the Senate Transportation Committee and the Assembly Transportation and Communications Committee.

This bill was pre-filed for introduction in the 1992 session pending technical review. As reported the bill includes the changes required by technical review which has been performed.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 35

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 1992

The Senate Budget and Appropriations Committee favorably reports Senate Bill No. 35 (1R), with committee amendments.

Senate Bill No. 35 (1R), as amended, entitled the "New Jersey Traffic Congestion and Air Pollution Control Act," establishes a comprehensive program of transportation control measures to deal with the interrelated problems of traffic congestion and air pollution in the State. This program would require the Department of Transportation to analyze the sources and levels of traffic congestion in the State, and implement policies to alleviate this congestion, such as the completion of "missing links" on the State's highway system, improved signage, synchronization of traffic lights, preferential treatment of high occupancy vehicles, "intelligent vehicle" highways, the maximum possible use of public transportation, and other appropriate measures. These measures are intended to reduce traffic congestion and air pollution in New Jersey. These actions are to a large degree mandated by the provisions of the federal Clean Air Act and this bill constitutes part of the effort by the State of New Jersey to comply with the provisions of that act.

The centerpiece of this effort to control congestion and reduce air pollution is the Travel Demand Management (TDM) Program to be established by Department of Transportation (DOT) regulation pursuant to the provisions of this bill. Sometimes called "ridesharing," the TDM approach concentrates on increasing the use of alternative means of commuting (such as car pooling, van pooling, public transportation, bicycling, walking and the like) rather than single occupancy vehicles and by staggering the arrivals of vehicles at the work site in order to reduce congestion during peak hours. In keeping with the provisions of the Clean Air Act, this program will require all employers with 100 or more employees at one work location to increase average passenger occupancy per vehicle (APO) in commuting trips between home and the workplace during peak travel periods by not less than 25% above the average vehicle occupancy per vehicle (AVO) in the region, as set by DOT.

The geographic scope of the program would be subject to regulatory action by DOT which will designate those parts of the State in which the bill is to be implemented. Currently, eighteen of New Jersey's 21 counties are classified as severe non-attainment areas for ozone, while the whole State is a non-attainment area for that pollutant. The regulatory flexibility in the bill is intended to enable the department to respond to final federal guidelines, which are not yet adopted, and to consider fully some of the highly

detailed and technical information and opinion relevant to establishing such a wide ranging program. The Department of Transportation will be required to obtain the approval of the federal Environmental Protection Agency, through the Department of Environmental Protection, on all aspects of the Travel Demand Management Program to avoid potential conflicts with the Clean Air Act and to avoid the imposition of sanctions.

The bill requires the DOT in consultation with the Department of Environmental Protection to adopt regulations within one year designating those areas of the State in which the program is to be implemented. Within these areas public and private employers, with at least 100 employees at a single location, will be required to conduct a survey or surveys of the commutation patterns of their employees and to develop a compliance plan. The compliance plan, which generally must be submitted by November 15, 1994, shall convincingly demonstrate compliance by November 15, 1996, as provided in the Clean Air Act, and employers will be expected to achieve the APO standard by that later date. Employers who fail to attain the standard will be subject to substantial fines. The compliance plan submitted to the department shall, during the initial years of the program, be certified as to accuracy and efficacy by an employee of a transportation management association approved for this purpose by DOT, or by another person or entity independent of the employer who is so approved. It is expected that transportation management associations, and other private sector entities approved by the DOT, would play a major role in implementing this program. The bill contains provisions concerning the submission and approval of certified plans.

The bill provides for filing fees and penalties, the proceeds of which would be used to fund the program. Generally, the fees range from \$800 for an annual filing to \$1600 for a biennial filing in the case of an employer of 1,000 or more employees, and \$200 for an annual filing to \$400 for a biennial filing in the case of an employer with 100 to 499 employees. The penalties range up to \$5,000 a month for failure to achieve the prescribed AVO rate. The fees would be set for a period of four years.

The bill provides an incentive for compliance with the TDM program by excluding an employee's commuter transportation benefits provided by an employer from the gross income tax and by providing a limited tax credit for the employer's cost of providing such benefits.

In the event that any provisions of this bill or any regulation issued thereunder are determined by the Environmental Protection Agency not to be in compliance with the Clean Air Act or the regulations issued thereunder, the commissioner is authorized to adopt regulations to the extent required to comply. This would provide maximum flexibility, subject to certain safeguards mentioned in the bill, for DOT to respond to federal guidelines which are not yet adopted.

Finally, the bill provides for a Travel Demand Management Advisory Council and a Technical Advisory Committee representing both the public and private sector, to advise the department during the regulatory process which will establish this program.

**COMMITTEE AMENDMENTS**

The committee amended the bill to delete the provisions relating to submitting a biennial compliance plan by requiring instead that after the submission of an initial compliance plan a subsequent compliance plan is to be submitted by November 15, 1996, unless a more frequent submittal is required by federal guidelines. After November 15, 1996 additional compliance plans may be required. The amendments also specify the maximum amount of the exclusion from gross income of the employer provided commuter transportation benefits by limiting it to \$900 for taxable years on and after January 1, 1993 but before January 1, 1994, to be adjusted thereafter based on the consumer price index. The amendments also make partnerships eligible to claim a tax credit for employer provided employee commuter transportation benefits and similarly provide for the adjustment of the \$90 credit based upon the consumer price index. Provisions are added providing for compliance by the employer in order for it to qualify for the credit and setting up means of verification. The employer tax deduction provision is deleted from the bill. The bill also provides for preferential treatment of high occupancy vehicles. Various other clarifying and technical amendments were made to the bill.

**FISCAL IMPACT**

Under the bill, for taxable years beginning during 1993, up to \$900 of employer provided commuter transportation benefits are excludable from an employee's taxable New Jersey gross income. Employers who provide employee commuter transportation benefits are eligible for a tax credit equal to 10% of the cost of the benefits, up to \$90 per employee. Both the \$900 and \$90 limits will be adjusted annually by the consumer price index.

No fiscal impact statement has been prepared for this bill. The Division of Taxation estimates that the annual cost to the State from the employer tax credit provisions will be approximately \$32 million.

REPLACE SECTION 12 TO READ:

12. (New section) In the event that any provision of this amendatory and supplementary act or any regulation issued thereunder is determined by the Environmental Protection Agency not to be in compliance with the requirements of the Clean Air Act or the regulations issued thereunder, the commissioner is authorized to adopt regulations to the extent required to comply with the Clean Air Act and regulations issued thereunder. However, this section shall not be construed <sup>3</sup>[as affecting <sup>2</sup>[sections] section<sup>2</sup> 15 <sup>2</sup>[and]of P.L. , c. (C. ) (now pending before the legislature as this bill), the amendments to N.J.S.54A:7-2 made by section<sup>2</sup> 16 of this amendatory and supplementary act <sup>2</sup>or section 17 of this amendatory and supplementary act<sup>2</sup> or<sup>3</sup> as permitting the commissioner to take any action prohibited by law or regulation or as exceeding any commitment made to the federal government in a revised State Implementation Plan.

OMIT SECTIONS 15 THROUGH 17 IN THEIR ENTIRETY

RENUMBER SECTION 18 AS SECTION 15

REPLACE SECTION 19 TO READ:

<sup>2</sup>[18] <sup>3</sup>[<sup>19</sup><sup>2</sup>] 16.<sup>3</sup> This act shall take effect immediately <sup>3</sup>[, and the gross income tax exclusion authorized in section 15 shall be applicable to <sup>2</sup>[tax] taxable<sup>2</sup> years beginning on and after January 1, <sup>2</sup>[1992] 1993<sup>2</sup>]<sup>3</sup> <sup>2</sup>[and the corporation business tax benefits authorized by section 16 shall be applicable to accounting or privilege periods beginning on and after July 1, 1992]<sup>2</sup>.

STATEMENT

These amendments make technical corrections to the bill, conforming it to A-1563, its companion bill in the Assembly. In addition, the amendments delete the tax credit and gross income tax deduction, conforming the bill to A-1563, as amended by the Assembly Appropriations Committee. With these changes, the bill is identical to A-1563(1R).

LEGISLATIVE FISCAL ESTIMATE TO

[THIRD REPRINT]

SENATE, No. 35

STATE OF NEW JERSEY

DATED: July 16, 1992

Senate Bill No. 35(3R) of 1992 concerns the State's interrelated problems of traffic congestion and air pollution, and proposes a comprehensive program of transportation control measures to deal with these problems. This program, the need for which is highlighted by the 1990 amendments to the federal Clean Air Act, would require the Department of Transportation (DOT) to analyze the sources and levels of traffic congestion in the State, and implement policies to alleviate this congestion and to reduce air pollution. These requirements are to a large degree mandated by the provisions of the federal Clean Air Act and this bill constitutes part of the effort by the State to comply with the provisions of that act.

The DOT anticipates that the costs to the department for developing and implementing this program would, by and large, be supported in the near term with federal Congestion Mitigation and Air Quality Program funds. In addition, as those companies having 100 or more employees at one work location develop compliance plans, plans which are required by the bill and which are to indicate how each affected company proposes to reduce the demand for travel by its employees on the State's highway system, the companies will be assessed a filing fee when the plans are first submitted to DOT and for each subsequent filing. These fees will then be used to help provide additional support for the program. Consequently, the department does not expect to need direct State funding to support the program.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.