54:10A-5.29

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2017 **CHAPTER:** 40

NJSA: 54:10A-5.29 (Permits holding companies of eligible New Jersey emerging technology companies to receive investments under "New Jersey Angel Investor Tax Credit Act.")

BILL NO: S158 (Substituted for A3631)

SPONSOR(S) Madden and others

DATE INTRODUCED: 1-12-2016

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

SENATE: Economic Growth
Budget & Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 3-16-2017

SENATE: 3-14-2016

DATE OF APPROVAL: 5-1-2017

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second Reprint enacted) Yes

S158

SPONSOR'S STATEMENT: (Begins on page 11 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes Commerce & Econ. Develop.
Appropriations

SENATE: Yes Economic Growth
Budget & Appropriations

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

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

A3631

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

COMMITTEE STATEMENT: **ASSEMBLY**: Yes Commerce & Econ. Develop.
Appropriations

SENATE: No

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

(continued)

FLOOR AMENDMENT STATEMENT:	No
LEGISLATIVE FISCAL ESTIMATE:	Yes
VETO MESSAGE:	No
GOVERNOR'S PRESS RELEASE ON SIGNING:	Yes

FOLLOWING WERE PRINTED:

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REPORTS:	No
HEARINGS:	No
NEWSPAPER ARTICLES:	No

RWH/JA

§4 - Note

P.L.2017, CHAPTER 40, ***approved May 1, 2017***
Senate, No. 158 ***(Second Reprint)***

AN ACT concerning eligible investments under the "New Jersey Angel Investor Tax Credit Act," and amending P.L.1997, c.349 and P.L.2013, c.14.

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

1. Section 2 of P.L.1997, c.349 (C.54:10A-5.29) is amended to read as follows:

2. As used in **[**this act**]** sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30):

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

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials. "Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies [1],[1] and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

[1]"Carbon footprint reduction technology" means a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.[1]

"Control" with respect to a corporation means ownership, directly or indirectly, of stock possessing **[**80%**]** 80 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and "control" with respect to a trust means ownership, directly or indirectly, of **[**80%**]** 80 percent or more of the beneficial interest in the principal or income of the

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:
[1]Senate SEG committee amendments adopted February 8, 2016.
[2]Senate SBA committee amendments adopted March 10, 2016.

trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.267), other than paragraph (3) of subsection (c) of that section.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least **[**80%**]** <u>80 percent</u> of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least **[**80%**]** <u>80 percent</u> of the voting power of all classes of stock of at least one of the other corporations.

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

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment [1]**[**,**]**[1] and instrumentation, radio frequency, microwave [1]**[**,**]**[1] and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

"Information technology" means software publishing, motion picture and video production, television production and post-production services, telecommunications, data processing, hosting and related services, custom computer programming services, computer system design, computer facilities management services, other computer related services, and computer training.

"Life sciences" means the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products [1]**[**;**]**<u>,</u>[1] or physical and biological research.

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

"Mobile communications technology" means a technology involving the functionality and reliability of [1]<u>the</u>[1] transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include [1]<u>,</u>[1] but [1]**[**shall**]**[1] not be limited to [1]<u>,</u>[1] smartphones, electronic books and tablets, [1]**[**mp3**]** <u>digital audio</u>[1] players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having connected to any physical or fixed link.

"New Jersey emerging technology business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State and: [(1)] has qualified research expenses paid or incurred for research conducted in this State; [(2)] conducts pilot scale manufacturing in this State; or [(3)] conducts technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, [1]carbon footprint reduction technology,[1] electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"New Jersey emerging technology business holding company" means any corporation, association, firm, partnership, trust, or other form of business organization, but not a natural person, which directly or indirectly, owns, has the power or right to control, or has the power to vote, a controlling share of the outstanding voting securities of a corporation or other form of a New Jersey emerging technology business.

"Partnership" means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

"Pilot scale manufacturing" means the design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotechnology, [1]carbon footprint reduction technology[1] electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, and renewable energy technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if the total gross receipts, as calculated in the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from [such] the sales of the product, service, or process do not exceed $1,000,000.

"Qualified investment" means the non-refundable transfer of cash to a New Jersey emerging technology business [2]or to a New Jersey emerging technology business holding company[2] by a taxpayer that is not a related person of the New Jersey emerging technology business [2]or the New Jersey emerging technology business holding company[2], the transfer of which is in connection with either [(1)]: a transaction [2]between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both[2] in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options [1],[1] or any items similar to those included herein, including, but not limited to, options or rights to acquire any of the items included herein; or [(2)] a purchase, production, or research agreement [2]between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both[2].

"Qualified research expenses" means qualified research expenses [1],[1] as defined in section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, [1]carbon footprint reduction technology[1] electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"Related person" means:

[a.**]** a corporation, partnership, association or trust controlled by the taxpayer;

[b.**]** an individual, corporation, partnership, association or trust that is in the control of the taxpayer;

[c.**]** a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or

[d.**]** a member of the same controlled group as the taxpayer.

"Renewable energy technology" means a technology involving the generation of electricity from solar energy; wind energy; wave or tidal action; geothermal energy; the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digestor gas, biomass gas, or other renewable fuel but not powered by a fossil fuel.

"Tax year" means the fiscal or calendar accounting period of a taxpayer.

"Verified transfer of funds" means a non-refundable transfer of funds [2]equal to 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company to a New Jersey emerging technology business by the New Jersey emerging technology business holding company[2] that is accompanied by documentation, as required by the New Jersey Economic Development Authority, which provides proof of a cash transaction originating with a taxpayer and concluding with a New Jersey emerging technology business, provided that the transactions from origin to destination occur within the same [2]**[**privilege period**]** tax year[2] .

(cf: P.L.2013, c.14, s.2)

2. Section 3 of P.L.1997, c.349 (C.54:10A-5.30) is amended to read as follows:

3. a. A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic Development Authority and in consultation with the director, shall be allowed a credit against

the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to [10%] 10 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, or [2]in[2] a New Jersey emerging technology business holding company that makes a verified transfer of funds to [2][the] a[2] New Jersey emerging technology business [2],[2] up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer.

b. A credit shall not be allowed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

Notwithstanding any other provision of law, the order of priority in which the credit allowed by this section and any other credits allowed by law may be taken shall be as prescribed by the director.

c. Except as provided in subsection d. of this section, the amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year against tax liability otherwise due for that tax year may either be carried over, if necessary, to the 15 tax years following the tax year for which the credit was allowed or, at the election of the taxpayer, be claimed as and treated as an overpayment for the purposes of R.S.54:49-15, provided, however, that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not apply.

d. A taxpayer may not carry over any amount of credit allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

e. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt [1][rules in accordance with], pursuant to[1] the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) [1][as], rules and regulations that[1] are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and section 4 of P.L.2013, c.14 (C.54A:4-13), including [1],[1] but not limited to: examples of and the determination of qualified investments of which applicants [1][must] shall[1] provide documentation with their tax credit application; the promulgation of procedures and forms necessary to apply for a credit; and provisions for credit applicants to be charged an initial application fee [1][,][1] and ongoing service fees [1][,][1] to cover the administrative costs related to the credit.

The amount of credits approved by the Executive Director of the New Jersey Economic Development Authority, and in consultation with the director, pursuant to subsection a. of this section and pursuant to section 4 of P.L.2013, c.14 (C.54A:4-13) [1],[1] shall not exceed a cumulative total of $25,000,000 in any calendar year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits under this section and section 4 of P.L.2013, c.14 (C.54A:4-13) are not in excess of the amount of credits available.

(cf: P.L.2013, c.14, s.3)

3. Section 4 of P.L.2013, c.14 (C.54A:4-13) is amended to read as follows:

4. a. A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic Development Authority, and in consultation with the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 10 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, or [2]in[2] a New Jersey emerging technology business holding company that makes a verified transfer of funds to [2][the] a[2] New Jersey emerging technology business, up to a maximum allowed credit of $500,000 for the taxable year for each qualified investment made by the taxpayer.

b. The amount of the credit allowed pursuant to this section shall be applied against the tax otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., after all other credits and payments. If the credit exceeds the amount of tax liability otherwise due, that amount of excess shall be an overpayment for the purposes of N.J.S.54A:9-7, provided, however, that subsection (f) of N.J.S.54A:9-7 shall not apply.

c. (1) A partnership shall not be allowed a credit under this section directly, but the amount of credit of a taxpayer in respect of a distributive share of partnership income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year. For the purposes of subsection b. of this section, the amount of tax liability that would be otherwise due of a taxpayer is that proportion of the total liability of the taxpayer that the taxpayer's share of the partnership income or gain included in gross income bears to the total gross income of the taxpayer.

(2) The credit for a corporation that has made a valid election as a New Jersey S corporation pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22) may be applied by the shareholders of the S corporation against the tax liability otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., provided that the amount of credit that may be used by a shareholder of the S corporation shall be determined by allocating to each shareholder of the S corporation that proportion of the tax credit of the S corporation that is equal to the shareholder's proportionate share of the S corporation, whether or not distributed, of the total distributive income or gain of the S corporation for its tax period ending with or within the shareholder's tax period, and the credit may be applied by the shareholders against the tax liability otherwise due pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

d. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt [1]⟦rules in accordance with⟧, pursuant to[1] the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) [1]⟦as⟧, rules and regulations that[1] are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and this section, including [1],[1] but not limited to: examples of and the determination of qualified investments of which applicants [1]⟦must⟧ shall[1] provide documentation with their tax credit application; the promulgation of procedures and forms necessary to apply for a credit; and provisions for credit applicants to be charged an initial application fee [1]⟦,⟧[1] and ongoing service fees [1]⟦,⟧[1] to cover the administrative costs related to the credit.

The amount of credits approved by the Executive Director of the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury [1],[1] pursuant to subsection a. of this section and pursuant to section 3 of P.L.1997, c.349 (C.54:10A-5.30) [1],[1] shall not exceed a cumulative total of $25,000,000 in any calendar year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits under this section and section 3 of P.L.1997, c.349 (C.54:10A-5.30) are not in excess of the amount of credits available.

e. As used in this section:

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

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

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies [1],[1] and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

[1]"Carbon footprint reduction technology" means a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.[1]

"Control" with respect to a corporation, means ownership, directly or indirectly, of stock possessing 80 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and "control," with respect to a trust, means ownership, directly or indirectly, of 80 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.267), other than paragraph (3) of subsection (c) of that section.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 80 percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least 80 percent of the voting power of all classes of stock of at least one of the other corporations.

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

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment [1]⟦,⟧[1] and instrumentation, radio frequency, microwave [1]⟦,⟧[1] and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

"Information technology" means software publishing, motion picture and video production, television production and post-production services, telecommunications, data processing, hosting and related services, custom computer programming services, computer system design, computer facilities management services, other computer related services, and computer training.

"Life sciences" means the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products [1]⟦;⟧,[1] or physical and biological research.

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

"Mobile communications technology" means a technology involving the functionality and reliability of [1]the[1] transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include [1],[1] but [1]⟦shall⟧[1] not be limited to [1],[1] smartphones, electronic books and tablets, [1]⟦mp3⟧ digital audio[1] players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having connected to any physical or fixed link.

"New Jersey emerging technology business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State and: ⟦(1)⟧ has qualified research expenses paid or incurred for research conducted in this State; ⟦(2)⟧ conducts pilot scale manufacturing in this State; or ⟦(3)⟧ conducts technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, [1]carbon footprint reduction technology,[1] electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

“New Jersey emerging technology business holding company” means any corporation, association, firm, partnership, trust or other form of business organization, but not a natural person, which directly or indirectly, owns, has the power or right to control, or has the power to vote, a controlling share of the outstanding voting securities of a corporation or other form of a New Jersey emerging technology business.

"Partnership" means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

"Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotechnology, [1]carbon footprint reduction technology[1] electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if the total gross receipts, as calculated in the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from ⟦such⟧ the sales of the product, service, or process do not exceed $1,000,000.

"Qualified investment" means the non-refundable transfer of cash to a New Jersey emerging technology business [2]or to a New Jersey emerging technology business holding company[2] by a taxpayer that is not a related person of the New Jersey emerging technology business [2]or the New Jersey emerging technology business holding company[2], the transfer of which is in connection with either ⟦(1)⟧: a transaction [2]between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both[2] in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options [1],[1] or any items similar to those included herein, including, but not limited to, options or rights to acquire any of the items included herein; or ⟦(2)⟧ a purchase, production, or research agreement [2]between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both[2].

"Qualified research expenses" means qualified research expenses [1],[1] as defined in section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"Related person" means:

[a.] a corporation, partnership, association or trust controlled by the taxpayer;

[b.] an individual, corporation, partnership, association or trust that is in the control of the taxpayer;

[c.] a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or

[d.] a member of the same controlled group as the taxpayer.

"Renewable energy technology" means a technology involving the generation of electricity from solar energy; wind energy; wave or tidal action; geothermal energy; the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digestor gas, biomass gas, or other renewable fuel but not powered by a fossil fuel.

“Verified transfer of funds” means a non-refundable transfer of funds [2]equal to 100 percent of the taxpayer’s qualified investment in the New Jersey emerging technology business holding company to a New Jersey emerging technology business by the New Jersey emerging technology business holding company[2] that is accompanied by documentation, as required by the New Jersey Economic Development Authority, which provides proof of a cash transaction originating with a taxpayer and concluding with a New Jersey emerging technology business, provided that the transactions from origin to destination occur within the same taxable year.

(cf: P.L.2013, c.14, s.4)

4. This act shall take effect immediately [1][and] [2][. Except as applicable to a New Jersey emerging technology business that conducts technology commercialization in this State in the field of carbon footprint reduction technology,[1] section 2 shall be retroactive to tax years beginning on or after January 1, 2012 and section 3 shall be retroactive to taxable years beginning on or after January 1, 2012] and shall apply retroactively to qualified investments made for tax years and taxable years beginning on or after January 1, 2012, other than qualified investments in New Jersey emerging technology businesses, and in New Jersey emerging technology business holding companies that make verified transfers of funds to New Jersey emerging technology businesses, that conduct technology commercialization in this State in the field of carbon footprint reduction technology[2].

Permits holding companies of eligible New Jersey emerging technology companies to receive investments under "New Jersey Angel Investor Tax Credit Act."

SENATE, No. 158

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:
Senator FRED H. MADDEN, JR.
District 4 (Camden and Gloucester)

SYNOPSIS

Permits holding companies of eligible New Jersey emerging technology companies to receive investments under "New Jersey Angel Investor Tax Credit Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning eligible investments under the "New Jersey Angel Investor Tax Credit Act," and amending P.L.1997, c.349 and P.L.2013, c.14.

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

1. Section 2 of P.L.1997, c.349 (C.54:10A-5.29) is amended to read as follows:

2. As used in **[**this act**]** <u>sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30)</u>:

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

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials. "Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

"Control" with respect to a corporation means ownership, directly or indirectly, of stock possessing **[**80%**]** <u>80 percent</u> or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and "control" with respect to a trust means ownership, directly or indirectly, of **[**80%**]** <u>80 percent</u> or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.267), other than paragraph (3) of subsection (c) of that section.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least **[**80%**]** <u>80 percent</u> of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least **[**80%**]**

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

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

<u>80 percent</u> of the voting power of all classes of stock of at least one of the other corporations.

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

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

"Information technology" means software publishing, motion picture and video production, television production and post-production services, telecommunications, data processing, hosting and related services, custom computer programming services, computer system design, computer facilities management services, other computer related services, and computer training.

"Life sciences" means the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products; or physical and biological research.

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

"Mobile communications technology" means a technology involving the functionality and reliability of transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include but shall not be limited to smartphones, electronic books and tablets, mp3 players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having connected to any physical or fixed link.

"New Jersey emerging technology business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State and: **⟦**(1)**⟧** has qualified research expenses paid or incurred for research conducted in this State; **⟦**(2)**⟧** conducts pilot scale manufacturing in this State; or **⟦**(3)**⟧** conducts technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

<u>"New Jersey emerging technology business holding company" means any corporation, association, firm, partnership, trust, or other form of business organization, but not a natural person, which directly or indirectly, owns, has the power or right to control, or has the power to vote, a controlling share of the outstanding voting</u>

securities of a corporation or other form of a New Jersey emerging technology business.

"Partnership" means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

"Pilot scale manufacturing" means the design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, and renewable energy technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if the total gross receipts, as calculated in the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from [such] the sales of the product, service, or process do not exceed $1,000,000.

"Qualified investment" means the non-refundable transfer of cash to a New Jersey emerging technology business by a taxpayer that is not a related person of the New Jersey emerging technology business, the transfer of which is in connection with either [(1)]: a transaction in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options or any items similar to those included herein, including, but not limited to, options or rights to acquire any of the items included herein; or [(2)] a purchase, production, or research agreement.

"Qualified research expenses" means qualified research expenses as defined in section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"Related person" means:

[a.] a corporation, partnership, association or trust controlled by the taxpayer;

[b.] an individual, corporation, partnership, association or trust that is in the control of the taxpayer;

[c.] a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or

[d.] a member of the same controlled group as the taxpayer.

"Renewable energy technology" means a technology involving the generation of electricity from solar energy; wind energy; wave or tidal action; geothermal energy; the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digestor gas, biomass gas, or other renewable fuel but not powered by a fossil fuel.

"Tax year" means the fiscal or calendar accounting period of a taxpayer.

“Verified transfer of funds” means a non-refundable transfer of funds that is accompanied by documentation, as required by the New Jersey Economic Development Authority, which provides proof of a cash transaction originating with a taxpayer and concluding with a New Jersey emerging technology business, provided that the transactions from origin to destination occur within the same privilege period.

(cf: P.L.2013, c.14, s.2)

2. Section 3 of P.L.1997, c.349 (C.54:10A-5.30) is amended to read as follows:

3. a. A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic Development Authority and in consultation with the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 【10%】 10 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, or a New Jersey emerging technology business holding company that makes a verified transfer of funds to the New Jersey emerging technology business up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer.

b. A credit shall not be allowed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

Notwithstanding any other provision of law, the order of priority in which the credit allowed by this section and any other credits allowed by law may be taken shall be as prescribed by the director.

c. Except as provided in subsection d. of this section, the amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year against tax liability otherwise due for that tax year may either be carried over, if necessary, to the 15 tax years following the tax year for which the credit was allowed or, at the election of the taxpayer, be claimed as and treated as an overpayment for the purposes of R.S.54:49-15, provided, however, that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not apply.

d. A taxpayer may not carry over any amount of credit allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

e. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and section 4 of P.L.2013, c.14 (C.54A:4-13), including but not limited to: examples of and the determination of qualified investments of which applicants must provide documentation with their tax credit application; the promulgation of procedures and forms necessary to apply for a credit; and provisions for credit applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the credit.

The amount of credits approved by the Executive Director of the New Jersey Economic Development Authority, and in consultation with the director, pursuant to subsection a. of this section and pursuant to section 4 of P.L.2013, c.14 (C.54A:4-13) shall not exceed a cumulative total of $25,000,000 in any calendar year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits under this section and section 4 of P.L.2013, c.14 (C.54A:4-13) are not in excess of the amount of credits available.

(cf: P.L.2013, c.14, s.3)

3. Section 4 of P.L.2013, c.14 (C.54A:4-13) is amended to read as follows:

4. a. A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic Development Authority, and in consultation with the director, shall be allowed a credit against

the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 10 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, or a New Jersey emerging technology business holding company that makes a verified transfer of funds to the New Jersey emerging technology business, up to a maximum allowed credit of $500,000 for the taxable year for each qualified investment made by the taxpayer.

b. The amount of the credit allowed pursuant to this section shall be applied against the tax otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., after all other credits and payments. If the credit exceeds the amount of tax liability otherwise due, that amount of excess shall be an overpayment for the purposes of N.J.S.54A:9-7, provided, however, that subsection (f) of N.J.S.54A:9-7 shall not apply.

c. (1) A partnership shall not be allowed a credit under this section directly, but the amount of credit of a taxpayer in respect of a distributive share of partnership income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year. For the purposes of subsection b. of this section, the amount of tax liability that would be otherwise due of a taxpayer is that proportion of the total liability of the taxpayer that the taxpayer's share of the partnership income or gain included in gross income bears to the total gross income of the taxpayer.

(2) The credit for a corporation that has made a valid election as a New Jersey S corporation pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22) may be applied by the shareholders of the S corporation against the tax liability otherwise due under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., provided that the amount of credit that may be used by a shareholder of the S corporation shall be determined by allocating to each shareholder of the S corporation that proportion of the tax credit of the S corporation that is equal to the shareholder’s proportionate share of the S corporation, whether or not distributed, of the total distributive income or gain of the S corporation for its tax period ending with or within the shareholder’s tax period, and the credit may be applied by the shareholders against the tax liability otherwise due pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.

d. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through

C.54:10A-5.30) and this section, including but not limited to: examples of and the determination of qualified investments of which applicants must provide documentation with their tax credit application; the promulgation of procedures and forms necessary to apply for a credit; and provisions for credit applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the credit.

The amount of credits approved by the Executive Director of the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury pursuant to subsection a. of this section and pursuant to section 3 of P.L.1997, c.349 (C.54:10A-5.30) shall not exceed a cumulative total of $25,000,000 in any calendar year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits under this section and section 3 of P.L.1997, c.349 (C.54:10A-5.30) are not in excess of the amount of credits available.

e. As used in this section:

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

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

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

"Control" with respect to a corporation, means ownership, directly or indirectly, of stock possessing 80 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and "control," with respect to a trust, means ownership, directly or indirectly, of 80 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.267), other than paragraph (3) of subsection (c) of that section.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 80 percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least 80 percent of the voting power of all classes of stock of at least one of the other corporations.

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

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

"Information technology" means software publishing, motion picture and video production, television production and post-production services, telecommunications, data processing, hosting and related services, custom computer programming services, computer system design, computer facilities management services, other computer related services, and computer training.

"Life sciences" means the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products; or physical and biological research.

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

"Mobile communications technology" means a technology involving the functionality and reliability of transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include but shall not be limited to smartphones, electronic books and tablets, mp3 players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having connected to any physical or fixed link.

"New Jersey emerging technology business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State and: **[**(1)**]** has qualified research expenses paid or incurred for research conducted in this State; **[**(2)**]** conducts pilot scale manufacturing in this State; or [(3)] conducts technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"New Jersey emerging technology business holding company" means any corporation, association, firm, partnership, trust or other form of business organization, but not a natural person, which directly or indirectly, owns, has the power or right to control, or has the power to vote, a controlling share of the outstanding voting securities of a corporation or other form of a New Jersey emerging technology business.

"Partnership" means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

"Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if the total gross receipts, as calculated in the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from [such] the sales of the product, service, or process do not exceed $1,000,000.

"Qualified investment" means the non-refundable transfer of cash to a New Jersey emerging technology business by a taxpayer that is not a related person of the New Jersey emerging technology business, the transfer of which is in connection with either [(1)]: a transaction in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options or any items similar to those included herein, including, but not limited to, options or rights to acquire any of the items included herein; or [(2)] a purchase, production, or research agreement.

"Qualified research expenses" means qualified research expenses as defined in section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"Related person" means:

[a.] a corporation, partnership, association or trust controlled by the taxpayer;

⟦b.⟧ an individual, corporation, partnership, association or trust that is in the control of the taxpayer;

⟦c.⟧ a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or

⟦d.⟧ a member of the same controlled group as the taxpayer.

"Renewable energy technology" means a technology involving the generation of electricity from solar energy; wind energy; wave or tidal action; geothermal energy; the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digestor gas, biomass gas, or other renewable fuel but not powered by a fossil fuel.

<u>"Verified transfer of funds" means a non-refundable transfer of funds that is accompanied by documentation, as required by the New Jersey Economic Development Authority, which provides proof of a cash transaction originating with a taxpayer and concluding with a New Jersey emerging technology business, provided that the transactions from origin to destination occur within the same taxable year.</u>

(cf: P.L.2013, c.14, s.4)

4. This act shall take effect immediately and section 2 shall be retroactive to tax years beginning on or after January 1, 2012 and section 3 shall be retroactive to taxable years beginning on or after January 1, 2012.

STATEMENT

This bill expands eligibility for tax credits under the "New Jersey Angel Investor Tax Credit Act" to include investments in the holding companies of qualified New Jersey emerging technology businesses. An investment in the holding company of a qualified business is to be accompanied by evidence that the money invested in that holding company is transferred from the holding company to the qualified business owned by the holding company in the same tax year that the money was received by the holding company. The bill permits indirect investment in qualified New Jersey emerging technology businesses through the holding companies that control those businesses, rather than requiring investors to identify a means of providing funding directly to the subsidiary business.

The bill also establishes that the tax credits due as a result of a qualified investment by a New Jersey S corporation are to be distributed to the individual owners of the S corporation according to their proportional share of ownership in the S corporation. The owners may then claim those proportional credits on their own personal income taxes.

The expanded eligibility is to be retroactive to January 1, 2012.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

[Second Reprint]

SENATE, No. 158

STATE OF NEW JERSEY

DATED: OCTOBER 6, 2016

The Assembly Commerce and Economic Development Committee reports favorably Senate Bill No. 158. (2R)

This bill revises the "New Jersey Angel Investor Tax Credit Act" to provide tax credits for qualified investments in New Jersey emerging technology business holding companies, to broaden the types of New Jersey emerging technology businesses that are eligible to receive qualified investments, and to provide directions for the distribution of tax credits allowed for qualified investments by New Jersey S corporations.

Under the "New Jersey Angel Investor Tax Credit Act," a tax credit is allowed against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business. The law provides that the amount of the tax credit is equal to 10 percent of the qualified investment made by the taxpayer, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer.

Currently, taxpayers seeking to claim the credit must apply to and receive approval for the allowance of a credit from the New Jersey Economic Development Authority. The law limits to $25 million per calendar year the cumulative amount of all tax credits that the authority is permitted to approve in connection with qualified investments.

This bill amends the "New Jersey Angel Investor Tax Credit Act" to similarly allow a tax credit against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business. The bill provides that for the tax credit to be allowed, 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company must be transferred from the holding company to the New Jersey emerging technology business, and specifies that the transfer of funds must be accompanied by documentation which provides proof that the invested funds are transferred from the holding company to the emerging technology business in the same tax year or taxable year that the funds were received by the holding company.

In addition, the bill broadens the definition of a New Jersey emerging technology business under the "New Jersey Angel Investor Tax Credit Act" to include certain companies that conduct technology commercialization in this State in the field of carbon footprint reduction technology so that qualified investments in companies that conduct commercialization in that field (or in holding companies that make verified transfers to companies in that field) may be claimed as a tax credit. A "carbon footprint reduction technology" is defined by the bill as a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.

The bill also provides directions for the distribution of tax credits allowed in connection with qualified investments made by New Jersey S corporations. The bill permits tax credits due as a result of a qualified investment by a corporation that has made a valid election as a New Jersey S corporation under State law to be distributed to the individual shareholders of the S corporation according to the shareholders' proportional share of ownership in the S corporation. The bill provides that shareholders receiving a distributive credit may then claim those credits to reduce the shareholders' gross income tax liability.

The bill takes effect immediately, but applies retroactively to qualified investments made for tax years and taxable years beginning on or after January 1, 2012, other than qualified investments that are made in New Jersey emerging technology businesses, and in New Jersey emerging technology business holding companies that make verified transfers of funds to businesses, that conduct technology commercialization in this State in the field of carbon footprint reduction technology.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]

SENATE, No. 158

STATE OF NEW JERSEY

DATED: OCTOBER 27, 2016

The Assembly Appropriations Committee reports favorably Senate Bill No. 158 (2R).

This bill revises the "New Jersey Angel Investor Tax Credit Act" to provide tax credits for qualified investments in New Jersey emerging technology business holding companies, to broaden the types of New Jersey emerging technology businesses that are eligible to receive qualified investments, and to provide directions for the distribution of tax credits allowed for qualified investments by New Jersey S corporations.

Under the "New Jersey Angel Investor Tax Credit Act," a tax credit is allowed against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business. The law provides that the amount of the tax credit is equal to 10 percent of the qualified investment made by the taxpayer, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer.

Currently, taxpayers seeking to claim the credit must apply to and receive approval for the allowance of a credit from the New Jersey Economic Development Authority. The law limits to $25 million per calendar year the cumulative amount of all tax credits that the authority is permitted to approve in connection with qualified investments.

This bill amends the "New Jersey Angel Investor Tax Credit Act" to similarly allow a tax credit against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business. The bill provides that for the tax credit to be allowed, 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company must be transferred from the holding company to the New Jersey emerging technology business, and specifies that the transfer of funds must be accompanied by documentation which provides proof that the invested funds are transferred from the holding company to the emerging technology business in the same tax year or taxable year that the funds were received by the holding company.

In addition, the bill broadens the definition of a New Jersey emerging technology business under the "New Jersey Angel Investor Tax Credit Act" to include certain companies that conduct technology commercialization in this State in the field of carbon footprint reduction technology so that qualified investments in companies that conduct commercialization in that field (or in holding companies that make verified transfers to companies in that field) may be claimed as a tax credit. A "carbon footprint reduction technology" is defined by the bill as a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.

The bill also provides directions for the distribution of tax credits allowed in connection with qualified investments made by New Jersey S corporations. The bill permits tax credits due as a result of a qualified investment by a corporation that has made a valid election as a New Jersey S corporation under State law to be distributed to the individual shareholders of the S corporation according to the shareholders' proportional share of ownership in the S corporation. The bill provides that shareholders receiving a distributive credit may then claim those credits to reduce the shareholders' gross income tax liability.

The bill takes effect immediately, but applies retroactively to qualified investments made for tax years and taxable years beginning on or after January 1, 2012, other than qualified investments that are made in New Jersey emerging technology businesses, and in New Jersey emerging technology business holding companies that make verified transfers of funds to businesses, that conduct technology commercialization in this State in the field of carbon footprint reduction technology.

As reported, this bill is identical to Assembly Bill No. 3631, as also reported by committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot project the bill's net fiscal impact on State revenues.

The OLS notes that under current law, the Angel Investor Tax Credit Program has an annual calendar year cap of $25.0 million of tax credits. The New Jersey Economic Development Authority (EDA) had awarded only $5.1 million in tax credits through the program for 2015. As the program has yet to utilize the available cap amount, the OLS anticipates the expanded eligibility under the bill to absorb more of the available cap amount, which will largely depend on the number of newly qualified businesses and the behavior of investors.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 158

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 8, 2016

The Senate Economic Growth Committee reports favorably and with committee amendments Senate Bill No. 158.

As amended and reported, this bill expands eligibility for tax credits under the "New Jersey Angel Investor Tax Credit Act" (act) to include investments in the holding company of a qualified New Jersey emerging technology business (qualified business). An investment in the holding company of a qualified business is to be accompanied by evidence that the money invested in the holding company is transferred from the holding company to the qualified business owned by the holding company in the same tax year that the money was received by the holding company. The bill permits an indirect investment in a qualified business through the holding company that controls the qualified business, rather than requiring investors to identify a means of providing funding directly to the qualified business.

The bill also establishes that the tax credits due as a result of a qualified investment by a New Jersey S corporation are to be distributed to the individual owners of the S corporation according to their proportional share of ownership in the S corporation. The owners may then claim those proportional credits on their own personal income taxes.

The bill also includes carbon footprint reduction technology as a research field that a company can engage in to be deemed a New Jersey emerging technology business and thus eligible for participation in the program established under the act. Carbon footprint reduction technology is a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.

The expanded eligibility is to be retroactive to January 1, 2012, for all research fields except carbon footprint reduction technology, which is not retroactively eligible for tax credits under the act.

The committee amended the bill to include the research field of carbon footprint reduction technology as an eligible emerging technology used by a qualified business but disallows an investment in a qualified business using that technology or its holding company to be retroactively eligible for tax credits under the act.

This bill was pre-filed for introduction in the 2016-2017 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. 158

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 10, 2016

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 158 (1R), with committee amendments.

As amended, this bill revises the "New Jersey Angel Investor Tax Credit Act" to provide tax credits for qualified investments in New Jersey emerging technology business holding companies, to broaden the types of New Jersey emerging technology businesses that are eligible to receive qualified investments, and to provide directions for the distribution of tax credits allowed for qualified investments by New Jersey S corporations.

Under the "New Jersey Angel Investor Tax Credit Act," a tax credit is allowed against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business. The law provides that the amount of the tax credit is equal to 10 percent of the qualified investment made by the taxpayer, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer.

Currently, taxpayers seeking to claim the credit must apply to and receive approval for the allowance of a credit from the New Jersey Economic Development Authority. The law limits to $25 million per calendar year the cumulative amount of all tax credits that the authority is permitted to approve in connection with qualified investments.

This bill amends the "New Jersey Angel Investor Tax Credit Act" to similarly allow a tax credit against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business. The bill provides that for the tax credit to be allowed, 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company must be transferred from the holding company to the New Jersey emerging technology business, and specifies that the transfer of funds must be accompanied by documentation which provides proof that the invested funds are transferred from the holding company to the emerging technology business in the same tax year or taxable year that the funds were received by the holding company.

In addition, the bill broadens the definition of a New Jersey emerging technology business under the "New Jersey Angel Investor Tax Credit Act" to include certain companies that conduct technology commercialization in this State in the field of carbon footprint reduction technology so that qualified investments in companies that conduct commercialization in that field (or in holding companies that make verified transfers to companies in that field) may be claimed as a tax credit. A "carbon footprint reduction technology" is defined by the bill as a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.

The bill also provides directions for the distribution of tax credits allowed in connection with qualified investments made by New Jersey S corporations. The bill permits tax credits due as a result of a qualified investment by a corporation that has made a valid election as a New Jersey S corporation under State law to be distributed to the individual shareholders of the S corporation according to the shareholders' proportional share of ownership in the S corporation. The bill provides that shareholders receiving a distributive credit may then claim those credits to reduce the shareholders' gross income tax liability.

The bill takes effect immediately, but applies retroactively to qualified investments made for tax years and taxable years beginning on or after January 1, 2012, other than qualified investments that are made in New Jersey emerging technology businesses, and in New Jersey emerging technology business holding companies that make verified transfers of funds to businesses, that conduct technology commercialization in this State in the field of carbon footprint reduction technology.

<u>COMMITTEE AMENDMENTS</u>:

The amendments make corresponding changes to the definition of qualified investment under the "New Jersey Angel Investor Tax Credit Act" to specify that qualified investments include non-refundable transfers of cash to New Jersey emerging technology business holding companies. The amendments modify the definition of a verified transfer of funds to require that 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company must be transferred from the holding company to the New Jersey emerging technology business. The amendments also clarify the retroactive provisions of the bill's effective date.

FISCAL IMPACT:

The Office of Legislative Services (OLS) lacks sufficient information to determine the direction or quantify the magnitude of the bill's net fiscal impact on State revenues. In large part, it is not known how many additional taxpayers will make qualified investments as a result of the changes provided by the bill, or the amount of each additional investment that may be made by those newly eligible taxpayers.

The OLS notes that under current law the New Jersey Economic Development Authority is prohibited from awarding a cumulative total of more than $25.0 million in tax credits to qualified investors in any calendar year. As the State has yet to use all available tax credits under the annual limit, the OLS anticipates the expanded eligibility under the bill to absorb some additional, indeterminate amount under that limit.

However, the OLS notes that it is unlikely the bill's changes will propel the program to reach its annual limit in future years. According to information made available by the New Jersey Economic Development Authority, in calendar year 2015 the State awarded only $5.1 million in tax credits in connection with 213 qualified investments in 28 different companies.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 158

STATE OF NEW JERSEY
217th LEGISLATURE

DATED: MARCH 18, 2016

SUMMARY

Synopsis: Permits holding companies of eligible New Jersey emerging technology companies to receive investments under "New Jersey Angel Investor Tax Credit Act."

Type of Impact: Unknown net effect of three countervailing impacts: 1) indeterminate revenue loss to the State General Fund and Property Tax Relief Fund from expanded eligibility under existing program cap; 2) indeterminate revenue increase to the State General Fund, Property Tax Relief Fund from receipts catalyzed by credit-induced economic activity; 3) recurring opportunity costs to the State from granting credits.

Agencies Affected: Department of the Treasury.
New Jersey Economic Development Authority.

Office of Legislative Services Estimate

Fiscal Impact	
Direct State Revenue Loss	Minimal, Indeterminate
State Opportunity Cost	Indeterminate
Indirect State Revenue Gain	Indeterminate

- The Office of Legislative Services (OLS) can project neither the direction nor the magnitude of the bill's net fiscal impact on State revenues.

- The OLS notes that under the current law, the Angel Investor Tax Credit Program has an existing cap of $25.0 million. As the program has yet to utilize all of the available cap space, the OLS anticipates the expanded eligibility under the bill to absorb more of the available cap space. However, the OLS is unable to determine exactly how much cap space the bill would absorb.

- The bill is unlikely to propel the program to its cap considering, as recently as CY 2015, the New Jersey Economic Development Authority (EDA) had awarded only $5.1 million in tax credits through the program for that year. The amount of cap space absorbed by this bill will largely depend on the number of newly qualified businesses and the behavior of investors.

BILL DESCRIPTION

Senate Bill No. 158 (2R) of 2016 expands eligibility for tax credits under the "New Jersey Angel Investor Tax Credit Act" to include investments in the holding company of a qualified New Jersey emerging technology business and to include carbon footprint reduction technology as a research field that a company can engage in to be deemed a New Jersey emerging technology business under the act. Under the program, the State annually awards up to $25 million in tax credits to taxpayers who make certain investments in New Jersey emerging technology businesses. These credits may be applied against the New Jersey gross income or corporate business taxes.

The bill maintains all existing provisions regarding qualified investments, but in addition expands the tax credit to include: direct and indirect investments in a holding company which owns and transfers the investment to a qualified business; carbon footprint reduction technology, which is used by commercial, institutional, and industrial sectors to increase energy efficiency, develop and deliver renewable or non-carbon-emitting energy technologies, develop innovative carbon emissions abatement with significant carbon emissions reduction potential, or promote measurable electricity end-use energy efficiency; and to establish that tax credits due as a result of a qualified business investment by a New Jersey S corporation are to be distributed to the individual owners of the S corporation according to their proportional share of ownership in the S corporation. Currently, the program includes certain emerging technology businesses, such as advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, and renewable energy technology. The expanded eligibility is to be retroactive to January 1, 2012, for all research fields except carbon footprint reduction technology, which is not retroactively eligible for tax credits under the bill.

To qualify for a tax credit of up to 10 percent (capped at $500,000 per investment) of the angel investors' qualified investment in New Jersey emerging technology companies, the companies being invested in must have fewer than 225 employees, and at least 75 percent of those positions must be located in New Jersey. An individual tax payer with excess credit will receive a refund from the State. Further, a corporate taxpayer can choose to either receive a refund of the excess credit or carry over the excess credit for 15 years.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS can determine neither the direction nor the net fiscal impact of the bill on State revenues from the expansion of eligibility under the Angel Investor Tax Credit Program. The OLS notes that under current law, the Angel Investor Tax Credit Program has an existing cap of

$25.0 million, which has not yet been fully utilized. The OLS anticipates that expanding eligibility under the bill will utilize more of the available cap space. However, the OLS is unable to determine exactly how much cap space the bill will absorb.

The OLS is unable to pinpoint the bill's exact direct revenue loss. Additionally, it cannot calculate its opportunity cost or its offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on those angel investors who would invest in newly eligible businesses and would earn tax credits.

In general, the State net fiscal impact is calculated by adding the direct revenue loss from granting additional tax credits and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain from granting the tax credits.

Direct Fiscal Impact: The bill is expected to result in a direct revenue loss to the State General Fund and Property Tax Relief Fund from expanding eligibility under the existing Angel Investor Tax Credit Program; however, the OLS is unable to determine how much existing cap space the bill would absorb. Additionally, the bill's expanded eligibility would be retroactive to January 1, 2012, for all research fields except carbon footprint reduction technology. The OLS is also unable to determine the impact prior investments, now eligible as a result of this bill, would have on the available cap space for prior years. It is unlikely that the bill would propel the program to its cap considering current program statistics.

After the Angel Investor Tax Credit Act was enacted in January 2013, the program did not begin accepting applications until July 1, 2013. For CY 2013, the EDA awarded $1.4 million in tax credits for 28 investments in five different companies. The number of tax credits awarded increased substantially in CY 2014, the program's first full year, to $6.0 million for 181 investments in 22 different companies. Further, in CY 2015, the amount in tax credits awarded fell to $5.1 million; however, the number of investments increased to 213 in 28 different companies.

To reach the $25.0 million cap in a given year, at least $250.0 million would have to be invested annually in New Jersey-based emerging technology, biotechnology, and the newly eligible carbon footprint reduction technology businesses through the Angel Investor Tax Credit Program. (The tax credits are capped at 10 percent of the angel investor's investment.) Additionally, based on the program statistics provided by the EDA, the average credit awarded in CY 2015 was $24,008.55. In order for the cap to be reached based on the average credit awarded in CY 2015 ($24,008.55), the EDA would have to award tax credits for 1,041 investments. Considering that 213 investments were awarded tax credits in CY 2015, and as a result of these tax credits, 20.4 percent of the cap was utilized, the bill would have to generate approximately 828 newly eligible investments to reach the cap. Further, over the past three years, out of the 422 investments awarded tax credits, only one investment reached the credit limit of $500,000 per investment and 29 investments were awarded at least $100,000 or more in tax credits.

Indirect Fiscal Impact: The bill may generate an indeterminate indirect revenue gain to the State that may partially offset the direct State revenue loss from and State opportunity cost of providing the tax credits. The OLS, however, does not have the capacity to quantify the bill's secondary effects, since it cannot estimate the volume of investments that the tax credit will directly spur and their ensuing indirect effect on State government tax receipts.

In general, any indirect revenue gain will result from the economic ramifications of tax credit-induced behavior changes. Once New Jerseyans will have income they would not have had absent the tax credit, at least a portion of that additional income will newly circulate in New

Jersey's economy. As these ramifications will flow through the economy, they will affect State revenue collections. Indirect fiscal effects encompass secondary tax collections from credit-induced investments (such as enhanced gross income tax collections from employees whose positions are retained in New Jersey because of the tax credit) and credit-induced spending by all impacted firms and their employees (such as employees whose positions are retained in New Jersey because of the tax credit spending their income on taxable goods and services).

Nonetheless, the OLS points out that not all of the economic and fiscal feedback effects of these investments benefitting from the credit may represent a gain to the State. Only the ripple effects caused by credit-induced purchases should enter the fiscal estimate, while those from investments that would also be made absent the credit must be excluded. The exclusion of investments that will happen with or without the credit takes into account that the tax incentive has no economic impact whenever it benefits taxpayers who would invest in a New Jersey-based emerging technology business anyway. In such a scenario, the State will only incur the direct cost of the subsidy, while the investment's secondary effects cannot be attributed to the bill.

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

Opportunity Costs: Opportunity costs capture the economic and fiscal benefits the economy and the State forego as spending is redirected from one economic activity to another. Given the State's finite resources and its balanced budget requirement, the decision to subsidize certain investments in New Jersey emerging technology businesses will invariably divert resources from policy alternatives to which they would have been applied absent the tax credit. Therefore, if, instead of this legislation, the State invested in road construction, for example, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on subsidizing taxpayers' capital investments in transit hubs and that of the foregone road construction investment.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Jordan DiGiovanni* *Assistant Fiscal Analyst*
Approved:	*Frank W. Haines III* *Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 3631

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED APRIL 14, 2016

Sponsored by:
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Assemblyman GARY S. SCHAER
District 36 (Bergen and Passaic)
Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)
Assemblyman ANDREW ZWICKER
District 16 (Hunterdon, Mercer, Middlesex and Somerset)
Assemblyman RAJ MUKHERJI
District 33 (Hudson)
Assemblyman JOE DANIELSEN
District 17 (Middlesex and Somerset)

Co-Sponsored by:
Assemblywoman Pintor Marin

SYNOPSIS

Permits holding companies of eligible New Jersey emerging technology companies to receive investments under "New Jersey Angel Investor Tax Credit Act."

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/17/2017)

AN ACT concerning eligible investments under the "New Jersey Angel Investor Tax Credit Act," and amending P.L.1997, c.349 and P.L.2013, c.14.

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

1. Section 2 of P.L.1997, c.349 (C.54:10A-5.29) is amended to read as follows:

2. As used in **[**this act**]** <u>sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30)</u>:

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

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials. "Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies<u>,</u> and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

<u>"Carbon footprint reduction technology" means a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.</u>

"Control" with respect to a corporation means ownership, directly or indirectly, of stock possessing **[**80%**]** <u>80 percent</u> or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and "control" with respect to a trust means ownership, directly or indirectly, of **[**80%**]** <u>80 percent</u> or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.267), other than paragraph (3) of subsection (c) of that section.

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

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

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least [80%] 80 percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least [80%] 80 percent of the voting power of all classes of stock of at least one of the other corporations.

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

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

"Information technology" means software publishing, motion picture and video production, television production and post-production services, telecommunications, data processing, hosting and related services, custom computer programming services, computer system design, computer facilities management services, other computer related services, and computer training.

"Life sciences" means the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products [;], or physical and biological research.

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

"Mobile communications technology" means a technology involving the functionality and reliability of the transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include, but [shall] not be limited to, smartphones, electronic books and tablets, [mp3] digital audio players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having connected to any physical or fixed link.

"New Jersey emerging technology business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State and: [(1)] has qualified research expenses paid or incurred for research conducted in this State; [(2)] conducts pilot scale manufacturing in this State; or [(3)] conducts technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"New Jersey emerging technology business holding company" means any corporation, association, firm, partnership, trust, or other form of business organization, but not a natural person, which directly or indirectly, owns, has the power or right to control, or has the power to vote, a controlling share of the outstanding voting securities of a corporation or other form of a New Jersey emerging technology business.

"Partnership" means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

"Pilot scale manufacturing" means the design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, and renewable energy technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if the total gross receipts, as calculated in the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from [such] the sales of the product, service, or process do not exceed $1,000,000.

"Qualified investment" means the non-refundable transfer of cash to a New Jersey emerging technology business or to a New Jersey emerging technology business holding company by a taxpayer that is not a related person of the New Jersey emerging technology business or the New Jersey emerging technology business holding company, the transfer of which is in connection with either [(1)]: a transaction between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options, or any items similar to those included herein, including, but not limited to, options or rights to acquire any of the items included herein; or [(2)] a purchase, production, or research agreement between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both.

"Qualified research expenses" means qualified research expenses, as defined in section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"Related person" means:

[a.] a corporation, partnership, association or trust controlled by the taxpayer;

[b.] an individual, corporation, partnership, association or trust that is in the control of the taxpayer;

[c.] a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or

[d.] a member of the same controlled group as the taxpayer.

"Renewable energy technology" means a technology involving the generation of electricity from solar energy; wind energy; wave or tidal action; geothermal energy; the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digestor gas, biomass gas, or other renewable fuel but not powered by a fossil fuel.

"Tax year" means the fiscal or calendar accounting period of a taxpayer.

"Verified transfer of funds" means a non-refundable transfer of funds equal to 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company to a New Jersey emerging technology business by the New Jersey emerging technology business holding company that is accompanied by documentation, as required by the New Jersey Economic Development Authority, which provides proof of a cash transaction originating with a taxpayer and concluding with a New Jersey emerging technology business, provided that the transactions from origin to destination occur within the same tax year.

(cf: P.L.2013, c.14, s.2)

2. Section 3 of P.L.1997, c.349 (C.54:10A-5.30) is amended to read as follows:

3. a. A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic Development Authority and in consultation with the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to [10%] 10 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, or in a New Jersey emerging technology business holding company that makes a verified transfer of funds to [the] a New Jersey emerging technology business, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer.

b. A credit shall not be allowed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

Notwithstanding any other provision of law, the order of priority in which the credit allowed by this section and any other credits allowed by law may be taken shall be as prescribed by the director.

c. Except as provided in subsection d. of this section, the amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year against tax liability otherwise due for that tax year may either be carried over, if necessary, to the 15 tax years following the tax year for which the credit was allowed or, at the election of the taxpayer, be claimed as and treated as an overpayment for the purposes of R.S.54:49-15, provided, however, that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not apply.

d. A taxpayer may not carry over any amount of credit allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

e. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt **[**rules in accordance with**]**, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) **[**as**]**, rules and regulations that are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and section 4 of P.L.2013, c.14 (C.54A:4-13), including, but not limited to: examples of and the determination of qualified investments of which applicants **[**must**]** shall provide documentation with their tax credit application; the promulgation of procedures and forms necessary to apply for a credit; and provisions for credit applicants to be charged an initial application fee **[**,**]** and ongoing service fees **[**,**]** to cover the administrative costs related to the credit.

The amount of credits approved by the Executive Director of the New Jersey Economic Development Authority, and in consultation with the director, pursuant to subsection a. of this section and pursuant to section 4 of P.L.2013, c.14 (C.54A:4-13), shall not

exceed a cumulative total of $25,000,000 in any calendar year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits under this section and section 4 of P.L.2013, c.14 (C.54A:4-13) are not in excess of the amount of credits available.
(cf: P.L.2013, c.14, s.3)

3. Section 4 of P.L.2013, c.14 (C.54A:4-13) is amended to read as follows:

4. a. A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic Development Authority, and in consultation with the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 10 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, <u>or in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business,</u> up to a maximum allowed credit of $500,000 for the taxable year for each qualified investment made by the taxpayer.

b. The amount of the credit allowed pursuant to this section shall be applied against the tax otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., after all other credits and payments. If the credit exceeds the amount of tax liability otherwise due, that amount of excess shall be an overpayment for the purposes of N.J.S.54A:9-7, provided, however, that subsection (f) of N.J.S.54A:9-7 shall not apply.

c. <u>(1)</u> A partnership shall not be allowed a credit under this section directly, but the amount of credit of a taxpayer in respect of a distributive share of partnership income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year. For the purposes of subsection b. of this section, the amount of tax liability that would be otherwise due of a taxpayer is that proportion of the total liability of the taxpayer that the taxpayer's share of the partnership income or gain included in gross income bears to the total gross income of the taxpayer.

(2) The credit for a corporation that has made a valid election as a New Jersey S corporation pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22) may be applied by the shareholders of the S corporation against the tax liability otherwise due under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., provided that the amount of credit that may be used by a shareholder of the S corporation shall be determined by allocating to each shareholder of the S corporation that proportion of the tax credit of the S corporation that is equal to the shareholder’s proportionate share of the S corporation, whether or not distributed, of the total distributive income or gain of the S corporation for its tax period ending with or within the shareholder’s tax period, and the credit may be applied by the shareholders against the tax liability otherwise due pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.

d. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt **[**rules in accordance with**]**, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) **[**as**]**, rules and regulations that are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and this section, including, but not limited to: examples of and the determination of qualified investments of which applicants **[**must**]** shall provide documentation with their tax credit application; the promulgation of procedures and forms necessary to apply for a credit; and provisions for credit applicants to be charged an initial application fee **[**,**]** and ongoing service fees **[**,**]** to cover the administrative costs related to the credit.

The amount of credits approved by the Executive Director of the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury, pursuant to subsection a. of this section and pursuant to section 3 of P.L.1997, c.349 (C.54:10A-5.30), shall not exceed a cumulative total of $25,000,000 in any calendar year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits under this section and section 3 of P.L.1997, c.349 (C.54:10A-5.30) are not in excess of the amount of credits available.

e. As used in this section:

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

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

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

"Carbon footprint reduction technology" means a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.

"Control" with respect to a corporation, means ownership, directly or indirectly, of stock possessing 80 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and "control," with respect to a trust, means ownership, directly or indirectly, of 80 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.267), other than paragraph (3) of subsection (c) of that section.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 80 percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least 80 percent of the voting power of all classes of stock of at least one of the other corporations.

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

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

"Information technology" means software publishing, motion picture and video production, television production and post-production services, telecommunications, data processing, hosting and related services, custom computer programming services, computer system design, computer facilities management services, other computer related services, and computer training.

"Life sciences" means the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products [;], or physical and biological research.

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

"Mobile communications technology" means a technology involving the functionality and reliability of the transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include, but [shall] not be limited to, smartphones, electronic books and tablets, [mp3] digital audio players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having connected to any physical or fixed link.

"New Jersey emerging technology business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State and: [(1)] has qualified research expenses paid or incurred for research conducted in this State; [(2)] conducts pilot scale manufacturing in this State; or [(3)] conducts technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

“New Jersey emerging technology business holding company” means any corporation, association, firm, partnership, trust or other form of business organization, but not a natural person, which directly or indirectly, owns, has the power or right to control, or has the power to vote, a controlling share of the outstanding voting securities of a corporation or other form of a New Jersey emerging technology business.

"Partnership" means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

"Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if the total gross receipts, as calculated in the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from ⟦such⟧ the sales of the product, service, or process do not exceed $1,000,000.

"Qualified investment" means the non-refundable transfer of cash to a New Jersey emerging technology business or to a New Jersey emerging technology business holding company by a taxpayer that is not a related person of the New Jersey emerging technology business or the New Jersey emerging technology business holding company, the transfer of which is in connection with either ⟦(1)⟧: a transaction between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options, or any items similar to those included herein, including, but not limited to, options or rights to acquire any of the items included herein; or ⟦(2)⟧ a purchase, production, or research agreement between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both.

"Qualified research expenses" means qualified research expenses, as defined in section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"Related person" means:

⟦a.⟧ a corporation, partnership, association or trust controlled by the taxpayer;

⟦b.⟧ an individual, corporation, partnership, association or trust that is in the control of the taxpayer;

⟦c.⟧ a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or

⟦d.⟧ a member of the same controlled group as the taxpayer.

"Renewable energy technology" means a technology involving the generation of electricity from solar energy; wind energy; wave or tidal action; geothermal energy; the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digestor gas, biomass gas, or other renewable fuel but not powered by a fossil fuel.

"Verified transfer of funds" means a non-refundable transfer of funds equal to 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company to a New Jersey emerging technology business by the New Jersey emerging technology business holding company that is accompanied by documentation, as required by the New Jersey Economic Development Authority, which provides proof of a cash transaction originating with a taxpayer and concluding with a New Jersey emerging technology business, provided that the transactions from origin to destination occur within the same taxable year.

(cf: P.L.2013, c.14, s.4)

4. This act shall take effect immediately and shall apply retroactively to qualified investments made for tax years and taxable years beginning on or after January 1, 2012, other than qualified investments in New Jersey emerging technology businesses, and in New Jersey emerging technology business holding companies that make verified transfers of funds to New Jersey emerging technology businesses, that conduct technology commercialization in this State in the field of carbon footprint reduction technology.

STATEMENT

This bill revises the "New Jersey Angel Investor Tax Credit Act" to provide tax credits for qualified investments in New Jersey emerging technology business holding companies, to broaden the types of New Jersey emerging technology businesses that are eligible to receive qualified investments, and to provide directions for the distribution of tax credits allowed for qualified investments by New Jersey S corporations.

Under the "New Jersey Angel Investor Tax Credit Act," a tax credit is allowed against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business. The law provides that the amount of the tax credit is equal to 10 percent of the qualified investment made by the taxpayer, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer.

Currently, taxpayers seeking to claim the credit must apply to and receive approval for the allowance of a credit from the New Jersey Economic Development Authority. The law limits to $25 million per calendar year the cumulative amount of all tax credits that the authority is permitted to approve in connection with qualified investments.

This bill amends the "New Jersey Angel Investor Tax Credit Act" to similarly allow a tax credit against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business. The bill provides that for the tax credit to be allowed, 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company must be transferred from the holding company to the New Jersey emerging technology business, and specifies that the transfer of funds must be accompanied by documentation which provides proof that the invested funds are transferred from the holding company to the emerging technology business in the same tax year or taxable year that the funds were received by the holding company.

In addition, the bill broadens the definition of a New Jersey emerging technology business under the "New Jersey Angel Investor Tax Credit Act" to include certain companies that conduct technology commercialization in this State in the field of carbon footprint reduction technology so that qualified investments in companies that conduct commercialization in that field (or in holding companies that make verified transfers to companies in that field) may be claimed as a tax credit. A "carbon footprint reduction technology" is defined by the bill as a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.

The bill also provides directions for the distribution of tax credits allowed in connection with qualified investments made by New Jersey S corporations. The bill permits tax credits due as a result of a qualified investment by a corporation that has made a valid election as a New Jersey S corporation under State law to be distributed to the individual shareholders of the S corporation according to the shareholders' proportional share of ownership in the S corporation. The bill provides that shareholders receiving a distributive credit may then claim those credits to reduce the shareholders' gross income tax liability.

The bill takes effect immediately, but applies retroactively to qualified investments made for tax years and taxable years beginning on or after January 1, 2012, other than qualified investments that are made in New Jersey emerging technology businesses, and in New Jersey emerging technology business holding companies that make verified transfers of funds to businesses, that conduct technology commercialization in this State in the field of carbon footprint reduction technology.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3631

STATE OF NEW JERSEY

DATED: OCTOBER 6, 2016

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 3631.

This bill revises the "New Jersey Angel Investor Tax Credit Act" to provide tax credits for qualified investments in New Jersey emerging technology business holding companies, to broaden the types of New Jersey emerging technology businesses that are eligible to receive qualified investments, and to provide directions for the distribution of tax credits allowed for qualified investments by New Jersey S corporations.

Under the "New Jersey Angel Investor Tax Credit Act," a tax credit is allowed against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business. The law provides that the amount of the tax credit is equal to 10 percent of the qualified investment made by the taxpayer, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer.

Currently, taxpayers seeking to claim the credit must apply to and receive approval for the allowance of a credit from the New Jersey Economic Development Authority. The law limits to $25 million per calendar year the cumulative amount of all tax credits that the authority is permitted to approve in connection with qualified investments.

This bill amends the "New Jersey Angel Investor Tax Credit Act" to similarly allow a tax credit against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business. The bill provides that for the tax credit to be allowed, 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company must be transferred from the holding company to the New Jersey emerging technology business, and specifies that the transfer of funds must be accompanied by documentation which provides proof that the invested funds are transferred from the holding company to the emerging technology business in the same tax year or taxable year that the funds were received by the holding company.

In addition, the bill broadens the definition of a New Jersey emerging technology business under the "New Jersey Angel Investor Tax Credit Act" to include certain companies that conduct technology commercialization in this State in the field of carbon footprint reduction technology so that qualified investments in companies that conduct commercialization in that field (or in holding companies that make verified transfers to companies in that field) may be claimed as a tax credit. A "carbon footprint reduction technology" is defined by the bill as a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.

The bill also provides directions for the distribution of tax credits allowed in connection with qualified investments made by New Jersey S corporations. The bill permits tax credits due as a result of a qualified investment by a corporation that has made a valid election as a New Jersey S corporation under State law to be distributed to the individual shareholders of the S corporation according to the shareholders' proportional share of ownership in the S corporation. The bill provides that shareholders receiving a distributive credit may then claim those credits to reduce the shareholders' gross income tax liability.

The bill takes effect immediately, but applies retroactively to qualified investments made for tax years and taxable years beginning on or after January 1, 2012, other than qualified investments that are made in New Jersey emerging technology businesses, and in New Jersey emerging technology business holding companies that make verified transfers of funds to businesses, that conduct technology commercialization in this State in the field of carbon footprint reduction technology.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3631

STATE OF NEW JERSEY

DATED: OCTOBER 27, 2016

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3631.

This bill revises the "New Jersey Angel Investor Tax Credit Act" to provide tax credits for qualified investments in New Jersey emerging technology business holding companies, to broaden the types of New Jersey emerging technology businesses that are eligible to receive qualified investments, and to provide directions for the distribution of tax credits allowed for qualified investments by New Jersey S corporations.

Under the "New Jersey Angel Investor Tax Credit Act," a tax credit is allowed against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business. The law provides that the amount of the tax credit is equal to 10 percent of the qualified investment made by the taxpayer, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer.

Currently, taxpayers seeking to claim the credit must apply to and receive approval for the allowance of a credit from the New Jersey Economic Development Authority. The law limits to $25 million per calendar year the cumulative amount of all tax credits that the authority is permitted to approve in connection with qualified investments.

This bill amends the "New Jersey Angel Investor Tax Credit Act" to similarly allow a tax credit against the corporation business tax and the gross income tax for qualified investments in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business. The bill provides that for the tax credit to be allowed, 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company must be transferred from the holding company to the New Jersey emerging technology business, and specifies that the transfer of funds must be accompanied by documentation which provides proof that the invested funds are transferred from the holding company to the emerging technology business in the same tax year or taxable year that the funds were received by the holding company.

In addition, the bill broadens the definition of a New Jersey emerging technology business under the "New Jersey Angel Investor

Tax Credit Act" to include certain companies that conduct technology commercialization in this State in the field of carbon footprint reduction technology so that qualified investments in companies that conduct commercialization in that field (or in holding companies that make verified transfers to companies in that field) may be claimed as a tax credit. A "carbon footprint reduction technology" is defined by the bill as a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.

The bill also provides directions for the distribution of tax credits allowed in connection with qualified investments made by New Jersey S corporations. The bill permits tax credits due as a result of a qualified investment by a corporation that has made a valid election as a New Jersey S corporation under State law to be distributed to the individual shareholders of the S corporation according to the shareholders' proportional share of ownership in the S corporation. The bill provides that shareholders receiving a distributive credit may then claim those credits to reduce the shareholders' gross income tax liability.

The bill takes effect immediately, but applies retroactively to qualified investments made for tax years and taxable years beginning on or after January 1, 2012, other than qualified investments that are made in New Jersey emerging technology businesses, and in New Jersey emerging technology business holding companies that make verified transfers of funds to businesses, that conduct technology commercialization in this State in the field of carbon footprint reduction technology.

As reported, this bill is identical to Senate Bill No. 158 (2R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot project the bill's net fiscal impact on State revenues.

The OLS notes that under current law, the Angel Investor Tax Credit Program has an annual calendar year cap of $25.0 million of tax credits. The New Jersey Economic Development Authority (EDA) had awarded only $5.1 million in tax credits through the program for 2015. As the program has yet to utilize the available cap amount, the OLS anticipates the expanded eligibility under the bill to absorb more of the available cap amount, which will largely depend on the number of newly qualified businesses and the behavior of investors.

LEGISLATIVE FISCAL ESTIMATE

ASSEMBLY, No. 3631

STATE OF NEW JERSEY
217th LEGISLATURE

DATED: OCTOBER 28, 2016

SUMMARY

Synopsis: Permits holding companies of eligible New Jersey emerging technology companies to receive investments under "New Jersey Angel Investor Tax Credit Act."

Type of Impact: Unknown net effect of three countervailing impacts: 1) indeterminate revenue loss to the State General Fund and Property Tax Relief Fund from expanded eligibility under existing program cap; 2) indeterminate revenue increase to the State General Fund, Property Tax Relief Fund from receipts catalyzed by credit-induced economic activity; 3) recurring opportunity costs to the State from granting credits.

Agencies Affected: Department of the Treasury.
New Jersey Economic Development Authority.

Office of Legislative Services Estimate

Fiscal Impact	
Direct State Revenue Loss	Minimal, Indeterminate
State Opportunity Cost	Indeterminate
Indirect State Revenue Gain	Indeterminate

- The Office of Legislative Services (OLS) can project neither the direction nor the magnitude of the bill's net fiscal impact on State revenues.

- The OLS notes that under the current law, the Angel Investor Tax Credit Program has an existing cap of $25.0 million. As the program has yet to utilize all of the available cap space, the OLS anticipates the expanded eligibility under the bill to absorb more of the available cap space. However, the OLS is unable to determine exactly how much cap space the bill would absorb.

- The bill is unlikely to propel the program to its cap considering, as recently as CY 2015, the New Jersey Economic Development Authority (EDA) had awarded only $5.1 million in tax credits through the program for that year. The amount of cap space absorbed by this bill will largely depend on the number of newly qualified businesses and the behavior of investors.

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– OLS –

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BILL DESCRIPTION

Assembly Bill No. 3631 of 2016 expands eligibility for tax credits under the "New Jersey Angel Investor Tax Credit Act" to include investments in the holding company of a qualified New Jersey emerging technology business and to include carbon footprint reduction technology as a research field that a company can engage in to be deemed a New Jersey emerging technology business under the act. Under the program, the State annually awards up to $25 million in tax credits to taxpayers who make certain investments in New Jersey emerging technology businesses. These credits may be applied against the New Jersey gross income or corporate business taxes.

The bill maintains all existing provisions regarding qualified investments, but in addition expands the tax credit to include: direct and indirect investments in a holding company which owns and transfers the investment to a qualified business; carbon footprint reduction technology, which is used by commercial, institutional, and industrial sectors to increase energy efficiency, develop and deliver renewable or non-carbon-emitting energy technologies, develop innovative carbon emissions abatement with significant carbon emissions reduction potential, or promote measurable electricity end-use energy efficiency; and to establish that tax credits due as a result of a qualified business investment by a New Jersey S corporation are to be distributed to the individual owners of the S corporation according to their proportional share of ownership in the S corporation. Currently, the program includes certain emerging technology businesses, such as advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, and renewable energy technology. The expanded eligibility is to be retroactive to January 1, 2012, for all research fields except carbon footprint reduction technology, which is not retroactively eligible for tax credits under the bill.

To qualify for a tax credit of up to 10 percent (capped at $500,000 per investment) of the angel investors' qualified investment in New Jersey emerging technology companies, the companies being invested in must have fewer than 225 employees, and at least 75 percent of those positions must be located in New Jersey. An individual tax payer with excess credit will receive a refund from the State. Further, a corporate taxpayer can choose to either receive a refund of the excess credit or carry over the excess credit for 15 years.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS can determine neither the direction nor the net fiscal impact of the bill on State revenues from the expansion of eligibility under the Angel Investor Tax Credit Program. The OLS notes that under current law, the Angel Investor Tax Credit Program has an existing cap of $25.0 million, which has not yet been fully utilized. The OLS anticipates that expanding eligibility under the bill will utilize more of the available cap space. However, the OLS is unable to determine exactly how much cap space the bill will absorb.

The OLS is unable to pinpoint the bill's exact direct revenue loss. Additionally, it cannot calculate its opportunity cost or its offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on those angel investors who would invest in newly eligible businesses and would earn tax credits.

In general, the State net fiscal impact is calculated by adding the direct revenue loss from granting additional tax credits and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain from granting the tax credits.

Direct Fiscal Impact: The bill is expected to result in a direct revenue loss to the State General Fund and Property Tax Relief Fund from expanding eligibility under the existing Angel Investor Tax Credit Program; however, the OLS is unable to determine how much existing cap space the bill would absorb. Additionally, the bill's expanded eligibility would be retroactive to January 1, 2012, for all research fields except carbon footprint reduction technology. The OLS is also unable to determine the impact prior investments, now eligible as a result of this bill, would have on the available cap space for prior years. It is unlikely that the bill would propel the program to its cap considering current program statistics.

After the Angel Investor Tax Credit Act was enacted in January 2013, the program did not begin accepting applications until July 1, 2013. For CY 2013, the EDA awarded $1.4 million in tax credits for 28 investments in five different companies. The number of tax credits awarded increased substantially in CY 2014, the program's first full year, to $6.0 million for 181 investments in 22 different companies. Further, in CY 2015, the amount in tax credits awarded fell to $5.1 million; however, the number of investments increased to 213 in 28 different companies.

To reach the $25.0 million cap in a given year, at least $250.0 million would have to be invested annually in New Jersey-based emerging technology, biotechnology, and the newly eligible carbon footprint reduction technology businesses through the Angel Investor Tax Credit Program. (The tax credits are capped at 10 percent of the angel investor's investment.) Additionally, based on the program statistics provided by the EDA, the average credit awarded in CY 2015 was $24,008.55. In order for the cap to be reached based on the average credit awarded in CY 2015 ($24,008.55), the EDA would have to award tax credits for 1,041 investments. Considering that 213 investments were awarded tax credits in CY 2015, and as a result of these tax credits, 20.4 percent of the cap was utilized, the bill would have to generate approximately 828 newly eligible investments to reach the cap. Further, over the past three years, out of the 422 investments awarded tax credits, only one investment reached the credit limit of $500,000 per investment and 29 investments were awarded at least $100,000 or more in tax credits.

Indirect Fiscal Impact: The bill may generate an indeterminate indirect revenue gain to the State that may partially offset the direct State revenue loss from and State opportunity cost of providing the tax credits. The OLS, however, does not have the capacity to quantify the bill's secondary effects, since it cannot estimate the volume of investments that the tax credit will directly spur and their ensuing indirect effect on State government tax receipts.

In general, any indirect revenue gain will result from the economic ramifications of tax credit-induced behavior changes. Once New Jerseyans will have income they would not have had absent the tax credit, at least a portion of that additional income will newly circulate in New Jersey's economy. As these ramifications will flow through the economy, they will affect State revenue collections. Indirect fiscal effects encompass secondary tax collections from credit-induced investments (such as enhanced gross income tax collections from employees whose positions are retained in New Jersey because of the tax credit) and credit-induced spending by all impacted firms and their employees (such as employees whose positions are retained in New Jersey because of the tax credit spending their income on taxable goods and services).

Nonetheless, the OLS points out that not all of the economic and fiscal feedback effects of these investments benefitting from the credit may represent a gain to the State. Only the ripple effects caused by credit-induced purchases should enter the fiscal estimate, while those from investments that would also be made absent the credit must be excluded. The exclusion of investments that will happen with or without the credit takes into account that the tax incentive has no economic impact whenever it benefits taxpayers who would invest in a New Jersey-based emerging technology business anyway. In such a scenario, the State will only incur the direct cost of the subsidy, while the investment's secondary effects cannot be attributed to the bill.

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

Opportunity Costs: Opportunity costs capture the economic and fiscal benefits the economy and the State forego as spending is redirected from one economic activity to another. Given the State's finite resources and its balanced budget requirement, the decision to subsidize certain investments in New Jersey emerging technology businesses will invariably divert resources from policy alternatives to which they would have been applied absent the tax credit. Therefore, if, instead of this legislation, the State invested in road construction, for example, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on subsidizing taxpayers' capital investments in transit hubs and that of the foregone road construction investment.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Jordan DiGiovanni* *Assistant Fiscal Analyst*
Approved:	*Frank W. Haines III* *Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Christie Takes Action On Pending Legislation

Monday, May 1, 2017 Tags: Addiction Taskforce

Trenton, NJ - Governor Chris Christie signed into law today several bills to empower New Jersey's military members and veterans, including a bipartisan initiative to create the "Veterans Diversion Program."

The new law, S-307/A-4362 (Van Drew, Allen/Andrzejczak, Mazzeo, Land, Tucker, Benson, Bramnick), requires the New Jersey Department of Military and Veterans Affairs to collaborate with its federal counterpart and develop a statewide program providing appropriate case management and mental health services to eligible military service members who have committed nonviolent offenses. The department will publicize a directory of existing federal and State case management and mental health program locations, which will serve as points of entry to facilitate support and services.

"It is impossible to imagine the courage, sacrifices and experiences of the men and women who put their lives on the line to protect the American people and our freedom," Governor Christie said. "This critical legislation gives back by supporting New Jersey's military service members when they need it most and when their lives depend on it. This new program will strengthen families and communities, by empowering veterans with individualized, holistic care and steering them clear of the criminal justice system."

Other military and veterans' bills signed by Governor Christie today require the Department of Military and Veterans Affairs (DMAVA) to develop an informational website for Gold Star families; require DMAVA to notify local county veterans' affairs offices and State veterans service offices of the death of a New Jersey or other service member whose surviving beneficiary resides in the State in order to inform the beneficiaries of federal and state benefits and creates a designated Gold Star family member liaison for each county veterans' office; and, retains eligibility for New Jersey National Guard members or reserve components of the U.S. Armed Forces called to active federal military service who met maximum age requirements at the closing date of civil service examinations.

Governor Christie also took action on the following bills:

BILL SIGNINGS:

S-158/A-3631 (Madden, Cruz-Perez/Quijano, Schaer, Vainieri Huttle, Zwicker, Mukherji, Danielsen) - Permits holding companies of eligible New Jersey emerging technology companies to receive investments under "New Jersey Angel Investor Tax Credit Act"

S-227/A-963 (Holzapfel, Allen/Wolfe, McGuckin, Dancer) - Requires DOT, NJTA, and SJTA to use only native vegetation for landscaping, land management, reforestation, or habitat restoration

S-518/A-4452 (Beck/Downey, Houghtaling, Benson, Mukherji, Vainieri Huttle) - Requires sanitation vehicles display flashing lights in certain circumstances and imposes conditions on drivers approaching sanitation vehicles displaying flashing lights; designated as "Michael Massey's Law"

S-724/A-3604 (Cruz-Perez, Allen/Eustace, Wolfe, Mukherji) - Establishes "Integrated Roadside Vegetation Management Program"

S-792/A-1271 (Sarlo/ Caride, Schaer, Pintor Marin) - Permits newly created regional school districts or enlarging regional school districts to determine apportionment methodology for their boards of education on basis other than population

S-913/A-3404 (Codey, Vitale/Burzichelli, Coughlin, Schaer, Singleton) - Permits hospitals to establish system for making performance-based incentive payments to physicians

S-1059/A-4462 (Diegnan/Lagana, Vainieri Huttle, Mukherji) - Permits amusement games license to be issued to holder of alcoholic beverage special concessionaire permit at certain airports; allows licensees to offer electronic amusements under certain circumstances

S-1398/A-1447 (Weinberg, Gill/Lampitt, Spencer, Vainieri Huttle, McKeon, Mukherji, Holley, Caride, Downey) - Expands infertility coverage under certain health insurance plans

S-1404/A-4423 (Weinberg/Johnson, Benson, Mukherji, Handlin) - Requires governmental affairs agents to disclose on notice of representation form compensation amount received from State or local government entities; requires notice to be posted on Internet site of Election Law Enforcement Commission

S-1475/A-3304 (Ruiz, Vitale/Vainieri Huttle, Mukherji, Holley, Jimenez) - Establishes three-year Medicaid home visitation demonstration project

S-1634/A-3991 (Turner, Stack/Muoio, Wimberly, Johnson, Pintor Marin, Mukherji) - Requires housing authority to advertise when applications are being accepted for housing assistance waiting lists online

S-1761/A-4473 (Rice, Cunningham, Pou/Johnson, Wimberly, Pintor Marin) - Directs Community College Consortium for Workforce and Economic Development to promote basic skills training through organizations dedicated to the economic empowerment of specific segments of society, such as the African American Chamber of Commerce

S-1825/A-3432 (Sarlo, Cruz-Perez, Gordon/Greenwald, Lampitt, Benson, Caride, Chiaravalloti) - Establishes task force to study and make recommendations concerning mobility and support services needs of NJ adults with autism spectrum disorder

S-1856/A-3846 (Pou, Allen/Phoebus, Tucker, Space) - Provides for retained eligibility for members of NJ National Guard or reserve component of US Armed Forces called to active federal military service who met maximum age requirement at closing date of civil service examination

S-2286/A-3083 (Weinberg, Gordon/Vainieri Huttle, Eustace, Johnson) - Establishes Mike Adler Aphasia Task Force to assess needs of persons with aphasia, and their families, and ensure adequate provision of support services and information thereto

S-2414/A-4056 (Scutari/Jimenez, Eustace, Giblin, McKnight) - Requires "Massage and Bodywork Therapist Licensing Act" to require certain class study and examination requirements

S-2856/A-4402 (Beach, Madden/Greenwald, Andrzejczak, Johnson, Rible, Jones, Land, Houghtaling, Benson) - Requires DMVA to notify county veterans' affairs office of death of certain military service members; requires office to have Gold Star liaisons

S-2857/A-4403 (Beach, Madden/Greenwald, Rible, Land, Johnson, Mazzeo, Andrzejczak, Houghtaling, Benson) - Requires Adjutant General to create informational webpage for Gold Star families

S-2868/A-4501 (Pou, Sarlo/Sumter, Wimberly) - Increases value of Economic Redevelopment and Growth Grant program residential tax credits to $823 million; restricts $105 million of tax credits to qualified residential projects and mixed use parking projects

S-3015/A-4623 (Rice, Ruiz/Sumter, Oliver, Schaer, Pintor Marin) - Requires study of program allowing community service in lieu of paying motor vehicle surcharges

SJR-49/AJR-106 (Ruiz, Oroho/Phoebus, Pintor Marin, Space, McKnight, Schepisi) - Designates third week in September of each year as Go Gold for Kids with Cancer Awareness Week"

SJR-75/AJR- 122 (Rice, Codey/Oliver, Giblin, Chiaravalloti, Sumter, Quijano, McKnight) - Establishes "Disparity in State Procurement Study Commission"

BILLS VETOED:

S-596/A-3422 (Cunningham, Greenstein, Sweeney/Benson, Mukherji, Muoio, Holley, Sumter, Downey, Lampitt, Oliver, Danielsen, Wimberly) - CONDITIONAL - Establishes compensation program for law enforcement officers and certain other employees injured while performing official duties

S-690/A-2921 **(Gordon, Beach, Eustace, Houghtaling, Pinkin, Mazzeo) - CONDITIONAL -** Increases flexibility, clarity, and available tools of optional municipal consolidation process

SCS for S-895/ACS **for A-2182 (Lesniak, Beck, Cunningham/Sumter, Holley, Oliver, Jones, Wimberly) - CONDITIONAL** - "Earn Your Way Out Act"; requires DOC to develop inmate reentry plan; establishes administrative parole release for certain inmates; requires study and report by DOC on fiscal impact

S-956/A-2202 **(Gordon, Bateman/Eustace, Zwicker, O'Scanlon, Downey, Wisniewski, Pinkin) - CONDITIONAL** - Authorizes special emergency appropriations for the payment of certain expenses incurred by municipalities to implement a municipal consolidation

S-2844/A-4425 **(Vitale, Codey/Vainieri Huttle, Muoio, Eustace, Space, Benson) - CONDITIONAL** - Eliminates certificate of need requirement for inpatient hospital beds for treatment of psychiatric and substance use disorder dual diagnosis

S-3041/ACS **for A-2338 (Lesniak/Benson, Vainieri Huttle, Eustace, Gusciora, Mukherji, Jimenez) - CONDITIONAL** - Revises "Pet Purchase Protection Act" to establish new requirements for pet dealers and pet shops

S-3048/A-4520 **(Weinberg, Turner, Greenstein/McKeon, Singleton, Moriarty, Quijano, Johnson, Benson) - CONDITIONAL** - Requires candidates for President and Vice-President of United States to disclose federal income tax returns to appear on ballot; prohibits Electoral College electors from voting for candidates who fail to file income tax returns

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