34:1B-242

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 149

NJSA: 34:1B-242 (Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses)

BILL NO: S3033 (Substituted for A4306)

SPONSOR(S) Lesniak and others

DATE INTRODUCED: September 19, 2011

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

SENATE: Economic Growth
Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 15, 2011

SENATE: December 15, 2011

DATE OF APPROVAL: January 5, 2012

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Fifth reprint enacted)

S3033

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

COMMITTEE STATEMENT: **ASSEMBLY**: Yes Commerce
Appropriations

SENATE: Yes Economic
Budget

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(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: Yes

LEGISLATIVE FISCAL ESTIMATE: Yes 10-5-11
12-13-11

A4306

SPONSOR'S STATEMENT: (Begins on page 24 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes Commerce
Appropriations

SENATE: No

(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

LAW/KR

Title 34.
Part XIII (New)
Grow New Jersey
Assistance Act.
§§1-9 –
C.34:1B-242 to
34:1B-250
§15 - Repealer

P.L.2011, CHAPTER 149, ***approved January 5, 2012***
Senate, No. 3033 ***(Fifth Reprint)***

AN ACT providing for the availability of tax credits to certain businesses [4], authorizing a transfer of certain real property,[4] and supplementing Title 34 of the Revised Statutes [1]**[**and**]**,[1] amending [1]**[**P.L.2007, c.346**]** various parts of the statutory law, and repealing section 6 of P.L.1996, c.25[1].

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

1. (New section) Sections 1 through [4]**[**8**]** 9[4] of this act shall be known and may be cited as the "Grow New Jersey Assistance Act."

2. (New section) As used in this act:

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-209).

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 September 19, 2011.
[2]Senate SBA committee amendments adopted September 22, 2011.
[3]Senate floor amendments adopted September 26, 2011.
[4]Assembly ACE committee amendments adopted November 21, 2011.
[5]Assembly AAP committee amendments adopted December 1, 2011.

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

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership, an S corporation, or a limited liability corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

"Capital investment" in a qualified business facility means expenses incurred after application, but before the end of the tenth year after, the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) for: a. site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property; and b. obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property.

[1]"Eligible position" means a full-time position retained or [3]**[**hired**]** created[3] by a business in this State for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes.[1]

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

[3]"New full-time job" means an eligible position created by the business at the qualified business facility that did not previously exist in this State. For the purposes of determining a number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.[3]

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

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

"Program" means the "Grow New Jersey Assistance Program" established pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment located within a qualified incentive area, used in connection with the operation of a business.

"Qualified incentive area" means an area designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban) [2], or any urban, regional, or town designated center under the State Development and Redevelopment Plan[2]; an area zoned for development pursuant to a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L.1968, c.404 (C.13:17-21); any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L.1971, c.137 (C.5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L.1968, c.404 (C.13:17-4); a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.); an area designated for development, redevelopment, or economic growth within the Highlands Region; federally owned land approved for closure under any federal Base Closure and Realignment Commission action; or any property consisting of a vacant commercial building having over 400,000 square feet of office [1], laboratory, or industrial[1] space available for occupancy for a period of over one year or is negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

[1]"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered [3]**[**the**]**[3] eligible positions of the business.[1]

3. (New section) a. The Grow New Jersey Assistance Program is hereby established as a program under the jurisdiction of the New Jersey Economic Development Authority and shall be administered by the authority. The purpose of the program is to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State. To implement this purpose, and to the extent that funding for the program is available, the program may provide tax credits to eligible businesses. To be eligible for any tax credits pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), a business's chief executive officer or equivalent officer shall demonstrate to the authority, at the time of application, that: (1) the business will make, acquire, or lease a capital investment of at least $20,000,000 at a qualified business facility at which it will [3](a)[3] employ at least 100 full-time employees in retained full-time jobs [3], or (b) create at least 100 new full-time jobs in an industry identified by the authority as desirable for the State to maintain or attract[3]; [3]**[**and**]**[3] (2) the capital investment resultant from the award of tax credits and the resultant retention and creation of eligible positions will yield a net positive benefit to the State [3]; and [5], except as provided in subsection d. of this section,[5] (3) the award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program[3].

b. [3]**[**In**]** To assist the authority in[3] determining whether a proposed capital investment will yield a net positive benefit, the business's chief executive officer, or equivalent officer, shall submit a certification to the authority indicating that [3]**[**the**]** any[3] existing jobs are at risk of leaving the State [3], that any projected creation of new full-time jobs would not occur but for the provision of tax credits under the program,[3] and that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the authority and that the representations contained therein are accurate. In the event that this certification by the business's chief executive officer, or equivalent officer, is found to be willfully false, the authority may revoke any award of tax credits in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to. When considering an application involving intra-State job transfers, the authority shall require the business to submit the following information as part of its application: a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the authority, the authority shall independently verify and confirm, by way of making a factual finding by separate vote of the authority's board, the business's assertion that the jobs are actually at risk of leaving the State, before a business may be awarded any tax credits under this section.

[1]c. A project that consists solely of point-of-final-purchase retail facilities shall not be eligible for a grant of tax credits. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this section, catalog distribution centers shall not be considered point-of-final-purchase retail facilities.[1]

[5]d. The authority may determine as eligible for tax credits under the program any business that is required to respond to a request for proposals and to fulfill a contract with the federal government although the business's chief executive officer or equivalent officer has not demonstrated to the authority that the award of tax credits will be a material factor in the business’s decision to retain at least 100 full-time jobs, as otherwise required by paragraph 3 of subsection a. of this section. The authority may, in its discretion, consider the economic benefit of the retained jobs servicing the contract in conducting a net benefit analysis required by paragraph 2 of subsection a. of this section. For the purposes of this subsection, "retained jobs" includes jobs that are at risk of being eliminated. Applications to the authority for eligibility under the program pursuant to the criteria set forth in this subsection shall be completed by March 31, 2012. Submission of a proposal to the federal government prior to authority approval shall not disqualify a business from the program.[5]

4. (New section) The authority shall require an eligible business to enter an agreement prior to the issuance of tax credits. The agreement shall include, but shall not be limited to, the following:

a. A detailed description of the proposed project which will result in job creation or retention, and the number of full-time employees.

b. The term of the tax credits, and the first year for which the tax credits may be claimed.

c. Personnel information that will enable the authority to administer the program.

d. A requirement that the applicant maintain the project at a location in New Jersey for at least 1.5 times the number of years of the term of the tax credits, with at least the number of full-time employees as required by section 6 of P.L.   , c.   (C.   ) (pending before the Legislature as this bill) and a provision to permit the authority to recapture all or part of any tax credit awarded, at its discretion, if the business does not remain at the site for the required term.

e. A method for the business to report annually to the authority the number of full-time employees for which the tax credits are to be made.

f. A provision permitting an audit of the payroll records of the business from time to time, as the authority deems necessary.

g. A provision which permits the authority to amend the agreement.

h. A provision establishing the conditions under which the agreement may be terminated and awarded tax credits are recaptured, in whole or in part, by the authority at its discretion.

5. (New section) a. The value of each tax credit for an eligible business shall be equal to $5,000 per year for a period of ten years for each new or retained full-time job [3]**[**certified**]** determined[3] by the authority pursuant to section 3 of P.L.   , c.   (C.   ) (pending before the Legislature as this bill) to be located at the qualified business facility, subject to the provisions of this section.

b. In addition to any grant of tax credits determined pursuant to subsection a. of this section, a bonus award of up to an additional $3,000 per job of the amount of the original tax credits may be made to any eligible business as determined by the authority. In making a bonus award to an eligible business, the authority shall consider the following factors, such that whether the business: (1) is an industry identified by the authority as desirable for the State to maintain [3]or attract[3]; (2) [2]locates or[2] relocates to a location within a qualified incentive area adjacent to [1], or within walking distance or short-distance-shuttle service of,[1] a public transit facility, as determined by the authority [1],[1] by regulation; (3) creates jobs using full-time employees in eligible positions whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the average full-time salary in this State; or (4) is locating to a project site that is or has been negatively impacted by the approval of a “qualified business facility,” as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

[1]c. Notwithstanding the provisions of subsections a. and b. of this section, (1) the amount of tax credits available to be applied by the business annually shall not exceed [4]the lesser of[4] one tenth of the capital investment certified by the authority pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill) [4]or $4,000,000[4], and (2) the number of new full-time jobs [3]for which a business receives a tax credit[3] shall not exceed the number of retained full-time jobs for which a business receives a tax credit [3], unless the business qualifies by creating at least 100 new full-time jobs in an industry identified by the authority as desirable for the State to maintain or attract[3]. [3]**[**For the purposes of this section, a "new full-time job" means an eligible position created by the business at the qualified business facility that did not previously exist in this State.**]**[3] [1]

6. (New section) a. (1) The value of all credits approved by the authority pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed $200,000,000, except that the value of all credits approved by the authority pursuant to this section may exceed $200,000,000 if the board of the authority determines the credits to be reasonable, justifiable, and appropriate; provided, however, the combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq. and P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed $1,500,000,000.

(2) A business, including any affiliate of the business or any business that is a tenant within any qualified business facility, shall make or acquire capital investments totaling not less than $20,000,000 in a qualified business facility, at which the business shall employ not fewer than 100 full-time employees to be eligible for a credit pursuant to P.L. , c. (pending before the Legislature as this bill). A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be.

(3) A business shall not be allowed tax credits pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) [3]or P.L.1996, c.26 (C.34:1B-124 et seq.)[3] relating to the same capital and employees that qualify the business for tax credits pursuant to P.L. , c. (pending before the Legislature as this bill). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall not qualify for a tax credit under this section, based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the "Urban Transit Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.).

(4) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(5) The capital investment of the owner of a qualified business facility is that percentage of the capital investment made or acquired by the owner of the building that the percentage of net leasable area of the qualified business facility not leased to tenants is of the total net leasable area of the qualified business facility. [1]For a business that is a tenant, the amount of capital investment in a facility that a leased area represents shall be equal to that percentage of the owner's total capital investment in the facility that the percentage of net leasable area leased by the tenant is of the total net leasable area of the qualified business facility. Capital investments made by a tenant shall be deemed to be included in the calculation of the capital investment made or acquired by the owner, but only to the extent necessary to meet the owner's minimum capital investment of $20,000,000. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of [2]**[**$50,000,000**]** $20,000,000[2] shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.[1]

b. A business shall apply for the tax credit prior to July 1, 2014, and shall submit its documentation indicating that it has met the capital investment and employment specified in the project agreement for certification of its credit amount no later than July 28, 2017.

c. (1) The amount of credit allowed shall not exceed the capital investment made by the business or the capital investment represented by the business' leased area, as certified by the authority pursuant to subsection b. of this section, as having met the investment capital and employment qualifications, subject to any reduction or disqualification as provided by subsection d. of this section as determined by annual review by the authority. In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

The credit amount for any tax period ending after July 28, 2017, during which the documentation of a business' credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it.

The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the value of all credits approved by the authority against tax liabilities pursuant to P.L. , c. (pending before the Legislature as this bill), in any fiscal year shall not exceed $150,000,000 and the combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed $1,500,000,000.

The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business' total lease payments for occupancy of the qualified business facility for the tax period.

(2) A business that is a partnership shall not be allowed a credit under this section directly, but the amount of credit of an owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or with the owner's tax period, or that proportion that is allocated by an agreement, if any, among the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by such time and accompanied by such additional information as the director may require.

(3) The amount of credit allowed may be applied against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

d. (1) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval under section 3 of P.L. , c. (pending before the Legislature as this bill), then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business' Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(2) If, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area drops below 100 or 80 percent of the number of new and retained full-time jobs specified in the project agreement, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 100.

(3) (a) If the qualified business facility is sold in whole or in part during the 10-year eligibility period the new owner shall not acquire the capital investment of the seller and the seller shall

forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided however that any credits of tenants shall remain unaffected.

(b) If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period the new tenant shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods.

7. (New section) A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the chief executive officer of the authority for a tax credit transfer certificate, covering one or more years, in lieu of the business being allowed any amount of the credit against the tax liability of the business. The tax credit transfer certificate, upon receipt thereof by the business from the director and the chief executive officer of the authority, may be sold or assigned, in full or in part, to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5. The certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the business that originally applied for and was allowed the credit.

8. (New section) a. The chief executive officer of the authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, 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 P.L. , c. (C.) (pending before the Legislature as this bill), including but not limited to: examples of and the determination of capital investment; the enumeration of qualified incentive areas; specific delineation of these incentive areas; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements; the promulgation of procedures and forms necessary to apply for a tax credit, including the enumeration of the certification procedures and allocation of tax credits for different phases of a qualified business facility; and provisions for tax credit applicants to be charged an initial application fee, and ongoing

service fees, to cover the administrative costs related to the tax credit.

b. Through regulation, the authority shall establish standards by which qualified business facilities shall be constructed or renovated based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

[4]9. (New section) a. Notwithstanding the provisions of P.L.1962, c. 220 (C.52:31-1.1 et seq.), P.L. 2011, c.85, or any other law or regulation to the contrary, and without the requirement for the approval by any other party or entity, the State Treasurer is hereby authorized to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey's right, title and interest in the land and improvements located in the City of Newark, County of Essex, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark and are designated as Block 125, Lots 23, 26 and 115, Block 126.01, Lot 21, such portion of Block 17, Lot 1, which was designated for commercial development pursuant to the sublease, and Block 17, Lots 20 and 21. Such conveyances shall be on such terms and conditions, and for such consideration, as shall be determined by the State Treasurer in the State Treasurer's sole discretion. The proceeds from any such sales and conveyances shall be deposited and applied as provided by law. In the event that the identification of any of the property contained in this section by block and lot number is inaccurate, the State Treasurer is authorized to convey such blocks and lots which are subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center as represent the actual parcels to be conveyed.

b. The State Treasurer is hereby authorized to enter into any agreements, and to amend any existing agreements, required to effectuate this sale and conveyance to the New Jersey Performing Arts Center and any such agreements and amendments shall not require the approval of any other party or entity, notwithstanding any other law or regulation to the contrary.

c. The New Jersey Economic Development Authority is hereby authorized to sell and convey all or any portion of its right, title, and interest in the property described in subsection a. of this section to the New Jersey Performing Arts Center, in one or more series of transactions on such terms and conditions, and for such consideration, as shall be determined by the authority in its sole discretion and to enter into any agreements and amend any existing agreements required to effectuate this sale and conveyance. Any such sale or conveyance shall not require the approval of any other party or entity, notwithstanding any other law or regulation to the contrary.[4]

[4][9.] 10.[4] Section 2 of P.L.2007, c.346 (C.34:1B-208) is amended to read as follows:

2. As used in this act:

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-209).

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

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership, an S corporation, or a limited liability corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

"Capital investment" in a qualified business facility means expenses incurred after, but before the end of the eighth year after, the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a. the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility or improvement to real property; and b. obtaining and installing furnishings and machinery, apparatus or equipment for the operation of a business in a building, structure, facility or improvement to real property.

"Eligible municipality" means a municipality: (1) which qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or which was continued to be a qualified municipality thereunder pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Mixed use project" means a project comprising both a qualified business facility and a qualified residential project.

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

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment located within a designated urban transit hub in an eligible municipality, used in connection with the operation of a business.

"Qualified residential project" shall have the meaning ascribed to that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).

"Residential unit" means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

"Urban transit hub" means:

a. [5](1)[5] property located within a [4]**[**1/2**]** [5]**[**one[4]**]** 1/2[5] mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority

Trans-Hudson Corporation rail station platform area [4]**[**, including all light rail stations**]**[4], [5]including all light rail stations,[5] and

[5](2)[5] property located within a one mile radius of the mid point of the platform area of [4]**[**such**]**[4] [5]such[5] a [5]**[**[4]light[4]**]**[5] rail station if the property is in a qualified municipality under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et seq.) [5]or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the federal Department of Housing and Urban Development, and

(3) the site of the campus of an acute care medical facility located within a one mile radius of the mid point of the platform area of such a rail station, and

(4) the site of a closed hospital located within a one mile radius of the mid point of the platform area of such a rail station[5];

b. property located within a 1/2 mile radius surrounding the mid point of [5]**[**[4](1) any light rail station platform area other than a station that is in a qualified municipality under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et seq.) and (2)[4]**]**[5] one of up to two underground light rail stations' platform areas that are most proximate to an interstate rail station;

c. property adjacent to, or connected by rail spur to, a freight rail line if the business utilizes that freight line at any rail spur located adjacent to or within a one mile radius surrounding the entrance to the property for loading and unloading freight cars on trains;

which property shall have been specifically delineated by the authority pursuant to subsection e. of section 3 of P.L.2007, c.346 (C.34:1B-209).

A property which is partially included within the radius shall only be considered part of the urban transit hub if over 50 percent of its land area falls within the radius.

"Rail station" shall not include any rail station located at an international airport, except that any property within a 1/2 mile radius surrounding the mid point of a New Jersey Transit Corporation rail station platform area at an international airport upon which a qualified business facility is constructed or renovated commencing after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be deemed an urban transit hub, excluding any property owned or controlled by the Port Authority of New York and New Jersey.

(cf: P.L.2011, c.89, s.1)

[4]**[**[1]10.**]** 11.[4] Section 3 of P.L.2007, c.346 (C.34:1B-209) is amended to read as follows:

3. a. (1) A business, upon application to and approval from the authority, shall be allowed a credit of 100 percent of its capital

investment, made after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility within an eligible municipality, pursuant to the restrictions and requirements of this section. To be eligible for any tax credits authorized under this section, a business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality. The value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall not exceed $1,500,000,000.

(2) A business, other than a tenant eligible pursuant to paragraph (3) of this subsection, shall make or acquire capital investments totaling not less than $50,000,000 in a qualified business facility, at which the business shall employ not fewer than 250 full-time employees to be eligible for a credit under this section. A business that acquires a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller.

(3) A business that is a tenant in a qualified business facility, the owner of which has made or acquired capital investments in the facility totaling not less than $50,000,000, shall occupy a leased area of the qualified business facility that represents at least $17,500,000 of the capital investment in the facility at which the tenant business and up to two other tenants in the qualified business facility shall employ not fewer than 250 full-time employees in the aggregate to be eligible for a credit under this section. The amount of capital investment in a facility that a leased area represents shall be equal to that percentage of the owner's total capital investment in the facility that the percentage of net leasable area leased by the tenant is of the total net leasable area of the qualified business facility. Capital investments made by a tenant shall be deemed to be included in the calculation of the capital investment made or acquired by the owner, but only to the extent necessary to meet the owner's minimum capital investment of $50,000,000. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of $50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

(4) A business shall not be allowed tax credits under this section if the business participates in a business employment incentive grant relating to the same capital and employees that qualify the business for this credit, or if the business receives assistance pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall not qualify for a tax credit under this section,

based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-237 et seq.).

(5) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(6) The capital investment of the owner of a qualified business facility is that percentage of the capital investment made or acquired by the owner of the building that the percentage of net leasable area of the qualified business facility not leased to tenants is of the total net leasable area of the qualified business facility.

(7) A business shall be allowed a tax credit of 100 percent of its capital investment, made after the effective date of P.L.2011, c.89 but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility that is part of a mixed use project, provided that (a) the qualified business facility represents at least $17,500,000 of the total capital investment in the mixed use project, (b) the business employs not fewer than 250 full-time employees in the qualified business facility, and (c) the total capital investment in the mixed use project of which the qualified business facility is a part is not less than $50,000,000. The allowance of credits under this paragraph shall be subject to the restrictions and requirements, to the extent that those are not inconsistent with the provisions of this paragraph, set forth in paragraphs (1) through (6) of this subsection, including but not limited to the requirement that the business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality.

(8) In determining whether a proposed capital investment will yield a net positive benefit, the authority shall not consider the transfer of an existing job from one location in the State to another location in the State as the creation of a new job, unless (a) the business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality whether in-State or out-of-State, or (b) the business's chief executive officer, or equivalent officer, submits a certification to the authority indicating that the existing jobs are at risk of leaving the State and that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the authority and that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility. In the event that this certification by the business's chief executive officer, or equivalent officer, is found to

be willfully false, the authority may revoke any award of tax credits in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to. When considering an application involving intra-State job transfers, the authority shall require the company to submit the following information as part of its application: a full economic analysis of all locations under consideration by the company; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the authority, the authority shall independently verify and confirm, by way of making a factual finding by separate vote of the authority's board, the business's assertion that the jobs are actually at risk of leaving the State, before a business may be awarded any tax credits under this section.

b. A business shall apply for the credit within five years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and shall submit its documentation for approval of its credit amount within eight years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.).

c. (1) The amount of credit allowed shall, except as otherwise provided, be equal to the capital investment made by the business, or the capital investment represented by the business' leased area, or area owned by the business as a condominium, and shall be taken over a 10-year period, at the rate of one-tenth of the total amount of the business' credit for each tax accounting or privilege period of the business, beginning with the tax period in which the business is first 【approved】 <u>certified</u> by the authority as having met the investment capital and employment qualifications, subject to any reduction or disqualification as provided by subsection d. of this section as determined by annual review by the authority. In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

The credit amount for any tax period ending after the date eight years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) during which the documentation of a business' credit amount remains 【unapproved】 <u>uncertified</u> shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it.

The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the value of all credits approved by the authority against tax liabilities pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year shall not exceed $150,000,000.

The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business' total lease payments for occupancy of the qualified business facility for the tax period.

(2) A business that is a partnership shall not be allowed a credit under this section directly, but the amount of credit of an owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or with the owner's tax period, or that proportion that is allocated by an agreement, if any, among the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by such time and accompanied by such additional information as the director may require.

(3) The amount of credit allowed may be applied against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

d. (1) If, in any tax period, fewer than 200 full-time employees of the business at the qualified business facility are employed in new full-time positions, the amount of the credit otherwise determined pursuant to final calculation of the award of tax credits pursuant to subsection c. of this section shall be reduced by 20 percent for that tax period and each subsequent tax period until the first period for which documentation demonstrating the restoration of the 200 full-time employees employed in new full-time positions at the qualified business facility has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed; provided, however, that for businesses applying before January 1, 2010, there shall be no reduction if a business relocates to an urban transit hub from another location or other locations in the same municipality. For the purposes of this paragraph, a "new full-time position" means a position created by the business at the qualified business facility that did not previously exist in this State.

(2) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under <u>subsection a. of</u> this section, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business'

Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(3) If, in any tax period, (a) the number of full-time employees employed by the business at the qualified business facility located in an urban transit hub within an eligible municipality drops below 250, or (b) the number of full-time employees, who are not the subject of intra-State job transfers, pursuant to paragraph (8) of subsection a. of this section, employed by the business at any other business facility in the State, whether or not located in an urban transit hub within an eligible municipality, drops by more than 20 percent from the number of full-time employees in its workforce in the last tax accounting or privilege period prior to the credit amount approval under this section, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 250 or an increase above the 20 percent reduction has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(4) (i) If the qualified business facility is sold in whole or in part during the 10-year eligibility period the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided however that any credits of tenants shall remain unaffected.

(ii) If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period the new tenant shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods.

e. (1) The Executive Director of the New Jersey Economic Development Authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, 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 this act, including but not limited to: examples of and the determination of capital investment; the enumeration of eligible municipalities; specific delineation of urban transit hubs; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements; the promulgation of procedures and forms necessary to apply for a credit, including the enumeration of the certification procedures and allocation of tax credits for different phases of a qualified business facility or mixed use project; 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.

(2) Through regulation, the Economic Development Authority shall establish standards based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.[1]

(cf: P.L.2011, c.89, s.2)

[4]⟦[1]11.⟧ 12.[4] Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to read as follows:

2. As used in this act:

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. s.414). An entity may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes;

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

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

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

"Capital investment" means expenses that the business incurs following its submission of an application to the authority pursuant to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the Capital Investment Completion Date, as shall be defined in the project agreement, for: (1) the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property in this State; and (2) obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility in this State. Provided however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.168. A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be;

"Certificate of compliance" means a certificate issued by the authority pursuant to section 9 of P.L.1996, c.25 (C.34:1B-120);

"Chief executive officer" means the chief executive officer of the New Jersey Economic Development Authority;

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

"Designated industry" means an industry identified by the authority as desirable for the State to maintain, which may be designated and amended via the promulgation of rules by the authority to reflect changing market conditions;

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

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

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the authority, as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the authority, as full-time employment, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the authority, as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business;

"New business location" means the premises to which a business will relocate that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than the commitment duration or eight years, whichever is greater, from the date of relocation. A "new business location" also means the business's current location or locations if the business makes a capital investment equal to the total value of the business retention or relocation grant of tax credits to the business at that location or locations;

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

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

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered the eligible positions of the business;

"Tax credit term" means the period of time commencing with the first issuance of tax credits and continuing during the period in which the recipient of a grant of tax credits is eligible to apply the tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3); and

"Yearly tax credit amount" means $1,500 times the number of retained full-time jobs. "Yearly tax credit amount" does not include the amount of any bonus award authorized pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1).[1]

(cf: P.L.2010, c.123, s.1)

[4][[1]12.] 13.[4] Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is amended to read as follows:

7. a. The total value of the grants of tax credits, approved by the authority pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that may be applied against tax liability [in a fiscal year] for any tax period shall not exceed an aggregate annual limit of $20,000,000. The total value of the grants of tax credits, issued pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that a single business may apply against its tax liability shall not exceed an aggregate annual limit of $10,000,000 in a fiscal year. A tax credit issued pursuant to P.L.1996, c.25 may be applied against liability in the single tax period in which the tax credit or portion of the tax credit may be applied as prescribed by the project agreement and as set forth in subsection b. of this section and shall expire thereafter.

b. Subject to the limitation set forth in subsection a. of this section, grants of tax credits shall be approved for qualifying businesses according to the following schedule, and shall be issued upon the execution and satisfaction of the requirements of the project agreement between the authority and the business with an approved project:

(1) for a project that covers a business relocating or retaining 50 to 250 full-time employees, a grant of tax credits shall be for the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1), and may be applied against liability in the tax period in which the tax credit is issued;

(2) for a project that covers a business relocating or retaining 251 to 400 full-time employees, a grant of tax credits shall be for two times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1), and may be applied against liability in the tax period in which the tax credit is issued and the following tax period, for one-half of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

(3) for a project that covers a business relocating or retaining 401 to 600 full-time employees, a grant of tax credits shall be for three times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following two tax periods, for one-third of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

(4) for a project that covers a business relocating or retaining 601 to 800 full-time employees, a grant of tax credits shall be for four times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following three tax periods, for one-fourth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

(5) for a project that covers a business relocating or retaining 801 to 1,000 full-time employees, a grant of tax credits shall be for five times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following four tax periods for one-fifth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance; and

(6) for a project that covers a business relocating or retaining 1,001 or more full-time employees, a grant of tax credits shall be for six times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following five tax periods, for one-sixth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance.

c. If the approval of a grant of tax credits pursuant to this section would exceed the $20,000,000 aggregate annual limit, the authority may award a smaller grant of tax credits or no grants of tax credits, as necessary to comply with the aggregate annual limit.[1]

(cf: P.L.2010, c.123, s.6)

[4]**[**[1]13.**]** 14.[4] Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is amended to read as follows:

17. a. The authority shall establish a corporation business tax credit and insurance premiums tax credit certificate transfer program to allow businesses in this State with unused amounts of tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and

otherwise allowable, that cannot be applied by the business to which originally issued before the expiration of the credit, to surrender those tax credits for use by other corporation business and insurance premiums taxpayers in this State. The tax credits may be used on the corporation business tax and insurance premiums tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer or insurance premiums taxpayer that is the recipient of the corporation business tax credit certificate or insurance premiums tax credit certificate to assist in the funding of costs incurred by the relocating business.

b. Businesses may apply to the executive director of the authority and the Director of the Division of Taxation for a tax credit transfer certificate, covering one or more years. Upon receipt thereof, the business may sell or assign the tax credit certificate in exchange for private financial assistance to be made by the purchaser in an amount equal to at least 75% of the amount of the surrendered tax credit of a business relocating in the State. The private financial assistance shall assist in funding expenses incurred in connection with the operation of the business in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of P.L.1996, c.25 (C.34:1B-112 et seq.).

c. The authority shall establish procedures to facilitate such transfers and encourage liquidity and simplicity in the market for the purchase and sale of such certificates, including, in the authority's discretion, coordinating the applications for surrender and acquisition of unused but otherwise allowable tax credits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to businesses in this State.

d. The authority shall, in consultation with the Director of the Division of Taxation, develop criteria for the approval or disapproval of applications.[1]

(cf: P.L.2010, c.123, s.14)

[4][[1]14.] 15.[4] (New section) Section 6 of P.L.1996, c.25 (34:1B-117) is repealed.[1]

[1][10.] [4][15.[1]] 16.[4] This act shall take effect immediately.

Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs; authorizes transfer of certain real property.

SENATE, No. 3033

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED SEPTEMBER 19, 2011

Sponsored by:
Senator RAYMOND J. LESNIAK
District 20 (Union)
Senator JOSEPH M. KYRILLOS, JR.
District 13 (Middlesex and Monmouth)

SYNOPSIS

Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; establishes certain property as urban transit hubs.

CURRENT VERSION OF TEXT

As introduced.

AN ACT providing for the availability of tax credits to certain businesses and supplementing Title 34 of the Revised Statutes and amending P.L.2007, c.346.

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

1. (New section) Sections 1 through 8 of this act shall be known and may be cited as the "Grow New Jersey Assistance Act."

2. (New section) As used in this act:

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-209).

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

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership, an S corporation, or a limited liability corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

"Capital investment" in a qualified business facility means expenses incurred after application, but before the end of the tenth year after, the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) for: a. site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property; and b. obtaining and installing furnishings and machinery,

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.

apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property.

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

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

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

“Program” means the “Grow New Jersey Assistance Program” established pursuant to section 3 of P.L.   , c.   (C.   ) (pending before the Legislature as this bill).

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment located within a qualified incentive area, used in connection with the operation of a business.

"Qualified incentive area" means an area designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban); an area zoned for development pursuant to a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L.1968, c.404 (C.13:17-21); any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L.1971, c.137 (C.5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of

P.L.1968, c.404 (C.13:17-4); a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.); an area designated for development, redevelopment, or economic growth within the Highlands Region; federally owned land approved for closure under any federal Base Closure and Realignment Commission action; or any property consisting of a vacant commercial building having over 400,000 square feet of office space available for occupancy for a period of over one year or is negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

3. (New section) a. The Grow New Jersey Assistance Program is hereby established as a program under the jurisdiction of the New Jersey Economic Development Authority and shall be administered by the authority. The purpose of the program is to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State. To implement this purpose, and to the extent that funding for the program is available, the program may provide tax credits to eligible businesses. To be eligible for any tax credits pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), a business's chief executive officer or equivalent officer shall demonstrate to the authority, at the time of application, that: (1) the business will make, acquire, or lease a capital investment of at least $20,000,000 at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs; and (2) the capital investment resultant from the award of tax credits and the resultant retention and creation of eligible positions will yield a net positive benefit to the State.

b. In determining whether a proposed capital investment will yield a net positive benefit, the business's chief executive officer, or equivalent officer, shall submit a certification to the authority indicating that the existing jobs are at risk of leaving the State and that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the authority and that the representations contained therein are accurate. In the event that this certification by the business's chief executive officer, or equivalent officer, is found to be willfully false, the authority may revoke any award of tax credits in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to. When considering an application involving intra-State job transfers, the authority shall require the business to submit the following information as part of its application: a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the authority, the authority shall independently verify and confirm, by way of making a factual finding by separate vote of the authority's board, the business's assertion that the jobs are actually at risk of leaving the State, before a business may be awarded any tax credits under this section.

4. (New section) The authority shall require an eligible business to enter an agreement prior to the issuance of tax credits. The agreement shall include, but shall not be limited to, the following:

a. A detailed description of the proposed project which will result in job creation or retention, and the number of full-time employees.

b. The term of the tax credits, and the first year for which the tax credits may be claimed.

c. Personnel information that will enable the authority to administer the program.

d. A requirement that the applicant maintain the project at a location in New Jersey for at least 1.5 times the number of years of the term of the tax credits, with at least the number of full-time employees as required by section 6 of P.L. , c. (C.) (pending before the Legislature as this bill) and a provision to permit the authority to recapture all or part of any tax credit awarded, at its discretion, if the business does not remain at the site for the required term.

e. A method for the business to report annually to the authority the number of full-time employees for which the tax credits are to be made.

f. A provision permitting an audit of the payroll records of the business from time to time, as the authority deems necessary.

g. A provision which permits the authority to amend the agreement.

h. A provision establishing the conditions under which the agreement may be terminated and awarded tax credits are recaptured, in whole or in part, by the authority at its discretion.

5. (New section) a. The value of each tax credit for an eligible business shall be equal to $5,000 per year for a period of ten years for each new or retained full-time job certified by the authority pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) to be located at the qualified business facility, subject to the provisions of this section.

b. In addition to any grant of tax credits determined pursuant to subsection a. of this section, a bonus award of up to an additional $3,000 per job of the amount of the original tax credits may be made to any eligible business as determined by the authority. In making a bonus award to an eligible business, the authority shall consider the following factors, such that whether the business: (1) is an industry identified by the authority for the State to maintain; (2) relocates to a location within a qualified incentive area adjacent to a public transit facility, as determined by the authority by regulation; (3) creates jobs using full-time employees in eligible positions whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the average full-time salary in this State; or (4) is locating to a project site that is or has been negatively impacted by the approval of a “qualified business facility,” as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

6. (New section) a. (1) The value of all credits approved by the authority pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed $200,000,000, except that the value of all credits approved by the authority pursuant to this section may exceed $200,000,000 if the board of the authority determines the credits to be reasonable, justifiable, and appropriate; provided, however, the combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed $1,500,000,000.

(2) A business, including any affiliate of the business or any business that is a tenant within any qualified business facility, shall make or acquire capital investments totaling not less than $20,000,000 in a qualified business facility, at which the business shall employ not fewer than 100 full-time employees to be eligible for a credit pursuant to P.L. , c. (pending before the Legislature as this bill). A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be.

(3) A business shall not be allowed tax credits pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) relating to the same capital and employees that qualify the business for tax credits pursuant to P.L. , c. (pending before the Legislature as this bill). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall not qualify for a tax credit under this section, based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the "Urban Transit Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.).

(4) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(5) The capital investment of the owner of a qualified business facility is that percentage of the capital investment made or acquired by the owner of the building that the percentage of net leasable area of the qualified business facility not leased to tenants is of the total net leasable area of the qualified business facility.

b. A business shall apply for the tax credit prior to July 1, 2014, and shall submit its documentation indicating that it has met the capital investment and employment specified in the project agreement for certification of its credit amount no later than July 28, 2017.

c. (1) The amount of credit allowed shall not exceed the capital investment made by the business or the capital investment represented by the business' leased area, as certified by the authority pursuant to subsection b. of this section, as having met the investment capital and employment qualifications, subject to any reduction or disqualification as provided by subsection d. of this section as determined by annual review by the authority. In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

The credit amount for any tax period ending after July 28, 2017, during which the documentation of a business' credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it.

The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the value of all credits approved by the authority against tax liabilities pursuant to P.L. , c. (pending before the Legislature as this bill), in any fiscal year shall not exceed $150,000,000 and the combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed $1,500,000,000.

The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business' total lease payments for occupancy of the qualified business facility for the tax period.

(2) A business that is a partnership shall not be allowed a credit under this section directly, but the amount of credit of an owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax

period ending within or with the owner's tax period, or that proportion that is allocated by an agreement, if any, among the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by such time and accompanied by such additional information as the director may require.

(3) The amount of credit allowed may be applied against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

d. (1) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval under section 3 of P.L.   , c.   (pending before the Legislature as this bill), then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business' Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(2) If, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area drops below 100 or 80 percent of the number of new and retained full-time jobs specified in the project agreement, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 100.

(3) (a) If the qualified business facility is sold in whole or in part during the 10-year eligibility period the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided however that any credits of tenants shall remain unaffected.

(b) If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period the new tenant shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods.

7. (New section) A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the chief executive officer of the authority for a tax credit transfer certificate, covering one or more years, in lieu of the business being

allowed any amount of the credit against the tax liability of the business. The tax credit transfer certificate, upon receipt thereof by the business from the director and the chief executive officer of the authority, may be sold or assigned, in full or in part, to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5. The certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the business that originally applied for and was allowed the credit.

8. (New section) a. The chief executive officer of the authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, 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 P.L. , c. (C.) (pending before the Legislature as this bill), including but not limited to: examples of and the determination of capital investment; the enumeration of qualified incentive areas; specific delineation of these incentive areas; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements; the promulgation of procedures and forms necessary to apply for a tax credit, including the enumeration of the certification procedures and allocation of tax credits for different phases of a qualified business facility; and provisions for tax credit applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the tax credit.

b. Through regulation, the authority shall establish standards by which qualified business facilities shall be constructed or renovated based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

9. Section 2 of P.L.2007, c.346 (C.34:1B-208) is amended to read as follows:

2. As used in this act:

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-209).

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

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership, an S corporation, or a limited liability corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

"Capital investment" in a qualified business facility means expenses incurred after, but before the end of the eighth year after, the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a. the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility or improvement to real property; and b. obtaining and installing furnishings and machinery, apparatus or equipment for the operation of a business in a building, structure, facility or improvement to real property.

"Eligible municipality" means a municipality: (1) which qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or which was continued to be a qualified municipality thereunder pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Mixed use project" means a project comprising both a qualified business facility and a qualified residential project.

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

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment located within a designated urban transit hub in an eligible municipality, used in connection with the operation of a business.

"Qualified residential project" shall have the meaning ascribed to that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).

"Residential unit" means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

"Urban transit hub" means:

a. property located within a 1/2 mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, including all light rail stations, and property located within a one mile radius of the mid point of the platform area of such a rail station if the property is in a qualified municipality under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et seq.);

b. property located within a 1/2 mile radius surrounding the mid point of one of up to two underground light rail stations' platform areas that are most proximate to an interstate rail station;

c. property adjacent to, or connected by rail spur to, a freight rail line if the business utilizes that freight line at any rail spur located adjacent to or within a one mile radius surrounding the entrance to the property for loading and unloading freight cars on trains;

which property shall have been specifically delineated by the authority pursuant to subsection e. of section 3 of P.L.2007, c.346 (C.34:1B-209).

A property which is partially included within the radius shall only be considered part of the urban transit hub if over 50 percent of its land area falls within the radius.

"Rail station" shall not include any rail station located at an international airport, except that any property within a 1/2 mile radius surrounding the mid point of a New Jersey Transit Corporation rail station platform area at an international airport upon which a qualified business facility is constructed or renovated commencing after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be deemed an urban transit hub, excluding any property owned or controlled by the Port Authority of New York and New Jersey.

(cf: P.L.2011, c.89, s.1)

10. This act shall take effect immediately.

STATEMENT

This bill establishes the Grow New Jersey Assistance Program (“program”) to provide certain eligible businesses with tax credits for creating a minimum of 100 full-time jobs as well as making capital investments of at least $20 million in certain incentive areas as designated in the bill.

Specifically, the bill establishes a $200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment and job subsidies that incentivize both retained and new jobs. The program’s cost would fall under the $1.5 billion cap established under the “Urban Transit Hub Tax Credit” (“UTHTC”) program. The initial $200 million program allocation could be increased at discretion of board of the New Jersey Economic Development Authority (“EDA”) if the board determines the credits to be reasonable, justifiable, and appropriate. All applications for eligibility under the program shall be made to the EDA by July 1, 2014.

Under the program, a minimum of $20 million in capital investment would be required to be spent at the project site, with owners, tenants, and affiliates allowed to participate in cost sharing to meet this eligibility requirement. “Green” building standards would need to be used in the design and construction of any eligible project that are based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Areas of the State where program assistance would be available include: 1) Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment law; 3) vacant commercial office properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas designated for development in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the program, an eligible business would receive a base tax credit of $5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. Tax credits issued to an eligible business may be transferable. The base tax credit may be increased of an amount up to $3,000 per job by an eligible business that, as determined by the authority: 1) is an industry identified by the authority for the State to maintain; 2) relocates to a location adjacent to a public transit facility; 3) creates jobs using full-time employees in eligible positions whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the average full-time salary in this State; or 4) is locating to a project site that is or has been negatively impacted by the approval of a “qualified business facility,” under the UTHTC program. The per project benefit shall not exceed the capital investment at the project site.

At the time of the application, the business’s CEO must certify that: 1) the business will make, acquire, or lease a capital investment of at least $20 million at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs; and 2) the capital investment resultant from the award of tax credits and the resultant retention and creation of eligible positions will yield a “net positive benefit” to the State as that term is described in the bill.

Further, the program provides for performance requirement "claw backs" (i.e., forfeiting the amount of assistance received in any year) if a business receiving assistance under the program does not employ a minimum of 100 full-time jobs or meet an 80 percent Statewide full-time job maintenance and 15-year full-time job maintenance requirements.

Finally, the bill amends the definition of “urban transit hub” under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 3033

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 2011

The Senate Economic Growth Committee reports favorably Senate Bill No. 3033 with committee amendments.

This bill, as amended, establishes the Grow New Jersey Assistance Program ("program") to provide certain eligible businesses with tax credits for creating a minimum of 100 new or retained full-time jobs as well as making capital investments of at least $20 million in certain incentive areas as designated in the bill.

Specifically, the amended bill establishes a $200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment and job subsidies that incentivize both retained and new jobs. The program's cost would fall under the $1.5 billion cap established under the "Urban Transit Hub Tax Credit" ("UTHTC") program. The initial $200 million program allocation could be increased at the discretion of board of the New Jersey Economic Development Authority ("EDA") if the board determines the credits to be reasonable, justifiable, and appropriate. All applications for eligibility under the program shall be made to the EDA by July 1, 2014.

Under the program, a minimum of $20 million in capital investment would be required to be spent at the project site, with owners, tenants, and affiliates allowed to participate in cost sharing to meet this eligibility requirement. "Green" building standards would need to be used in the design and construction of any eligible project that are based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Areas of the State where program assistance would be available include: 1) Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment law; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the program, an eligible business would receive a base tax credit of $5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. Tax credits issued to an eligible business may be transferable. The base tax credit may be increased of an amount up to $3,000 per job by an eligible business that, as determined by the authority: 1) is an industry identified by the authority as desirable for the State to maintain; 2) relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a “qualified business facility,” under the UTHTC program. The per project benefit shall not exceed the capital investment at the project site.

At the time of the application, the business’s CEO must certify that retained jobs are at risk of leaving the State. Additionally, in order to be eligible, a business shall demonstrate to the EDA, at the time of application, that the tax credits and resultant retention of full-time jobs and any capital investment will yield a “net positive benefit” to the State as that term is described in the bill.

Further, the program provides for performance requirement "claw backs" (i.e., forfeiting the amount of assistance received in any year) if a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

In addition, the amended bill: 1) amends the definition of “urban transit hub” under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey, 2) clarify that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, that the business met the capital investments and employment requirements prior to claiming the tax credits.

The committee amended the bill to clarify eligibility under the program, including: 1) adding definitions of “eligible position” and “retained full-time job” to the program and changing the definition of “qualified incentive area" to require vacant laboratory or industrial facilities be included with the criterion of property consisting of a vacant commercial building having over 400,000 square feet of office, available for occupancy for a period of over one year or is negatively impacted by UTHTC program approval; 2) regarding the bonus tax credit provision, that the criterion for receipt of the bonus credit be extended to a location within walking distance or short shuttle service, as determined by the EDA by regulation; 3) providing that projects consisting solely of point-of-final-purchase retail facilities shall not be eligible for tax credits under the program; 4) providing that a) the amount of tax credits available to be applied to the business annually shall not exceed one tenth of the capital investment and b) the number of new full-time jobs shall not exceed the number of retained full-time jobs; and 5) concerning capital investments made by a tenant, the amount capital investment in a facility that a leased area represents shall be equal to that percentage of the owner's total capital investment in the facility that the percentage of net leasable area leased by the tenant is of the total net leasable area of the qualified business facility.

In addition, the amendments make changes to the UTHTC law to clarify that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, that the business met the capital investments and employment requirements prior to claiming the tax credits.

Further, the amendments make clarifying changes to the "Business Retention and Relocation Assistance Grant" (“BRRAG”) program to: 1) change the definition of “capital investment” to include under that definition that a business acquiring or leasing a qualified business facility as deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeals the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3033

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 22, 2011

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3033 (1R), with committee amendments.

As amended, this bill establishes the Grow New Jersey Assistance Program ("program") to provide certain eligible businesses with tax credits for creating a minimum of 100 new or retained full-time jobs as well as making capital investments of at least $20 million at a qualified business facility in certain qualified incentive areas as designated in the bill.

Specifically, the bill establishes a $200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment and job subsidies that incentivize both retained and new jobs. The program's cost would fall under the $1.5 billion cap established under the "Urban Transit Hub Tax Credit" ("UTHTC") program. The initial $200 million program allocation could be increased at discretion of board of the New Jersey Economic Development Authority ("EDA") if the board determines the credits to be reasonable, justifiable, and appropriate. All applications for eligibility under the program shall be made to the EDA by July 1, 2014.

Under the program, a minimum of $20 million in capital investment would be required to be spent at the project site, with owners, tenants, and affiliates allowed to participate in cost sharing to meet this eligibility requirement. "Green" building standards would need to be used in the design and construction of any eligible project that are based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Areas of the State where program assistance would be available include: 1) Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), and any urban, regional, or town designated center locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment law; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the program, an eligible business would receive a base tax credit of $5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to $3,000 per job by an eligible business that, as determined by the authority, meets the following factors: 1) is an industry identified by the authority as desirable for the State to maintain; 2) locates or relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a “qualified business facility,” under the UTHTC program. The per project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

At the time of the application, the business’s CEO must certify that retained jobs are at risk of leaving the State. Additionally, in order to be eligible, a business shall demonstrate to the EDA, at the time of application, that the tax credits and resultant retention of full-time jobs and any capital investment will yield a “net positive benefit” to the State as that term is described in the bill.

Further, the program provides for performance requirement "claw backs" (i.e., forfeiting the amount of assistance received in any year) if a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

In addition, the bill: 1) amends the definition of “urban transit hub” under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey, 2) clarify that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, that the business met the capital investments and employment requirements prior to claiming the tax credits.

Also, the bill makes clarifying changes to the "Business Retention and Relocation Assistance Grant" (“BRRAG”) program to: 1) change the definition of “capital investment” to include under that definition that a business acquiring or leasing a qualified business facility as deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeals the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

COMMITTEE AMENDMENTS:

The committee amendments include locations deemed urban, regional, or town designated center locations under the State Development and Redevelopment Plan as areas of the State where program assistance will be available. The committee amendments also correct the reference in section 5 of the bill to the capital investment requirement of $20 million under the Grow New Jersey Assistance Program. The committee amendments also add to one of the tax credit bonus award business factors, in addition to relocating, the original locating of a business within a qualified incentive area or within walking distance or short-distance-shuttle service of a public transit facility.

FISCAL IMPACT:

In establishing the Grow New Jersey Assistance Program and in amending the Urban Transit Hub Tax Credit Act, the bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could be no higher than $1.11 billion -- the difference between the urban transit hub tax credit program's $1.5 billion cap and the $394 million in tax credits the EDA has awarded to ten projects through April 18, 2011 -- accumulated over several years.

In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the State General Fund could be no higher than $17.3 million annually -- the difference between the program's $20 million annual cap and the estimated $2.7 million in such credits currently claimed under the program.

Whether the bill's impact will actually approach those respective cost ceilings will largely depend on the extent to which the program's caps would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the programs would reach their caps, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.

To the extent that additional tax credits awarded pursuant to this bill are essential to the realization of capital projects, such projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety, the revenue loss and opportunity cost of providing the financial assistance authorized by the bill. The Office of Legislative Services, however, cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State and local government tax receipts, and therefore cannot posit an annual net fiscal impact estimate.

STATEMENT TO

[Second Reprint]
SENATE, No. 3033

with Senate Floor Amendments
(Proposed by Senator LESNIAK)

ADOPTED: SEPTEMBER 26, 2011

These floor amendments: 1) revise the qualifications that a business must demonstrate to be eligible under the “Grow New Jersey Assistance Program” (“program”) by (a) allowing the 100-employee “full-time jobs” requirement to be met with newly created jobs, provided those jobs are in an industry identified by the New Jersey Economic Development Authority (“authority”) as desirable for the State to maintain or attract and add a definition of “new full-time job” and (b) requiring the business to show that the award of tax credits will be a material factor in the business’ decision to create or retain the minimum number of full-time jobs for eligibility under the program; 2) include, as part of the information that the authority is to receive for its use in determining whether a proposed capital investment will yield a net positive benefit to the State, the business’s certification that the creation of any new full-time jobs would not occur but for the provision of tax credits under the program; 3) modify the requirement that the number of new full-time jobs shall not exceed the number of retained full-time jobs for which a business receives a tax credit by exempting from that requirement a business creating at least 100 new full-time jobs in an industry identified by the authority as desirable for the State to maintain or attract; and 4) prohibit a business from receiving tax credits under the program relating to the same capital and employees that qualify the business for tax credits under the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 3033

STATE OF NEW JERSEY
214th LEGISLATURE

DATED: OCTOBER 5, 2011

SUMMARY

Synopsis: Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs.

Type of Impact: Unknown net effect of two countervailing impacts: 1) a multi-year revenue loss to the State General Fund and the Property Tax Relief Fund from awarding tax credits; 2) an annual revenue increase to the State General Fund, Property Tax Relief Fund, and local governments from fiscal activity catalyzed by tax credit-induced economic activity.

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

Office of Legislative Services Estimate

Fiscal Impact	Cumulative Multi-Year Impact
Direct State Revenue Loss	Indeterminate — Potentially up to $1.2 billion
Indirect State Revenue Gain	Indeterminate — See comments below
State Opportunity Cost	Indeterminate — See comments below
Indirect Local Revenue Gain	Indeterminate — See comments below

- The Office of Legislative Services (OLS) can determine neither the direction nor the magnitude of the bill's fiscal net impact on the State and affected local governments. On the one side of the ledger, the bill could produce a State revenue loss of up to $1.2 billion from awarding additional tax credits in addition to the indeterminate opportunity cost of the tax expenditure—opportunity costs capture the fiscal benefits the State forgoes as spending is redirected from one economic activity to another. On the other side of the ledger, additional tax credits that are essential to the realization of capital projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety, the revenue loss and opportunity cost of providing the financial assistance.

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- In creating the Grow New Jersey Assistance Program, the bill could result in a $1.11 billion maximum direct State revenue loss, reflecting the difference between the $1.5 billion cap for the Urban Transit Hub Tax Credit program, to which that program's tax credits are subject, and the $394 million in urban transit hub tax credits the New Jersey Economic Development Authority (EDA) has awarded through April 18, 2011. Given the wide range of locales in which a creditable project may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap.

- Whether that revenue loss totals $1.11 billion will largely depend on the extent to which the program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce a $1.11 billion State revenue loss, however, if the bill results in the granting of Grow New Jersey tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.

- In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the General Fund could be up to $17.3 million annually, reflecting the difference between the $20 million annual cap on that program's tax credits and the estimated $2.7 million in such credits currently claimed. Again, if this aspect of the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.

- Capital investments for which the tax credits will serve as the impetus will also generate indirect fiscal benefits to the State and local governments. In the converse, extending the tax credit to capital projects that taxpayers would also make absent the tax incentive will produce sunk costs to the State, or an expense without a benefit, as the tax credit will not have affected the decision to proceed with the investment. For reasons outlined on pages 4-5 of this legislative fiscal estimate, it is reasonable to expect, however, that most of the indirect effects of credits awarded will count as a benefit to the State and affected local governments. The OLS, however, cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State and local government tax receipts.

BILL DESCRIPTION

Senate Bill No. 3033 (2R) of 2011 creates a new tax credit for businesses under the Grow New Jersey Assistance Program, expands the existing Urban Transit Hub Tax Credit program, and makes revisions to the Business Retention and Relocation Assistance Grant Program.

A) Grow New Jersey Assistance Program: The bill creates a new tax credit program under which a business will receive a tax credit for making a minimum $20 million capital investment in a business facility and creating or retaining at least 100 full-time positions in a qualified area, but only if the project yields a positive fiscal net benefit to the State and if the business applies for the credit before July 1, 2014. A qualified area is a) a vacant commercial building having over 400,000 square feet of office, laboratory or industrial space available; b) an area designated for development within the Highlands, Meadowlands, and Pinelands; c) Fort Monmouth; and d) areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or as an urban, regional or town center under the State Development and Redevelopment Plan.

The credit equals ten annual installments of $5,000 each per full-time position created or retained. The annual credit amount increases to $8,000 if a) the business operates in an industry the EDA identifies as desirable to maintain, b) the business is in proximity to a qualified area adjacent to a public transit facility, c) the full-time jobs created carry salaries in excess of New Jersey's average full-time salary, or d) the qualified area is negatively affected by the approval of a "qualified business facility" under the Urban Transit Hub Tax Credit Act. A total cap on tax credits that can be applied by any business is set at the certified capital investment, and an annual cap on tax credits that can be applied by any business is set at one-tenth of the certified capital investment. If the business does not have a sufficient tax liability against which to offset the tax credit, the business may carry any unused balance forward for 20 years or sell it to another taxpayer. Tax credit amounts may be reduced or revoked if the business fails to meet its New Jersey full-time employment target as specified in the tax credit agreement. The tax credits are subject to the existing $1.5 billion cap for all credits under the Urban Transit Hub Tax Credit program and an annual $150 million cap imposed on the new tax credits by the bill.

B) Urban Transit Hub Tax Credit Program: The bill expands the Urban Transit Hub Tax Credit program to the area within a half-mile radius of the rail or light rail station at Newark Liberty International Airport (but not to property within that area owned or controlled by the Port Authority of New York and New Jersey). Under the program, the State awards up to $1.5 billion in tax credits to taxpayers who make certain capital investments in real property in urban transit hubs.

To qualify for a business facility tax credit of up to 100 percent of the investment, a capital investment in real property must a) equal at least $50 million; b) pave the way for at least 250 full-time employees working in the business facility; c) be made within eight years from January 13, 2008, the effective date of P.L.2007, c.346; and d) yield a net positive benefit to the State and the municipality hosting the transit hub.

Tenants in qualified business facilities may also receive a credit if they occupy space in the facility that represents at least $17.5 million of the capital investment and employ at least 250 persons in the facility. If fewer than 200 of the 250 full-time positions in a business facility represent a net gain to New Jersey, then the tax credit maxes out at 80 percent of the qualified capital investment.

To qualify for a residential tax credit of up to 20 percent of the investment, an investment in a residential project must a) equal at least $50 million; b) be made within eight years from July 28, 2009, the effective date of P.L.2009, c.90; and c) not occur absent the receipt of a tax credit.

Mixed use projects may qualify for a business facility tax credit for the amount of the investment in the project's business facility component only if it meets all of the aforementioned conditions for such a tax credit. Alternatively, the entire investment in a mixed use project may qualify for a residential tax credit if it meets all of the aforementioned conditions of such a tax credit and if more than half of the project's square footage is residential.

C) Business Retention and Relocation Assistance Grant Program: The bill clarifies that the annual aggregate limit on tax credits under the program is calculated by tax period rather than fiscal year, and changes the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility is deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be. The bill also deletes the prohibition on use of program tax credits by a business unless the retained State tax revenue from the business, in the tax period prior to the use of tax credits, equals or exceeds the amount of tax credits.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS can determine neither the direction nor the magnitude of the bill's fiscal net impact on the State and affected local governments. The State fiscal net impact is calculated by adding the direct revenue loss from granting the 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. In addition, the bill is also likely to accrue an indirect revenue gain to local governments. Although the OLS is able to pinpoint the bill's maximum direct revenue loss, it cannot calculate its opportunity cost or its offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on the characteristics of capital investments that will earn tax credits.

Direct State Revenue Loss: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund from the establishment of the Grow New Jersey Assistance Program and the expansion of the existing Urban Transit Hub Tax Credit program could be as high as $1.11 billion accumulated over several years, or the difference between the urban transit hub tax credit program's $1.5 billion cap and the $394 million in tax credits the EDA has awarded to ten projects through April 18, 2011.

Given the wide range of locales in which a creditable project may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap. In any event, whether the bill will actually cost $1.11 billion will largely depend on the extent to which the program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce a $1.11 billion State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.

The bill's direct revenue loss to the State General Fund from revisions to the Business Retention and Relocation Assistance Grant Program could be no higher than $17.3 million annually, the difference between the program's annual $20 million annual cap and the estimated $2.7 million in tax credits currently claimed under the program. Again, the maximum annual revenue loss results from the bill only to the extent that tax credits are granted to projects that could not have received credits under the program in its current form. It is reasonable to assume that some businesses would secure tax credits under the bill that could not do so under the current law, but the OLS has no information on which to base an estimate of the credits to be claimed by such businesses.

Indirect State and Local Revenue Gain: The bill may generate an indeterminate indirect revenue gain to the State and local governments that may partially offset the direct State revenue loss from and State opportunity cost of providing tax credits in accordance with the bill. The OLS, however, does not have the capacity to quantify the bill's secondary effects, since it cannot estimate the volume and types of capital investments that the tax credit will directly spur and their ensuing indirect effect on State and local 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 receive payments they would not have received absent the incentive, at least a portion of these payments will newly circulate in New Jersey's economy. As these ramifications will flow through the economy, they will affect State and local revenue collections. Indirect fiscal effects encompass secondary tax collections from credit-induced capital investments (such as enhanced gross income tax collections from employees whose positions are retained in New Jersey because of the tax credit and increased property tax collections if the investment appreciates the value of a property) 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 capital investments benefitting from the credit may represent a gain to the State and affected municipalities. 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 project anyway. In such a scenario, the State will only incur the direct cost of the subsidy, while the capital investment's secondary effects cannot be attributed to the bill.

Applying the general principle to this bill, it is reasonable to expect that most of the indirect effects of credits awarded will count as a benefit to the State. This is so because credits can only be awarded if a project passes the net benefit test. As part of that test, the EDA excludes from the analysis the indirect benefits from jobs that are neither "at risk," classified as a "suburban to urban move" or otherwise deemed new jobs to the State. Therefore, only those tax credits will not produce an indirect revenue gain to the State that represent a relocation of jobs from a suburban area of the State to an urban area or that represent an incorrect assessment regarding the likelihood of a job created or retained within New Jersey absent a credit award. It remains unclear, however, whether or not the indirect revenue gains attributable to the credits will exceed the direct State revenue loss and opportunity cost they will cause.

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 capital investments 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 and that of the foregone road construction investment.

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

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

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

[Third Reprint]
SENATE, No. 3033

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 21, 2011

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Senate Bill No. 3033 (3R).

This bill, as amended by the committee, establishes the Grow New Jersey Assistance Program ("program") to encourage businesses to engage in economic development, job creation and the preservation of existing jobs within New Jersey. The bill establishes a $200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment, creation of new jobs and retention of existing jobs.

To be eligible for program tax credits, a business would have to make capital investments of at least $20,000,000 at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs, or create at least 100 new full-time jobs in an industry deemed desirable by the New Jersey Economic Development Authority (EDA). Eligibility for program tax credits will also be based upon a determination by the EDA that the capital investment will yield a net positive benefit to the State and that the award of tax credits is a material factor in the business decision to create or retain the minimum number of full-time jobs.

The program's cost would fall under the $1.5 billion cap established under the "Urban Transit Hub Tax Credit" ("UTHTC") program. The initial $200 million program allocation could be increased by the board of the EDA if the board determines the credits to be reasonable, justifiable, and appropriate. All applications for eligibility under the program shall be made to the EDA by July 1, 2014.

Under the program, a minimum of $20 million in capital investment would be required to be spent at the project site. Owners, tenants, and affiliates would be allowed to participate in cost sharing to meet this eligibility requirement. The bill, as amended, provides that the amount of tax credits that can be applied by a business annually under the program cannot exceed the lesser of one-tenth of the capital investment or $4,000,000.

The bill requires the EDA to establish standards for the construction and renovation of business facilities based on the green building manual prepared by the Commissioner of Community Affairs. Areas of the State where program assistance would be available include: 1) Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), and any urban, regional, or town designated center locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment Act; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the program, an eligible business would receive a base tax credit of $5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to $3,000 per job by an eligible business that, as determined by the authority, meets the following factors: 1) is an industry identified by the authority as desirable for the State to maintain or attract; 2) locates or relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a "qualified business facility," under the UTHTC program. The per project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

The program provides for performance requirement "claw backs" (i.e., forfeiting the amount of assistance received in any year) if a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

The bill, as amended by the committee, amends the definition of "urban transit hub" under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey. The bill, as amended by the committee, also amends the definition of "urban transit hub" under the UTHTC law to expand the radius, from one-half to one mile the area, which surrounds the mid point of other New Jersey Transit Corporation rail stations and Port Authority Transit Corporation and Port Authority Trans-Hudson Corporation rail station platform areas.

The bill, as amended, also clarifies that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, and that the business met the capital investments and employment requirements prior to claiming the tax credits.

The bill, as amended, also makes clarifying changes to the "Business Retention and Relocation Assistance Grant" ("BRRAG") program to: 1) change the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility as deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeal the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

The bill, as amended, authorizes the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey's right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease.

This bill is identical to Assembly Bill No. 4306 ACA, (Coutinho/Conaway/Bucco/Chiusano) which the committee also reported on this date.

COMMITTEE AMENDMENTS

Committee amendments to the bill:

- clarify that the amount of tax credits available to be applied by the business annually under the program shall not exceed the lesser of one tenth of the capital investment or $4,000,000;
- authorize the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey's right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease; and
- modify the boundaries of an "urban transit hub" UTHTCA by expanding the radius, from one-half to one mile the area, which

surrounds the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Fourth Reprint]
SENATE, No. 3033

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 1, 2011

The Assembly Appropriations Committee reports favorably Senate Bill No. 3033(4R), with committee amendments.

As amended, this bill establishes the Grow New Jersey Assistance Program ("program") to encourage businesses to engage in economic development, job creation and the preservation of existing jobs within New Jersey. The bill establishes a $200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment, creation of new jobs and retention of existing jobs.

To be eligible for program tax credits, the bill requires a business to make capital investments of at least $20,000,000 at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs, or create at least 100 new full-time jobs in an industry deemed desirable by the New Jersey Economic Development Authority (EDA). Eligibility for program tax credits will also be based upon a determination by the EDA that the capital investment will yield a net positive benefit to the State and that the award of tax credits is a material factor in the business decision to create or retain the minimum number of full-time jobs.

The program's cost falls under the $1.5 billion cap established under the "Urban Transit Hub Tax Credit" ("UTHTC") program. The bill allows the initial $200 million program allocation to be increased by the board of the EDA if the board determines the credits to be reasonable, justifiable, and appropriate. The bill requires that all applications for eligibility under the program shall be made to the EDA by July 1, 2014.

The bill requires that a minimum of $20 million in capital investment be spent at the project site. Owners, tenants, and affiliates will be allowed to participate in cost sharing to meet this eligibility requirement. The bill provides that the amount of tax credits that can be applied by a business annually under the program cannot exceed the lesser of one-tenth of the capital investment, or $4,000,000.

The bill requires the EDA to establish standards for the construction and renovation of business facilities based on the green building manual prepared by the Commissioner of Community Affairs. Areas of the State where program assistance will be available include: 1) Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), and any urban, regional, or town designated center locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment Act; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the bill's program, an eligible business will receive a base tax credit of $5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to $3,000 per job by an eligible business that, as determined by the authority, meets the following factors: 1) is an industry identified by the authority as desirable for the State to maintain or attract; 2) locates or relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a "qualified business facility," under the UTHTC program. The per-project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

The bill's program provides for forfeiting the amount of assistance received in the current year and any future year in which a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

The bill expands the definition of "urban transit hub" under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey.

The bill clarifies that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, and that the business met the capital investments and employment requirements prior to claiming the tax credits.

The bill makes clarifying changes to the "Business Retention and Relocation Assistance Grant" ("BRRAG") program to: 1) change the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility as deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeal the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

The bill authorizes the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey's right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease.

As amended and reported by the committee, this bill is identical to Assembly Bill No.4306 (1R), as also amended and reported by the committee.

FISCAL IMPACT:

In establishing the Grow New Jersey Assistance Program and in amending the Urban Transit Hub Tax Credit Act, the bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could be no higher than $1.11 billion -- the difference between the urban transit hub tax credit program's $1.5 billion cap and the $394 million in tax credits the EDA has awarded to ten projects through April 18, 2011 -- accumulated over several years.

In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the State General Fund could be no higher than $17.3 million annually -- the difference between the program's $20 million annual cap and the estimated $2.7 million in such credits currently claimed under the program.

Whether the bill's impact will actually approach those respective cost ceilings will largely depend on the extent to which the program's caps would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the programs would reach their caps, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.

To the extent that additional tax credits awarded pursuant to this bill are essential to the realization of capital projects, such projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety, the revenue loss and opportunity cost of providing the financial assistance authorized by the bill. The Office of Legislative Services, however, cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State and local government tax receipts, and therefore cannot posit an annual net fiscal impact estimate.

COMMITTEE AMENDMENTS:

The amendments allow the EDA to award GROW-NJ tax credits to a business that must submit a proposal and fulfill a contract with the federal government although the award of tax credits is not a *material factor* in the business's decision to retain at least 100 full-time jobs, as is otherwise required of businesses under the bill.

The amendments modify the definition of "Urban Transit Hub" under current law to include:

1 - property located within a one mile radius of a rail station if the property is in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the federal Department of Housing and Urban Development,

2 - the site of the campus of an acute care medical facility located within a one mile radius of a rail station, and

3 – the site of a closed hospital located within a one mile radius of a rail station.

LEGISLATIVE FISCAL ESTIMATE

[Fifth Reprint]

SENATE, No. 3033

STATE OF NEW JERSEY
214th LEGISLATURE

DATED: DECEMBER 13, 2011

SUMMARY

Synopsis: Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs; authorizes transfer of certain real property.

Type of Impact: Unknown net effect of four countervailing impacts: 1) a multi-year revenue loss to the State General Fund and the Property Tax Relief Fund from awarding tax credits; 2) an annual revenue increase to the State General Fund, Property Tax Relief Fund, and local governments from fiscal activity catalyzed by tax credit-induced economic activity; 3) a revenue increase to the State General Fund from selling State-owned properties; 4) a potential revenue loss from cessation of rental income from these properties.

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

Office of Legislative Services Estimate

Fiscal Impact	Cumulative Multi-Year Impact
Direct State Revenue Loss (from Awarding of Additional Tax Credits)	Indeterminate — Potentially up to $1.1 billion
Indirect State Revenue Gain (from Awarding of Additional Tax Credits)	Indeterminate — See comments below
State Opportunity Cost (of Awarding of Additional Tax Credits)	Indeterminate — See comments below
Indirect Local Revenue Gain (from Awarding of Additional Tax Credits)	Indeterminate — See comments below
State Revenue Gain (from Sale of State-Owned Properties)	Indeterminate — See comments below
State Revenue Loss (from Loss of Rental Income from State-Owned Properties)	Indeterminate — See comments below

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-OLS-

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- The Office of Legislative Services (OLS) can determine neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of the bill's provisions relating to tax credits under the Grow New Jersey Assistance Program, the Urban Transit Hub Tax Credit Program, and the Business Retention and Relocation Assistance Grant Program. On the one side of the ledger, the bill could produce a State revenue loss of up to $1.1 billion from awarding additional tax credits in addition to the indeterminate opportunity cost of the tax expenditure—opportunity costs capture the fiscal benefits the State forgoes as spending is redirected from one economic activity to another. On the other side of the ledger, additional tax credits that are essential to the realization of capital projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety, the revenue loss and opportunity cost of providing the financial assistance.

- In creating the Grow New Jersey Assistance Program and expanding the Urban Transit Hub Tax Credit program, the bill could result in a $1.11 billion maximum direct State revenue loss, reflecting the difference between the $1.5 billion cap applicable to the two programs combined and the $394 million in urban transit hub tax credits the New Jersey Economic Development Authority (EDA) has awarded through April 18, 2011. Given the wide range of locales in which creditable projects may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap.

- Whether that revenue loss will total $1.1 billion will largely depend on the extent to which the program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce a $1.1 billion State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.

- In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the General Fund could be up to $17.3 million annually, reflecting the difference between the $20 million annual cap on that program's tax credits and the estimated $2.7 million in such credits currently claimed. If this bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.

- Capital investments for which tax credits will serve as the impetus will also generate indirect fiscal benefits to the State and local governments. In the converse, extending tax credits to capital projects that taxpayers would also undertake absent the incentive will produce sunk costs to the State, or an expense without a benefit, as the tax credit will have no bearing on the decision to execute the projects. Consequently, the indirect fiscal effects from projects that would be undertaken anyway have to be excluded from the analysis. Applying the general principle to this bill, it is reasonable to expect that almost all the tax credits' indirect effects will count as a benefit. This is so because the bill requires that credits be instrumental to the execution of a credit-receiving capital project and that the project yield incremental receipts to the State that exceed the credit amount. But it is possible that in spite of its due diligence the EDA will be misled about an applicant's true intentions in this regard. In addition, the bill waives the requirement that a Grow New Jersey Assistance Program tax credit be a decisive factor in the pursuit of a credit-receiving project for a subset of projects so that the indirect fiscal benefits of those projects cannot be attributed to the bill. In all, however, the OLS cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State and local government tax receipts.

- Without knowledge of the final sales arrangement, the OLS can gauge neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

BILL DESCRIPTION

Senate Bill No. 3033 (5R) of 2011 creates a new tax credit for businesses under the Grow New Jersey Assistance Program, expands the existing Urban Transit Hub Tax Credit program, makes revisions to the Business Retention and Relocation Assistance Grant Program, and authorizes the sale of certain State-owned properties in the City of Newark to the New Jersey Performing Arts Center.

A) Grow New Jersey Assistance Program: The bill creates a new tax credit program under which a business will receive a tax credit for a) making a minimum $20 million capital investment in a business facility in a qualified area and b) at that business facility either retaining at least 100 full-time positions with health benefits in New Jersey or creating at least 100 new full-time positions with health benefits in an industry the EDA identifies as desirable to maintain or attract. Tax credits will be awarded only if a) the project yields a positive fiscal net benefit to the State, b) the award of the tax credit is a material factor in the business decision to create or retain eligible full-time positions, c) the project does not involve a point-of-final-purchase retail facility, and d) the business applies for the credit before July 1, 2014. Notwithstanding these general restrictions, the bill authorizes the EDA to exempt at its discretion from the material factor requirement businesses meeting all other eligibility criteria if the business is required to respond to requests for proposal and to fulfill a contract with the federal government and if the application for a tax credit will have been submitted by March 31, 2012.

The credit equals ten annual installments of $5,000 each per full-time position created or retained as long as the number of new full-time jobs for which a business receives a tax credit does not exceed the number of retained full-time jobs for which a business receives a credit, unless the business qualifies by creating at least 100 new full-time positions in an industry identified by the EDA as desirable for the State to attract or maintain.

The annual credit amount increases to $8,000 if a) the business operates in an industry the EDA identifies as desirable to maintain or attract, b) the business is in proximity to a qualified area adjacent to or within walking distance or short-distance-shuttle service of a public transit facility, c) the full-time jobs created carry salaries in excess of New Jersey's average full-time salary, or d) the qualified area is negatively affected by the approval of a "qualified business facility" under the Urban Transit Hub Tax Credit Act.

But a total tax credit award cannot exceed the value of a project's certified capital investment and must be taken in ten annual installments with each installment equal to the lesser of one-tenth of the certified capital investment or $4 million. If the business does not have a sufficient tax liability against which to offset the tax credit, the business may carry any unused balance forward for 20 years or sell it to another taxpayer. Tax credit amounts may be reduced or revoked if the business fails to meet its New Jersey full-time employment target as specified in the tax credit agreement. The tax credits are subject to the existing $1.5 billion cap for all credits under the Urban Transit Hub Tax Credit program and an annual $150 million cap imposed on the new tax credits by the bill.

A qualified area is a) a vacant commercial building having over 400,000 square feet of office, laboratory or industrial space available; b) an area designated for development within the Highlands, Meadowlands, and Pinelands; c) Fort Monmouth; and d) areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or as an urban, regional or town designated center under the State Development and Redevelopment Plan.

<u>B) Urban Transit Hub Tax Credit Program:</u> The bill expands the areas of the State that are designated as urban transit hubs under the Urban Transit Hub Tax Credit program. Under the program, the State awards up to $1.5 billion in tax credits to taxpayers who make certain capital investments in real property in urban transit hubs.

The bill newly includes among urban transit hubs the area within a half-mile radius of the rail or light rail station at Newark Liberty International Airport (but not to property within that area owned or controlled by the Port Authority of New York and New Jersey) and the area within a one-mile radius of a rail or light rail station that is subject to a Choice Neighborhoods Transformation Plan. (The only New Jersey Choice Neighborhood is currently in Jersey City at the McGinley Square – Montgomery Corridor.) In addition, the bill makes urban transit hub tax credits available to acute care medical facilities and closed hospitals located within a one-mile radius of a rail or light rail station.

To qualify for a business facility tax credit of up to 100 percent of the investment under the Urban Transit Hub Tax Credit program, a capital investment in real property must a) equal at least $50 million; b) pave the way for at least 250 full-time employees working in the business facility; c) be made within eight years from January 13, 2008, the effective date of P.L.2007, c.346; and d) yield a net positive benefit to the State and the municipality hosting the transit hub.

Tenants in qualified business facilities may also receive a credit if they occupy space in the facility that represents at least $17.5 million of the capital investment and employ at least 250 persons in the facility. If fewer than 200 of the 250 full-time positions in a business facility represent a net gain to New Jersey, then the tax credit maxes out at 80 percent of the qualified capital investment.

To qualify for a residential tax credit of up to 35 percent of the investment, an investment in a residential project must a) equal at least $50 million; b) be made within eight years from July 28, 2009, the effective date of P.L.2009, c.90; and c) not occur absent the receipt of a tax credit.

Two mutually exclusive tax credit options exist for developers of mixed use projects representing a capital investment of at least $50 million. They may either receive a residential tax credit for the entire investment subject to the conditions of that tax credit or they may receive a residential tax credit for the project's residential component if it represents at least a $17.5 million capital investment and otherwise meets the conditions of that tax credit and a business facility tax credit for the project's business facility component if it represents at least a $17.5 million capital investment and otherwise meets the conditions of that tax credit.

<u>C) Business Retention and Relocation Assistance Grant Program:</u> The bill clarifies that the annual aggregate limit on tax credits under the program is calculated by tax period rather than fiscal year, and changes the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility is deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be. The bill also deletes the prohibition on use of program tax credits by a business unless the retained State tax

revenue from the business, in the tax period prior to the use of tax credits, equals or exceeds the amount of tax credits.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS can determine neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of the bill's provisions relating to tax credits under the Grow New Jersey Assistance Program, the Urban Transit Hub Tax Credit Program, and the Business Retention and Relocation Assistance Grant Program. Their State fiscal net impact would be calculated by adding the direct revenue loss from granting the 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. In addition, the bill is also likely to accrue an indirect revenue gain to local governments. Although the OLS is able to pinpoint the bill's maximum direct revenue loss, it cannot calculate its opportunity cost or its offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on the characteristics of capital investments that will earn tax credits.

Without knowledge of the final sales arrangement, the OLS also can gauge neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

Direct State Revenue Loss: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund from the establishment of the Grow New Jersey Assistance Program and the expansion of the existing Urban Transit Hub Tax Credit program could be as high as \$1.11 billion accumulated over several years, or the difference between the urban transit hub tax credit program's \$1.5 billion cap and the \$394 million in tax credits the EDA has awarded to ten projects through April 18, 2011.

Given the wide range of locales in which a creditable project may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap. In any event, whether the bill's provisions governing the Grow New Jersey Assistance Program and the Urban Transit Hub Tax Credit program will actually cost \$1.11 billion will largely depend on the extent to which the \$1.5 billion program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce a \$1.11 billion State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.

The bill's direct revenue loss to the State General Fund from the revisions to the Business Retention and Relocation Assistance Grant Program could be no higher than $17.3 million annually, the difference between the program's $20 million annual cap and the estimated $2.7 million in tax credits currently claimed under the program. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce an annual $17.3 million State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more tax credits would be awarded under the program.

Irrespective of the State fiscal effects of the bill's provisions relating to the three tax credit programs, taxpayers earning credits will share their benefit with the federal government. This will be so because taxpayers can deduct their State and local income tax payments on their federal income tax returns. Consequently, a lower New Jersey corporation business tax liability translates into a lower federal deduction, and thus a higher federal income tax liability. At the federal corporation income tax rate of 35 percent, taxpayers receiving a State tax credit will therefore only hold on to 65 percent of the tax credit amount, while the remaining 35 percent of the benefit will accrue to the United States government.

Indirect State and Local Revenue Gain: The bill may generate an indeterminate indirect revenue gain to the State and local governments that may partially offset the direct State revenue loss from and State opportunity cost of providing tax credits in accordance with the bill. The OLS, however, does not have the capacity to quantify the bill's secondary effects, since it cannot estimate the volume and types of capital investments that the tax credit will directly spur and their ensuing indirect effect on State and local 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 receive payments they would not have received absent the incentive, at least a portion of these payments will newly circulate in New Jersey's economy. As these ramifications will flow through the economy, they will affect State and local revenue collections. Indirect fiscal effects encompass secondary tax collections from credit-induced capital investments (such as enhanced gross income tax collections from employees whose positions are retained in New Jersey because of the tax credit and increased property tax collections if the investment appreciates the value of a property) 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 capital investments benefitting from the credit may represent a gain to the State and affected municipalities. 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 project anyway. In such a scenario, the State will only incur the direct cost of the subsidy, while the capital investment's secondary effects cannot be attributed to the bill.

Applying the general principle to this bill, it is reasonable to expect that most of the indirect effects of credits awarded will count as a benefit to the State. This is so because credits can only be awarded if a project passes the net benefit test. As part of that test, the EDA excludes from the analysis the indirect benefits from jobs that are neither "at risk," classified as a "suburban to urban move" or otherwise deemed new jobs to the State. Therefore, only those tax credits will not produce an indirect revenue gain to the State that represent a relocation of jobs from a suburban area of the State to an urban area or that represent an incorrect assessment regarding the likelihood of a job created or retained within New Jersey absent a credit award. It remains unclear, however, whether or not the indirect revenue gains attributable to the credits will exceed the direct State revenue loss and opportunity cost they will cause.

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 capital investments 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 and that of the foregone road construction investment.

Sale of State-Owned Properties to New Jersey Performing Arts Center: Without knowledge of the final sales arrangement, the OLS also can calculate neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

The property sale appears to relate to the proposed construction by Prudential Financial Inc. of a new office tower totaling 600,000 square feet along with a parking structure for 1,600 vehicles adjacent to the New Jersey Performing Arts Center. According to a November 9, 2011 memorandum by the Chief Executive Officer of the EDA to the members of the EDA Board, the project will cost Prudential Financial an estimated $369 million and stands to receive an urban transit hub tax credit of $250.8 million from the State.

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

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

ASSEMBLY, No. 4306

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED NOVEMBER 21, 2011

Sponsored by:
Assemblyman ALBERT COUTINHO
District 29 (Essex and Union)
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington and Camden)
Assemblyman ANTHONY M. BUCCO
District 25 (Morris)
Assemblyman GARY R. CHIUSANO
District 24 (Sussex, Hunterdon and Morris)

Co-Sponsored by:
Assemblywomen McHose, Spencer and Assemblyman Coughlin

SYNOPSIS

Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 11/22/2011)

AN ACT providing for the availability of tax credits to certain businesses and supplementing Title 34 of the Revised Statutes, amending various parts of the statutory law, and repealing section 6 of P.L.1996, c.25.

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

1. (New section) Sections 1 through 8 of this act shall be known and may be cited as the "Grow New Jersey Assistance Act."

2. (New section) As used in this act:

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-209).

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

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership, an S corporation, or a limited liability corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

"Capital investment" in a qualified business facility means expenses incurred after application, but before the end of the tenth year after, the effective date of P.L.   , c.   (C.   ) (pending before the Legislature as this bill) for: a. site preparation and construction, repair, renovation, improvement, equipping, or

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.

furnishing of a building, structure, facility, or improvement to real property; and b. obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property.

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

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"New full-time job" means an eligible position created by the business at the qualified business facility that did not previously exist in this State. For the purposes of determining a number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

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

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

"Program" means the "Grow New Jersey Assistance Program" established pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment located within a qualified incentive area, used in connection with the operation of a business.

"Qualified incentive area" means an area designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or any urban, regional, or town designated center under the State Development and Redevelopment Plan; an area zoned for development pursuant to a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L.1968, c.404 (C.13:17-21); any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L.1971, c.137 (C.5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L.1968, c.404 (C.13:17-4); a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.); an area designated for development, redevelopment, or economic growth within the Highlands Region; federally owned land approved for closure under any federal Base Closure and Realignment Commission action; or any property consisting of a vacant commercial building having over 400,000 square feet of office, laboratory, or industrial space available for occupancy for a period of over one year or is negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

3. (New section) a. The Grow New Jersey Assistance Program is hereby established as a program under the jurisdiction of the New Jersey Economic Development Authority and shall be administered by the authority. The purpose of the program is to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State. To implement this purpose, and to the extent that funding for the program is available, the program may provide tax credits to eligible businesses. To be eligible for any tax credits pursuant to P.L. , c. (C.) (pending before the

Legislature as this bill), a business's chief executive officer or equivalent officer shall demonstrate to the authority, at the time of application, that: (1) the business will make, acquire, or lease a capital investment of at least $20,000,000 at a qualified business facility at which it will (a) employ at least 100 full-time employees in retained full-time jobs, or (b) create at least 100 new full-time jobs in an industry identified by the authority as desirable for the State to maintain or attract; (2) the capital investment resultant from the award of tax credits and the resultant retention and creation of eligible positions will yield a net positive benefit to the State; and (3) the award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program.

b. To assist the authority in determining whether a proposed capital investment will yield a net positive benefit, the business's chief executive officer, or equivalent officer, shall submit a certification to the authority indicating that any existing jobs are at risk of leaving the State, that any projected creation of new full-time jobs would not occur but for the provision of tax credits under the program, and that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the authority and that the representations contained therein are accurate. In the event that this certification by the business's chief executive officer, or equivalent officer, is found to be willfully false, the authority may revoke any award of tax credits in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to. When considering an application involving intra-State job transfers, the authority shall require the business to submit the following information as part of its application: a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the authority, the authority shall independently verify and confirm, by way of making a factual finding by separate vote of the authority's board, the business's assertion that the jobs are actually at risk of leaving the State, before a business may be awarded any tax credits under this section.

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

4. (New section) The authority shall require an eligible business to enter an agreement prior to the issuance of tax credits. The agreement shall include, but shall not be limited to, the following:

a. A detailed description of the proposed project which will result in job creation or retention, and the number of full-time employees.

b. The term of the tax credits, and the first year for which the tax credits may be claimed.

c. Personnel information that will enable the authority to administer the program.

d. A requirement that the applicant maintain the project at a location in New Jersey for at least 1.5 times the number of years of the term of the tax credits, with at least the number of full-time employees as required by section 6 of P.L. , c. (C.) (pending before the Legislature as this bill) and a provision to permit the authority to recapture all or part of any tax credit awarded, at its discretion, if the business does not remain at the site for the required term.

e. A method for the business to report annually to the authority the number of full-time employees for which the tax credits are to be made.

f. A provision permitting an audit of the payroll records of the business from time to time, as the authority deems necessary.

g. A provision which permits the authority to amend the agreement.

h. A provision establishing the conditions under which the agreement may be terminated and awarded tax credits are recaptured, in whole or in part, by the authority at its discretion.

5. (New section) a. The value of each tax credit for an eligible business shall be equal to $5,000 per year for a period of ten years for each new or retained full-time job determined by the authority pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) to be located at the qualified business facility, subject to the provisions of this section.

b. In addition to any grant of tax credits determined pursuant to subsection a. of this section, a bonus award of up to an additional $3,000 per job of the amount of the original tax credits may be made to any eligible business as determined by the authority. In making a bonus award to an eligible business, the authority shall consider the following factors, such that whether the business: (1) is an industry identified by the authority as desirable for the State to maintain or attract; (2) locates or relocates to a location within a qualified incentive area adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the authority, by regulation; (3) creates jobs using full-time employees in eligible positions whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the average full-time salary in this State; or (4) is locating to a project site that is or has been negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

c. Notwithstanding the provisions of subsections a. and b. of this section, (1) the amount of tax credits available to be applied by the business annually shall not exceed one tenth of the capital investment certified by the authority pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill), and (2) the number of new full-time jobs for which a business receives a tax credit shall not exceed the number of retained full-time jobs for which a business receives a tax credit, unless the business qualifies by creating at least 100 new full-time jobs in an industry identified by the authority as desirable for the State to maintain or attract.

6. (New section) a. (1) The value of all credits approved by the authority pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed $200,000,000, except that the value of all credits approved by the authority pursuant to this section may exceed $200,000,000 if the board of the authority determines the credits to be reasonable, justifiable, and appropriate; provided, however, the combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq. and P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed $1,500,000,000.

(2) A business, including any affiliate of the business or any business that is a tenant within any qualified business facility, shall make or acquire capital investments totaling not less than $20,000,000 in a qualified business facility, at which the business shall employ not fewer than 100 full-time employees to be eligible for a credit pursuant to P.L. , c. (pending before the Legislature as this bill). A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be.

(3) A business shall not be allowed tax credits pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) or P.L.1996, c.26 (C.34:1B-124 et seq.) relating to the same capital and employees that qualify the business for tax credits pursuant to P.L. , c. (pending before the Legislature as this bill). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall not qualify for a tax credit under this section, based upon capital

investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the "Urban Transit Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.).

(4) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(5) The capital investment of the owner of a qualified business facility is that percentage of the capital investment made or acquired by the owner of the building that the percentage of net leasable area of the qualified business facility not leased to tenants is of the total net leasable area of the qualified business facility. For a business that is a tenant, the amount of capital investment in a facility that a leased area represents shall be equal to that percentage of the owner's total capital investment in the facility that the percentage of net leasable area leased by the tenant is of the total net leasable area of the qualified business facility. Capital investments made by a tenant shall be deemed to be included in the calculation of the capital investment made or acquired by the owner, but only to the extent necessary to meet the owner's minimum capital investment of $20,000,000. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of $20,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

b. A business shall apply for the tax credit prior to July 1, 2014, and shall submit its documentation indicating that it has met the capital investment and employment specified in the project agreement for certification of its credit amount no later than July 28, 2017.

c. (1) The amount of credit allowed shall not exceed the capital investment made by the business or the capital investment represented by the business' leased area, as certified by the authority pursuant to subsection b. of this section, as having met the investment capital and employment qualifications, subject to any reduction or disqualification as provided by subsection d. of this section as determined by annual review by the authority. In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

The credit amount for any tax period ending after July 28, 2017, during which the documentation of a business' credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it.

The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the value of all credits approved by the authority against tax liabilities pursuant to P.L. , c. (pending before the Legislature as this bill), in any fiscal year shall not exceed $150,000,000 and the combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed $1,500,000,000.

The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business' total lease payments for occupancy of the qualified business facility for the tax period.

(2) A business that is a partnership shall not be allowed a credit under this section directly, but the amount of credit of an owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or with the owner's tax period, or that proportion that is allocated by an agreement, if any, among the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by such time and accompanied by such additional information as the director may require.

(3) The amount of credit allowed may be applied against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

d. (1) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval under section 3 of P.L. , c. (pending before the Legislature as this bill), then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business' Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(2) If, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area drops below 100 or 80 percent of the number of new and retained full-time jobs specified in the project agreement, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the

number of full-time employees employed by the business at the qualified business facility to 100.

(3) (a) If the qualified business facility is sold in whole or in part during the 10-year eligibility period the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided however that any credits of tenants shall remain unaffected.

(b) If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period the new tenant shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods.

7. (New section) A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the chief executive officer of the authority for a tax credit transfer certificate, covering one or more years, in lieu of the business being allowed any amount of the credit against the tax liability of the business. The tax credit transfer certificate, upon receipt thereof by the business from the director and the chief executive officer of the authority, may be sold or assigned, in full or in part, to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5. The certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the business that originally applied for and was allowed the credit.

8. (New section) a. The chief executive officer of the authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, 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 P.L. , c. (C.) (pending before the Legislature as this bill), including but not limited to: examples of and the determination of capital investment; the enumeration of qualified incentive areas; specific delineation of these incentive areas; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital

improvements; the promulgation of procedures and forms necessary to apply for a tax credit, including the enumeration of the certification procedures and allocation of tax credits for different phases of a qualified business facility; and provisions for tax credit applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the tax credit.

b. Through regulation, the authority shall establish standards by which qualified business facilities shall be constructed or renovated based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

9. Section 2 of P.L.2007, c.346 (C.34:1B-208) is amended to read as follows:

2. As used in this act:

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-209).

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

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership, an S corporation, or a limited liability corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

"Capital investment" in a qualified business facility means expenses incurred after, but before the end of the eighth year after, the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a. the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility or improvement to real property; and b. obtaining and installing furnishings and machinery, apparatus or equipment for the operation of a business in a building, structure, facility or improvement to real property.

"Eligible municipality" means a municipality: (1) which qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or which was continued to be a qualified municipality thereunder pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Mixed use project" means a project comprising both a qualified business facility and a qualified residential project.

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

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment located within a designated urban transit hub in an eligible municipality, used in connection with the operation of a business.

"Qualified residential project" shall have the meaning ascribed to that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).

"Residential unit" means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

"Urban transit hub" means:

a. property located within a 1/2 mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, including all light rail stations, and property located within a one mile radius of the mid point of the platform area of such a rail station if the property is in a qualified municipality under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et seq.);

b. property located within a 1/2 mile radius surrounding the mid point of one of up to two underground light rail stations' platform areas that are most proximate to an interstate rail station;

c. property adjacent to, or connected by rail spur to, a freight rail line if the business utilizes that freight line at any rail spur located adjacent to or within a one mile radius surrounding the entrance to the property for loading and unloading freight cars on trains;

which property shall have been specifically delineated by the authority pursuant to subsection e. of section 3 of P.L.2007, c.346 (C.34:1B-209).

A property which is partially included within the radius shall only be considered part of the urban transit hub if over 50 percent of its land area falls within the radius.

"Rail station" shall not include any rail station located at an international airport<u>, except that any property within a 1/2 mile radius surrounding the mid point of a New Jersey Transit Corporation rail station platform area at an international airport upon which a qualified business facility is constructed or renovated commencing after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be deemed an urban transit hub, excluding any property owned or controlled by the Port Authority of New York and New Jersey</u>.

(cf: P.L.2011, c.89, s.1)

10. Section 3 of P.L.2007, c.346 (C.34:1B-209) is amended to read as follows:

3. a. (1) A business, upon application to and approval from the authority, shall be allowed a credit of 100 percent of its capital investment, made after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business

facility within an eligible municipality, pursuant to the restrictions and requirements of this section. To be eligible for any tax credits authorized under this section, a business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality. The value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall not exceed $1,500,000,000.

(2) A business, other than a tenant eligible pursuant to paragraph (3) of this subsection, shall make or acquire capital investments totaling not less than $50,000,000 in a qualified business facility, at which the business shall employ not fewer than 250 full-time employees to be eligible for a credit under this section. A business that acquires a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller.

(3) A business that is a tenant in a qualified business facility, the owner of which has made or acquired capital investments in the facility totaling not less than $50,000,000, shall occupy a leased area of the qualified business facility that represents at least $17,500,000 of the capital investment in the facility at which the tenant business and up to two other tenants in the qualified business facility shall employ not fewer than 250 full-time employees in the aggregate to be eligible for a credit under this section. The amount of capital investment in a facility that a leased area represents shall be equal to that percentage of the owner's total capital investment in the facility that the percentage of net leasable area leased by the tenant is of the total net leasable area of the qualified business facility. Capital investments made by a tenant shall be deemed to be included in the calculation of the capital investment made or acquired by the owner, but only to the extent necessary to meet the owner's minimum capital investment of $50,000,000. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of $50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

(4) A business shall not be allowed tax credits under this section if the business participates in a business employment incentive grant relating to the same capital and employees that qualify the business for this credit, or if the business receives assistance pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall not qualify for a tax credit under this section, based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the

"InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-237 et seq.).

(5) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(6) The capital investment of the owner of a qualified business facility is that percentage of the capital investment made or acquired by the owner of the building that the percentage of net leasable area of the qualified business facility not leased to tenants is of the total net leasable area of the qualified business facility.

(7) A business shall be allowed a tax credit of 100 percent of its capital investment, made after the effective date of P.L.2011, c.89 but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility that is part of a mixed use project, provided that (a) the qualified business facility represents at least $17,500,000 of the total capital investment in the mixed use project, (b) the business employs not fewer than 250 full-time employees in the qualified business facility, and (c) the total capital investment in the mixed use project of which the qualified business facility is a part is not less than $50,000,000. The allowance of credits under this paragraph shall be subject to the restrictions and requirements, to the extent that those are not inconsistent with the provisions of this paragraph, set forth in paragraphs (1) through (6) of this subsection, including but not limited to the requirement that the business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality.

(8) In determining whether a proposed capital investment will yield a net positive benefit, the authority shall not consider the transfer of an existing job from one location in the State to another location in the State as the creation of a new job, unless (a) the business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality whether in-State or out-of-State, or (b) the business's chief executive officer, or equivalent officer, submits a certification to the authority indicating that the existing jobs are at risk of leaving the State and that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the authority and that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility. In the event that this certification by the business's chief executive officer, or equivalent officer, is found to be willfully false, the authority may revoke any award of tax credits in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be

subject to. When considering an application involving intra-State job transfers, the authority shall require the company to submit the following information as part of its application: a full economic analysis of all locations under consideration by the company; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the authority, the authority shall independently verify and confirm, by way of making a factual finding by separate vote of the authority's board, the business's assertion that the jobs are actually at risk of leaving the State, before a business may be awarded any tax credits under this section.

b. A business shall apply for the credit within five years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and shall submit its documentation for approval of its credit amount within eight years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.).

c. (1) The amount of credit allowed shall, except as otherwise provided, be equal to the capital investment made by the business, or the capital investment represented by the business' leased area, or area owned by the business as a condominium, and shall be taken over a 10-year period, at the rate of one-tenth of the total amount of the business' credit for each tax accounting or privilege period of the business, beginning with the tax period in which the business is first 【approved】 <u>certified</u> by the authority as having met the investment capital and employment qualifications, subject to any reduction or disqualification as provided by subsection d. of this section as determined by annual review by the authority. In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

The credit amount for any tax period ending after the date eight years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) during which the documentation of a business' credit amount remains 【unapproved】 <u>uncertified</u> shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it.

The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the value of all credits approved by the authority against tax liabilities pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year shall not exceed $150,000,000.

The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business' total lease payments for occupancy of the qualified business facility for the tax period.

(2) A business that is a partnership shall not be allowed a credit under this section directly, but the amount of credit of an owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or with the owner's tax period, or that proportion that is allocated by an agreement, if any, among the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by such time and accompanied by such additional information as the director may require.

(3) The amount of credit allowed may be applied against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

d. (1) If, in any tax period, fewer than 200 full-time employees of the business at the qualified business facility are employed in new full-time positions, the amount of the credit otherwise determined pursuant to final calculation of the award of tax credits pursuant to subsection c. of this section shall be reduced by 20 percent for that tax period and each subsequent tax period until the first period for which documentation demonstrating the restoration of the 200 full-time employees employed in new full-time positions at the qualified business facility has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed; provided, however, that for businesses applying before January 1, 2010, there shall be no reduction if a business relocates to an urban transit hub from another location or other locations in the same municipality. For the purposes of this paragraph, a "new full-time position" means a position created by the business at the qualified business facility that did not previously exist in this State.

(2) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under <u>subsection a. of</u> this section, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business' Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(3) If, in any tax period, (a) the number of full-time employees employed by the business at the qualified business facility located in an urban transit hub within an eligible municipality drops below 250, or (b) the number of full-time employees, who are not the subject of intra-State job transfers, pursuant to paragraph (8) of subsection a. of this section, employed by the business at any other business facility in the State, whether or not located in an urban transit hub within an eligible municipality, drops by more than 20 percent from the number of full-time employees in its workforce in the last tax accounting or privilege period prior to the credit amount approval under this section, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 250 or an increase above the 20 percent reduction has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(4) (i) If the qualified business facility is sold in whole or in part during the 10-year eligibility period the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided however that any credits of tenants shall remain unaffected.

(ii) If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period the new tenant shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods.

e. (1) The Executive Director of the New Jersey Economic Development Authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, 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 this act, including but not limited to: examples of and the determination of capital investment; the enumeration of eligible municipalities; specific delineation of urban transit hubs; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements; the promulgation of procedures and forms necessary to apply for a credit, including the enumeration of the certification procedures and allocation of tax credits for different phases of a qualified business facility or mixed use project; 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.

(2) Through regulation, the Economic Development Authority shall establish standards based on the green building manual prepared by the Commissioner of Community Affairs pursuant to

section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

(cf: P.L.2011, c.89, s.2)

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

2. As used in this act:

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. s.414). An entity may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes;

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

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

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

"Capital investment" means expenses that the business incurs following its submission of an application to the authority pursuant to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the Capital Investment Completion Date, as shall be defined in the project agreement, for: (1) the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property in this State; and (2) obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility in this State. Provided however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.168. A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be;

"Certificate of compliance" means a certificate issued by the authority pursuant to section 9 of P.L.1996, c.25 (C.34:1B-120);

"Chief executive officer" means the chief executive officer of the New Jersey Economic Development Authority;

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

"Designated industry" means an industry identified by the authority as desirable for the State to maintain, which may be designated and amended via the promulgation of rules by the authority to reflect changing market conditions;

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

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

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the authority, as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the authority, as full-time employment, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the authority, as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business;

"New business location" means the premises to which a business will relocate that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than the commitment duration or eight years, whichever is greater, from the date of relocation. A "new business location" also means the business's current location or locations if the business makes a capital investment equal to the total value of the business retention or relocation grant of tax credits to the business at that location or locations;

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

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

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered the eligible positions of the business;

"Tax credit term" means the period of time commencing with the first issuance of tax credits and continuing during the period in which the recipient of a grant of tax credits is eligible to apply the tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3); and

"Yearly tax credit amount" means $1,500 times the number of retained full-time jobs. "Yearly tax credit amount" does not include the amount of any bonus award authorized pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1).

(cf: P.L.2010, c.123, s.1)

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

7. a. The total value of the grants of tax credits, approved by the authority pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that may be applied against tax liability **[**in a fiscal year**]** <u>for any tax period</u> shall not exceed an aggregate annual limit of $20,000,000. The total value of the grants of tax credits, issued pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that a single business may apply against its tax liability shall not exceed an aggregate annual limit of $10,000,000 in a fiscal year. A tax credit issued pursuant to P.L.1996, c.25 may be applied against liability in the single tax period in which the tax credit or portion of the tax credit may be applied as prescribed by the project agreement and as set forth in subsection b. of this section and shall expire thereafter.

b. Subject to the limitation set forth in subsection a. of this section, grants of tax credits shall be approved for qualifying businesses according to the following schedule, and shall be issued upon the execution and satisfaction of the requirements of the project agreement between the authority and the business with an approved project:

(1) for a project that covers a business relocating or retaining 50 to 250 full-time employees, a grant of tax credits shall be for the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1), and may be applied against liability in the tax period in which the tax credit is issued;

(2) for a project that covers a business relocating or retaining 251 to 400 full-time employees, a grant of tax credits shall be for two times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1), and may be applied against liability in the tax period in which the tax credit is issued and the following tax period, for one-half of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

(3) for a project that covers a business relocating or retaining 401 to 600 full-time employees, a grant of tax credits shall be for three times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following two tax periods, for

one-third of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

(4) for a project that covers a business relocating or retaining 601 to 800 full-time employees, a grant of tax credits shall be for four times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following three tax periods, for one-fourth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

(5) for a project that covers a business relocating or retaining 801 to 1,000 full-time employees, a grant of tax credits shall be for five times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following four tax periods for one-fifth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance; and

(6) for a project that covers a business relocating or retaining 1,001 or more full-time employees, a grant of tax credits shall be for six times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following five tax periods, for one-sixth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance.

c. If the approval of a grant of tax credits pursuant to this section would exceed the $20,000,000 aggregate annual limit, the authority may award a smaller grant of tax credits or no grants of tax credits, as necessary to comply with the aggregate annual limit.

(cf: P.L.2010, c.123, s.6)

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

17. a. The authority shall establish a corporation business tax credit and insurance premiums tax credit certificate transfer program to allow businesses in this State with unused amounts of tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and otherwise allowable, that cannot be applied by the business to which originally issued before the expiration of the credit, to surrender those tax credits for use by other corporation business and insurance premiums taxpayers in this State. The tax credits may be used on the corporation business tax and insurance premiums tax returns to be filed by those taxpayers in exchange for private

financial assistance to be provided by the corporation business taxpayer or insurance premiums taxpayer that is the recipient of the corporation business tax credit certificate or insurance premiums tax credit certificate to assist in the funding of costs incurred by the relocating business.

b. Businesses may apply to the <u>executive director of the</u> authority and the Director of the Division of Taxation for a tax credit transfer certificate, covering one or more years. Upon receipt thereof, the business may sell or assign the tax credit certificate in exchange for private financial assistance to be made by the purchaser in an amount equal to at least 75% of the amount of the surrendered tax credit of a business relocating in the State. The private financial assistance shall assist in funding expenses incurred in connection with the operation of the business in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of P.L.1996, c.25 (C.34:1B-112 et seq.).

c. The authority shall establish procedures to facilitate such transfers and encourage liquidity and simplicity in the market for the purchase and sale of such certificates, including, in the authority's discretion, coordinating the applications for surrender and acquisition of unused but otherwise allowable tax credits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to businesses in this State.

d. The authority shall, in consultation with the Director of the Division of Taxation, develop criteria for the approval or disapproval of applications.

(cf: P.L.2010, c.123, s.14)

14. (New section) Section 6 of P.L.1996, c.25 (34:1B-117) is repealed.

15. This act shall take effect immediately.

STATEMENT

This bill establishes the Grow New Jersey Assistance Program (“program”) to provide certain eligible businesses with tax credits for making capital investments of at least $20 million at a qualified business facility in certain qualified incentive areas, as designated in the bill, at which the business shall: 1) maintain a at least 100 retained full-time jobs; or 2) create at least 100 new full-time jobs if it is an industry identified by the New Jersey Economic

Development Authority ("EDA") as desirable for the State to maintain or attract.

Specifically, the bill establishes a $200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment and job subsidies that incentivize both retained and new jobs. The program's cost would fall under the $1.5 billion cap established under the "Urban Transit Hub Tax Credit" ("UTHTC") program. The initial $200 million program allocation could be increased at discretion of board of the EDA if the board determines the credits to be reasonable, justifiable, and appropriate. All applications for eligibility under the program shall be made to the EDA by July 1, 2014.

Under the program, a minimum of $20 million in capital investment would be required to be spent at the project site, with owners, tenants, and affiliates allowed to participate in cost sharing to meet this eligibility requirement. "Green" building standards would need to be used in the design and construction of any eligible project that are based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Areas of the State where program assistance would be available include: 1) Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), and any urban, regional, or town designated center locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment law; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the program, an eligible business would receive a base tax credit of $5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to $3,000 per job by an eligible business that, as determined by the authority, meets the following factors: 1) is an industry identified by the authority as desirable for the State to maintain or attract; 2) locates or relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a "qualified business facility," under the UTHTC program. The per project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

To be eligible for any tax credits under the program, a business's chief executive officer ("CEO") or equivalent officer shall demonstrate to the EDA, at the time of application, that: 1) the business will make, acquire, or lease a capital investment of at least $20 million at a qualified business facility at which it will (a) employ at least 100 full-time employees in retained full-time jobs, or (b) create at least 100 new full-time jobs in an industry identified by the EDA as desirable for the State to maintain or attract; 2) the capital investment resultant from the award of tax credits and the resultant retention and creation of eligible positions will yield a "net positive benefit" to the State as that term is described in the bill; and 3) the award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program. To assist the EDA in determining whether a proposed capital investment will yield a net positive benefit, the business's CEO, or equivalent officer, shall submit a certification to the EDA indicating that any existing jobs are at risk of leaving the State and that any projected creation of new full-time jobs would not occur but for the provision of tax credits under the program.

Further, the program provides for performance requirement "claw backs" (i.e., forfeiting the amount of assistance received in any year) if a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

In addition, the bill: 1) amends the definition of "urban transit hub" under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey, 2) clarify that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, that the business met the capital investments and employment requirements prior to claiming the tax credits.

Also, the bill makes clarifying changes to the "Business Retention and Relocation Assistance Grant" ("BRRAG") program to: 1) change the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility as deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeals the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4306

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 21, 2011

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly Bill No. 4306.

This bill, as amended by the committee, establishes the Grow New Jersey Assistance Program ("program") to encourage businesses to engage in economic development, job creation and the preservation of existing jobs within New Jersey. The bill establishes a $200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment, creation of new jobs and retention of existing jobs.

To be eligible for program tax credits, a business would have to make capital investments of at least $20,000,000 at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs, or create at least 100 new full-time jobs in an industry deemed desirable by the New Jersey Economic Development Authority (EDA). Eligibility for program tax credits will also be based upon a determination by the EDA that the capital investment will yield a net positive benefit to the State and that the award of tax credits is a material factor in the business decision to create or retain the minimum number of full-time jobs.

The program's cost would fall under the $1.5 billion cap established under the "Urban Transit Hub Tax Credit" ("UTHTC") program. The initial $200 million program allocation could be increased by the board of the EDA if the board determines the credits to be reasonable, justifiable, and appropriate. All applications for eligibility under the program shall be made to the EDA by July 1, 2014.

Under the program, a minimum of $20 million in capital investment would be required to be spent at the project site. Owners, tenants, and affiliates would be allowed to participate in cost sharing to meet this eligibility requirement. The bill, as amended, provides that the amount of tax credits that can be applied by a business annually under the program cannot exceed the lesser of one-tenth of the capital investment or $4,000,000.

The bill requires the EDA to establish standards for the construction and renovation of business facilities based on the green building manual prepared by the Commissioner of Community Affairs. Areas of the State where program assistance would be available include: 1) Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), and any urban, regional, or town designated center locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment Act; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the program, an eligible business would receive a base tax credit of $5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to $3,000 per job by an eligible business that, as determined by the authority, meets the following factors: 1) is an industry identified by the authority as desirable for the State to maintain or attract; 2) locates or relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a "qualified business facility," under the UTHTC program. The per project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

The program provides for performance requirement "claw backs" (i.e., forfeiting the amount of assistance received in any year) if a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

The bill, as amended by the committee, amends the definition of "urban transit hub" under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey. The bill, as amended by the committee, also amends the definition of "urban transit hub" under the UTHTC law to expand the radius, from one-half to one mile the area, which surrounds the mid point of other New Jersey Transit Corporation rail stations and Port Authority Transit Corporation and Port Authority Trans-Hudson Corporation rail station platform areas.

The bill, as amended, also clarifies that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, and that the business met the capital investments and employment requirements prior to claiming the tax credits.

The bill, as amended, also makes clarifying changes to the "Business Retention and Relocation Assistance Grant" (“BRRAG”) program to: 1) change the definition of “capital investment” to include under that definition that a business acquiring or leasing a qualified business facility as deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeal the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

The bill, as amended, authorizes the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey’s right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease.

This bill is identical to Senate Bill No. 3033 (3R) ACA (Lesniak/Kyrillos) which the committee also reported on this date.

COMMITTEE AMENDMENTS

Committee amendments to the bill:

- clarify that the amount of tax credits available to be applied by the business annually under the program shall not exceed the lesser of one tenth of the capital investment or $4,000,000;
- authorize the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey’s right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease; and
- modify the boundaries of an “urban transit hub” UTHTCA by expanding the radius, from one-half to one mile the area, which surrounds the mid point of a New Jersey Transit Corporation, Port

Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4306

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 1, 2011

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4306 (1R), with committee amendments.

As amended, this bill establishes the Grow New Jersey Assistance Program ("program") to encourage businesses to engage in economic development, job creation and the preservation of existing jobs within New Jersey. The bill establishes a $200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment, creation of new jobs and retention of existing jobs.

To be eligible for program tax credits, the bill requires a business to make capital investments of at least $20,000,000 at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs, or create at least 100 new full-time jobs in an industry deemed desirable by the New Jersey Economic Development Authority (EDA). Eligibility for program tax credits will also be based upon a determination by the EDA that the capital investment will yield a net positive benefit to the State and that the award of tax credits is a material factor in the business decision to create or retain the minimum number of full-time jobs.

The program's cost falls under the $1.5 billion cap established under the "Urban Transit Hub Tax Credit" ("UTHTC") program. The bill allows the initial $200 million program allocation to be increased by the board of the EDA if the board determines the credits to be reasonable, justifiable, and appropriate. The bill requires that all applications for eligibility under the program shall be made to the EDA by July 1, 2014.

The bill requires that a minimum of $20 million in capital investment be spent at the project site. Owners, tenants, and affiliates will be allowed to participate in cost sharing to meet this eligibility requirement. The bill provides that the amount of tax credits that can be applied by a business annually under the program cannot exceed the lesser of one-tenth of the capital investment, or $4,000,000.

The bill requires the EDA to establish standards for the construction and renovation of business facilities based on the green building manual prepared by the Commissioner of Community Affairs. Areas of the State where program assistance will be available include: 1) Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), and any urban, regional, or town designated center locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment Act; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the bill's program, an eligible business will receive a base tax credit of $5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to $3,000 per job by an eligible business that, as determined by the authority, meets the following factors: 1) is an industry identified by the authority as desirable for the State to maintain or attract; 2) locates or relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a "qualified business facility," under the UTHTC program. The per-project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

The bill's program provides for forfeiting the amount of assistance received in the current year and any future year in which a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

The bill expands the definition of "urban transit hub" under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey.

The bill clarifies that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, and that the business met the capital investments and employment requirements prior to claiming the tax credits.

The bill makes clarifying changes to the "Business Retention and Relocation Assistance Grant" ("BRRAG") program to: 1) change the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility as deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeal the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

The bill authorizes the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey's right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease.

As amended and reported by the committee, this bill is identical to Senate Bill No. 3033 (4R), as also amended and reported by the committee.

FISCAL IMPACT:

In establishing the Grow New Jersey Assistance Program and in amending the Urban Transit Hub Tax Credit Act, the bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could be no higher than $1.11 billion -- the difference between the urban transit hub tax credit program's $1.5 billion cap and the $394 million in tax credits the EDA has awarded to ten projects through April 18, 2011 -- accumulated over several years.

In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the State General Fund could be no higher than $17.3 million annually -- the difference between the program's $20 million annual cap and the estimated $2.7 million in such credits currently claimed under the program.

Whether the bill's impact will actually approach those respective cost ceilings will largely depend on the extent to which the program's caps would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the programs would reach their caps, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.

To the extent that additional tax credits awarded pursuant to this bill are essential to the realization of capital projects, such projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety, the revenue loss and opportunity cost of providing the financial assistance authorized by the bill. The Office of Legislative Services, however, cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State and local government tax receipts, and therefore cannot posit an annual net fiscal impact estimate.

COMMITTEE AMENDMENTS:

The amendments allow the EDA to award GROW-NJ tax credits to a business that must submit a proposal and fulfill a contract with the federal government although the award of tax credits is not a *material factor* in the business's decision to retain at least 100 full-time jobs, as is otherwise required of businesses under the bill.

The amendments modify the definition of "Urban Transit Hub" under current law to include:

1 - property located within a one mile radius of a rail station if the property is in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the federal Department of Housing and Urban Development,

2 - the site of the campus of an acute care medical facility located within a one mile radius of a rail station, and

3 – the site of a closed hospital located within a one mile radius of a rail station.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4306

STATE OF NEW JERSEY
214th LEGISLATURE

DATED: DECEMBER 13, 2011

SUMMARY

Synopsis: Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs; authorizes transfer of certain real property.

Type of Impact: Unknown net effect of four countervailing impacts: 1) a multi-year revenue loss to the State General Fund and the Property Tax Relief Fund from awarding tax credits; 2) an annual revenue increase to the State General Fund, Property Tax Relief Fund, and local governments from fiscal activity catalyzed by tax credit-induced economic activity; 3) a revenue increase to the State General Fund from selling State-owned properties; 4) a potential revenue loss from cessation of rental income from these properties.

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

Office of Legislative Services Estimate

Fiscal Impact	Cumulative Multi-Year Impact
Direct State Revenue Loss	
(from Awarding of Additional Tax Credits)	Indeterminate — Potentially up to $1.1 billion
Indirect State Revenue Gain	
(from Awarding of Additional Tax Credits)	Indeterminate — See comments below
State Opportunity Cost	
(of Awarding of Additional Tax Credits)	Indeterminate — See comments below
Indirect Local Revenue Gain	
(from Awarding of Additional Tax Credits)	Indeterminate — See comments below
State Revenue Gain	
(from Sale of State-Owned Properties)	Indeterminate — See comments below
State Revenue Loss	
(from Loss of Rental Income from State-Owned Properties)	Indeterminate — See comments below

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- The Office of Legislative Services (OLS) can determine neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of the bill's provisions relating to tax credits under the Grow New Jersey Assistance Program, the Urban Transit Hub Tax Credit Program, and the Business Retention and Relocation Assistance Grant Program. On the one side of the ledger, the bill could produce a State revenue loss of up to $1.1 billion from awarding additional tax credits in addition to the indeterminate opportunity cost of the tax expenditure—opportunity costs capture the fiscal benefits the State forgoes as spending is redirected from one economic activity to another. On the other side of the ledger, additional tax credits that are essential to the realization of capital projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety, the revenue loss and opportunity cost of providing the financial assistance.

- In creating the Grow New Jersey Assistance Program and expanding the Urban Transit Hub Tax Credit program, the bill could result in a $1.11 billion maximum direct State revenue loss, reflecting the difference between the $1.5 billion cap applicable to the two programs combined and the $394 million in urban transit hub tax credits the New Jersey Economic Development Authority (EDA) has awarded through April 18, 2011. Given the wide range of locales in which creditable projects may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap.

- Whether that revenue loss will total $1.1 billion will largely depend on the extent to which the program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce a $1.1 billion State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.

- In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the General Fund could be up to $17.3 million annually, reflecting the difference between the $20 million annual cap on that program's tax credits and the estimated $2.7 million in such credits currently claimed. If this bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.

- Capital investments for which tax credits will serve as the impetus will also generate indirect fiscal benefits to the State and local governments. In the converse, extending tax credits to capital projects that taxpayers would also undertake absent the incentive will produce sunk costs to the State, or an expense without a benefit, as the tax credit will have no bearing on the decision to execute the projects. Consequently, the indirect fiscal effects from projects that would be undertaken anyway have to be excluded from the analysis. Applying the general principle to this bill, it is reasonable to expect that almost all the tax credits' indirect effects will count as a benefit. This is so because the bill requires that credits be instrumental to the execution of a credit-receiving capital project and that the project yield incremental receipts to the State that exceed the credit amount. But it is possible that in spite of its due diligence the EDA will be misled about an applicant's true intentions in this regard. In addition, the bill waives the requirement that a Grow New Jersey Assistance Program tax credit be a decisive factor in the pursuit of a credit-receiving project for a subset of projects so that the indirect fiscal benefits of those projects cannot be attributed to the bill. In all, however, the OLS cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State and local government tax receipts.

- Without knowledge of the final sales arrangement, the OLS can gauge neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

BILL DESCRIPTION

Assembly Bill No. 4306 (2R) of 2011 creates a new tax credit for businesses under the Grow New Jersey Assistance Program, expands the existing Urban Transit Hub Tax Credit program, makes revisions to the Business Retention and Relocation Assistance Grant Program, and authorizes the sale of certain State-owned properties in the City of Newark to the New Jersey Performing Arts Center.

A) Grow New Jersey Assistance Program: The bill creates a new tax credit program under which a business will receive a tax credit for a) making a minimum $20 million capital investment in a business facility in a qualified area and b) at that business facility either retaining at least 100 full-time positions with health benefits in New Jersey or creating at least 100 new full-time positions with health benefits in an industry the EDA identifies as desirable to maintain or attract. Tax credits will be awarded only if a) the project yields a positive fiscal net benefit to the State, b) the award of the tax credit is a material factor in the business decision to create or retain eligible full-time positions, c) the project does not involve a point-of-final-purchase retail facility, and d) the business applies for the credit before July 1, 2014. Notwithstanding these general restrictions, the bill authorizes the EDA to exempt at its discretion from the material factor requirement businesses meeting all other eligibility criteria if the business is required to respond to requests for proposal and to fulfill a contract with the federal government and if the application for a tax credit will have been submitted by March 31, 2012.

The credit equals ten annual installments of $5,000 each per full-time position created or retained as long as the number of new full-time jobs for which a business receives a tax credit does not exceed the number of retained full-time jobs for which a business receives a credit, unless the business qualifies by creating at least 100 new full-time positions in an industry identified by the EDA as desirable for the State to attract or maintain.

The annual credit amount increases to $8,000 if a) the business operates in an industry the EDA identifies as desirable to maintain or attract, b) the business is in proximity to a qualified area adjacent to or within walking distance or short-distance-shuttle service of a public transit facility, c) the full-time jobs created carry salaries in excess of New Jersey's average full-time salary, or d) the qualified area is negatively affected by the approval of a "qualified business facility" under the Urban Transit Hub Tax Credit Act.

But a total tax credit award cannot exceed the value of a project's certified capital investment and must be taken in ten annual installments with each installment equal to the lesser of one-tenth of the certified capital investment or $4 million. If the business does not have a sufficient tax liability against which to offset the tax credit, the business may carry any unused balance forward for 20 years or sell it to another taxpayer. Tax credit amounts may be reduced or revoked if the business fails to meet its New Jersey full-time employment target as specified in the tax credit agreement. The tax credits are subject to the existing $1.5 billion cap for all credits under the Urban Transit Hub Tax Credit program and an annual $150 million cap imposed on the new tax credits by the bill.

A qualified area is a) a vacant commercial building having over 400,000 square feet of office, laboratory or industrial space available; b) an area designated for development within the Highlands, Meadowlands, and Pinelands; c) Fort Monmouth; and d) areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or as an urban, regional or town designated center under the State Development and Redevelopment Plan.

<u>B) Urban Transit Hub Tax Credit Program:</u> The bill expands the areas of the State that are designated as urban transit hubs under the Urban Transit Hub Tax Credit program. Under the program, the State awards up to $1.5 billion in tax credits to taxpayers who make certain capital investments in real property in urban transit hubs.

The bill newly includes among urban transit hubs the area within a half-mile radius of the rail or light rail station at Newark Liberty International Airport (but not to property within that area owned or controlled by the Port Authority of New York and New Jersey) and the area within a one-mile radius of a rail or light rail station that is subject to a Choice Neighborhoods Transformation Plan. (The only New Jersey Choice Neighborhood is currently in Jersey City at the McGinley Square – Montgomery Corridor.) In addition, the bill makes urban transit hub tax credits available to acute care medical facilities and closed hospitals located within a one-mile radius of a rail or light rail station.

To qualify for a business facility tax credit of up to 100 percent of the investment under the Urban Transit Hub Tax Credit program, a capital investment in real property must a) equal at least $50 million; b) pave the way for at least 250 full-time employees working in the business facility; c) be made within eight years from January 13, 2008, the effective date of P.L.2007, c.346; and d) yield a net positive benefit to the State and the municipality hosting the transit hub.

Tenants in qualified business facilities may also receive a credit if they occupy space in the facility that represents at least $17.5 million of the capital investment and employ at least 250 persons in the facility. If fewer than 200 of the 250 full-time positions in a business facility represent a net gain to New Jersey, then the tax credit maxes out at 80 percent of the qualified capital investment.

To qualify for a residential tax credit of up to 35 percent of the investment, an investment in a residential project must a) equal at least $50 million; b) be made within eight years from July 28, 2009, the effective date of P.L.2009, c.90; and c) not occur absent the receipt of a tax credit.

Two mutually exclusive tax credit options exist for developers of mixed use projects representing a capital investment of at least $50 million. They may either receive a residential tax credit for the entire investment subject to the conditions of that tax credit or they may receive a residential tax credit for the project's residential component if it represents at least a $17.5 million capital investment and otherwise meets the conditions of that tax credit and a business facility tax credit for the project's business facility component if it represents at least a $17.5 million capital investment and otherwise meets the conditions of that tax credit.

<u>C) Business Retention and Relocation Assistance Grant Program:</u> The bill clarifies that the annual aggregate limit on tax credits under the program is calculated by tax period rather than fiscal year, and changes the definition of "capital investment" to include under that definition

that a business acquiring or leasing a qualified business facility is deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be. The bill also deletes the prohibition on use of program tax credits by a business unless the retained State tax revenue from the business, in the tax period prior to the use of tax credits, equals or exceeds the amount of tax credits.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS can determine neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of the bill's provisions relating to tax credits under the Grow New Jersey Assistance Program, the Urban Transit Hub Tax Credit Program, and the Business Retention and Relocation Assistance Grant Program. Their State fiscal net impact would be calculated by adding the direct revenue loss from granting the 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. In addition, the bill is also likely to accrue an indirect revenue gain to local governments. Although the OLS is able to pinpoint the bill's maximum direct revenue loss, it cannot calculate its opportunity cost or its offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on the characteristics of capital investments that will earn tax credits.

Without knowledge of the final sales arrangement, the OLS also can gauge neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

Direct State Revenue Loss: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund from the establishment of the Grow New Jersey Assistance Program and the expansion of the existing Urban Transit Hub Tax Credit program could be as high as $1.11 billion accumulated over several years, or the difference between the urban transit hub tax credit program's $1.5 billion cap and the $394 million in tax credits the EDA has awarded to ten projects through April 18, 2011.

Given the wide range of locales in which a creditable project may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap. In any event, whether the bill's provisions governing the Grow New Jersey Assistance Program and the Urban Transit Hub Tax Credit program will actually cost $1.11 billion will largely depend on the extent to which the $1.5 billion program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce a $1.11 billion State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.

The bill's direct revenue loss to the State General Fund from the revisions to the Business Retention and Relocation Assistance Grant Program could be no higher than $17.3 million annually, the difference between the program's $20 million annual cap and the estimated $2.7 million in tax credits currently claimed under the program. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce an annual $17.3 million State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more tax credits would be awarded under the program.

Irrespective of the State fiscal effects of the bill's provisions relating to the three tax credit programs, taxpayers earning credits will share their benefit with the federal government. This will be so because taxpayers can deduct their State and local income tax payments on their federal income tax returns. Consequently, a lower New Jersey corporation business tax liability translates into a lower federal deduction, and thus a higher federal income tax liability. At the federal corporation income tax rate of 35 percent, taxpayers receiving a State tax credit will therefore only hold on to 65 percent of the tax credit amount, while the remaining 35 percent of the benefit will accrue to the United States government.

Indirect State and Local Revenue Gain: The bill may generate an indeterminate indirect revenue gain to the State and local governments that may partially offset the direct State revenue loss from and State opportunity cost of providing tax credits in accordance with the bill. The OLS, however, does not have the capacity to quantify the bill's secondary effects, since it cannot estimate the volume and types of capital investments that the tax credit will directly spur and their ensuing indirect effect on State and local 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 receive payments they would not have received absent the incentive, at least a portion of these payments will newly circulate in New Jersey's economy. As these ramifications will flow through the economy, they will affect State and local revenue collections. Indirect fiscal effects encompass secondary tax collections from credit-induced capital investments (such as enhanced gross income tax collections from employees whose positions are retained in New Jersey because of the tax credit and increased property tax collections if the investment appreciates the value of a property) 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 capital investments benefitting from the credit may represent a gain to the State and affected municipalities. 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 project anyway. In such a scenario, the State will only incur the direct cost of the subsidy, while the capital investment's secondary effects cannot be attributed to the bill.

Applying the general principle to this bill, it is reasonable to expect that most of the indirect effects of credits awarded will count as a benefit to the State. This is so because credits can only be awarded if a project passes the net benefit test. As part of that test, the EDA excludes from the analysis the indirect benefits from jobs that are neither "at risk," classified as a "suburban to urban move" or otherwise deemed new jobs to the State. Therefore, only those tax credits will not produce an indirect revenue gain to the State that represent a relocation of jobs from a suburban area of the State to an urban area or that represent an incorrect assessment regarding the likelihood of a job created or retained within New Jersey absent a credit award. It remains unclear, however, whether or not the indirect revenue gains attributable to the credits will exceed the direct State revenue loss and opportunity cost they will cause.

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 capital investments 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 and that of the foregone road construction investment.

Sale of State-Owned Properties to New Jersey Performing Arts Center: Without knowledge of the final sales arrangement, the OLS also can calculate neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

The property sale appears to relate to the proposed construction by Prudential Financial Inc. of a new office tower totaling 600,000 square feet along with a parking structure for 1,600 vehicles adjacent to the New Jersey Performing Arts Center. According to a November 9, 2011 memorandum by the Chief Executive Officer of the EDA to the members of the EDA Board, the project will cost Prudential Financial an estimated $369 million and stands to receive an urban transit hub tax credit of $250.8 million from the State.

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

Governor Chris Christie Takes Action to Create Jersey Jobs and Grow Economy with $200 Million GrowNJ Incentive Program

Friday, January 6, 2012 Tags: Jobs and the Economy

Bipartisan Bill Implements Christie Administration Initiative to Build on the Success of Job Creating, Business Growth and Retention Incentives

Trenton, NJ – Acting on an agenda to create jobs for New Jerseyans and spur economic development in areas across the state, Governor Chris Christie today signed S-3033, legislation creating the GrowNJ Assistance program to provide at least $200 million in incentives to create and retain Jersey Jobs. The GrowNJ program will encourage business investment and expansion in New Jersey by providing tax credits to companies moving to or growing in the state based on capital investment and job creation or retention.

"Through the creation of GrowNJ, we are ensuring that critical economic development projects are moving forward and that businesses are staying, growing and creating jobs for New Jerseyans," said Governor Christie. "Expanding the reach of these job-creating incentives will put people to work now in construction jobs and create long-term, permanent jobs for our families. This bipartisan bill puts into action an initiative of my Administration that recognizes and builds on the success of the Urban Transit Hub Tax Credit, while increasing the competitiveness of New Jersey as a business-friendly environment for job growth."

The GrowNJ program, a Christie Administration initiative, duplicates and expands the success of existing incentive programs while embracing innovative ideas to spur job growth and economic expansion. The program provides areas of New Jersey not currently eligible for the Urban Transit Hub Tax Credit (UTHTC) with a comparable business incentive program, allowing them to compete for new development, the retention of jobs and reinvestment. Since the GrowNJ's tax credit allocation of $200 million falls under the $1.5 billion total tax credit cap already provided for in the Urban Transit Hub Tax Credit Act, the program will not result in any new costs to the State.

Under GrowNJ, an eligible business will receive an annual tax credit of $5,000 - $8,000 for ten years for each full-time job created or retained. A business would be eligible for a GrowNJ tax credit if it retains 100 full-time jobs or creates at least 100 full-time jobs in an EDA-designated desirable industry and in addition to job creation/retention also makes a capital investment of at least $20 million in a qualified incentive area.

S-3033 also makes changes to eligibility requirements for the Urban Transit Hub Tax Credit program to expand the program's use in retaining and attracting jobs to New Jersey, including the addition of medical facility sites, vacant hospital sites, and federally designated CHOICE neighborhoods within 1 mile of a rail station in a UTHTC city.

Since Governor Christie took office, through the Partnership for Action, the Administration has continued to advance policies that will improve New Jersey's business climate, which has led to the creation of nearly 50,000 private sector jobs. Governor Christie sunset the corporate business tax surcharge, signed new, robust business attraction legislation, and enacted $2.35 billion in pro-growth, job creating tax cuts. These policies have positioned New Jersey for business expansion, economic growth and job creation as our economy recovers.

Sponsors of S-3033/A-4306 include Senators Joseph Kyrillos (R-Middlesex, Monmouth) and Raymond Lesniak (D-Union); and Assemblymembers Anthony Bucco (R-Morris), Gary Chiusano (R-Sussex, Hunterdon, Morris), Herb Conaway (D-Burlington, Camden), Albert Coutinho (D-Essex, Union), and Ruben Ramos (D-Hudson).

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