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Report to the transition team [of the] subcommittee on economic development & job growth.  
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LAW/KR

[Second Reprint]  
**SENATE, No. 2370**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

INTRODUCED OCTOBER 18, 2010

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**SYNOPSIS**

Revises financial assistance under Business Retention and Relocation Assistance Grant Program; repeals requirement to study implementation.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Budget Committee on December 13, 2010, with amendments.

(Sponsorship Updated As Of: 1/7/2011)

1 AN ACT concerning the Business Retention and Relocation  
2 Assistance Grant Program, amending P.L.1996, c.25 and  
3 P.L.2004, c.65, and repealing section 11 of P.L.1996, c.25.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to  
9 read as follows:

10 2. As used in this act:

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

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

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

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

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

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Senate SBA committee amendments adopted November 15, 2010.

<sup>2</sup>Assembly ABU committee amendments adopted December 13, 2010.

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

3 **【“Biotechnology” means the continually expanding body of**  
4 **fundamental knowledge about the functioning of biological systems**  
5 **from the macro level to the molecular and sub-atomic levels, as**  
6 **well as novel products, services, technologies and sub-technologies**  
7 **developed as a result of insights gained from research advances**  
8 **which add to that body of fundamental knowledge;**

9 **“Biotechnology company” means a person with headquarters or**  
10 **base of operations located in New Jersey and engaged in the**  
11 **research, development, production, or provision of biotechnology**  
12 **for the purpose of developing or providing products or processes for**  
13 **specific commercial or public purposes, including, but not limited**  
14 **to, medical, pharmaceutical, nutritional, and other health-related**  
15 **purposes, agricultural purposes, and environmental purposes, or a**  
16 **person with headquarters or base of operations located in New**  
17 **Jersey and engaged in providing services or products necessary for**  
18 **such research, development, production, or provision;】**

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

27 **<sup>1</sup>【“Certificate of compliance” means a certificate issued by the**  
28 **authority pursuant to section 9 of P.L.1996, c.25 (C.34:1B-120);】<sup>1</sup>**

29 **【“Commissioner” means the Executive Director of the New**  
30 **Jersey Commerce Commission;**

31 **“Department” means the New Jersey Commerce Commission;】**

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

1       “Capital investment” means expenses that the business incurs  
2 following its submission of an application to the authority pursuant  
3 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the  
4 Capital Investment Completion Date, as shall be defined in the  
5 project agreement, for: <sup>1</sup>[a. the site preparation and construction,  
6 repair, renovation, improvement, equipping, or furnishing of a  
7 building, structure, facility, or improvement to real property; and b.  
8 obtaining and installing furnishings and machinery, apparatus or  
9 equipment for the operation of a business in a building, structure,  
10 facility or improvement to real property] (1) the site preparation  
11 and construction, renovation, improvement, equipping of, or  
12 obtaining and installing fixtures and machinery, apparatus or  
13 equipment in, a newly constructed, renovated or improved building,  
14 structure, facility, or improvement to real property in this State; and  
15 (2) obtaining and installing fixtures and machinery, apparatus or  
16 equipment in a building, structure, or facility in this State. Provided  
17 however, that "capital investment" shall not include soft costs such  
18 as financing and design, furniture or decorative items such as  
19 artwork or plants, or office equipment if the office equipment is  
20 property with a recovery period of less than five years. The  
21 recovery period of any property, for purposes of this section, shall  
22 be determined as of the date such property is first placed in service  
23 or use in this State by the business, determined in accordance with  
24 section 168 of the federal Internal Revenue Code of 1986 (26  
25 U.S.C. s.168)<sup>1</sup> ;

26       <sup>1</sup>“Certificate of compliance” means a certificate issued by the  
27 authority pursuant to section 9 of P.L.1996, c.25 (C.34:1B-120);<sup>1</sup>

28       “Chief executive officer” means the chief executive officer of the  
29 New Jersey Economic Development Authority;

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

34       “Designated industry” means [a business engaged in the field of  
35 biotechnology, pharmaceuticals, manufacturing, financial services  
36 or transportation and logistics, advanced computing, advanced  
37 materials, electronic device technology, environmental technology  
38 or medical device technology] an industry identified by the  
39 authority as desirable for the State to maintain, which may be  
40 designated and amended via the promulgation of rules by the  
41 authority to reflect changing market conditions;

42       “Designated urban center” means an urban center designated in  
43 the State Development and Redevelopment Plan adopted by the  
44 State Planning Commission;

45       ["Electronic device technology" means a technology involving  
46 microelectronics, semiconductors, electronic equipment, and  
47 instrumentation, radio frequency, microwave, and millimeter

1 electronics, and optical and optic-related electrical devices, or data  
2 and digital communications and imaging devices;

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

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

16 "Full-time employee" means a person 【who is employed for  
17 consideration for at least thirty-five hours a week, or who renders  
18 any other standard of service generally accepted by custom or  
19 practice as full-time employment, whose wages are subject to  
20 withholding as provided in the "New Jersey Gross Income Tax  
21 Act," N.J.S.54A:1-1 et seq., and who is determined by the  
22 commissioner to be employed in a permanent position according to  
23 criteria as the Board of Directors of the New Jersey Commerce  
24 Commission may prescribe. "Full-time employee" shall not include  
25 any person who works as an independent contractor or on a  
26 consulting basis for the business. "Full-time employee" shall not  
27 include a child, grandchild, parent, or spouse of an individual who  
28 has direct or indirect ownership of at least 5% of the profits, capital,  
29 or value of the business】 employed by the business for  
30 consideration for at least 35 hours a week, or who renders any other  
31 standard of service generally accepted by custom or practice, as  
32 determined by the authority, as full-time employment, or a person  
33 who is employed by a professional employer organization pursuant  
34 to an employee leasing agreement between the business and the  
35 professional employer organization, in accordance with P.L.2001,  
36 c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who  
37 renders any other standard of service generally accepted by custom  
38 or practice, as determined by the authority, as full-time  
39 employment, and whose wages are subject to withholding as  
40 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
41 et seq. or an employee who is a resident of another State but whose  
42 income is not subject to the "New Jersey Gross Income Tax Act,"  
43 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
44 for the partnership for at least 35 hours a week, or who renders any  
45 other standard of service generally accepted by custom or practice,  
46 as determined by the authority, as full-time employment, and whose  
47 distributive share of income, gain, loss, or deduction, or whose  
48 guaranteed payments, or any combination thereof, is subject to the

1 payment of estimated taxes, as provided in the "New Jersey Gross  
2 Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall  
3 not include any person who works as an independent contractor or  
4 on a consulting basis for the business;

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

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

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

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

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

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

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

43 "Project agreement" means an agreement between a business and  
44 the [department] authority that sets the forecasted schedule for  
45 completion and occupancy of the project, the date the commitment  
46 duration shall commence, the amount and tax credit term of the



1 applicable grant of tax credits, and other such provisions which  
2 further the purposes of P.L.1996, c.25 (C.34:1B-112 et seq.);

3 <sup>1</sup>["Qualifying capital investment" means a capital investment in  
4 an amount that is at least twice that of the total value of the business  
5 retention or relocation grant of tax credits to a business;]<sup>1</sup>

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

11 "Retained full-time job" means an eligible position that currently  
12 exists in New Jersey and is filled by a full-time employee but  
13 which, because of a potential relocation by the business, is at risk of  
14 being lost to another state or country. For the purposes of  
15 determining a number of retained full-time jobs, the eligible  
16 positions of <sup>1</sup>[the members of a "controlled group of corporations"  
17 as defined pursuant to section 1563 of the federal Internal Revenue  
18 Code of 1986, 26 U.S.C. s.1563,] an affiliate<sup>1</sup> shall be considered  
19 the eligible positions of <sup>1</sup>[a single employer] the business<sup>1</sup>; [and]

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

24 ["Total allowable relocation costs" means \$1,500 times the  
25 number of retained full-time jobs. "Total allowable relocation  
26 costs" does not include the amount of any bonus award authorized  
27 pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1).] ; and

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

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

33

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

36 3. The Business Retention and Relocation Assistance Grant  
37 Program is hereby established as a program under the jurisdiction of  
38 the New Jersey **[Commerce Commission]** Economic Development  
39 Authority and shall be administered by the **[New Jersey Commerce**  
40 **Commission]** authority. The purpose of the program is to  
41 encourage economic development and job creation and to preserve  
42 jobs that currently exist in New Jersey but which are in danger of  
43 being relocated to premises outside of the State. To implement that  
44 purpose, and to the extent that funding for the program is available,  
45 the program may provide grants of tax credits **[but in no case shall**  
46 **the amount of an individual grant of tax credits exceed 80% of the**  
47 **projected State tax revenues from the retained full-time jobs**

1 covered by the project agreement of an applicant for a grant of tax  
2 credits]. To be eligible for any grant of tax credits pursuant to  
3 P.L.1996, c.25 (C.34:1B-112 et seq.), a business shall demonstrate  
4 to the authority, at the time of application, that the grant of tax  
5 credits and resultant retention of full-time jobs and any capital  
6 investment will yield a net positive benefit to the State. 'The net  
7 benefit resulting from the retention of full-time jobs and any capital  
8 investment by a business that has had grant pre-application  
9 meetings with the authority and has executed contracts relating to  
10 the new business location during the period commencing May 1,  
11 2010 until the enactment of P.L. , c. (C. ) (pending before the  
12 Legislature as this bill), shall be calculated from the date of the  
13 initial grant pre-application meeting.<sup>1</sup>

14 (cf: P.L.2007, c.253, s.15)

15

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

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

20 (1) relocate or maintain a minimum of 50 retained full-time jobs  
21 from one or more locations within this State to a new business  
22 location or locations in this State; and

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

25 b. A project that consists solely of point-of-final-purchase  
26 retail facilities shall not be eligible for a grant of tax credits. If a  
27 project consists of both point-of-final-purchase retail facilities and  
28 non-retail facilities, only the portion of the project consisting of  
29 non-retail facilities shall be eligible for a grant of tax credits. If a  
30 warehouse facility is part of a point-of-final-purchase retail facility  
31 and supplies only that facility, the warehouse facility shall not be  
32 eligible for a grant of tax credits. For the purposes of this section,  
33 catalog distribution centers shall not be considered point-of-final-  
34 purchase retail facilities.

35 (cf: P.L.2007, c.310, s.1)

36

37 4. Section 5 of P.L.2004, c.65 (C.34:1B-115.1) is amended to  
38 read as follows:

39 5. a. In addition to any grant of tax credits determined  
40 pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3), a bonus  
41 award equivalent to 50% of the amount of the original grant of tax  
42 credits shall be made to any business that relocates more than 2,000  
43 full-time employees covered by the project agreement from one or  
44 more locations outside of a designated urban center into a  
45 designated urban center, provided that all other applicable  
46 requirements of P.L.1996, c. 25 (C.34:1B-112 et seq.) are satisfied;  
47 and provided further that no grant of tax credits shall be awarded  
48 pursuant to this section for any job that is moved from its current

1 location in an urban enterprise zone designated pursuant to the  
2 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303  
3 (C.52:27H-60 et seq.) to a location that is not within an urban  
4 enterprise zone; however, that if the move from the urban enterprise  
5 zone is to a facility already owned or leased by the same business  
6 and that business already employs at least the same number of  
7 persons as those being relocated from the urban enterprise zone a  
8 grant of tax credits may still be awarded pursuant to this section.

9 b. In addition to any grant of tax credits determined pursuant to  
10 section 7 of P.L.2004, c.65 (C.34:1B-115.3), and in addition to any  
11 bonus award pursuant to subsection a. of this section, a bonus award  
12 equivalent to 50% of the amount of the '[original]' grant of tax  
13 credits pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3)<sup>1</sup>  
14 shall be made to any business that makes a '[qualifying]' capital  
15 investment in an amount that is at least twice that of the total  
16 value of the grant of tax credits granted pursuant to section 7 of  
17 P.L.2004, c. 65 (C.34:1B-115.3) and the grant of tax credits  
18 pursuant to this subsection<sup>1</sup> . '[If a bonus award under this section  
19 would result in a business's capital investment no longer being a  
20 qualifying capital investment, then the bonus award shall equal the  
21 largest bonus amount that would still result in the capital investment  
22 being a qualifying capital investment.] A bonus award made  
23 pursuant to this subsection may be limited, so that when added to  
24 the tax credits granted pursuant to section 7 of P.L.2004, c. 65  
25 (C.34:1B-115.3), the total amount shall not exceed 50% of the  
26 amount of the capital investment in this State.<sup>1</sup>

27 (cf: P.L.2004, c.65, s.5)

28  
29 <sup>1</sup>5. Section 6 of P.L. 2004, c.65 (C.34:1B-115.2) is amended to  
30 read as follows:

31 6. To qualify for a grant of tax credits pursuant to P.L.1996,  
32 c.25 (C.34:1B-112 et seq.), a business shall demonstrate that the  
33 receipt of assistance pursuant to P.L.1996, c.25, will be a material  
34 factor in the business' decision not to relocate outside of New  
35 Jersey; provided however, that a business that relocates 1,500 or  
36 more retained full-time jobs covered by a project agreement from  
37 outside of a designated urban center to one or more new locations  
38 within a designated urban center shall not be required to make such  
39 a demonstration if the business applies for a grant of tax credits  
40 within six months of signing its lease or purchase agreement. A  
41 business that has had grant pre-application meetings with the  
42 authority and has executed contracts relating to the new business  
43 location during the period commencing May 1, 2010 until the  
44 enactment of P.L. , c. (C. ) (pending before the Legislature as  
45 this bill) shall not be deemed ineligible for the grant due to the  
46 material factor requirement.<sup>1</sup>

47 (cf: P.L.2004, c.65, s.6)

1       <sup>1</sup>[5.] 6.<sup>1</sup> Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is  
2 amended to read as follows:

3       7. a. The total value of the grants of tax credits **[issued]**,  
4 approved by the authority pursuant to P.L.1996, c.25 (C.34:1B-112  
5 et seq.), that may be applied against tax liability in a fiscal year  
6 shall not exceed an aggregate annual limit of \$20,000,000 **[for a**  
7 **fiscal year]**. The total value of the grants of tax credits, issued  
8 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that a single  
9 business may apply against its tax liability shall not exceed an  
10 aggregate annual limit of \$10,000,000 <sup>1</sup>[for] in<sup>1</sup> a fiscal year. A  
11 tax credit issued pursuant to P.L.1996, c.25 may be applied against  
12 liability **[arising in the tax period in which the tax credit is issued**  
13 **and the tax period next following,]** <sup>1</sup>in the single <sup>2</sup>**[fiscal year]** tax  
14 period<sup>2</sup> in which the tax credit or portion of the tax credit may be  
15 applied<sup>1</sup> as <sup>2</sup>prescribed by the project agreement and as<sup>2</sup> set forth in  
16 subsection b. of this section and shall expire thereafter. <sup>2</sup>**[<sup>1</sup>The**  
17 **fiscal year in which a credit is applied is the fiscal year in which the**  
18 **original due date of the tax return falls for the liability against**  
19 **which the credit is applied.** <sup>1</sup><sup>2</sup>

20       b. **[Grants]** Subject to the limitation set forth in subsection a.  
21 of this section <sup>1</sup>,<sup>1</sup> grants of tax credits shall be [awarded and issued  
22 to] approved for qualifying businesses [as follows, subject to the  
23 limitations of subsection c. of this section] according to the  
24 following schedule, and shall be issued upon the execution and  
25 satisfaction of the requirements of the project agreement between  
26 the authority and the business with an approved project <sup>1</sup>[, and  
27 annually thereafter]<sup>1</sup> :

28       **[(1) for a project that covers a business relocating a minimum of**  
29 **500 full-time employees, a grant of tax credits made pursuant to**  
30 **P.L.1996, c.25 (C.34:1B-112 et seq.) shall equal total allowable**  
31 **relocation costs plus any applicable bonus award determined**  
32 **pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and, shall**  
33 **be issued immediately upon the entry of the project agreement**  
34 **between the commissioner and the business with an approved**  
35 **project, up to the aggregate annual limit; and**

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

40       **(1) for a project that covers a business relocating or retaining 50**  
41 **to 250 full-time employees, a grant of tax credits shall be for the**  
42 **yearly tax credit amount plus any applicable bonus award**  
43 **determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1),**  
44 **and may be applied against liability in the <sup>1</sup>[tax period] <sup>2</sup>[fiscal**  
45 **year<sup>1</sup>] tax period<sup>2</sup> in which the tax credit is issued;**

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

11       (3) for a project that covers a business relocating or retaining  
12 401 to 600 full-time employees, a grant of tax credits shall be for  
13 three times the yearly tax credit amount plus any applicable bonus  
14 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
15 115.1) and may be applied against liability in the <sup>1</sup>【tax period】  
16 <sup>2</sup>【fiscal year<sup>1</sup>】 tax period<sup>2</sup> in which the tax credit is issued and the  
17 following two <sup>1</sup>【tax periods】 <sup>2</sup>【fiscal years<sup>1</sup>】 tax periods<sup>2</sup> , for one-  
18 third of the total grant award per <sup>1</sup>【tax period】 <sup>2</sup>【fiscal year<sup>1</sup>】 tax  
19 period<sup>2</sup> , provided that the use of the credit must be accompanied by  
20 a certificate of compliance;

21       (4) for a project that covers a business relocating or retaining  
22 601 to 800 full-time employees, a grant of tax credits shall be for  
23 four times the yearly tax credit amount plus any applicable bonus  
24 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
25 115.1) and may be applied against liability in the <sup>1</sup>【tax period】  
26 <sup>2</sup>【fiscal year<sup>1</sup>】 tax period<sup>2</sup> in which the tax credit is issued and the  
27 following three <sup>1</sup>【tax periods】 <sup>2</sup>【fiscal years<sup>1</sup>】 tax periods<sup>2</sup> , for  
28 one-fourth of the total grant award per <sup>1</sup>【tax period】 <sup>2</sup>【fiscal year<sup>1</sup>】  
29 tax period<sup>2</sup> , provided that the use of the credit must be  
30 accompanied by a certificate of compliance;

31       (5) for a project that covers a business relocating or retaining  
32 801 to 1,000 full-time employees, a grant of tax credits shall be for  
33 five times the yearly tax credit amount plus any applicable bonus  
34 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
35 115.1) and may be applied against liability in the <sup>1</sup>【tax period】  
36 <sup>2</sup>【fiscal year<sup>1</sup>】 tax period<sup>2</sup> in which the tax credit is issued and the  
37 following four <sup>1</sup>【tax periods】<sup>2</sup>【fiscal years<sup>1</sup>】 tax periods<sup>2</sup> for one-  
38 fifth of the total grant award per <sup>1</sup>【tax period】 <sup>2</sup>【fiscal year<sup>1</sup>】 tax  
39 period<sup>2</sup> , provided that the use of the credit must be accompanied by  
40 a certificate of compliance; and

41       (6) for a project that covers a business relocating or retaining  
42 1,001 or more full-time employees, a grant of tax credits shall be  
43 for six times the yearly tax credit amount plus any applicable bonus  
44 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
45 115.1) and may be applied against liability in the <sup>1</sup>【tax period】  
46 <sup>2</sup>【fiscal year<sup>1</sup>】 tax period<sup>2</sup> in which the tax credit is issued and the

1 following five <sup>1</sup> [tax periods] <sup>2</sup> [fiscal years] <sup>1</sup> tax periods<sup>2</sup>, for one-  
2 sixth of the total grant award per <sup>1</sup> [tax period] <sup>2</sup> [fiscal year] <sup>1</sup> tax  
3 period<sup>2</sup>, provided that the use of the credit must be accompanied by  
4 a certificate of compliance.

5 c.  [If the sum of the amount of tax credits issued pursuant to  
6 paragraph (1) of subsection b. of this section in a fiscal year, plus  
7 the amount of tax credits approved pursuant to paragraph (2) of  
8 subsection b. of this section exceeds] If the <sup>1</sup> [issuance] approval<sup>1</sup>  
9 of a grant of tax credits pursuant to this section would exceed the  
10 \$20,000,000 aggregate annual limit, [the commissioner shall  
11 reduce, on a pro rata basis, the award to each business receiving a  
12 grant of tax credits pursuant to paragraph (2) of subsection b.] the  
13 authority may award a smaller grant of tax credits or no <sup>1</sup> grants of<sup>1</sup>  
14 tax credits, as necessary to comply with the aggregate annual limit.  
15 (cf: P.L.2007, c.310, s.2)

16

17 <sup>1</sup> [6.] 7.<sup>1</sup> Section 5 of P.L.1996, c.25 (C.34:1B-116) is  
18 amended to read as follows:

19 5. Each business seeking a grant of tax credits for a project  
20 shall submit an application for approval of the project to the  
21  [commissioner] authority in a form and manner prescribed in  
22 regulations adopted by the  [commissioner] authority. The  
23 application must be submitted to the  [commissioner] authority for  
24 approval at least 45 days prior to moving to the new business  
25 location; provided however, a business relocating 1,500 or more  
26 retained full-time jobs to one or more new locations within a  
27 designated urban center shall, if relocating to a leased location,  
28 submit an application within six months of executing its lease. <sup>1</sup> A  
29 <sup>2</sup> [company] business<sup>2</sup>  that has had grant pre-application meetings  
30  with the authority and has executed contracts relating to the  
31  new business location during the period commencing May 1, 2010  
32  until the enactment of P.L. , c. (C. ) (pending before the  
33  Legislature as this bill) shall not be deemed ineligible for the grant  
34  due to the requirement to apply 45 days before moving to the new  
35  business location.<sup>1</sup> The application for approval of a project shall  
36 include:

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

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

40 c.  Terms of any lease agreements, either existing or proposed,  
41  or details of the purchase or building of the new business location,  
42  if applicable;

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

45 e. A description of the type of contribution the business can  
46 make to the long-term growth of the State's economy and a

1 description of the potential impact on the State's economy if the  
2 jobs are not retained;

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

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

9 h. <sup>1</sup> **[A written commitment by the business to maintain 95% of**  
10 **the retained full-time jobs for at least the first two years of the**  
11 **commitment duration, and to maintain a minimum of 90% of the**  
12 **retained full-time jobs for the commitment duration]** (Deleted by  
13 amendment, P.L. , c. ) (pending before the Legislature as this  
14 bill)<sup>1</sup>; and

15 i. Any other necessary and relevant information as determined  
16 by the **[commissioner]** authority.

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

24 The project agreement shall include terms establishing the  
25 starting date, or event that will determine the starting date, of the  
26 commitment duration and any other terms or conditions as  
27 determined by the **[commissioner]** authority <sup>1</sup>, which shall include  
28 the number of full-time jobs that must be maintained in the State by  
29 the business over the commitment duration<sup>1</sup>.

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

31

32 <sup>1</sup>**[7.] 8.**<sup>1</sup> Section 6 of P.L.1996, c.25 (C.34:1B-117) is  
33 amended to read as follows:

34 6. No tax credits **[shall be]** issued as a grant of tax credits  
35 under P.L.1996, c.25 (C.34:1B-112 et seq.) may be applied by the  
36 business against liability <sup>2</sup>**[in any year]**<sup>2</sup> until the State Treasurer  
37 has certified that the amount of retained State tax revenue  
38 <sup>2</sup>**[received in the most recently completed State** <sup>1</sup>**[tax periods]**  
39 **fiscal years**<sup>1</sup> by the Director of the Division of Taxation]<sup>2</sup> from the  
40 business <sup>2</sup>for the tax period prior to the period in which the credits  
41 will be applied pursuant to P.L.c.25 (c.34:1B-112 et seq.),<sup>2</sup> equals  
42 or exceeds the amount of the <sup>2</sup>**[grant of]**<sup>2</sup> tax credits.

43 (cf: P.L.2004, c.65, s.9)

44

45 <sup>1</sup>**[8.] 9.**<sup>1</sup> Section 7 of P.L.1996, c.25 (C.34:1B-118) is  
46 amended to read as follows:

1       7. a. A business that is receiving a business employment  
2 incentive grant pursuant to the provisions of P.L.1996, c.26  
3 (C.34:1B-124 et al.) shall not be eligible to receive a grant of tax  
4 credits under P.L.1996, c.25 (C.34:1B-112 et seq.) with respect to a  
5 job which is included in the calculation of a grant pursuant to  
6 P.L.1996, c.26.

7       b. A business that is receiving any other grant by operation of  
8 State law shall be eligible to receive a grant of tax credits under  
9 P.L.1996, c.25 (C.34:1B-112 et seq.); provided, however, that a  
10 business that is receiving another State grant shall not be eligible to  
11 receive assistance with respect to any job that is currently the  
12 subject of any other State grant, except for grants from the Office of  
13 Customized Training pursuant to the "1992 New Jersey  
14 Employment and Workforce Development Act," P.L.1992, c.43  
15 (C.34:15D-1 et seq.), and provided further that a business shall not  
16 receive an amount as a grant of tax credits pursuant to P.L.1996,  
17 c.25 (C.34:1B-112 et seq.) **[which,]** unless the State will realize a  
18 net positive benefit from the grant of tax credits and resultant  
19 retention of full-time jobs and any capital investment when  
20 combined with such other grants, **[exceeds 80% of the retained**  
21 **State tax revenue,]** except upon the approval of the State Treasurer.  
22 Amounts received as grants from the Office of Customized Training  
23 pursuant to the "1992 New Jersey Employment and Workforce  
24 Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.), shall be  
25 excluded from the calculation of the total amount permitted under  
26 this subsection.

27 (cf: P.L.2004, c.65, s.10)

28  
29       **'[9.] 10.'**<sup>1</sup> Section 11 of P.L.2004, c.65 (C.34:1B-118.1) is  
30 amended to read as follows:

31       11. In **[determining the]** considering the award and the amount  
32 of any grant of tax credits made pursuant to P.L.1996, c.25  
33 (C.34:1B-112 et seq.), the **[commissioner shall]** authority may  
34 consider, as part of the **[commissioner's]** authority's overall  
35 **[calculation]** review process, the following factors:

- 36       a. The number of full-time jobs retained;  
37       b. The quality of the full-time jobs retained, including but not  
38 limited to the salaries and benefits provided to retained full-time  
39 employees;  
40       c. Any capital investments made by the business at the new  
41 business location;  
42       d. The nature of the business' operations, including but not  
43 limited to whether the business is a designated industry;  
44       e. The potential impact on the State if the business were to  
45 relocate to another state;  
46       f. The site of the new business location and its consistency  
47 with the smart growth goals, strategies and policies of the State



1 Development and Redevelopment Plan established pursuant to  
2 section 5 of P.L.1985, c.398 (C.52:18A-200);

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

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

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

10

11 <sup>1</sup>[10.] 11.<sup>1</sup> Section 8 of P.L.1996, c.25 (C.34:1B-119) is  
12 amended to read as follows:

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

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

31

32 <sup>1</sup>[11.] 12.<sup>1</sup> Section 9 of P.L.1996, c.25 (C.34:1B-120) is  
33 amended to read as follows:

34 9. <sup>1</sup>[a.]<sup>1</sup> As determined by the authority, a business which is  
35 awarded a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et  
36 seq.) shall submit annually, no later than March 1st of each  
37 <sup>2</sup>[<sup>1</sup>fiscal<sup>1</sup>]<sup>2</sup> year, commencing in the <sup>2</sup>[<sup>1</sup>fiscal<sup>1</sup>]<sup>2</sup> year in which the  
38 grant of tax credits is issued and for the remainder of the <sup>1</sup>[tax  
39 credit term] commitment duration<sup>1</sup> , a certification of compliance  
40 that indicates that the business continues to maintain the number of  
41 retained full-time jobs <sup>2</sup>[<sup>1</sup>during the business' tax period ending in  
42 that fiscal year<sup>1</sup>]<sup>2</sup> as specified in the project agreement. Upon  
43 receipt and review thereof <sup>1</sup>during the tax credit term<sup>1</sup> , the  
44 authority shall issue a certificate of compliance indicating the  
45 amount of tax credits that the business may apply against liability  
46 <sup>2</sup>[in that <sup>1</sup>[tax period] fiscal year<sup>1</sup>] pursuant to section 7 of

1 P.L.2004, c.65 (C.34:1B-115.3)<sup>2</sup>. Any reduction in the number of  
2 retained full-time jobs below the number prescribed under the terms  
3 of the project agreement shall proportionately reduce the amount of  
4 tax credits the business may apply against liability in that '[tax  
5 period] <sup>2</sup>[fiscal year<sup>1</sup>] tax period<sup>2</sup> and the '[unused]' credits 'that  
6 may no longer be applied<sup>1</sup> for that '[tax period] <sup>2</sup>[fiscal year<sup>1</sup>] tax  
7 period<sup>2</sup> shall be forfeited. '[If.] However, if<sup>1</sup> in any '[tax period]  
8 <sup>2</sup>[fiscal year<sup>1</sup>] tax period<sup>2</sup> , the number of retained full-time jobs  
9 drops below the minimum number of retained full-time jobs  
10 indicated in the '[applicable]' paragraph of subsection b. of section  
11 7 of P.L.2004, c.65 (C.34:1B-115.3) <sup>1</sup>pursuant to which the project  
12 agreement was executed<sup>1</sup> such that the business would no longer be  
13 eligible to apply the credits for the number of years for which it was  
14 approved, <sup>1</sup>[then the business shall forfeit its credit amount for that  
15 tax period and each subsequent tax period, until the first tax period  
16 for which documentation demonstrating the restoration of the  
17 number of retained full-time jobs has been reviewed and approved  
18 by the authority, for which tax period and each subsequent tax  
19 period the full amount of the credit shall be allowed] then the  
20 authority shall reduce the amount of tax credits the business may  
21 apply against liability and the number of years in which the  
22 business may apply the tax credits. The grant shall be subject to  
23 recapture provisions pursuant to the project agreement<sup>1</sup> .

24 <sup>1</sup>[b. As determined by the [commissioner] authority, a business  
25 which is awarded a grant of tax credits under P.L.1996, c.25  
26 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st  
27 of each year, commencing the year following the calendar year in  
28 which the business was approved for the grant of tax credits and for  
29 the remainder of the commitment duration, a copy of the State tax  
30 return for the business showing business income or activity,  
31 appropriate to its form of ownership together with an annual report  
32 listing the full-time employees in eligible positions employed at the  
33 location or locations approved for the grant of tax credits, to the  
34 [commissioner] authority. Failure to submit a copy of its annual  
35 report or submission of the annual report without the information  
36 required above, may result in the forfeiture of any grant of tax  
37 credits to be received by the business and the recapture of any tax  
38 credits issued to the business unless the [commissioner] authority  
39 determines that there are extenuating circumstances excusing the  
40 business from the timely filing required.]<sup>1</sup>  
41 (cf: P.L.2004, c.65, s.13)

42

43 <sup>1</sup>[12.] 13.<sup>1</sup> Section 14 of P.L.2004, c.65 (C.34:1B-120.1) is  
44 amended to read as follows:

45 14. The [commissioner] authority is authorized to pursue, and  
46 shall adopt rules for, the recapture of all, or a portion of, the grant

1 of tax credits, based on criteria established by the [commissioner]  
2 authority pursuant to regulation or under the terms of the project  
3 agreement [if the business fails to maintain the retained full-time  
4 jobs at the location or locations approved for the grant of tax credits  
5 for the commitment duration or fails to meet or comply with any  
6 condition or requirement under the terms of the project agreement  
7 or included in rules and regulations adopted by the commissioner  
8 governing the implementation of the program]. The rules shall  
9 allow for the [commissioner] authority to pursue the full or partial  
10 recapture or, in its discretion, to notify the Director of the Division  
11 of Taxation in the Department of the Treasury, who shall issue a  
12 recapture assessment which shall be based upon the proportionate  
13 value of the grant of tax credits that corresponds to the amount and  
14 period of noncompliance[. The] , in which case, the recapture of  
15 funds shall be subject to the State Uniform Tax Procedure Law,  
16 R.S.54:48-1 et seq. Recaptured funds shall be deposited in the  
17 General Fund of the State.  
18 (cf: P.L.2004, c.65, s.14)  
19

20 ' [13.] 14.' Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is  
21 amended to read as follows:

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

43 b. [The commissioner, in cooperation with the Director of the  
44 Division of Taxation in the Department of the Treasury, shall  
45 review and approve applications by taxpayers under the Corporation  
46 Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and  
47 by taxpayers under the taxes imposed on insurers pursuant to

1 P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231  
2 (C.17:32-15) and N.J.S.17B:23-5 to acquire surrendered tax  
3 benefits, which shall be issued in the form of corporation business  
4 tax credit and insurance premiums tax credit transfer certificates,]  
5 Businesses may apply to the authority and the Director of the  
6 Division of Taxation for a tax credit transfer certificate, covering  
7 one or more years. Upon receipt thereof, the business may sell or  
8 assign the tax credit certificate in exchange for private financial  
9 assistance to be made by the [taxpayer] purchaser in an amount  
10 equal to at least 75% of the amount of the surrendered tax credit of  
11 a business relocating in the State. The private financial assistance  
12 shall assist in funding expenses incurred in connection with the  
13 operation of the business in the State, including but not limited to  
14 the expenses of fixed assets, such as the construction and  
15 acquisition and development of real estate, materials, start-up,  
16 tenant fit-out, working capital, salaries, research and development  
17 expenditures and any other expenses determined by the  
18 [commissioner] authority to be necessary to carry out the purposes  
19 of P.L.1996, c.25 (C.34:1B-112 et seq.).

20 c. The [commissioner] authority shall [coordinate] establish  
21 procedures to facilitate such transfers and encourage liquidity and  
22 simplicity in the market for the purchase and sale of such  
23 certificates, including, in the authority's discretion, coordinating  
24 the applications for surrender and acquisition of unused but otherwise  
25 allowable tax credits pursuant to this section in a manner that can  
26 best stimulate and encourage the extension of private financial  
27 assistance to businesses in this State. <sup>1</sup>[The authority also shall  
28 have the discretion, in consultation with the Treasurer, to purchase  
29 and retire unused certificates under circumstances where it may  
30 determine that such purchase and retirement is in the furtherance of  
31 the purposes of this act and in the overall interest of the State in  
32 cost-effective promotion of economic development.]<sup>1</sup>

33 d. The [commissioner] authority shall, in consultation with the  
34 Director of the Division of Taxation, develop criteria for the  
35 approval or disapproval of applications.  
36 (cf: P.L.2004, c.65, s.17)

37  
38 <sup>1</sup>[14.] 15.<sup>1</sup> Section 10 of P.L.1996, c.25 (C.34:1B-121) is  
39 amended to read as follows:

40 10. The [commissioner] authority shall prepare and transmit to  
41 the Governor and the Legislature <sup>2</sup>, pursuant to section 2 of  
42 P.L.1991, c.164 (C.52:14-19.1),<sup>2</sup> on or before November 1st of each  
43 year, a report concerning the impact of the program on job retention  
44 in the State.  
45 (cf: P.L.2004, c.65, s.15)

1       <sup>1</sup>[15. Section 12 of P.L.1996, c.25 (C.34:1B-123) is amended to  
2 read as follows:

3       12. There is appropriated to the **【New Jersey Commerce and**  
4 **Economic Growth Commission】** authority from the General Fund  
5 such sums as may be necessary, as certified by the **【commissioner】**  
6 chief executive officer of the authority and the Director of the  
7 Division of Budget and Accounting, to fund business retention and  
8 relocation grants of tax credits made under P.L.1996, c.25  
9 (C.34:1B-112 et seq.), the amount of which shall not exceed the  
10 retained State tax revenues as defined in section 2 of P.L.1996, c.25  
11 (C.34:1B-113).  
12 (cf: P.L.2004, c.65, s.16) <sup>1</sup>

13

14       16. Section 11 of P.L.1996, c.25 (C.34:1B-122) is repealed.

15

16       17. This act shall take effect immediately <sup>1</sup>**【and apply to tax**  
17 **periods beginning on or after the date of enactment】**<sup>1</sup>.

# SENATE, No. 2370

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED OCTOBER 18, 2010

**Sponsored by:**

**Senator FRED H. MADDEN, JR.**

**District 4 (Camden and Gloucester)**

**Senator JOSEPH M. KYRILLOS, JR.**

**District 13 (Middlesex and Monmouth)**

**Co-Sponsored by:**

**Senators T.Kean, A.R.Bucco, Goodwin, Oroho and Sweeney**

**SYNOPSIS**

Revises financial assistance under Business Retention and Relocation Assistance Grant Program; repeals requirement to study implementation.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/19/2010)**

S2370 MADDEN, KYRILLOS

2

1 AN ACT concerning the Business Retention and Relocation  
2 Assistance Grant Program, amending P.L.1996, c.25 and  
3 P.L.2004, c.65, and repealing section 11 of P.L.1996, c.25.

4

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

7

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

10 2. As used in this act:

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

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

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

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

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

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

**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.

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

7       "Biotechnology company" means a person with headquarters or  
8 base of operations located in New Jersey and engaged in the  
9 research, development, production, or provision of biotechnology  
10 for the purpose of developing or providing products or processes for  
11 specific commercial or public purposes, including, but not limited  
12 to, medical, pharmaceutical, nutritional, and other health-related  
13 purposes, agricultural purposes, and environmental purposes, or a  
14 person with headquarters or base of operations located in New  
15 Jersey and engaged in providing services or products necessary for  
16 such research, development, production, or provision;】

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

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

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

29       "Department" means the New Jersey Commerce Commission;】

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

45       "Capital investment" means expenses that the business incurs  
46 following its submission of an application to the authority pursuant  
47 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the  
48 Capital Investment Completion Date, as shall be defined in the



1 project agreement, for: a. the site preparation and construction,  
2 repair, renovation, improvement, equipping, or furnishing of a  
3 building, structure, facility, or improvement to real property; and b.  
4 obtaining and installing furnishings and machinery, apparatus or  
5 equipment for the operation of a business in a building, structure,  
6 facility or improvement to real property;

7 “Chief executive officer” means the chief executive officer of the  
8 New Jersey Economic Development Authority;

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

13 "Designated industry" means **[a business engaged in the field of**  
14 **biotechnology, pharmaceuticals, manufacturing, financial services**  
15 **or transportation and logistics, advanced computing, advanced**  
16 **materials, electronic device technology, environmental technology**  
17 **or medical device technology]** an industry identified by the  
18 authority as desirable for the State to maintain, which may be  
19 designated and amended via the promulgation of rules by the  
20 authority to reflect changing market conditions;

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

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

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

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

42 "Full-time employee" means a person **[who is employed for**  
43 **consideration for at least thirty-five hours a week, or who renders**  
44 **any other standard of service generally accepted by custom or**  
45 **practice as full-time employment, whose wages are subject to**  
46 **withholding as provided in the "New Jersey Gross Income Tax**  
47 **Act," N.J.S.54A:1-1 et seq., and who is determined by the**

1 commissioner to be employed in a permanent position according to  
2 criteria as the Board of Directors of the New Jersey Commerce  
3 Commission may prescribe. "Full-time employee" shall not include  
4 any person who works as an independent contractor or on a  
5 consulting basis for the business. "Full-time employee" shall not  
6 include a child, grandchild, parent, or spouse of an individual who  
7 has direct or indirect ownership of at least 5% of the profits, capital,  
8 or value of the business] employed by the business for  
9 consideration for at least 35 hours a week, or who renders any other  
10 standard of service generally accepted by custom or practice, as  
11 determined by the authority, as full-time employment, or a person  
12 who is employed by a professional employer organization pursuant  
13 to an employee leasing agreement between the business and the  
14 professional employer organization, in accordance with P.L.2001,  
15 c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who  
16 renders any other standard of service generally accepted by custom  
17 or practice, as determined by the authority, as full-time  
18 employment, and whose wages are subject to withholding as  
19 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
20 et seq. or an employee who is a resident of another State but whose  
21 income is not subject to the "New Jersey Gross Income Tax Act,"  
22 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
23 for the partnership for at least 35 hours a week, or who renders any  
24 other standard of service generally accepted by custom or practice,  
25 as determined by the authority, as full-time employment, and whose  
26 distributive share of income, gain, loss, or deduction, or whose  
27 guaranteed payments, or any combination thereof, is subject to the  
28 payment of estimated taxes, as provided in the "New Jersey Gross  
29 Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall  
30 not include any person who works as an independent contractor or  
31 on a consulting basis for the business;

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

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

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

46 "Medical device technology company" means a person with  
47 headquarters or base of operations located in New Jersey and  
48 engaged in the research, development, production, or provision of

1 medical device technology for the purpose of developing or  
2 providing products or processes for specific commercial or public  
3 purposes;】

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

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

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

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

28 "Qualifying capital investment" means a capital investment in an  
29 amount that is at least twice that of the total value of the business  
30 retention or relocation grant of tax credits to a business;

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

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

45 "Tax credit term" means the period of time commencing with the  
46 first issuance of tax credits and continuing during the period in

1 which the recipient of a grant of tax credits is eligible to apply the  
2 tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3):

3 **["Total allowable relocation costs" means \$1,500 times the**  
4 **number of retained full-time jobs. "Total allowable relocation**  
5 **costs" does not include the amount of any bonus award authorized**  
6 **pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1).] ; and**

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

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

12  
13 2. Section 3 of P.L.1996, c.25 (C.34:1B-114) is amended to  
14 read as follows:

15 3. The Business Retention and Relocation Assistance Grant  
16 Program is hereby established as a program under the jurisdiction of  
17 the New Jersey **【Commerce Commission】** Economic Development  
18 Authority and shall be administered by the **【New Jersey Commerce**  
19 **Commission】** authority. The purpose of the program is to  
20 encourage economic development and job creation and to preserve  
21 jobs that currently exist in New Jersey but which are in danger of  
22 being relocated to premises outside of the State. To implement that  
23 purpose, and to the extent that funding for the program is available,  
24 the program may provide grants of tax credits **【but in no case shall**  
25 **the amount of an individual grant of tax credits exceed 80% of the**  
26 **projected State tax revenues from the retained full-time jobs**  
27 **covered by the project agreement of an applicant for a grant of tax**  
28 **credits】**. To be eligible for any grant of tax credits pursuant to  
29 P.L.1996, c.25 (C.34:1B-112 et seq.), a business shall demonstrate  
30 to the authority, at the time of application, that the grant of tax  
31 credits and resultant retention of full-time jobs and any capital  
32 investment will yield a net positive benefit to the State.

33 (cf: P.L.2007, c.253, s.15)

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

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

39 (1) relocate or maintain a minimum of 50 retained full-time jobs  
40 from one or more locations within this State to a new business  
41 location or locations in this State; and

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

44 b. A project that consists solely of point-of-final-purchase  
45 retail facilities shall not be eligible for a grant of tax credits. If a  
46 project consists of both point-of-final-purchase retail facilities and  
47 non-retail facilities, only the portion of the project consisting of

1 non-retail facilities shall be eligible for a grant of tax credits. If a  
2 warehouse facility is part of a point-of-final-purchase retail facility  
3 and supplies only that facility, the warehouse facility shall not be  
4 eligible for a grant of tax credits. For the purposes of this section,  
5 catalog distribution centers shall not be considered point-of-final-  
6 purchase retail facilities.  
7 (cf: P.L.2007, c.310, s.1)

8  
9 4. Section 5 of P.L.2004, c.65 (C.34:1B-115.1) is amended to  
10 read as follows:

11 5. a. In addition to any grant of tax credits determined  
12 pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3), a bonus  
13 award equivalent to 50% of the amount of the original grant of tax  
14 credits shall be made to any business that relocates more than 2,000  
15 full-time employees covered by the project agreement from one or  
16 more locations outside of a designated urban center into a  
17 designated urban center, provided that all other applicable  
18 requirements of P.L.1996, c. 25 (C.34:1B-112 et seq.) are satisfied;  
19 and provided further that no grant of tax credits shall be awarded  
20 pursuant to this section for any job that is moved from its current  
21 location in an urban enterprise zone designated pursuant to the  
22 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303  
23 (C.52:27H-60 et seq.) to a location that is not within an urban  
24 enterprise zone; however, that if the move from the urban enterprise  
25 zone is to a facility already owned or leased by the same business  
26 and that business already employs at least the same number of  
27 persons as those being relocated from the urban enterprise zone a  
28 grant of tax credits may still be awarded pursuant to this section.

29 b. In addition to any grant of tax credits determined pursuant to  
30 section 7 of P.L.2004, c.65 (C.34:1B-115.3), and in addition to any  
31 bonus award pursuant to subsection a. of this section, a bonus award  
32 equivalent to 50% of the amount of the original grant of tax credits  
33 shall be made to any business that makes a qualifying capital  
34 investment. If a bonus award under this section would result in a  
35 business's capital investment no longer being a qualifying capital  
36 investment, then the bonus award shall equal the largest bonus  
37 amount that would still result in the capital investment being a  
38 qualifying capital investment.

39 (cf: P.L.2004, c.65, s.5)

40  
41 5. Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is amended to  
42 read as follows:

43 7. a. The total value of the grants of tax credits **【issued】** ,  
44 approved by the authority pursuant to P.L.1996, c.25 (C.34:1B-112  
45 et seq.) , that may be applied against tax liability in a fiscal year  
46 shall not exceed an aggregate annual limit of \$20,000,000 **【for a**  
47 **fiscal year】**. The total value of the grants of tax credits, issued  
48 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that a single

1 business may apply against its tax liability shall not exceed an  
2 aggregate annual limit of \$10,000,000 for a fiscal year. A tax credit  
3 issued pursuant to P.L.1996, c.25 may be applied against liability  
4 **【arising in the tax period in which the tax credit is issued and the**  
5 **tax period next following,】** as set forth in subsection b. of this  
6 section and shall expire thereafter.

7 b. **【Grants】** Subject to the limitation set forth in subsection a.  
8 of this section, grants of tax credits shall be 【awarded and issued  
9 to】 approved for qualifying businesses 【as follows, subject to the  
10 limitations of subsection c. of this section】 according to the  
11 following schedule, and shall be issued upon the execution and  
12 satisfaction of the requirements of the project agreement between  
13 the authority and the business with an approved project, and  
14 annually thereafter:

15 **【(1) for a project that covers a business relocating a minimum of**  
16 **500 full-time employees, a grant of tax credits made pursuant to**  
17 **P.L.1996, c.25 (C.34:1B-112 et seq.) shall equal total allowable**  
18 **relocation costs plus any applicable bonus award determined**  
19 **pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and, shall**  
20 **be issued immediately upon the entry of the project agreement**  
21 **between the commissioner and the business with an approved**  
22 **project, up to the aggregate annual limit; and**

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

27 (1) for a project that covers a business relocating or retaining  
28 50 to 250 full-time employees, a grant of tax credits shall be for the  
29 yearly tax credit amount plus any applicable bonus award  
30 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1),  
31 and may be applied against liability in the tax period in which the  
32 tax credit is issued;

33 (2) for a project that covers a business relocating or retaining  
34 251 to 400 full-time employees, a grant of tax credits shall be for  
35 two times the yearly tax credit amount plus any applicable bonus  
36 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
37 115.1), and may be applied against liability in the tax period in  
38 which the tax credit is issued and the following tax period, for one-  
39 half of the total grant award per tax period, provided that the use of  
40 the credit must be accompanied by a certificate of compliance;

41 (3) for a project that covers a business relocating or retaining  
42 401 to 600 full-time employees, a grant of tax credits shall be for  
43 three times the yearly tax credit amount plus any applicable bonus  
44 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
45 115.1) and may be applied against liability in the tax period in  
46 which the tax credit is issued and the following two tax periods, for  
47 one-third of the total grant award per tax period, provided that the

1 use of the credit must be accompanied by a certificate of  
2 compliance;

3 (4) for a project that covers a business relocating or retaining  
4 601 to 800 full-time employees, a grant of tax credits shall be for  
5 four times the yearly tax credit amount plus any applicable bonus  
6 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
7 115.1) and may be applied against liability in the tax period in  
8 which the tax credit is issued and the following three tax periods,  
9 for one-fourth of the total grant award per tax period, provided that  
10 the use of the credit must be accompanied by a certificate of  
11 compliance;

12 (5) for a project that covers a business relocating or retaining  
13 801 to 1,000 full-time employees, a grant of tax credits shall be for  
14 five times the yearly tax credit amount plus any applicable bonus  
15 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
16 115.1) and may be applied against liability in the tax period in  
17 which the tax credit is issued and the following four tax periods, for  
18 one-fifth of the total grant award per tax period, provided that the  
19 use of the credit must be accompanied by a certificate of  
20 compliance; and

21 (6) for a project that covers a business relocating or retaining  
22 1,001 or more full-time employees, a grant of tax credits shall be  
23 for six times the yearly tax credit amount plus any applicable bonus  
24 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
25 115.1) and may be applied against liability in the tax period in  
26 which the tax credit is issued and the following five tax periods, for  
27 one-sixth of the total grant award per tax period, provided that the  
28 use of the credit must be accompanied by a certificate of  
29 compliance.

30 c. **【**If the sum of the amount of tax credits issued pursuant to  
31 paragraph (1) of subsection b. of this section in a fiscal year, plus  
32 the amount of tax credits approved pursuant to paragraph (2) of  
33 subsection b. of this section exceeds**】** If the issuance of a grant of  
34 tax credits pursuant to this section would exceed the \$20,000,000  
35 aggregate annual limit, 【the commissioner shall reduce, on a pro  
36 rata basis, the award to each business receiving a grant of tax  
37 credits pursuant to paragraph (2) of subsection b.】 the authority  
38 may award a smaller grant of tax credits or no grants of tax credits,  
39 as necessary to comply with the aggregate annual limit.

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

41

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

44 5. Each business seeking a grant of tax credits for a project  
45 shall submit an application for approval of the project to the  
46 **【**commissioner**】** authority in a form and manner prescribed in  
47 regulations adopted by the **【**commissioner**】** authority. The

1 application must be submitted to the **【commissioner】** authority for  
2 approval at least 45 days prior to moving to the new business  
3 location; provided however, a business relocating 1,500 or more  
4 retained full-time jobs to one or more new locations within a  
5 designated urban center shall, if relocating to a leased location,  
6 submit an application within six months of executing its lease. The  
7 application for approval of a project shall include:

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

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

11 c. Terms of any lease agreements, either existing or proposed,  
12 or details of the purchase or building of the new business location,  
13 if applicable;

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

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

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

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

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

30 i. Any other necessary and relevant information as determined  
31 by the **【commissioner】** authority.

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

39 The project agreement shall include terms establishing the  
40 starting date, or event that will determine the starting date, of the  
41 commitment duration and any other terms or conditions as  
42 determined by the **【commissioner】** authority.

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

44

45 7. Section 6 of P.L.1996, c.25 (C.34:1B-117) is amended to  
46 read as follows:



1       6. No tax credits **【shall be】** issued as a grant of tax credits  
2 under P.L.1996, c.25 (C.34:1B-112 et seq.) may be applied by the  
3 business against liability in any year until the State Treasurer has  
4 certified that the amount of retained State tax revenue received in  
5 the most recently completed State tax periods by the Director of the  
6 Division of Taxation from the business equals or exceeds the  
7 amount of the grant of tax credits.

8 (cf: P.L.2004, c.65, s.9)

9  
10       8. Section 7 of P.L.1996, c.25 (C.34:1B-118) is amended to  
11 read as follows:

12       7. a. A business that is receiving a business employment  
13 incentive grant pursuant to the provisions of P.L.1996, c.26  
14 (C.34:1B-124 et al.) shall not be eligible to receive a grant of tax  
15 credits under P.L.1996, c.25 (C.34:1B-112 et seq.) with respect to a  
16 job which is included in the calculation of a grant pursuant to  
17 P.L.1996, c.26.

18       b. A business that is receiving any other grant by operation of  
19 State law shall be eligible to receive a grant of tax credits under  
20 P.L.1996, c.25 (C.34:1B-112 et seq.); provided, however, that a  
21 business that is receiving another State grant shall not be eligible to  
22 receive assistance with respect to any job that is currently the  
23 subject of any other State grant, except for grants from the Office of  
24 Customized Training pursuant to the "1992 New Jersey  
25 Employment and Workforce Development Act," P.L.1992, c.43  
26 (C.34:15D-1 et seq.), and provided further that a business shall not  
27 receive an amount as a grant of tax credits pursuant to P.L.1996,  
28 c.25 (C.34:1B-112 et seq.) **【which,】** unless the State will realize a  
29 net positive benefit from the grant of tax credits and resultant  
30 retention of full-time jobs and any capital investment when  
31 combined with such other grants, **【exceeds 80% of the retained**  
32 **State tax revenue,】** except upon the approval of the State Treasurer.  
33 Amounts received as grants from the Office of Customized Training  
34 pursuant to the "1992 New Jersey Employment and Workforce  
35 Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.), shall be  
36 excluded from the calculation of the total amount permitted under  
37 this subsection.

38 (cf: P.L.2004, c.65, s.10)

39  
40       9. Section 11 of P.L.2004, c.65 (C.34:1B-118.1) is amended to  
41 read as follows:

42       11. In **【determining the】** considering the award and the amount  
43 of any grant of tax credits made pursuant to P.L.1996, c.25  
44 (C.34:1B-112 et seq.), the **【commissioner shall】** authority may  
45 consider, as part of the **【commissioner's】** authority's overall  
46 **【calculation】** review process, the following factors:

47       a. The number of full-time jobs retained;

- 1       b. The quality of the full-time jobs retained, including but not  
2 limited to the salaries and benefits provided to retained full-time  
3 employees;
- 4       c. Any capital investments made by the business at the new  
5 business location;
- 6       d. The nature of the business' operations, including but not  
7 limited to whether the business is a designated industry;
- 8       e. The potential impact on the State if the business were to  
9 relocate to another state;
- 10      f. The site of the new business location and its consistency  
11 with the smart growth goals, strategies and policies of the State  
12 Development and Redevelopment Plan established pursuant to  
13 section 5 of P.L.1985, c.398 (C.52:18A-200);
- 14      g. Whether positions average at least 1.5 times the minimum  
15 hourly wage during the commitment duration; and
- 16      h. The duration and extent of past operations by the business in  
17 New Jersey and any other information indicating the business' level  
18 of commitment to the State and the likelihood that the business will  
19 continue to operate in this State in the future.  
20 (cf: P.L.2004, c.65, s.11)

21  
22      10. Section 8 of P.L.1996, c.25 (C.34:1B-119) is amended to  
23 read as follows:

24      8. The **【commissioner】** authority shall, after consultation with  
25 the Director of the Division of Taxation, pursuant to the  
26 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
27 seq.), adopt rules and regulations necessary to govern the proper  
28 conduct and operation of the program consistent with the provisions  
29 of P.L.1996, c.25 (C.34:1B-112 et seq.) including, but not limited  
30 to, a procedure for recapturing relocation grants of tax credits  
31 awarded pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) in those  
32 cases in which the **【commissioner】** authority determines that the  
33 business receiving the grant of tax credits fails to meet or comply  
34 with any condition or requirement attached by the **【commissioner】**  
35 authority to the receipt of the grant of tax credits or included in  
36 rules and regulations adopted by the **【commissioner】** authority  
37 governing the implementation of the program. The Director of the  
38 Division of Taxation, after consultation with the authority, is  
39 authorized to promulgate such rules and regulations as may be  
40 necessary to effect the tax-related provisions of the program.  
41 (cf: P.L.2004, c.65, s.12)

42  
43      11. Section 9 of P.L.1996, c.25 (C.34:1B-120) is amended to  
44 read as follows:

45      9. a. As determined by the authority, a business which is  
46 awarded a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et  
47 seq.) shall submit annually, no later than March 1st of each year,  
48 commencing in the year in which the grant of tax credits is issued

1 and for the remainder of the tax credit term, a certification of  
2 compliance that indicates that the business continues to maintain  
3 the number of retained full-time jobs as specified in the project  
4 agreement. Upon receipt and review thereof, the authority shall  
5 issue a certificate of compliance indicating the amount of tax credits  
6 that the business may apply against liability in that tax period. Any  
7 reduction in the number of retained full-time jobs below the number  
8 prescribed under the terms of the project agreement shall  
9 proportionately reduce the amount of tax credits the business may  
10 apply against liability in that tax period and the unused credits for  
11 that tax period shall be forfeited. If, in any tax period, the number  
12 of retained full-time jobs drops below the minimum number of  
13 retained full-time jobs indicated in the applicable paragraph of  
14 subsection b. of section 7 of P.L.2004, c.65 (C.34:1B-115.3) such  
15 that the business would no longer be eligible to apply the credits for  
16 the number of years for which it was approved, then the business  
17 shall forfeit its credit amount for that tax period and each  
18 subsequent tax period, until the first tax period for which  
19 documentation demonstrating the restoration of the number of  
20 retained full-time jobs has been reviewed and approved by the  
21 authority, for which tax period and each subsequent tax period the  
22 full amount of the credit shall be allowed.

23 b. As determined by the **【commissioner】** authority, a business  
24 which is awarded a grant of tax credits under P.L.1996, c.25  
25 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st  
26 of each year, commencing the year following the calendar year in  
27 which the business was approved for the grant of tax credits and for  
28 the remainder of the commitment duration, a copy of the State tax  
29 return for the business showing business income or activity,  
30 appropriate to its form of ownership together with an annual report  
31 listing the full-time employees in eligible positions employed at the  
32 location or locations approved for the grant of tax credits, to the  
33 **【commissioner】** authority. Failure to submit a copy of its annual  
34 report or submission of the annual report without the information  
35 required above, may result in the forfeiture of any grant of tax  
36 credits to be received by the business and the recapture of any tax  
37 credits issued to the business unless the **【commissioner】** authority  
38 determines that there are extenuating circumstances excusing the  
39 business from the timely filing required.  
40 (cf: P.L.2004, c.65, s.13)

41  
42 12. Section 14 of P.L.2004, c.65 (C.34:1B-120.1) is amended to  
43 read as follows:

44 14. The **【commissioner】** authority is authorized to pursue, and  
45 shall adopt rules for, the recapture of all, or a portion of, the grant  
46 of tax credits, based on criteria established by the **【commissioner】**  
47 authority pursuant to regulation or under the terms of the project

1 agreement **【**if the business fails to maintain the retained full-time  
2 jobs at the location or locations approved for the grant of tax credits  
3 for the commitment duration or fails to meet or comply with any  
4 condition or requirement under the terms of the project agreement  
5 or included in rules and regulations adopted by the commissioner  
6 governing the implementation of the program**】**. The rules shall  
7 allow for the **【**commissioner**】** authority to pursue the full or partial  
8 recapture or, in its discretion, to notify the Director of the Division  
9 of Taxation in the Department of the Treasury, who shall issue a  
10 recapture assessment which shall be based upon the proportionate  
11 value of the grant of tax credits that corresponds to the amount and  
12 period of noncompliance**【**. The**】** , in which case, the recapture of  
13 funds shall be subject to the State Uniform Tax Procedure Law,  
14 R.S.54:48-1 et seq. Recaptured funds shall be deposited in the  
15 General Fund of the State.  
16 (cf: P.L.2004, c.65, s.14)  
17

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

20 17. a. The **【**commissioner**】** authority shall establish a  
21 corporation business tax credit and insurance premiums tax credit  
22 certificate transfer program to allow businesses in this State with  
23 unused amounts of tax credits issued under P.L.1996, c.25  
24 (C.34:1B-112 et seq.), and otherwise allowable, that cannot be  
25 applied by the business to which originally issued before the  
26 expiration of the credit, to surrender those tax credits for use by  
27 other corporation business and insurance premiums taxpayers in this  
28 State **【**, provided that the taxpayer receiving the surrendered tax  
29 credits is not affiliated with the business that is surrendering its tax  
30 credits. For the purposes of this section, the test of affiliation is  
31 whether the same entity directly or indirectly owns or controls 5%  
32 or more of the voting rights or 5% or more of the value of all  
33 classes of stock of both the taxpayer receiving the tax credits and  
34 the business that is surrendering the tax credits**】**. The tax credits  
35 may be used on the corporation business tax and insurance  
36 premiums tax returns to be filed by those taxpayers in exchange for  
37 private financial assistance to be provided by the corporation  
38 business taxpayer or insurance premiums taxpayer that is the  
39 recipient of the corporation business tax credit certificate or  
40 insurance premiums tax credit certificate to assist in the funding of  
41 costs incurred by the relocating business.

42 b. **【**The commissioner, in cooperation with the Director of the  
43 Division of Taxation in the Department of the Treasury, shall  
44 review and approve applications by taxpayers under the Corporation  
45 Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and  
46 by taxpayers under the taxes imposed on insurers pursuant to  
47 P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231

1 (C.17:32-15) and N.J.S.17B:23-5 to acquire surrendered tax  
2 benefits, which shall be issued in the form of corporation business  
3 tax credit and insurance premiums tax credit transfer certificates,]  
4 Businesses may apply to the authority and the Director of the  
5 Division of Taxation for a tax credit transfer certificate, covering  
6 one or more years. Upon receipt thereof, the business may sell or  
7 assign the tax credit certificate in exchange for private financial  
8 assistance to be made by the **【taxpayer】 purchaser** in an amount  
9 equal to at least 75% of the amount of the surrendered tax credit of  
10 a business relocating in the State. The private financial assistance  
11 shall assist in funding expenses incurred in connection with the  
12 operation of the business in the State, including but not limited to  
13 the expenses of fixed assets, such as the construction and  
14 acquisition and development of real estate, materials, start-up,  
15 tenant fit-out, working capital, salaries, research and development  
16 expenditures and any other expenses determined by the  
17 **【commissioner】 authority** to be necessary to carry out the purposes  
18 of P.L.1996, c.25 (C.34:1B-112 et seq.).

19 c. The **【commissioner】 authority** shall **【coordinate】 establish**  
20 procedures to facilitate such transfers and encourage liquidity and  
21 simplicity in the market for the purchase and sale of such  
22 certificates, including, in the authority's discretion, coordinating the  
23 applications for surrender and acquisition of unused but otherwise  
24 allowable tax credits pursuant to this section in a manner that can  
25 best stimulate and encourage the extension of private financial  
26 assistance to businesses in this State. The authority also shall have  
27 the discretion, in consultation with the State Treasurer, to purchase  
28 and retire unused certificates under circumstances where it may  
29 determine that such purchase and retirement is in the furtherance of  
30 the purposes of this act and in the overall interest of the State in  
31 cost-effective promotion of economic development.

32 d. The **【commissioner】 authority** shall, in consultation with the  
33 Director of the Division of Taxation, develop criteria for the  
34 approval or disapproval of applications.  
35 (cf: P.L.2004, c.65, s.17)

36  
37 14. Section 10 of P.L.1996, c.25 (C.34:1B-121) is amended to  
38 read as follows:

39 10. The **【commissioner】 authority** shall prepare and transmit to  
40 the Governor and the Legislature on or before November 1st of  
41 each year, a report concerning the impact of the program on job  
42 retention in the State.  
43 (cf: P.L.2004, c.65, s.15)

44  
45 15. Section 12 of P.L.1996, c.25 (C.34:1B-123) is amended to  
46 read as follows:

1 12. There is appropriated to the **【New Jersey Commerce and**  
2 **Economic Growth Commission】** authority from the General Fund  
3 such sums as may be necessary, as certified by the **【commissioner】**  
4 chief executive officer of the authority and the Director of the  
5 Division of Budget and Accounting, to fund business retention and  
6 relocation grants of tax credits made under P.L.1996, c.25  
7 (C.34:1B-112 et seq.), the amount of which shall not exceed the  
8 retained State tax revenues as defined in section 2 of P.L.1996, c.25  
9 (C.34:1B-113).  
10 (cf: P.L.2004, c.65, s.16)

11

12 16. Section 11 of P.L.1996, c.25 (C.34:1B-122) is repealed.

13

14 17. This act shall take effect immediately and apply to tax  
15 periods beginning on or after the date of enactment.

16

17

18

#### STATEMENT

19

20 This bill broadens the availability and revises the terms of  
21 financial assistance under New Jersey's Business Retention and  
22 Relocation Assistance Grant ("BRRAG") Program. This program,  
23 administered by the New Jersey Economic Development Authority  
24 ("NJEDA"), helps a business preserve jobs, expand operations, and  
25 reinvest in the State through the award of tax credits against the  
26 corporation business tax and various taxes on insurers; the amount  
27 of the credits awarded is based upon the business's investment, or  
28 its expansion or preservation of jobs, in the State.

29 Under the bill:

30 (1) A current provision, limiting the amount of an individual  
31 grant of tax credits to no more than 80 percent of projected State tax  
32 revenues from the retained full-time jobs, is eliminated.

33 (2) Applicants for BRRAG credits would have to show that the  
34 capital investment and jobs retention resulting from their proposed  
35 projects would "yield a net positive benefit to the State."

36 (3) Not only jobs relocated within the State (as currently), but  
37 also jobs maintained at a New Jersey business location, could  
38 qualify as "retained" jobs for BRRAG award eligibility purposes.

39 (4) "Bonus" credits under the program, currently awarded for  
40 the relocation of jobs to urban centers, could also be earned for  
41 making a capital investment in an amount that is at least twice that  
42 of the value of the credits granted.

43 (5) The current annual cap of \$20 million on the issuance of  
44 BRRAG credits is converted to a cap on the total amount of such  
45 credits that could applied against tax liability in a fiscal year. Also,  
46 a new annual cap of \$10 million would be imposed on the total  
47 value of credits that a single business could apply against liability in  
48 a fiscal year.

- 1       (6) The value of BRRAG credits for a business retaining more  
2 than 250 jobs is increased by authorizing awards in multiples of up  
3 to six times the current rate of \$1,500 per employee, with the size of  
4 the multiple depending on the number of retained jobs. The bill  
5 requires such “multiple rate” awards to be taken in equal amounts  
6 over the appropriate number of years.
- 7       (7) A current rule, establishing as a precondition for the  
8 issuance of BRRAG credits to a business that the amount of State  
9 tax revenue resulting from retention of the business must at least  
10 equal the value of the credits, is instead made a precondition for the  
11 business’s ability to apply the credits against tax liability.
- 12       (8) The class of businesses to which, as a “designated industry,”  
13 consideration may be given in determining the amount of a BRRAG  
14 award is broadened to include, not only high technology businesses,  
15 but any business deemed desirable by the NJEDA to be maintained  
16 in the State.
- 17       (9) Once a business is initially granted BRRAG credits, and for  
18 so long as it participates in the program, it would have to certify to  
19 the NJEDA that it continues to maintain the number of retained jobs  
20 specified in the agreement under which the credits were issued.  
21 Based upon this certification, the NJEDA would issue a certificate  
22 indicating the amount of credits that the business could use in a tax  
23 period. If a business failed to meet its jobs retention commitment,  
24 its credit award would be reduced proportionately and it would  
25 forfeit the unused credits.
- 26       (10) A provision in the statute authorizing the sale of BRRAG  
27 tax credits that prohibits such sales between “affiliated” businesses  
28 is eliminated.
- 29       (11) A requirement that a study be conducted to determine the  
30 minimum funding level needed for successful implementation of the  
31 BRRAG program is repealed.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 2370**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: NOVEMBER 15, 2010

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2370, with committee amendments.

This bill broadens the availability and revises the terms of financial assistance under New Jersey's Business Retention and Relocation Assistance Grant ("BRRAG") Program. This program, administered by the New Jersey Economic Development Authority ("EDA"), helps a business preserve jobs, expand operations, and reinvest in the State through the award of tax credits against the corporation business tax and the taxes on insurers. The amount of the credits awarded is based upon the business's expansion or preservation of jobs, in the State, augmented by targeted capital investment.

The bill broadens the class of businesses to which, as a "designated industry," consideration may be given in determining the amount of a BRRAG award, eliminating the limitation to certain high technology businesses, allowing the EDA to determine what is desirable for the State depending on changing market conditions.

The bill changes the criteria for award of a credit. Under current law, the amount of an individual grant of tax credits is limited to no more than 80 percent of projected State tax revenues from the retained full-time jobs. The bill replaces that rule with a requirement that BRRAG credit applicants show that the combination of capital investment and jobs retention resulting from their proposed projects would "yield a net positive benefit to the State."

Currently, jobs relocated within the State are creditable jobs. The bill also allows jobs maintained at a New Jersey business location to qualify as "retained" jobs for BRRAG credit award eligibility purposes if certain capital investments are made.

"Bonus" credits are currently awarded under the program for the relocation of jobs to urban centers. The bill allows a second type of bonus credit to be earned for making a capital investment in an amount that is at least twice that of the value of the credits granted.

The bill increases the potential value of BRRAG credits for a business relocating or retaining more than 250 jobs. Currently, the per-job award amount is \$1,500 for each relocated or retained full time job. The bill establishes six tiers, by size, of job relocations or



retentions and authorizes awards in increasing multiples of the per-job award of up to six times the current rate. The bill requires such “multiple rate” awards to be taken in equal amounts over the appropriate number of years.

The bill makes a number of changes to increase the stability and predictability of the tax expenditure associated with the award of tax credits. There is currently annual cap of \$20 million on the *issuance* of BRRAG credits, which can be taken in some cases over two taxpayer tax periods. The bill converts this to a cap on the total amount of credits that may be *applied* against tax liability in a State fiscal year, and requires that a tax credit be used in the State fiscal year for which it is issued. The bill sets a new annual cap of \$10 million on the total value of credits that a single business may apply against liability in a State fiscal year. Currently, it is a precondition for the *issuance* of BRRAG credits to a business that the amount of State tax revenue resulting from retention of the business must at least equal the value of the credits; the bill makes this a precondition for the business’s ability to *apply* the credits against tax liability.

The bill requires that a business that is initially granted BRRAG credits, and for so long as it participates in the program, must annually certify to the EDA that it continues to maintain the number of retained jobs specified in the project agreement under which the credits were issued. Based upon this certification, the EDA will issue a certificate indicating the amount of credits that the business may use in a fiscal year. If a business fails to meet its jobs retention commitment, its credit award will be reduced proportionately, and it will forfeit the unused credits. If a business fails to retain jobs to the extent that it no longer qualifies for its credit tier, the business will lose credits for the years of which it was approved but no longer qualifies.

Tax credits may be recaptured, subject to the terms of the business’ project agreement.

The bill provides a definition of “affiliate,” a business that controls, is controlled by, or under common control with the business receiving a credit, and provides that 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. The bill eliminates a provision in the current law authorizing the sale of BRRAG tax credits that prohibits such sales between “affiliated” businesses

The bill repeals a requirement that a study be conducted to determine the minimum funding level needed for successful implementation of the BRRAG program.

#### COMMITTEE AMENDMENTS:

The amendments provide a slightly different definition of capital investment, clarifying the standards for creditable equipment. The

amendments delete a definition of “qualifying capital investment,” but use the substance of that definition to clarify language already in the bill that resolves a potential conflict between the fact that a bonus credit requires that capital investment be twice the amount of credit awarded and the fact that a bonus award could increase the credit awarded to more than 50% of the capital investment.

The amendments delete a now-superseded requirement that a project agreement commit the business to maintaining 95% of retained full-time jobs for the first two years of its commitment duration and 90% of retained full-time jobs for all of its commitment duration.

The amendments clarify that a credit amount that is not used in the fiscal year for which it was granted expires.

The amendments exempt certain companies from the material factor requirement and calculation of net benefits under the Business Retention and Relocation Assistance Grant Program. For any company that has had grant pre-application meetings with EDA, and has executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of the bill, the net benefit for the retention of full-time jobs and any capital investment shall be calculated from the date of the initial grant pre-application meeting. Any company that has had grant pre-application meetings with EDA and has executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of the bill shall not be deemed ineligible for the grant due to the material factor requirement nor deemed ineligible due to the requirement to apply 45 days before moving to the new business location.

The amendments delete a provision that would have allowed the EDA to purchase and retire certificates of credit grants.

The committee also made various minor technical amendments to the language of the bill, including changes of references to tax period to fiscal year, the consequences of non-compliance with the terms of the project agreement, and an amendment to the effective date.

FISCAL IMPACT:

While this bill does not change the existing \$20 million annual limit on the value of tax credits that may be taken in a fiscal year, in no fiscal year have the credits applied against CBT liability approached the limit. The changes to the program resulting from the provisions of this bill will likely increase the annual tax revenue loss in Fiscal Year 2012 and beyond. As the use of these credits will depend on decisions that have not yet been made, and employment retention which has not yet occurred, it is not possible to calculate the additional level of credits that will be used annually.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

[First Reprint]

### **SENATE, No. 2370**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 14, 2010

The Assembly Budget Committee reports favorably Senate Bill No. 2370, with committee amendments.

Senate Bill No. 2370 (1R), as amended, broadens the availability and revises the terms of financial assistance under New Jersey's Business Retention and Relocation Assistance Grant ("BRRAG") Program. This program, administered by the New Jersey Economic Development Authority ("EDA"), helps businesses to preserve jobs, expand operations, and reinvest in the State through the award of tax credits against the corporation business tax and the taxes on insurers. The amount of the credits awarded is based upon a business's expansion or preservation of jobs in the State, augmented by targeted capital investment.

The bill broadens the class of businesses to which, as a "designated industry," consideration may be given in determining the amount of a BRRAG award, eliminating the limitation to certain high technology businesses, allowing the EDA to determine what is desirable for the State depending on changing market conditions.

The bill changes the criteria for award of a credit. Under current law, the amount of an individual grant of tax credits is limited to no more than 80 percent of projected State tax revenues from the retained full-time jobs. The bill replaces that rule with a requirement that BRRAG credit applicants show that the combination of capital investment and jobs retention resulting from their proposed projects would "yield a net positive benefit to the State."

Currently, jobs relocated within the State are creditable jobs. The bill also will additionally allow jobs maintained at a New Jersey business location to qualify as "retained" jobs for BRRAG credit award eligibility purposes if certain capital investments are made.

"Bonus" credits are currently awarded under the program for the relocation of jobs to urban centers. The bill allows a second type of bonus credit to be earned for making a capital investment in an amount that is at least twice that of the value of the credits granted.

The bill increases the potential value of BRRAG credits for a business relocating or retaining more than 250 jobs. Currently, the

per-job award amount is \$1,500 for each relocated or retained full time job. The bill establishes six tiers, by size, of job relocations or retentions and authorizes awards in increasing multiples of the per-job award of up to six times the current rate. The bill requires such “multiple rate” awards to be taken in equal amounts over the appropriate number of years.

The bill makes a number of changes to increase the stability and predictability of the tax expenditure associated with the award of tax credits. There is currently annual cap of \$20 million on the *issuance* of BRRAG credits, which can be taken in some cases over two taxpayer tax periods. The bill converts this to a cap on the total amount of credits that may be *applied* against tax liability in a State fiscal year, and requires that a tax credit be used in the tax period for which it is issued. The bill sets a new annual cap of \$10 million on the total value of credits that a single business may apply against liability in a State fiscal year. Currently, it is a precondition for the *issuance* of BRRAG credits to a business that the amount of State tax revenue resulting from retention of the business must at least equal the value of the credits; the bill makes this a precondition for the business’s ability to *apply* the credits against tax liability.

The bill requires that a business that is initially granted BRRAG credits, and for so long as it participates in the program, must annually certify to the EDA that it continues to maintain the number of retained jobs specified in the project agreement under which the credits were issued. Based upon this certification, the EDA will issue a certificate indicating the amount of credits that the business may use in a fiscal year. If a business fails to meet its jobs retention commitment, its credit award will be reduced proportionately, and it will forfeit the unused credits. If a business fails to retain jobs to the extent that it no longer qualifies for its credit tier, the business will lose credits for the years for which it was approved but no longer qualifies.

Tax credits may be recaptured, subject to the terms of the business’ project agreement.

The bill provides a definition of “affiliate,” a business that controls, is controlled by, or under common control with the business receiving a credit, and provides that 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. The bill eliminates a provision in the current law authorizing the sale of BRRAG tax credits that prohibits such sales between “affiliated” businesses

The bill repeals a requirement that a study be conducted to determine the minimum funding level needed for successful implementation of the BRRAG program.

As reported by the committee, this bill is identical to Assembly Bill. No 3389 (1R) as also amended and reported by the committee.

**FISCAL IMPACT:**

While this bill does not change the existing \$20 million annual limit on the value of tax credits that may be taken in a fiscal year, in no fiscal year have the credits applied against CBT liability approached the limit. The changes to the program resulting from the provisions of this bill will likely increase the annual tax revenue loss in Fiscal Year 2012 and beyond. As the use of these credits will depend on decisions that have not yet been made, and employment retention which has not yet occurred, it is not possible to calculate the additional level of credits that will be used annually.

**COMMITTEE AMENDMENTS:**

The amendments make various technical changes, including:  
changing references to fiscal year to tax period (at the recommendation of the Division of Taxation); and  
including in a reporting requirement the cross reference to the section governing the method of reporting.

**FISCAL NOTE**  
 [First Reprint]  
**SENATE, No. 2370**  
**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

DATED: DECEMBER 21, 2010

**SUMMARY**

- Synopsis:** Revises financial assistance under Business Retention and Relocation Assistance Grant Program; repeals requirement to study implementation.
- Type of Impact:** Unknown net effect of two countervailing impacts: 1) an annual revenue loss to the State General Fund from awarding tax credits, 2) an annual revenue increase to the State General Fund and 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.

**Executive Estimate**

Fiscal Impact	<u>Fiscal Year 2011</u>	<u>Fiscal Year 2012</u>	<u>Fiscal Year 2013</u>
<b>Direct State Cost</b>	Up to \$18,600,000 per Fiscal Year		
<b>Indirect State Revenue Gain</b>	Indeterminate — See comments below		

**Office of Legislative Services Estimate**

Fiscal Impact	<u>Fiscal Year 2011</u>	<u>Fiscal Year 2012</u>	<u>Fiscal Year 2013</u>
<b>Direct State Cost</b>	Up to \$18,600,000 per Fiscal Year		
<b>Indirect State Revenue Gain</b>	Indeterminate — See comments below		
<b>Indirect Local Revenue Gain</b>	Indeterminate — See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate. On the one hand, the bill could produce an additional annual State revenue loss of up to \$18.6 million in the form of additional and larger Business Retention and Relocation Assistance (BRRAG) tax credits. On the other hand, additional and larger tax credits that are essential to retaining

economic activity in New Jersey will also generate indirect fiscal benefits to the State and local governments that may, or may not, be greater than the cost and opportunity cost of providing the financial assistance. The OLS, however, lacks the information necessary to quantify either of the two countervailing fiscal effects, and thus can determine neither the direction nor the magnitude of their net impact on State finances.

- Not every dollar newly awarded as a BRRAG tax credit will yield a return to the State in the form of the retention of additional economic activity in New Jersey. Only tax credit-induced retentions of economic activity that would not occur absent the tax credit will yield a return for the State's intensified tax credit spending. Investments that receive the tax credit but that also would be undertaken without it, on the other hand, represent sunk costs to the State, or an expense without a benefit. The OLS, however, is not in a position to gauge the amount of tax credit-induced retained economic activity and its ensuing impact on New Jersey's employment, income, wealth, population, and tax receipts.
- As to BRRAG tax credits awarded under the bill's provision waiving the tax credit's "material factor" requirement for companies that, during the period commencing May 1, 2010 until the bill's date of enactment, have had grant pre-application meetings with the New Jersey Economic Development Authority (EDA) and have executed contracts relating to the new business location, the OLS notes that all such credit awards will represent a sunk cost to the State without the realization of any secondary benefits attributable to the credit awards, given that the projects for which the credits will be awarded would happen with or without the bill.

## **BILL DESCRIPTION**

Senate Bill No. 2370 (1R) of 2010 expands the classes of businesses that may receive a BRRAG tax credit under the corporation business and insurance premiums taxes and raises the amounts of individual tax credits. The bill maintains the annual \$20 million cap on total tax credits awarded and the requirement that the receipt of the credit is a material factor in a business' decision not to relocate full-time positions outside New Jersey.

The bill broadens the classes of businesses that may receive a tax credit. First, the legislation exempts companies that, during the period commencing May 1, 2010 until the bill's date of enactment, have had grant pre-application meetings with the EDA and have executed contracts relating to a new business location from the BRRAG criterion that the receipt of the tax credit must be a material factor in a business' decision not to relocate full-time positions outside New Jersey.

The bill also no longer limits BRRAG tax credits to businesses in industries specifically enumerated in the law, but instead extends discretion to the EDA to identify industries that shall be eligible for tax credits.

The bill also establishes a new credit award schedule for full-time employees who are retained in New Jersey either by relocating them within New Jersey or keeping them in their current location. The per-employee tax credit is \$1,500 if a business retains between 50 and 250 full-time employees, \$3,000 if it retains between 251 and 400 full-time employees, \$4,500 if it retains between 401 and 600 full-time employees, \$6,000 if it retains between 601 and 800 full-time employees, \$7,500 if it retains between 801 and 1,000 full-time employees, and \$9,000 if it retains more than 1,000 full-time employees. As under current law, businesses earn a tax credit

bonus of 50 percent if they relocate at least 2,000 jobs from a location in New Jersey into a designated urban area. In addition, they can newly earn a 50 percent bonus under this bill if their capital investment is at least twice the amount of tax credits granted prior to the application of a bonus. A business may claim both bonuses. Lastly, in addition to the receipt of the tax credit being a material factor in the business' decision to retain full-time positions in New Jersey, an applicant business must newly demonstrate to the EDA that the tax credit will yield a net positive benefit to the State.

Under the current program, BRRAG tax credits equal up to 80 percent of the State tax revenues accruing during the time period covered by the grant agreement from full-time jobs relocated and retained in New Jersey if a claimant relocates between 50 and 499 full-time employees. If the business relocates within New Jersey at least 500 full-time employees, the business receives a \$1,500 tax credit per full-time employee relocated and retained. Also, businesses earn a tax credit bonus of 50 percent if they relocate at least 2,000 full-time jobs from a location in New Jersey into a designated urban area. Lastly, the receipt of the tax credit must be a material factor in the business' decision to retain full-time positions in New Jersey.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Office of Management and Budget (OMB) in the Department of the Treasury estimates that this bill will cause a maximum annual State revenue loss of \$18.6 million from awarding additional and larger BRRAG tax credits. The amount reflects the difference between the program's annual \$20 million cap on tax credits awarded and the \$1.4 million in tax credits the State awarded, on average, in each of the last five years.

The OMB also notes that the maximum annual revenue loss of \$18.6 million could be offset, in whole or in part, by an indeterminate increase in State revenues from tax credit recipients retaining economic activity in New Jersey that absent the tax credit would have left the State.

While the OMB submitted the above estimate for Senate Bill No. 2370, it appears that the estimate is still valid for Senate Bill No. 2370 (1R).

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concurs with the Executive estimate. On the one hand, the bill could produce an annual revenue loss of up to \$18.6 million to the State General Fund in the form of additional and larger BRRAG tax credits. On the other hand, additional tax credits that are essential to retaining economic activity in New Jersey will also generate indirect fiscal benefits to the State and local governments that may, or may not, be greater than the cost and opportunity cost of providing the financial assistance. The OLS, however, lacks the information necessary to quantify either of the two countervailing fiscal effects, and thus can determine neither the direction nor the magnitude of their net impact on State finances.

But the OLS cautions that not every dollar newly awarded as a BRRAG tax credit will yield a return to the State in the form of the retention of additional economic activity in New Jersey. Only tax credit-induced retentions of economic activity that would not occur absent the tax credit will yield a return for the State's intensified tax credit spending. Investments that receive the tax credit but that also would be undertaken without it, on the other hand, represent sunk costs to the State, or an expense without a benefit. The OLS, however, is not in a position to gauge the



amount of tax credit-induced retained economic activity and its ensuing impact on New Jersey's employment, income, wealth, population, and tax receipts.

If the tax credit's general eligibility criteria are respected, the additional and larger BRRAG tax credits ought to result in a net revenue gain to the State and local governments, as the bill requires that the financial assistance be material to the business' decision to retain full-time positions in New Jersey and that the financial assistance yield receipts to the State that exceed the tax credit amount. But the bill does not guarantee that all tax credits will pay for themselves, for it exempts from the "material factor" criterion companies that have had grant pre-application meetings with EDA and that have executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of the bill. All the economic activity from projects earning tax credits under this exemption will represent a sunk cost to the State, an expense without a benefit, as the indirect economic and fiscal effects of projects exempt from the "material factor" requirement cannot be attributed to the bill.

**Direct Fiscal Impact:** The bill's maximum direct revenue loss to the State could equal \$18.6 million per year, or the difference between the annual cap amount of \$20 million and the \$1.4 million in BRRAG tax credits the State awarded, on average, in each of the last five years. The OLS, however, does not have enough information to foresee the actual number and magnitude of future tax credit awards.

**Indirect Fiscal Impact:** In addition to perhaps accruing an annual indirect revenue gain to local governments, the bill may produce an indirect revenue gain to the State that may, or may not, exceed the direct cost and opportunity cost of awarding the financial incentives. The OLS, however, does not have the capacity to quantify the impact on New Jersey's employment, income, wealth, population, and tax receipts of economic activity retained in New Jersey because of additional and larger BRRAG tax credits.

Any indirect revenue gain will result from the economic ramifications of tax credit-induced behavior changes. Once New Jersey businesses and their employees begin or continue to receive payments they would not have received absent the bill's changes to the tax credit program, 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 revenue collections. Indirect fiscal effects encompass tax credit-driven input purchases from businesses benefiting from the financial assistance and tax credit-driven spending by employees of all impacted firms.

Nonetheless, not all of the tax incentive's economic and fiscal feedback effects may represent a gain to the State and affected municipalities. Only the ripple effects caused by corporate location decisions induced by additional and larger tax credits should enter the fiscal estimate, whereas those from corporate location decisions that would have occurred absent the bill must be excluded. The exclusion takes into account that tax credits have no economic impact whenever they are awarded to companies that would have made the location decision anyway. In such a scenario, the State would only incur the cost of subsidizing a location decision that the investor would have pursued regardless of the tax credit, without receiving an incremental benefit.

The legislation sets forth eligibility criteria for the tax credits that, if followed, will produce a net revenue gain to the State and local governments from providing the financial assistance. Notably, the bill requires a tax credit to be a material factor in the business' decision to retain full-time positions in New Jersey and to accrue receipts to the State and local governments that exceed the tax credit amount. Accordingly, in this scenario, all indirect economic and fiscal effects tied to subsidized projects should count as benefits catalyzed by the bill.

Notwithstanding these eligibility criteria, the bill does not guarantee that additional and larger tax credits will pay for themselves. Not only may the EDA err in its assessment of credit

applications. But, more importantly, the bill exempts from the “material factor” criterion companies that have had grant pre-application meetings with EDA and that have executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of the bill. All the economic activity from projects earning tax credits under this exemption will represent a sunk cost to the State, an expense without a benefit, as the indirect economic and fiscal effects of projects exempt from the “material factor” requirement cannot be attributed to the bill.

Lastly, the OLS notes that any estimate of the New Jersey feedback effects of additional and larger BRRAG tax credits 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.

**Net Fiscal Impact:** Even if the OLS were able to estimate the bill’s indirect fiscal impact, doing so would ignore that the decision to issue additional and larger tax credits would divert resources from policy alternatives to which they would have been applied absent the awarding of tax credits. The OLS, however, cannot gauge this opportunity cost, which constitutes a critical component of the bill’s *net* fiscal impact.

The bill’s opportunity cost would only be zero if the State’s investment in BRRAG tax credits did not displace or forestall other spending (thereby setting the bill’s fiscal feedback effects equal to its *net* fiscal feedback effects). In actuality, given the State’s finite resources and its balanced budget requirement, the bill’s *net* fiscal impact will be the bill’s fiscal feedback effects minus its opportunity cost (or the total of the bill’s direct and indirect effects *less* the equivalent effects of the alternative uses of moneys the legislation will preempt). For example, if, instead of this legislation, the State invested in road construction, the bill will produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on retaining economic activity in New Jersey 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 note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

**FISCAL NOTE**  
 [Second Reprint]  
**SENATE, No. 2370**  
**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

DATED: JANUARY 5, 2011

**SUMMARY**

**Synopsis:** Revises financial assistance under Business Retention and Relocation Assistance Grant Program; repeals requirement to study implementation.

**Type of Impact:** Unknown net effect of two countervailing impacts: 1) an annual revenue loss to the State General Fund from awarding tax credits, 2) an annual revenue increase to the State General Fund and 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.

**Executive Estimate**

Fiscal Impact	<u>Fiscal Year 2011</u>	<u>Fiscal Year 2012</u>	<u>Fiscal Year 2013</u>
<b>Direct State Cost</b>	Up to \$18,600,000 per Fiscal Year		
<b>Indirect State Revenue Gain</b>	Indeterminate — See comments below		

**Office of Legislative Services Estimate**

Fiscal Impact	<u>Fiscal Year 2011</u>	<u>Fiscal Year 2012</u>	<u>Fiscal Year 2013</u>
<b>Direct State Cost</b>	Up to \$18,600,000 per Fiscal Year		
<b>Indirect State Revenue Gain</b>	Indeterminate — See comments below		
<b>State Opportunity Cost</b>	Indeterminate — See comments below		
<b>Indirect Local Revenue Gain</b>	Indeterminate — See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate. On the one hand, the bill could produce an additional annual State revenue loss of up to \$18.6 million in the form of additional and larger Business Retention and Relocation Assistance (BRRAG) tax credits. On the other hand, additional and larger tax credits that are essential to retaining

economic activity in New Jersey will also generate indirect fiscal benefits to the State and local governments that may, or may not, be greater than the cost and opportunity cost of providing the financial assistance. The OLS, however, is unable to calculate the bill's economic and fiscal net impact, as it cannot gauge either the indirect fiscal benefits to the State and local governments or the State's opportunity cost of providing additional tax credits. Opportunity costs capture the economic and fiscal benefits the economy and the State forgo as spending is redirected from one economic activity to another.

- Not every dollar newly awarded as a BRRAG tax credit will yield a return to the State in the form of the retention of additional economic activity in New Jersey. Only tax credit-induced retentions of economic activity that would not occur absent the tax credit will yield a return for the State's intensified tax credit spending. Investments that receive the tax credit but that also would be undertaken without it, on the other hand, represent sunk costs to the State, or an expense without a benefit. The OLS, however, is not in a position to gauge the amount of tax credit-induced retained economic activity and its ensuing impact on New Jersey's employment, income, wealth, population, and tax receipts.
- As to BRRAG tax credits awarded under the bill's provision waiving the tax credit's "material factor" requirement for companies that, during the period commencing May 1, 2010 until the bill's date of enactment, have had grant pre-application meetings with the New Jersey Economic Development Authority (EDA) and have executed contracts relating to the new business location, the OLS notes that all such credit awards will represent a sunk cost to the State without the realization of any secondary benefits attributable to the credit awards, given that the projects for which the credits will be awarded would happen with or without the bill.

## **BILL DESCRIPTION**

Senate Bill No. 2370 (2R) of 2010 expands the classes of businesses that may receive a BRRAG tax credit under the corporation business and insurance premiums taxes and raises the amounts of individual tax credits. The bill maintains the annual \$20 million program cap and the requirement that the receipt of the credit is a material factor in a business' decision not to relocate full-time positions outside New Jersey.

The bill broadens the classes of businesses that may receive a tax credit. First, the legislation exempts companies that, during the period commencing May 1, 2010 until the bill's date of enactment, have had grant pre-application meetings with the EDA and have executed contracts relating to a new business location from the BRRAG criterion that the receipt of the tax credit must be a material factor in a business' decision not to relocate full-time positions outside New Jersey.

The bill also no longer limits BRRAG tax credits to businesses in industries specifically enumerated in the law, but instead extends discretion to the EDA to identify industries that shall be eligible for tax credits.

The bill also establishes a new credit award schedule for full-time employees who are retained in New Jersey either by relocating them within New Jersey or keeping them in their current location. The per-employee tax credit is \$1,500 if a business retains between 50 and 250 full-time employees, \$3,000 if it retains between 251 and 400 full-time employees, \$4,500 if it

retains between 401 and 600 full-time employees, \$6,000 if it retains between 601 and 800 full-time employees, \$7,500 if it retains between 801 and 1,000 full-time employees, and \$9,000 if it retains more than 1,000 full-time employees. As under current law, businesses earn a tax credit bonus of 50 percent if they relocate at least 2,000 jobs from a location in New Jersey into a designated urban area. In addition, they can newly earn a 50 percent bonus under this bill if their capital investment is at least twice the amount of tax credits granted prior to the application of a bonus. A business may claim both bonuses. Lastly, in addition to the receipt of the tax credit being a material factor in the business' decision to retain full-time positions in New Jersey, an applicant business must newly demonstrate to the EDA that the tax credit will yield a net positive benefit to the State.

Under the current program, BRRAG tax credits equal up to 80 percent of the State tax revenues accruing during the time period covered by the grant agreement from full-time jobs relocated and retained in New Jersey if a claimant relocates between 50 and 499 full-time employees. If the business relocates within New Jersey at least 500 full-time employees, the business receives a \$1,500 tax credit per full-time employee relocated and retained. Also, businesses earn a tax credit bonus of 50 percent if they relocate at least 2,000 full-time jobs from a location in New Jersey into a designated urban area. Lastly, the receipt of the tax credit must be a material factor in the business' decision to retain full-time positions in New Jersey.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Office of Management and Budget (OMB) in the Department of the Treasury estimates that this bill will cause a maximum annual State revenue loss of \$18.6 million from awarding additional and larger BRRAG tax credits. The amount reflects the difference between the program's annual \$20 million cap and the \$1.4 million in tax credits the State awarded, on average, in each of the last five years.

The OMB also notes that the maximum annual revenue loss of \$18.6 million could be offset, in whole or in part, by an indeterminate increase in State revenues from tax credit recipients retaining economic activity in New Jersey that absent the tax credit would have left the State.

While the OMB submitted the above estimate for Senate Bill No. 2370, it appears that the estimate is still valid for Senate Bill No. 2370 (2R).

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concurs with the Executive estimate. On the one hand, the bill could produce an annual revenue loss of up to \$18.6 million to the State General Fund in the form of additional and larger BRRAG tax credits. On the other hand, additional tax credits that are essential to retaining economic activity in New Jersey will also generate indirect fiscal benefits to the State and local governments that may, or may not, be greater than the cost and opportunity cost of providing the financial assistance. The OLS, however, is unable to calculate the bill's economic and fiscal net impact, as it cannot gauge either the indirect fiscal benefits to the State and local governments or the State's opportunity cost of providing additional tax credits. Opportunity costs capture the economic and fiscal benefits the economy and the State forgo as spending is redirected from one economic activity to another.

The OLS cautions that not every dollar newly awarded as a BRRAG tax credit will yield a return to the State in the form of the retention of additional economic activity in New Jersey. Only tax credit-induced retentions of economic activity that would not occur absent the tax credit will yield a return for the State's intensified tax credit spending. Investments that receive the tax credit but that also would be undertaken without it, on the other hand, represent sunk costs to the State, or an expense without a benefit. The OLS, however, is not in a position to gauge the amount of tax credit-induced retained economic activity and its ensuing impact on New Jersey's employment, income, wealth, population, and tax receipts.

If the tax credit's general eligibility criteria are respected, the additional and larger BRRAG tax credits ought to result in a net revenue gain to the State and local governments, as the bill requires that the financial assistance be material to the business' decision to retain full-time positions in New Jersey and that the financial assistance yield receipts to the State that exceed the tax credit amount. But the bill does not guarantee that all tax credits will pay for themselves, for it exempts from the "material factor" criterion companies that have had grant pre-application meetings with EDA and that have executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of the bill. All the economic activity from projects earning tax credits under this exemption will represent a sunk cost to the State, an expense without a benefit, as the indirect economic and fiscal effects of projects exempt from the "material factor" requirement cannot be attributed to the bill.

**Direct Fiscal Impact:** The bill's maximum direct revenue loss to the State could equal \$18.6 million per year, or the difference between the program's annual cap amount of \$20 million and the \$1.4 million in BRRAG tax credits the State awarded, on average, in each of the last five years. The OLS, however, does not have enough information to foresee the actual number and magnitude of future tax credit awards.

**Indirect Fiscal Impact:** In addition to perhaps accruing an annual indirect revenue gain to local governments, the bill may produce an indirect revenue gain to the State that may, or may not, exceed the direct cost and opportunity cost of awarding the financial incentives. The OLS, however, does not have the capacity to quantify the impact on New Jersey's employment, income, wealth, population, and tax receipts of economic activity retained in New Jersey because of additional and larger BRRAG tax credits.

Any indirect revenue gain will result from the economic ramifications of tax credit-induced behavior changes. Once New Jersey businesses and their employees receive payments they would not have received absent the bill's changes to the tax credit program, 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 revenue collections. Indirect fiscal effects encompass tax credit-driven input purchases from businesses benefiting from the financial assistance and tax credit-driven spending by employees of all impacted firms.

Nonetheless, not all of the tax incentive's economic and fiscal feedback effects may represent a gain to the State and affected municipalities. Only the ripple effects caused by corporate location decisions induced by additional and larger tax credits should enter the fiscal estimate, whereas those from corporate location decisions that would have occurred absent the bill must be excluded. The exclusion takes into account that tax credits have no economic impact whenever they are awarded to companies that would have made the location decision anyway. In such a scenario, the State would only incur the cost of subsidizing a location decision that the investor would have pursued regardless of the tax credit, without receiving an incremental benefit.

The legislation sets forth eligibility criteria for the tax credits that, if followed, will produce a net revenue gain to the State and local governments from providing the financial assistance.

Notably, the bill requires a tax credit to be a material factor in the business' decision to retain full-time positions in New Jersey and to accrue receipts to the State and local governments that exceed the tax credit amount. Accordingly, in this scenario, all indirect economic and fiscal effects tied to subsidized projects should count as benefits catalyzed by the bill.

Notwithstanding these eligibility criteria, the bill does not guarantee that additional and larger tax credits will pay for themselves. Not only may the EDA err in its assessment of credit applications. But, more importantly, the bill exempts from the "material factor" criterion companies that have had grant pre-application meetings with EDA and that have executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of the bill. All the economic activity from projects earning tax credits under this exemption will represent a sunk cost to the State, an expense without a benefit, as the indirect economic and fiscal effects of projects exempt from the "material factor" requirement cannot be attributed to the bill.

Lastly, the OLS notes that any estimate of the New Jersey feedback effects of additional and larger BRRAG tax credits 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.

**Fiscal Net Impact:** The bill's economic and fiscal *net* impact will be the direct cost of awarding additional BRRAG tax credits less their fiscal feedback effects plus their opportunity cost. The OLS, however, is unable to calculate the bill's true economic and fiscal *net* impact because it can estimate neither the bill's indirect fiscal effects nor the State's opportunity cost of providing additional tax credits.

Opportunity costs capture the economic and fiscal benefits the economy and the State forgo as spending is redirected from one economic activity to another. Given the State's finite resources and its balanced budget requirement, the decision to issue additional BRRAG tax credits will invariably divert resources from policy alternatives to which they would have been applied absent the awarding of additional tax credits. Therefore, if, instead of this legislation, the State invested in road construction, for example, the bill will produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on retaining economic activity in New Jersey 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 note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY, No. 3389

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED OCTOBER 14, 2010

**Sponsored by:**

**Assemblywoman SHEILA Y. OLIVER**

**District 34 (Essex and Passaic)**

**Assemblyman ALBERT COUTINHO**

**District 29 (Essex and Union)**

**Assemblyman ANTHONY M. BUCCO**

**District 25 (Morris)**

**Assemblyman JON M. BRAMNICK**

**District 21 (Essex, Morris, Somerset and Union)**

**Co-Sponsored by:**

**Assemblywoman Watson Coleman**

**SYNOPSIS**

Revises financial assistance under Business Retention and Relocation Assistance Grant Program; repeals requirement to study implementation.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 11/9/2010)**



1 AN ACT concerning the Business Retention and Relocation  
2 Assistance Grant Program, amending P.L.1996, c.25 and  
3 P.L.2004, c.65, and repealing section 11 of P.L.1996, c.25.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to  
9 read as follows:

10 2. As used in this act:

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

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

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

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

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

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

**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.**

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

7       "Biotechnology company" means a person with headquarters or  
8 base of operations located in New Jersey and engaged in the  
9 research, development, production, or provision of biotechnology  
10 for the purpose of developing or providing products or processes for  
11 specific commercial or public purposes, including, but not limited  
12 to, medical, pharmaceutical, nutritional, and other health-related  
13 purposes, agricultural purposes, and environmental purposes, or a  
14 person with headquarters or base of operations located in New  
15 Jersey and engaged in providing services or products necessary for  
16 such research, development, production, or provision;】

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

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

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

29       "Department" means the New Jersey Commerce Commission;】

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

45       "Capital investment" means expenses that the business incurs  
46 following its submission of an application to the authority pursuant  
47 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the  
48 Capital Investment Completion Date, as shall be defined in the

1 project agreement, for: a. the site preparation and construction,  
2 repair, renovation, improvement, equipping, or furnishing of a  
3 building, structure, facility, or improvement to real property; and b.  
4 obtaining and installing furnishings and machinery, apparatus or  
5 equipment for the operation of a business in a building, structure,  
6 facility or improvement to real property;

7 “Chief executive officer” means the chief executive officer of the  
8 New Jersey Economic Development Authority;

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

13 "Designated industry" means **[a business engaged in the field of**  
14 **biotechnology, pharmaceuticals, manufacturing, financial services**  
15 **or transportation and logistics, advanced computing, advanced**  
16 **materials, electronic device technology, environmental technology**  
17 **or medical device technology]** an industry identified by the  
18 authority as desirable for the State to maintain, which may be  
19 designated and amended via the promulgation of rules by the  
20 authority to reflect changing market conditions;

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

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

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

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

42 "Full-time employee" means a person **[who is employed for**  
43 **consideration for at least thirty-five hours a week, or who renders**  
44 **any other standard of service generally accepted by custom or**  
45 **practice as full-time employment, whose wages are subject to**  
46 **withholding as provided in the "New Jersey Gross Income Tax**  
47 **Act," N.J.S.54A:1-1 et seq., and who is determined by the**

1 commissioner to be employed in a permanent position according to  
2 criteria as the Board of Directors of the New Jersey Commerce  
3 Commission may prescribe. "Full-time employee" shall not include  
4 any person who works as an independent contractor or on a  
5 consulting basis for the business. "Full-time employee" shall not  
6 include a child, grandchild, parent, or spouse of an individual who  
7 has direct or indirect ownership of at least 5% of the profits, capital,  
8 or value of the business] employed by the business for  
9 consideration for at least 35 hours a week, or who renders any other  
10 standard of service generally accepted by custom or practice, as  
11 determined by the authority, as full-time employment, or a person  
12 who is employed by a professional employer organization pursuant  
13 to an employee leasing agreement between the business and the  
14 professional employer organization, in accordance with P.L.2001,  
15 c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who  
16 renders any other standard of service generally accepted by custom  
17 or practice, as determined by the authority, as full-time  
18 employment, and whose wages are subject to withholding as  
19 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
20 et seq. or an employee who is a resident of another State but whose  
21 income is not subject to the "New Jersey Gross Income Tax Act,"  
22 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
23 for the partnership for at least 35 hours a week, or who renders any  
24 other standard of service generally accepted by custom or practice,  
25 as determined by the authority, as full-time employment, and whose  
26 distributive share of income, gain, loss, or deduction, or whose  
27 guaranteed payments, or any combination thereof, is subject to the  
28 payment of estimated taxes, as provided in the "New Jersey Gross  
29 Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall  
30 not include any person who works as an independent contractor or  
31 on a consulting basis for the business;

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

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

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

46 "Medical device technology company" means a person with  
47 headquarters or base of operations located in New Jersey and  
48 engaged in the research, development, production, or provision of

1 medical device technology for the purpose of developing or  
2 providing products or processes for specific commercial or public  
3 purposes;】

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

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

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

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

28 "Qualifying capital investment" means a capital investment in an  
29 amount that is at least twice that of the total value of the business  
30 retention or relocation grant of tax credits to a business;

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

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

45 "Tax credit term" means the period of time commencing with the  
46 first issuance of tax credits and continuing during the period in

1 which the recipient of a grant of tax credits is eligible to apply the  
2 tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3):

3 ["Total allowable relocation costs" means \$1,500 times the  
4 number of retained full-time jobs. "Total allowable relocation  
5 costs" does not include the amount of any bonus award authorized  
6 pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1).] ; and

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

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

12

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

15 3. The Business Retention and Relocation Assistance Grant  
16 Program is hereby established as a program under the jurisdiction of  
17 the New Jersey **[Commerce Commission]** Economic Development  
18 Authority and shall be administered by the **[New Jersey Commerce**  
19 **Commission]** authority. The purpose of the program is to  
20 encourage economic development and job creation and to preserve  
21 jobs that currently exist in New Jersey but which are in danger of  
22 being relocated to premises outside of the State. To implement that  
23 purpose, and to the extent that funding for the program is available,  
24 the program may provide grants of tax credits **[but in no case shall**  
25 **the amount of an individual grant of tax credits exceed 80% of the**  
26 **projected State tax revenues from the retained full-time jobs**  
27 **covered by the project agreement of an applicant for a grant of tax**  
28 **credits]**. To be eligible for any tax credits pursuant to P.L.1996,  
29 c.25 (C.34:1B-112 et seq.), a business shall demonstrate to the  
30 authority, at the time of application, that the grant of tax credits and  
31 resultant retention of full-time jobs and any capital investment will  
32 yield a net positive benefit to the State.

33 (cf: P.L.2007, c.253, s.15)

34

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

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

39 (1) relocate or maintain a minimum of 50 retained full-time jobs  
40 from one or more locations within this State to a new business  
41 location or locations in this State; and

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

44 b. A project that consists solely of point-of-final-purchase  
45 retail facilities shall not be eligible for a grant of tax credits. If a  
46 project consists of both point-of-final-purchase retail facilities and  
47 non-retail facilities, only the portion of the project consisting of

1 non-retail facilities shall be eligible for a grant of tax credits. If a  
2 warehouse facility is part of a point-of-final-purchase retail facility  
3 and supplies only that facility, the warehouse facility shall not be  
4 eligible for a grant of tax credits. For the purposes of this section,  
5 catalog distribution centers shall not be considered point-of-final-  
6 purchase retail facilities.  
7 (cf: P.L.2007, c.310, s.1)

8  
9 4. Section 5 of P.L.2004, c.65 (C.34:1B-115.1) is amended to  
10 read as follows:

11 5. a. In addition to any grant of tax credits determined  
12 pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3), a bonus  
13 award equivalent to 50% of the amount of the original grant of tax  
14 credits shall be made to any business that relocates more than 2,000  
15 full-time employees covered by the project agreement from one or  
16 more locations outside of a designated urban center into a  
17 designated urban center, provided that all other applicable  
18 requirements of P.L.1996, c. 25 (C.34:1B-112 et seq.) are satisfied;  
19 and provided further that no grant of tax credits shall be awarded  
20 pursuant to this section for any job that is moved from its current  
21 location in an urban enterprise zone designated pursuant to the  
22 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303  
23 (C.52:27H-60 et seq.) to a location that is not within an urban  
24 enterprise zone; however, that if the move from the urban enterprise  
25 zone is to a facility already owned or leased by the same business  
26 and that business already employs at least the same number of  
27 persons as those being relocated from the urban enterprise zone a  
28 grant of tax credits may still be awarded pursuant to this section.

29 b. In addition to any grant of tax credits determined pursuant to  
30 section 7 of P.L.2004, c.65 (C.34:1B-115.3), and in addition to any  
31 bonus award pursuant to subsection a. of this section, a bonus award  
32 equivalent to 50% of the amount of the original grant of tax credits  
33 shall be made to any business that makes a qualifying capital  
34 investment. If a bonus award under this section would result in a  
35 business's capital investment no longer being a qualifying capital  
36 investment, then the bonus award shall equal the largest bonus  
37 amount that would still result in the capital investment being a  
38 qualifying capital investment.

39 (cf: P.L.2004, c.65, s.5)

40  
41 5. Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is amended to  
42 read as follows:

43 7. a. The total value of the grants of tax credits **【issued】**,  
44 approved by the authority pursuant to P.L.1996, c.25 (C.34:1B-112  
45 et seq.), that may be applied against tax liability in a fiscal year  
46 shall not exceed an aggregate annual limit of \$20,000,000 **【for a**  
47 **fiscal year】**. The total value of the grants of tax credits, issued  
48 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that a single

1 business may apply against its tax liability shall not exceed an  
2 aggregate annual limit of \$10,000,000 for a fiscal year. A tax credit  
3 issued pursuant to P.L.1996, c.25 may be applied against liability  
4 **【arising in the tax period in which the tax credit is issued and the**  
5 **tax period next following,】** as set forth in subsection b. of this  
6 section and shall expire thereafter.

7 b. **【Grants】** Subject to the limitation set forth in subsection a. of  
8 this section grants of tax credits shall be **【awarded and issued to】**  
9 approved for qualifying businesses **【as follows, subject to the**  
10 **limitations of subsection c. of this section】** according to the  
11 following schedule, and shall be issued upon the execution and  
12 satisfaction of the requirements of the project agreement between  
13 the authority and the business with an approved project, and  
14 annually thereafter:

15 **【(1) for a project that covers a business relocating a minimum of**  
16 **500 full-time employees, a grant of tax credits made pursuant to**  
17 **P.L.1996, c.25 (C.34:1B-112 et seq.) shall equal total allowable**  
18 **relocation costs plus any applicable bonus award determined**  
19 **pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and, shall**  
20 **be issued immediately upon the entry of the project agreement**  
21 **between the commissioner and the business with an approved**  
22 **project, up to the aggregate annual limit; and**

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

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

33 (2) for a project that covers a business relocating or retaining  
34 251 to 400 full-time employees, a grant of tax credits shall be for  
35 two times the yearly tax credit amount plus any applicable bonus  
36 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
37 115.1), and may be applied against liability in the tax period in  
38 which the tax credit is issued and the following tax period, for one-  
39 half of the total grant award per tax period, provided that the use of  
40 the credit must be accompanied by a certificate of compliance;

41 (3) for a project that covers a business relocating or retaining  
42 401 to 600 full-time employees, a grant of tax credits shall be for  
43 three times the yearly tax credit amount plus any applicable bonus  
44 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
45 115.1) and may be applied against liability in the tax period in  
46 which the tax credit is issued and the following two tax periods, for  
47 one-third of the total grant award per tax period, provided that the



1 use of the credit must be accompanied by a certificate of  
2 compliance;

3 (4) for a project that covers a business relocating or retaining  
4 601 to 800 full-time employees, a grant of tax credits shall be for  
5 four times the yearly tax credit amount plus any applicable bonus  
6 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
7 115.1) and may be applied against liability in the tax period in  
8 which the tax credit is issued and the following three tax periods,  
9 for one-fourth of the total grant award per tax period, provided that  
10 the use of the credit must be accompanied by a certificate of  
11 compliance;

12 (5) for a project that covers a business relocating or retaining  
13 801 to 1,000 full-time employees, a grant of tax credits shall be for  
14 five times the yearly tax credit amount plus any applicable bonus  
15 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
16 115.1) and may be applied against liability in the tax period in  
17 which the tax credit is issued and the following four tax periods, for  
18 one-fifth of the total grant award per tax period, provided that the  
19 use of the credit must be accompanied by a certificate of  
20 compliance; and

21 (6) for a project that covers a business relocating or retaining  
22 1,001 or more full-time employees, a grant of tax credits shall be  
23 for six times the yearly tax credit amount plus any applicable bonus  
24 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
25 115.1) and may be applied against liability in the tax period in  
26 which the tax credit is issued and the following five tax periods, for  
27 one-sixth of the total grant award per tax period, provided that the  
28 use of the credit must be accompanied by a certificate of  
29 compliance.

30 c. **【If the sum of the amount of tax credits issued pursuant to**  
31 **paragraph (1) of subsection b. of this section in a fiscal year, plus**  
32 **the amount of tax credits approved pursuant to paragraph (2) of**  
33 **subsection b. of this section exceeds】 If the issuance of a grant of**  
34 **tax credits pursuant to this section would exceed the \$20,000,000**  
35 **aggregate annual limit, 【the commissioner shall reduce, on a pro**  
36 **rata basis, the award to each business receiving a grant of tax**  
37 **credits pursuant to paragraph (2) of subsection b.】 the authority**  
38 **may award a smaller grant of tax credits or no tax credits, as**  
39 **necessary to comply with the aggregate annual limit.**

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

41

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

44 5. Each business seeking a grant of tax credits for a project  
45 shall submit an application for approval of the project to the  
46 **【commissioner】 authority** in a form and manner prescribed in  
47 regulations adopted by the **【commissioner】 authority**. The

1 application must be submitted to the **[commissioner]** authority for  
2 approval at least 45 days prior to moving to the new business  
3 location; provided however, a business relocating 1,500 or more  
4 retained full-time jobs to one or more new locations within a  
5 designated urban center shall, if relocating to a leased location,  
6 submit an application within six months of executing its lease. The  
7 application for approval of a project shall include:

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

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

11 c. Terms of any lease agreements, either existing or proposed,  
12 or details of the purchase or building of the new business location,  
13 if applicable;

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

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

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

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

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

30 i. Any other necessary and relevant information as determined  
31 by the **[commissioner]** authority.

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

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

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

44

45 7. Section 6 of P.L.1996, c.25 (C.34:1B-117) is amended to  
46 read as follows:

1       6. No tax credits **[shall be]** issued as a grant of tax credits  
2 under P.L.1996, c.25 (C.34:1B-112 et seq.) may be applied by the  
3 business against liability in any year until the State Treasurer has  
4 certified that the amount of retained State tax revenue received in  
5 the most recently completed State tax periods by the Director of the  
6 Division of Taxation from the business equals or exceeds the  
7 amount of the grant of tax credits.

8 (cf: P.L.2004, c.65, s.9)

9  
10       8. Section 7 of P.L.1996, c.25 (C.34:1B-118) is amended to  
11 read as follows:

12       7. a. A business that is receiving a business employment  
13 incentive grant pursuant to the provisions of P.L.1996, c.26  
14 (C.34:1B-124 et al.) shall not be eligible to receive a grant of tax  
15 credits under P.L.1996, c.25 (C.34:1B-112 et seq.) with respect to a  
16 job which is included in the calculation of a grant pursuant to  
17 P.L.1996, c.26.

18       b. A business that is receiving any other grant by operation of  
19 State law shall be eligible to receive a grant of tax credits under  
20 P.L.1996, c.25 (C.34:1B-112 et seq.); provided, however, that a  
21 business that is receiving another State grant shall not be eligible to  
22 receive assistance with respect to any job that is currently the  
23 subject of any other State grant, except for grants from the Office of  
24 Customized Training pursuant to the "1992 New Jersey  
25 Employment and Workforce Development Act," P.L.1992, c.43  
26 (C.34:15D-1 et seq.), and provided further that a business shall not  
27 receive an amount as a grant of tax credits pursuant to P.L.1996,  
28 c.25 (C.34:1B-112 et seq.) **[which,]** unless the State will realize a  
29 net positive benefit from the grant of tax credits and resultant  
30 retention of full-time jobs and any capital investment when  
31 combined with such other grants, **[exceeds 80% of the retained**  
32 **State tax revenue,]** except upon the approval of the State Treasurer.  
33 Amounts received as grants from the Office of Customized Training  
34 pursuant to the "1992 New Jersey Employment and Workforce  
35 Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.), shall be  
36 excluded from the calculation of the total amount permitted under  
37 this subsection.

38 (cf: P.L.2004, c.65, s.10)

39  
40       9. Section 11 of P.L.2004, c.65 (C.34:1B-118.1) is amended to  
41 read as follows:

42       11. In **[determining the]** considering the award and the amount  
43 of any grant of tax credits made pursuant to P.L.1996, c.25  
44 (C.34:1B-112 et seq.), the **[commissioner shall]** authority may  
45 consider, as part of the **[commissioner's]** authority's overall  
46 **[calculation]** review process, the following factors:

47       a. The number of full-time jobs retained;

- 1       b. The quality of the full-time jobs retained, including but not  
2 limited to the salaries and benefits provided to retained full-time  
3 employees;
- 4       c. Any capital investments made by the business at the new  
5 business location;
- 6       d. The nature of the business' operations, including but not  
7 limited to whether the business is a designated industry;
- 8       e. The potential impact on the State if the business were to  
9 relocate to another state;
- 10      f. The site of the new business location and its consistency  
11 with the smart growth goals, strategies and policies of the State  
12 Development and Redevelopment Plan established pursuant to  
13 section 5 of P.L.1985, c.398 (C.52:18A-200);
- 14      g. Whether positions average at least 1.5 times the minimum  
15 hourly wage during the commitment duration; and
- 16      h. The duration and extent of past operations by the business in  
17 New Jersey and any other information indicating the business' level  
18 of commitment to the State and the likelihood that the business will  
19 continue to operate in this State in the future.  
20 (cf: P.L.2004, c.65, s.11)

21  
22      10. Section 8 of P.L.1996, c.25 (C.34:1B-119) is amended to  
23 read as follows:

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

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

42  
43      11. Section 9 of P.L.1996, c.25 (C.34:1B-120) is amended to  
44 read as follows:

45      9. a. As determined by the authority, a business which is  
46 awarded a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et  
47 seq.) shall submit annually, no later than March 1st of each year,  
48 commencing in the year in which the grant of tax credits is issued

1 and for the remainder of the tax credit term, a certification of  
2 compliance that indicates that the business continues to maintain  
3 the number of retained full-time jobs as specified in the project  
4 agreement. Upon receipt and review thereof, the authority shall  
5 issue a certificate of compliance indicating the amount of tax credits  
6 that the business may apply against liability in that tax period. Any  
7 reduction in the number of retained full-time jobs below the number  
8 prescribed under the terms of the project agreement shall  
9 proportionately reduce the amount of tax credits the business may  
10 apply against liability in that tax period and the unused credits for  
11 that tax period shall be forfeited. If, in any tax period, the number  
12 of retained full-time jobs drops below the minimum number of  
13 retained full-time jobs indicated in the applicable paragraph of  
14 subsection b. of section 7 of P.L.2004, c.65 (C.34:1B-115.3) such  
15 that the business would no longer be eligible to apply the credits for  
16 the number of years for which it was approved, then the business  
17 shall forfeit its credit amount for that tax period and each  
18 subsequent tax period, until the first tax period for which  
19 documentation demonstrating the restoration of the number of  
20 retained full-time jobs has been reviewed and approved by the  
21 authority, for which tax period and each subsequent tax period the  
22 full amount of the credit shall be allowed.

23 b. As determined by the **[commissioner]** authority, a business  
24 which is awarded a grant of tax credits under P.L.1996, c.25  
25 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st  
26 of each year, commencing the year following the calendar year in  
27 which the business was approved for the grant of tax credits and for  
28 the remainder of the commitment duration, a copy of the State tax  
29 return for the business showing business income or activity,  
30 appropriate to its form of ownership together with an annual report  
31 listing the full-time employees in eligible positions employed at the  
32 location or locations approved for the grant of tax credits, to the  
33 **[commissioner]** authority. Failure to submit a copy of its annual  
34 report or submission of the annual report without the information  
35 required above, may result in the forfeiture of any grant of tax  
36 credits to be received by the business and the recapture of any tax  
37 credits issued to the business unless the **[commissioner]** authority  
38 determines that there are extenuating circumstances excusing the  
39 business from the timely filing required.  
40 (cf: P.L.2004, c.65, s.13)

41  
42 12. Section 14 of P.L.2004, c.65 (C.34:1B-120.1) is amended to  
43 read as follows:

44 14. The **[commissioner]** authority is authorized to pursue, and  
45 shall adopt rules for, the recapture of all, or a portion of, the grant  
46 of tax credits, based on criteria established by the **[commissioner]**  
47 authority pursuant to regulation or under the terms of the project

1 agreement [if the business fails to maintain the retained full-time  
2 jobs at the location or locations approved for the grant of tax credits  
3 for the commitment duration or fails to meet or comply with any  
4 condition or requirement under the terms of the project agreement  
5 or included in rules and regulations adopted by the commissioner  
6 governing the implementation of the program]. The rules shall  
7 allow for the [commissioner] authority to pursue the full or partial  
8 recapture or, in its discretion, to notify the Director of the Division  
9 of Taxation in the Department of the Treasury, who shall issue a  
10 recapture assessment which shall be based upon the proportionate  
11 value of the grant of tax credits that corresponds to the amount and  
12 period of noncompliance[. The] , in which case, the recapture of  
13 funds shall be subject to the State Uniform Tax Procedure Law,  
14 R.S.54:48-1 et seq. Recaptured funds shall be deposited in the  
15 General Fund of the State.  
16 (cf: P.L.2004, c.65, s.14)  
17

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

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

41 b. [The commissioner, in cooperation with the Director of the  
42 Division of Taxation in the Department of the Treasury, shall  
43 review and approve applications by taxpayers under the Corporation  
44 Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and  
45 by taxpayers under the taxes imposed on insurers pursuant to  
46 P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231  
47 (C.17:32-15) and N.J.S.17B:23-5 to acquire surrendered tax

1 benefits, which shall be issued in the form of corporation business  
2 tax credit and insurance premiums tax credit transfer certificates,]  
3 Businesses may apply to the authority and the Director of the  
4 Division of Taxation for a tax credit transfer certificate, covering  
5 one or more years. Upon receipt thereof, the business may sell or  
6 assign the tax credit certificate in exchange for private financial  
7 assistance to be made by the **【taxpayer】 purchaser** in an amount  
8 equal to at least 75% of the amount of the surrendered tax credit of  
9 a business relocating in the State. The private financial assistance  
10 shall assist in funding expenses incurred in connection with the  
11 operation of the business in the State, including but not limited to  
12 the expenses of fixed assets, such as the construction and  
13 acquisition and development of real estate, materials, start-up,  
14 tenant fit-out, working capital, salaries, research and development  
15 expenditures and any other expenses determined by the  
16 **【commissioner】 authority** to be necessary to carry out the purposes  
17 of P.L.1996, c.25 (C.34:1B-112 et seq.).

18 c. The **【commissioner】 authority** shall **【coordinate】 establish**  
19 procedures to facilitate such transfers and encourage liquidity and  
20 simplicity in the market for the purchase and sale of such  
21 certificates, including, in the authority's discretion, coordinating the  
22 applications for surrender and acquisition of unused but otherwise  
23 allowable tax credits pursuant to this section in a manner that can  
24 best stimulate and encourage the extension of private financial  
25 assistance to businesses in this State. The authority also shall have  
26 the discretion, in consultation with the Treasurer, to purchase and  
27 retire unused certificates under circumstances where it may  
28 determine that such purchase and retirement is in the furtherance of  
29 the purposes of this act and in the overall interest of the State in  
30 cost-effective promotion of economic development.

31 d. The **【commissioner】 authority** shall, in consultation with the  
32 Director of the Division of Taxation, develop criteria for the  
33 approval or disapproval of applications.  
34 (cf: P.L.2004, c.65, s.17)

35  
36 14. Section 10 of P.L.1996, c.25 (C.34:1B-121) is amended to  
37 read as follows:

38 10. The **【commissioner】 authority** shall prepare and transmit to  
39 the Governor and the Legislature on or before November 1st of  
40 each year, a report concerning the impact of the program on job  
41 retention in the State.  
42 (cf: P.L.2004, c.65, s.15)

43  
44 15. Section 12 of P.L.1996, c.25 (C.34:1B-123) is amended to  
45 read as follows:

46 12. There is appropriated to the **【New Jersey Commerce and**  
47 **Economic Growth Commission】 authority** from the General Fund

1 such sums as may be necessary, as certified by the [commissioner]  
2 chief executive officer of the authority and the Director of the  
3 Division of Budget and Accounting, to fund business retention and  
4 relocation grants of tax credits made under P.L.1996, c.25  
5 (C.34:1B-112 et seq.), the amount of which shall not exceed the  
6 retained State tax revenues as defined in section 2 of P.L.1996, c.25  
7 (C.34:1B-113).  
8 (cf: P.L.2004, c.65, s.16)

9  
10 16. Section 11 of P.L.1996, c.25 (C.34:1B-122) is repealed.

11  
12 17. This act shall take effect immediately and apply to tax  
13 periods beginning on or after the date of enactment.

14

15

16 STATEMENT

17

18 This bill broadens the availability of financial assistance under  
19 the Business Retention and Relocation Assistance Grant program,  
20 which helps companies preserve jobs, expand operations, and  
21 reinvest in the State of New Jersey.



ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 3389**

with committee amendments

**STATE OF NEW JERSEY**

DATED: NOVEMBER 8, 2010

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly Bill No. 3389.

As amended by the committee, Assembly, No. 3389 broadens the availability and revises the terms of financial assistance under the New Jersey's Business Retention and Relocation Assistance Grant ("BRRAG") Program. This program, administered by the New Jersey Economic Development Authority ("NJEDA"), helps a business preserve jobs, expand operations, and reinvest in the State through the award of tax credits against the corporation business tax and various taxes on insurers; the amount of the credits awarded is based upon the business's investment, or its expansion or preservation of jobs, in the State.

Under the bill:

(1) A current provision, limiting the amount of an individual grant of tax credits to no more than 80 percent of projected State tax revenues from the retained full-time jobs, is eliminated.

(2) Applicants for BRRAG credits would have to show that the capital investment and jobs retention resulting from their proposed projects would "yield a net positive benefit to the State."

(3) Not only jobs relocated within the State (as currently), but also jobs maintained at a New Jersey business location, could qualify as "retained" jobs for BRRAG award eligibility purposes.

(4) "Bonus" credits under the program, currently awarded for the relocation of jobs to urban centers, could also be earned for making a capital investment in an amount that is at least twice that of the value of the credits granted.

(5) The current annual cap of \$20 million on the issuance of BRRAG credits is converted to a cap on the total amount of such credits that could applied against tax liability in a fiscal year. Also, a new annual cap of \$10 million would be imposed on the total value of credits that a single business could apply against liability in a fiscal year.

(6) The value of BRRAG credits for a business retaining more than 250 jobs is increased by authorizing awards in multiples of up to six times the current rate of \$1,500 per employee, with the size of the multiple depending on the number of retained jobs. The bill requires such “multiple rate” awards to be taken in equal amounts over the appropriate number of years.

(7) A current rule, establishing as a precondition for the issuance of BRRAG credits to a business that the amount of State tax revenue resulting from retention of the business must at least equal the value of the credits, is instead made a precondition for the business’s ability to apply the credits against tax liability.

(8) The class of businesses to which, as a “designated industry,” consideration may be given in determining the amount of a BRRAG award is broadened to include, not only high technology businesses, but any business deemed desirable by the NJEDA to be maintained in the State.

(9) Once a business is initially granted BRRAG credits, and for so long as it participates in the program, it would have to certify to the NJEDA that it continues to maintain the number of retained jobs specified in the agreement under which the credits were issued. Based upon this certification, the NJEDA would issue a certificate indicating the amount of credits that the business could use in a tax period. If a business failed to meet its jobs retention commitment, its credit award would be reduced proportionately and it would forfeit the unused credits.

(10) A provision in the statute authorizing the sale of BRRAG tax credits that prohibits such sales between “affiliated” businesses is eliminated.

(11) A requirement that a study be conducted to determine the minimum funding level needed for successful implementation of the BRRAG program is repealed.

#### COMMITTEE AMENDMENTS

The proposed amendments are intended to exempt certain companies from the material factor requirement and calculation of net benefits under the Business Retention and Relocation Assistance Grant Program.

Specifically, for any company that has had grant pre-application meetings with NJEDA, and has executed contracts relating to the new business location during the period commencing May 1, 2010 until the adoption of these pending amendments to BRRAG, the net benefit for the retention of full-time jobs and any capital investment shall be calculated from the date of the initial grant pre-application meeting.

Further, any company that has had grant pre-application meetings with NJEDA and has executed contracts relating to the new business location during the period commencing May 1, 2010 until the adoption of these pending amendments to BRRAG, shall not be deemed

ineligible for the grant due to the material factor requirement nor deemed ineligible due to the requirement to apply 45 days before moving to the new business location.

The committee also made various minor technical amendments to the language of the bill.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

[First Reprint]

### **ASSEMBLY, No. 3389**

with Assembly committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 14, 2010

The Assembly Budget Committee reports favorably Assembly Bill No. 3389, with committee amendments.

Assembly Bill A3389 (1R), as amended, broadens the availability and revises the terms of financial assistance under New Jersey's Business Retention and Relocation Assistance Grant ("BRRAG") Program. This program, administered by the New Jersey Economic Development Authority ("EDA"), helps businesses to preserve jobs, expand operations, and reinvest in the State through the award of tax credits against the corporation business tax and the taxes on insurers. The amount of the credits awarded is based upon a business's expansion or preservation of jobs in the State, augmented by targeted capital investment.

The bill broadens the class of businesses to which, as a "designated industry," consideration may be given in determining the amount of a BRRAG award, eliminating the limitation to certain high technology businesses, allowing the EDA to determine what is desirable for the State depending on changing market conditions.

The bill changes the criteria for award of a credit. Under current law, the amount of an individual grant of tax credits is limited to no more than 80 percent of projected State tax revenues from the retained full-time jobs. The bill replaces that rule with a requirement that BRRAG credit applicants show that the combination of capital investment and jobs retention resulting from their proposed projects would "yield a net positive benefit to the State."

Currently, jobs relocated within the State are creditable jobs. The bill also will additionally allow jobs maintained at a New Jersey business location to qualify as "retained" jobs for BRRAG credit award eligibility purposes if certain capital investments are made.

"Bonus" credits are currently awarded under the program for the relocation of jobs to urban centers. The bill allows a second type of bonus credit to be earned for making a capital investment in an amount that is at least twice that of the value of the credits granted.

The bill increases the potential value of BRRAG credits for a business relocating or retaining more than 250 jobs. Currently, the

per-job award amount is \$1,500 for each relocated or retained full time job. The bill establishes six tiers, by size, of job relocations or retentions and authorizes awards in increasing multiples of the per-job award of up to six times the current rate. The bill requires such “multiple rate” awards to be taken in equal amounts over the appropriate number of years.

The bill makes a number of changes to increase the stability and predictability of the tax expenditure associated with the award of tax credits. There is currently annual cap of \$20 million on the *issuance* of BRRAG credits, which can be taken in some cases over two taxpayer tax periods. The bill converts this to a cap on the total amount of credits that may be *applied* against tax liability in a State fiscal year, and requires that a tax credit be used in the tax period for which it is issued. The bill sets a new annual cap of \$10 million on the total value of credits that a single business may apply against liability in a State fiscal year. Currently, it is a precondition for the *issuance* of BRRAG credits to a business that the amount of State tax revenue resulting from retention of the business must at least equal the value of the credits; the bill makes this a precondition for the business’s ability to *apply* the credits against tax liability.

The bill requires that a business that is initially granted BRRAG credits, and for so long as it participates in the program, must annually certify to the EDA that it continues to maintain the number of retained jobs specified in the project agreement under which the credits were issued. Based upon this certification, the EDA will issue a certificate indicating the amount of credits that the business may use in a fiscal year. If a business fails to meet its jobs retention commitment, its credit award will be reduced proportionately, and it will forfeit the unused credits. If a business fails to retain jobs to the extent that it no longer qualifies for its credit tier, the business will lose credits for the years for which it was approved but no longer qualifies.

Tax credits may be recaptured, subject to the terms of the business’ project agreement.

The bill provides a definition of “affiliate,” a business that controls, is controlled by, or under common control with the business receiving a credit, and provides that 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. The bill eliminates a provision in the current law authorizing the sale of BRRAG tax credits that prohibits such sales between “affiliated” businesses

The bill repeals a requirement that a study be conducted to determine the minimum funding level needed for successful implementation of the BRRAG program.

As amended and reported by the committee, this bill is identical to Senate Bill No 2370 (1R), as also amended and reported by the committee.

FISCAL IMPACT:

While this bill does not change the existing \$20 million annual limit on the value of tax credits that may be taken in a fiscal year, in no fiscal year have the credits applied against CBT liability approached the limit. The changes to the program resulting from the provisions of this bill will likely increase the annual tax revenue loss in Fiscal Year 2012 and beyond. As the use of these credits will depend on decisions that have not yet been made, and employment retention which has not yet occurred, it is not possible to calculate the additional level of credits that will be used annually.

COMMITTEE AMENDMENTS:

The amendments provide a slightly different definition of capital investment, clarifying the standards for creditable equipment. The amendments delete a definition of “qualifying capital investment,” but use the substance of that definition to clarify language already in the bill that resolves a potential conflict between the fact that a bonus credit requires that capital investment be twice the amount of credit awarded and the fact that a bonus award could increase the credit awarded to more than 50% of the capital investment.

The amendments delete a now-superseded requirement that a project agreement commit the business to maintaining 95% of retained full-time jobs for the first two years of its commitment duration and 90% of retained full-time jobs for all of its commitment duration, and clarify that the project agreement must include the number of full-time jobs that must be maintained in the State by the business over the commitment duration.

The amendments clarify that a credit amount that is not used in the fiscal year for which it was granted expires.

The amendments delete a provision that would have allowed the EDA to purchase and retire certificates of credit grants.

The amendments also make various technical changes, including:

- changing references to fiscal year to tax period (at the recommendation of the Division of Taxation); and
- including in a reporting requirement the cross reference to the section governing the method of reporting.
- the consequences of non-compliance with the terms of the project agreement, and
- an amendment to the effective date.

**FISCAL NOTE**  
 [Second Reprint]  
**ASSEMBLY, No. 3389**  
**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

DATED: JANUARY 5, 2011

**SUMMARY**

**Synopsis:** Revises financial assistance under Business Retention and Relocation Assistance Grant Program; repeals requirement to study implementation.

**Type of Impact:** Unknown net effect of two countervailing impacts: 1) an annual revenue loss to the State General Fund from awarding tax credits, 2) an annual revenue increase to the State General Fund and 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.

**Executive Estimate**

Fiscal Impact	<u>Fiscal Year 2011</u>	<u>Fiscal Year 2012</u>	<u>Fiscal Year 2013</u>
<b>Direct State Cost</b>	Up to \$18,600,000 per Fiscal Year		
<b>Indirect State Revenue Gain</b>	Indeterminate — See comments below		

**Office of Legislative Services Estimate**

Fiscal Impact	<u>Fiscal Year 2011</u>	<u>Fiscal Year 2012</u>	<u>Fiscal Year 2013</u>
<b>Direct State Cost</b>	Up to \$18,600,000 per Fiscal Year		
<b>Indirect State Revenue Gain</b>	Indeterminate — See comments below		
<b>State Opportunity Cost</b>	Indeterminate — See comments below		
<b>Indirect Local Revenue Gain</b>	Indeterminate — See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate. On the one hand, the bill could produce an additional annual State revenue loss of up to \$18.6 million in the form of additional and larger Business Retention and Relocation Assistance (BRRAG) tax credits. On the other hand, additional and larger tax credits that are essential to retaining

economic activity in New Jersey will also generate indirect fiscal benefits to the State and local governments that may, or may not, be greater than the cost and opportunity cost of providing the financial assistance. The OLS, however, is unable to calculate the bill's economic and fiscal net impact, as it cannot gauge either the indirect fiscal benefits to the State and local governments or the State's opportunity cost of providing additional tax credits. Opportunity costs capture the economic and fiscal benefits the economy and the State forgo as spending is redirected from one economic activity to another.

- Not every dollar newly awarded as a BRRAG tax credit will yield a return to the State in the form of the retention of additional economic activity in New Jersey. Only tax credit-induced retentions of economic activity that would not occur absent the tax credit will yield a return for the State's intensified tax credit spending. Investments that receive the tax credit but that also would be undertaken without it, on the other hand, represent sunk costs to the State, or an expense without a benefit. The OLS, however, is not in a position to gauge the amount of tax credit-induced retained economic activity and its ensuing impact on New Jersey's employment, income, wealth, population, and tax receipts.
- As to BRRAG tax credits awarded under the bill's provision waiving the tax credit's "material factor" requirement for companies that, during the period commencing May 1, 2010 until the bill's date of enactment, have had grant pre-application meetings with the New Jersey Economic Development Authority (EDA) and have executed contracts relating to the new business location, the OLS notes that all such credit awards will represent a sunk cost to the State without the realization of any secondary benefits attributable to the credit awards, given that the projects for which the credits will be awarded would happen with or without the bill.

## **BILL DESCRIPTION**

Assembly Bill No. 3389 (2R) of 2010 expands the classes of businesses that may receive a BRRAG tax credit under the corporation business and insurance premiums taxes and raises the amounts of individual tax credits. The bill maintains the annual \$20 million program cap and the requirement that the receipt of the credit is a material factor in a business' decision not to relocate full-time positions outside New Jersey.

The bill broadens the classes of businesses that may receive a tax credit. First, the legislation exempts companies that, during the period commencing May 1, 2010 until the bill's date of enactment, have had grant pre-application meetings with the EDA and have executed contracts relating to a new business location from the BRRAG criterion that the receipt of the tax credit must be a material factor in a business' decision not to relocate full-time positions outside New Jersey.

The bill also no longer limits BRRAG tax credits to businesses in industries specifically enumerated in the law, but instead extends discretion to the EDA to identify industries that shall be eligible for tax credits.

The bill also establishes a new credit award schedule for full-time employees who are retained in New Jersey either by relocating them within New Jersey or keeping them in their current location. The per-employee tax credit is \$1,500 if a business retains between 50 and 250 full-time employees, \$3,000 if it retains between 251 and 400 full-time employees, \$4,500 if it retains between 401 and 600 full-time employees, \$6,000 if it retains between 601 and 800 full-



time employees, \$7,500 if it retains between 801 and 1,000 full-time employees, and \$9,000 if it retains more than 1,000 full-time employees. As under current law, businesses earn a tax credit bonus of 50 percent if they relocate at least 2,000 jobs from a location in New Jersey into a designated urban area. In addition, they can newly earn a 50 percent bonus under this bill if their capital investment is at least twice the amount of tax credits granted prior to the application of a bonus. A business may claim both bonuses. Lastly, in addition to the receipt of the tax credit being a material factor in the business' decision to retain full-time positions in New Jersey, an applicant business must newly demonstrate to the EDA that the tax credit will yield a net positive benefit to the State.

Under the current program, BRRAG tax credits equal up to 80 percent of the State tax revenues accruing during the time period covered by the grant agreement from full-time jobs relocated and retained in New Jersey if a claimant relocates between 50 and 499 full-time employees. If the business relocates within New Jersey at least 500 full-time employees, the business receives a \$1,500 tax credit per full-time employee relocated and retained. Also, businesses earn a tax credit bonus of 50 percent if they relocate at least 2,000 full-time jobs from a location in New Jersey into a designated urban area. Lastly, the receipt of the tax credit must be a material factor in the business' decision to retain full-time positions in New Jersey.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Office of Management and Budget (OMB) in the Department of the Treasury estimates that this bill will cause a maximum annual State revenue loss of \$18.6 million from awarding additional and larger BRRAG tax credits. The amount reflects the difference between the program's annual \$20 million cap and the \$1.4 million in tax credits the State awarded, on average, in each of the last five years.

The OMB also notes that the maximum annual revenue loss of \$18.6 million could be offset, in whole or in part, by an indeterminate increase in State revenues from tax credit recipients retaining economic activity in New Jersey that absent the tax credit would have left the State.

While the OMB submitted the above estimate for Senate Bill No. 2370, it appears that the estimate is still valid for Assembly Bill No. 3389 (2R).

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concurs with the Executive estimate. On the one hand, the bill could produce an annual revenue loss of up to \$18.6 million to the State General Fund in the form of additional and larger BRRAG tax credits. On the other hand, additional tax credits that are essential to retaining economic activity in New Jersey will also generate indirect fiscal benefits to the State and local governments that may, or may not, be greater than the cost and opportunity cost of providing the financial assistance. The OLS, however, is unable to calculate the bill's economic and fiscal net impact, as it cannot gauge either the indirect fiscal benefits to the State and local governments or the State's opportunity cost of providing additional tax credits. Opportunity costs capture the economic and fiscal benefits the economy and the State forgo as spending is redirected from one economic activity to another.

The OLS cautions that not every dollar newly awarded as a BRRAG tax credit will yield a return to the State in the form of the retention of additional economic activity in New Jersey.

Only tax credit-induced retentions of economic activity that would not occur absent the tax credit will yield a return for the State's intensified tax credit spending. Investments that receive the tax credit but that also would be undertaken without it, on the other hand, represent sunk costs to the State, or an expense without a benefit. The OLS, however, is not in a position to gauge the amount of tax credit-induced retained economic activity and its ensuing impact on New Jersey's employment, income, wealth, population, and tax receipts.

If the tax credit's general eligibility criteria are respected, the additional and larger BRRAG tax credits ought to result in a net revenue gain to the State and local governments, as the bill requires that the financial assistance be material to the business' decision to retain full-time positions in New Jersey and that the financial assistance yield receipts to the State that exceed the tax credit amount. But the bill does not guarantee that all tax credits will pay for themselves, for it exempts from the "material factor" criterion companies that have had grant pre-application meetings with EDA and that have executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of the bill. All the economic activity from projects earning tax credits under this exemption will represent a sunk cost to the State, an expense without a benefit, as the indirect economic and fiscal effects of projects exempt from the "material factor" requirement cannot be attributed to the bill.

**Direct Fiscal Impact:** The bill's maximum direct revenue loss to the State could equal \$18.6 million per year, or the difference between the program's annual cap amount of \$20 million and the \$1.4 million in BRRAG tax credits the State awarded, on average, in each of the last five years. The OLS, however, does not have enough information to foresee the actual number and magnitude of future tax credit awards.

**Indirect Fiscal Impact:** In addition to perhaps accruing an annual indirect revenue gain to local governments, the bill may produce an indirect revenue gain to the State that may, or may not, exceed the direct cost and opportunity cost of awarding the financial incentives. The OLS, however, does not have the capacity to quantify the impact on New Jersey's employment, income, wealth, population, and tax receipts of economic activity retained in New Jersey because of additional and larger BRRAG tax credits.

Any indirect revenue gain will result from the economic ramifications of tax credit-induced behavior changes. Once New Jersey businesses and their employees receive payments they would not have received absent the bill's changes to the tax credit program, 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 revenue collections. Indirect fiscal effects encompass tax credit-driven input purchases from businesses benefiting from the financial assistance and tax credit-driven spending by employees of all impacted firms.

Nonetheless, not all of the tax incentive's economic and fiscal feedback effects may represent a gain to the State and affected municipalities. Only the ripple effects caused by corporate location decisions induced by additional and larger tax credits should enter the fiscal estimate, whereas those from corporate location decisions that would have occurred absent the bill must be excluded. The exclusion takes into account that tax credits have no economic impact whenever they are awarded to companies that would have made the location decision anyway. In such a scenario, the State would only incur the cost of subsidizing a location decision that the investor would have pursued regardless of the tax credit, without receiving an incremental benefit.

The legislation sets forth eligibility criteria for the tax credits that, if followed, will produce a net revenue gain to the State and local governments from providing the financial assistance. Notably, the bill requires a tax credit to be a material factor in the business' decision to retain full-time positions in New Jersey and to accrue receipts to the State and local governments that

exceed the tax credit amount. Accordingly, in this scenario, all indirect economic and fiscal effects tied to subsidized projects should count as benefits catalyzed by the bill.

Notwithstanding these eligibility criteria, the bill does not guarantee that additional and larger tax credits will pay for themselves. Not only may the EDA err in its assessment of credit applications. But, more importantly, the bill exempts from the “material factor” criterion companies that have had grant pre-application meetings with EDA and that have executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of the bill. All the economic activity from projects earning tax credits under this exemption will represent a sunk cost to the State, an expense without a benefit, as the indirect economic and fiscal effects of projects exempt from the “material factor” requirement cannot be attributed to the bill.

Lastly, the OLS notes that any estimate of the New Jersey feedback effects of additional and larger BRRAG tax credits 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.

**Fiscal Net Impact:** The bill’s economic and fiscal *net* impact will be the direct cost of awarding additional BRRAG tax credits less their fiscal feedback effects plus their opportunity cost. The OLS, however, is unable to calculate the bill’s true economic and fiscal *net* impact because it can estimate neither the bill’s indirect fiscal effects nor the State’s opportunity cost of providing additional tax credits.

Opportunity costs capture the economic and fiscal benefits the economy and the State forgo as spending is redirected from one economic activity to another. Given the State’s finite resources and its balanced budget requirement, the decision to issue additional BRRAG tax credits will invariably divert resources from policy alternatives to which they would have been applied absent the awarding of additional tax credits. Therefore, if, instead of this legislation, the State invested in road construction, for example, the bill will produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on retaining economic activity in New Jersey and that of the foregone road construction investment.

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

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# Governor Chris Christie Signs Legislation Proposed by Administration to Ensure New Jersey Remains Competitive in Attracting and Retaining Businesses

Friday, January 7, 2011 Tags: [Jobs and the Economy](#)

## Measure Bolsters State's Business Retention and Relocation Assistance Grant Program to Continue Growing the Economy and Creating Jobs

**Trenton, NJ** - Governor Chris Christie continued his commitment to making New Jersey a home for economic growth and job creation by signing Senate Bill No. 2370, revising the State's Business Retention and Relocation Assistance Grant (BRRAG) program. Administered by the Economic Development Authority (EDA), the BRRAG program has helped businesses preserve jobs, expand operations, and reinvest in the State through the award of corporation business tax credits. In July 2010, Governor Christie visited Honeywell International Inc. in Morris Township to announce the Administration's efforts to strengthen our State's business incentive offerings, including proposing the legislation that Governor Christie now signed.

"I'm pleased to sign this legislation today that follows through on my proposal to reform and improve this business tax credit, thereby strengthening my Administration's business and retention efforts," said Governor Christie. "This bill means real jobs for New Jersey, both now and in the future. The changes now made by this legislation were not only instrumental in Honeywell's decision to stay and expand their operations in New Jersey, but will enhance an incentive program for job creation and business investment that is crucial to economic growth in our state."

The BRRAG program, created in 1996, will be expanded and brought in line with comparable programs from other states in order to ensure New Jersey remains competitive among state incentive programs. The program will now provide a maximum tax credit of \$2,250 per year for six years, per job retained in the State. The current program provides for a maximum one-time tax credit incentive of \$1,500 per job retained in the State.

"The legislation will keep 10,000 jobs in New Jersey," said Lt. Governor Kim Guadagno. "We have kept our promise to business and will continue to work to put New Jerseyans back to work. The revisions to the BRRAG program build on the success while ensuring more businesses have an opportunity to participate."

The revised BRRAG program incentivizes businesses committed to expanding in New Jersey, providing the maximum benefits under the program to businesses that demonstrate an investment by making substantial capital investments in the State. The revisions to the program do not increase the existing \$20 million annual cap on the BRRAG program.

**Through the New Jersey Partnership for Action, the Christie-Guadagno Administration has implemented an aggressive economic development agenda to jumpstarting the state's economy through sustainable job creation and economic expansion.**

Senate sponsors of the bill were Senator Joe Kyrillos (R- Monmouth) and Senator Fred Madden (D-Gloucester) in the Assembly it was sponsored by Speaker Sheila Y. Oliver (D-Essex/Passaic), Assemblyman Jon Bramnick (R-Union, Morris, Somerset and Essex), Assemblyman Anthony M. Bucco (R-Morris), Assemblyman Albert Coutinho (D-Essex) and Assemblywoman Nellie Pou (D-Bergen and Passaic).

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