34:1B-113

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2010 **CHAPTER:** 123

NJSA: 34:1B-113 (Revises financial assistance under Business Retention and Relocation Assistance Grant Program; repeals requirement to study implementation")

BILL NO: S2370 (Substituted for A3389)

SPONSOR(S) Madden and others

DATE INTRODUCED: October 18, 2010

COMMITTEE: **ASSEMBLY:** Budget

SENATE: Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 6, 2011

SENATE: January 6, 2011

DATE OF APPROVAL: January 6, 2011

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second reprint enacted)

S2370

SPONSOR'S STATEMENT: (Begins on page 17 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes

SENATE: Yes

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

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes 12-21-10
1-5-10

A3389

SPONSOR'S STATEMENT: (Begins on page 17 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes Commerce
Budget

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:
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REPORTS: Yes

HEARINGS: No

NEWSPAPER ARTICLES: No

Report to the transition team [of the] subcommittee on economic development & job growth.
[Trenton, NJ : New Jersey Office of the Governor, 2010]

LAW/KR

[Second Reprint]

SENATE, No. 2370

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED OCTOBER 18, 2010

Sponsored by:
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District 4 (Camden and Gloucester)
Senator JOSEPH M. KYRILLOS, JR.
District 13 (Middlesex and Monmouth)
Assemblywoman SHEILA Y. OLIVER
District 34 (Essex and Passaic)
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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)

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

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

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

2. As used in this act:

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

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

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

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

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

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

Matter underlined <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate SBA committee amendments adopted November 15, 2010.
[2]Assembly ABU committee amendments adopted December 13, 2010.

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

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

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

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

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

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

"Department" means the New Jersey Commerce Commission;**]**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1][“Qualifying capital investment” means a capital investment in an amount that is at least twice that of the total value of the business retention or relocation grant of tax credits to a business;][1]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. In addition to any grant of tax credits determined pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3), and in addition to any bonus award pursuant to subsection a. of this section, a bonus award equivalent to 50% of the amount of the [1][original][1] grant of tax credits [1]pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3)[1] shall be made to any business that makes a [1][qualifying][1] capital investment [1]in an amount that is at least twice that of the total value of the grant of tax credits granted pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3) and the grant of tax credits pursuant to this subsection[1] . [1][If a bonus award under this section would result in a business's capital investment no longer being a qualifying capital investment, then the bonus award shall equal the largest bonus amount that would still result in the capital investment being a qualifying capital investment.] A bonus award made pursuant to this subsection may be limited, so that when added to the tax credits granted pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3), the total amount shall not exceed 50% of the amount of the capital investment in this State.[1]

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

[1]5. Section 6 of P.L. 2004, c.65 (C.34:1B-115.2) is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. [If the sum of the amount of tax credits issued pursuant to paragraph (1) of subsection b. of this section in a fiscal year, plus the amount of tax credits approved pursuant to paragraph (2) of subsection b. of this section exceeds] If the [1][issuance] approval[1] of a grant of tax credits pursuant to this section would exceed the $20,000,000 aggregate annual limit, [the commissioner shall reduce, on a pro rata basis, the award to each business receiving a grant of tax credits pursuant to paragraph (2) of subsection b.] the authority may award a smaller grant of tax credits or no [1]grants of[1] tax credits, as necessary to comply with the aggregate annual limit.

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

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

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

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

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

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

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

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

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

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

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

i. Any other necessary and relevant information as determined by the ⟦commissioner⟧ <u>authority</u>.

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

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

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

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

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

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

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

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

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

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

[1]**[**9.**]** 10.[1] Section 11 of P.L.2004, c.65 (C.34:1B-118.1) is amended to read as follows:

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

a. The number of full-time jobs retained;

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

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

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

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

f. The site of the new business location and its consistency with the smart growth goals, strategies and policies of the State

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

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

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

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

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

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

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

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

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

P.L.2004, c.65 (C.34:1B-115.3)[2]. Any reduction in the number of retained full-time jobs below the number prescribed under the terms of the project agreement shall proportionately reduce the amount of tax credits the business may apply against liability in that [1]【tax period】 [2]【fiscal year[1]】 tax period[2] and the [1]【unused】[1] credits [1]that may no longer be applied[1] for that [1]【tax period】 [2]【fiscal year[1]】 tax period[2] shall be forfeited. [1]【If,】 However, if[1] in any [1]【tax period】 [2]【fiscal year[1]】 tax period[2] , the number of retained full-time jobs drops below the minimum number of retained full-time jobs indicated in the [1]【applicable】[1] paragraph of subsection b. of section 7 of P.L.2004, c.65 (C.34:1B-115.3) [1]pursuant to which the project agreement was executed[1] such that the business would no longer be eligible to apply the credits for the number of years for which it was approved, [1]【then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of retained full-time jobs has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed】 then the authority shall reduce the amount of tax credits the business may apply against liability and the number of years in which the business may apply the tax credits. The grant shall be subject to recapture provisions pursuant to the project agreement[1] .

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

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

[1]【12.】 13.[1] Section 14 of P.L.2004, c.65 (C.34:1B-120.1) is amended to read as follows:

14. The 【commissioner】 authority is authorized to pursue, and shall adopt rules for, the recapture of all, or a portion of, the grant

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

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

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

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

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

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

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

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

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

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

10. The [commissioner] authority shall prepare and transmit to the Governor and the Legislature [2], pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),[2] on or before November 1st of each year, a report concerning the impact of the program on job retention in the State.

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

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

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

(cf: P.L.2004, c.65, s.16)][1]

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

17. This act shall take effect immediately [1][and apply to tax periods beginning on or after the date of enactment][1].

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)

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

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

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

2. As used in this act:

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

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

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

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

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

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

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.

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

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

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

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

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

"Department" means the New Jersey Commerce Commission;]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. In addition to any grant of tax credits determined pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3), and in addition to any bonus award pursuant to subsection a. of this section, a bonus award equivalent to 50% of the amount of the original grant of tax credits shall be made to any business that makes a qualifying capital investment. If a bonus award under this section would result in a business's capital investment no longer being a qualifying capital investment, then the bonus award shall equal the largest bonus amount that would still result in the capital investment being a qualifying capital investment.
(cf: P.L.2004, c.65, s.5)

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

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

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

b. ⟦Grants⟧ Subject to the limitation set forth in subsection a. of this section, grants of tax credits shall be ⟦awarded and issued to⟧ approved for qualifying businesses ⟦as follows, subject to the limitations of subsection c. of this section⟧ according to the following schedule, and shall be issued upon the execution and satisfaction of the requirements of the project agreement between the authority and the business with an approved project, and annually thereafter:

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

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

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

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

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

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

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

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

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

c. [If the sum of the amount of tax credits issued pursuant to paragraph (1) of subsection b. of this section in a fiscal year, plus the amount of tax credits approved pursuant to paragraph (2) of subsection b. of this section exceeds] If the issuance of a grant of tax credits pursuant to this section would exceed the $20,000,000 aggregate annual limit, [the commissioner shall reduce, on a pro rata basis, the award to each business receiving a grant of tax credits pursuant to paragraph (2) of subsection b.] the authority may award a smaller grant of tax credits or no grants of tax credits, as necessary to comply with the aggregate annual limit.

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

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

5. Each business seeking a grant of tax credits for a project shall submit an application for approval of the project to the [commissioner] authority in a form and manner prescribed in regulations adopted by the [commissioner] authority. The

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. No tax credits ⟦shall be⟧ issued as a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et seq.) may be applied by the business against liability in any year until the State Treasurer has certified that the amount of retained State tax revenue received in the most recently completed State tax periods by the Director of the Division of Taxation from the business equals or exceeds the amount of the grant of tax credits.
(cf: P.L.2004, c.65, s.9)

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

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

b. A business that is receiving any other grant by operation of State law shall be eligible to receive a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et seq.); provided, however, that a business that is receiving another State grant shall not be eligible to receive assistance with respect to any job that is currently the subject of any other State grant, except for grants from the Office of Customized Training pursuant to the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.), and provided further that a business shall not receive an amount as a grant of tax credits pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) ⟦which,⟧ unless the State will realize a net positive benefit from the grant of tax credits and resultant retention of full-time jobs and any capital investment when combined with such other grants, ⟦exceeds 80% of the retained State tax revenue,⟧ except upon the approval of the State Treasurer. Amounts received as grants from the Office of Customized Training pursuant to the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.), shall be excluded from the calculation of the total amount permitted under this subsection.
(cf: P.L.2004, c.65, s.10)

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

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

a. The number of full-time jobs retained;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. The ⟦commissioner⟧ authority is authorized to pursue, and shall adopt rules for, the recapture of all, or a portion of, the grant of tax credits, based on criteria established by the ⟦commissioner⟧ authority pursuant to regulation or under the terms of the project

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT

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 ("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.

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.

<u>COMMITTEE AMENDMENTS</u>:

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	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013
Direct State Cost	Up to $18,600,000 per Fiscal Year		
Indirect State Revenue Gain	Indeterminate — See comments below		

Office of Legislative Services Estimate

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

Office of Legislative Services Estimate

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

- The Office of Legislative Services (OLS) **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

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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)

An Act concerning the Business Retention and Relocation Assistance Grant Program, amending P.L.1996, c.25 and P.L.2004, c.65, and repealing section 11 of P.L.1996, c.25.

Be It Enacted *by the Senate and General Assembly of the State of New Jersey:*

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

2. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

"Department" means the New Jersey Commerce Commission;⟧

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. [Grants] Subject to the limitation set forth in subsection a. of this section grants of tax credits shall be [awarded and issued to] approved for qualifying businesses [as follows, subject to the limitations of subsection c. of this section] according to the following schedule, and shall be issued upon the execution and satisfaction of the requirements of the project agreement between the authority and the business with an approved project, and annually thereafter:

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

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

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

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

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

<u>use of the credit must be accompanied by a certificate of compliance;</u>

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

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

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

c. ⟦If the sum of the amount of tax credits issued pursuant to paragraph (1) of subsection b. of this section in a fiscal year, plus the amount of tax credits approved pursuant to paragraph (2) of subsection b. of this section exceeds⟧ <u>If the issuance of a grant of tax credits pursuant to this section would exceed</u> the $20,000,000 aggregate annual limit, ⟦the commissioner shall reduce, on a pro rata basis, the award to each business receiving a grant of tax credits pursuant to paragraph (2) of subsection b.⟧ <u>the authority may award a smaller grant of tax credits or no tax credits,</u> as necessary to comply with the aggregate annual limit.

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

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

5. Each business seeking a grant of tax credits for a project shall submit an application for approval of the project to the ⟦commissioner⟧ <u>authority</u> in a form and manner prescribed in regulations adopted by the ⟦commissioner⟧ <u>authority</u>. The

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The number of full-time jobs retained;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. The ⟦commissioner⟧ authority is authorized to pursue, and shall adopt rules for, the recapture of all, or a portion of, the grant of tax credits, based on criteria established by the ⟦commissioner⟧ authority pursuant to regulation or under the terms of the project

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

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

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

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

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

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

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

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

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

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

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

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

12. There is appropriated to the [New Jersey Commerce and Economic Growth Commission] authority from the General Fund

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

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

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

STATEMENT

This bill broadens the availability of financial assistance under the Business Retention and Relocation Assistance Grant program, which helps companies preserve jobs, expand operations, and 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	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013
Direct State Cost	Up to $18,600,000 per Fiscal Year		
Indirect State Revenue Gain	Indeterminate — See comments below		

Office of Legislative Services Estimate

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

- The Office of Legislative Services (OLS) **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

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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.

<u>Fiscal Net Impact:</u> 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*
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This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Ch. 123

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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