

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

OTHER: Yes

974.90 E19 2011

New Jersey urban enterprise zone program assessment / submitted to New Jersey Economic Development Authority;

Submitted by Delta Development Group, Inc. and HR&A Advisors, Inc.

By Delta Development Group.

[Mechanicsburg, Pa. : Delta Development Group], 2011

<http://dSPACE.njstatelib.org:8080/xmlui/bitstream/handle/10929/22402/e192011.pdf?sequence=1&isAllowed=y>

LAW/KR

P.L.2012, CHAPTER 35, *approved August 7, 2012*
Senate, No. 1562 (*First Reprint*)

1 AN ACT increasing the ¹**[total value]** amount¹ of tax credits
2 ¹**[allowable under the “Urban Transit Hub Tax Credit Act” and**
3 the “Grow New Jersey Assistance Act,” amending P.L.2007,
4 c.346 and P.L.2011, c.149] authorized to be issued under the
5 Urban Transit Hub Tax Credit program, extending the
6 application deadline, and amending various parts of the statutory
7 law¹ .
8

9 **BE IT ENACTED** by the Senate and General Assembly of the State
10 of New Jersey:
11

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

14 3. a. (1) A business, upon application to and approval from the
15 authority, shall be allowed a credit of 100 percent of its capital
16 investment, made after the effective date of P.L.2007, c.346
17 (C.34:1B-207 et seq.) but prior to its submission of documentation
18 pursuant to subsection c. of this section, in a qualified business
19 facility within an eligible municipality, pursuant to the restrictions
20 and requirements of this section. To be eligible for any tax credits
21 authorized under this section, a business shall demonstrate to the
22 authority, at the time of application, that the State's financial
23 support of the proposed capital investment in a qualified business
24 facility will yield a net positive benefit to both the State and the
25 eligible municipality. The value of all credits approved by the
26 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall
27 not exceed **[\$1,500,000,000]** ¹**[\$2,500,000,000]** 1,750,000,000¹.

28 (2) A business, other than a tenant eligible pursuant to
29 paragraph (3) of this subsection, shall make or acquire capital
30 investments totaling not less than \$50,000,000 in a qualified
31 business facility, at which the business shall employ not fewer than
32 250 full-time employees to be eligible for a credit under this
33 section. A business that acquires a qualified business facility shall
34 also be deemed to have acquired the capital investment made or
35 acquired by the seller.

36 (3) A business that is a tenant in a qualified business facility, the
37 owner of which has made or acquired capital investments in the
38 facility totaling not less than \$50,000,000, shall occupy a leased
39 area of the qualified business facility that represents at least
40 \$17,500,000 of the capital investment in the facility at which the
41 tenant business and up to two other tenants in the qualified business

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ABU committee amendments adopted June 21, 2012.

1 facility shall employ not fewer than 250 full-time employees in the
2 aggregate to be eligible for a credit under this section. The amount
3 of capital investment in a facility that a leased area represents shall
4 be equal to that percentage of the owner's total capital investment in
5 the facility that the percentage of net leasable area leased by the
6 tenant is of the total net leasable area of the qualified business
7 facility. Capital investments made by a tenant shall be deemed to
8 be included in the calculation of the capital investment made or
9 acquired by the owner, but only to the extent necessary to meet the
10 owner's minimum capital investment of \$50,000,000. Capital
11 investments made by a tenant and not allocated to meet the owner's
12 minimum capital investment threshold of \$50,000,000 shall be
13 added to the amount of capital investment represented by the
14 tenant's leased area in the qualified business facility.

15 (4) A business shall not be allowed tax credits under this section
16 if the business participates in a business employment incentive
17 grant relating to the same capital and employees that qualify the
18 business for this credit, or if the business receives assistance
19 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is
20 allowed a tax credit under this section shall not be eligible for
21 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et
22 al.). A business shall not qualify for a tax credit under this section,
23 based upon capital investment and employment of full-time
24 employees, if that capital investment or employment was the basis
25 for which a grant was provided to the business pursuant to the
26 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-
27 237 et seq.).

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

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

36 (7) A business shall be allowed a tax credit of 100 percent of its
37 capital investment, made after the effective date of P.L.2011, c.89
38 but prior to its submission of documentation pursuant to subsection
39 c. of this section, in a qualified business facility that is part of a
40 mixed use project, provided that (a) the qualified business facility
41 represents at least \$17,500,000 of the total capital investment in the
42 mixed use project, (b) the business employs not fewer than 250 full-
43 time employees in the qualified business facility, and (c) the total
44 capital investment in the mixed use project of which the qualified
45 business facility is a part is not less than \$50,000,000. The
46 allowance of credits under this paragraph shall be subject to the
47 restrictions and requirements, to the extent that those are not
48 inconsistent with the provisions of this paragraph, set forth in

1 paragraphs (1) through (6) of this subsection, including but not
2 limited to the requirement that the business shall demonstrate to the
3 authority, at the time of application, that the State's financial
4 support of the proposed capital investment in a qualified business
5 facility will yield a net positive benefit to both the State and the
6 eligible municipality.

7 (8) In determining whether a proposed capital investment will
8 yield a net positive benefit, the authority shall not consider the
9 transfer of an existing job from one location in the State to another
10 location in the State as the creation of a new job, unless (a) the
11 business proposes to transfer existing jobs to a municipality in the
12 State as part of a consolidation of business operations from two or
13 more other locations that are not in the same municipality whether
14 in-State or out-of-State, or (b) the business's chief executive officer,
15 or equivalent officer, submits a certification to the authority
16 indicating that the existing jobs are at risk of leaving the State and
17 that the business's chief executive officer, or equivalent officer, has
18 reviewed the information submitted to the authority and that the
19 representations contained therein are accurate, and the business
20 intends to employ not fewer than 500 full-time employees in the
21 qualified business facility. In the event that this certification by the
22 business's chief executive officer, or equivalent officer, is found to
23 be willfully false, the authority may revoke any award of tax credits
24 in their entirety, which revocation shall be in addition to any other
25 criminal or civil penalties that the business and the officer may be
26 subject to. When considering an application involving intra-State
27 job transfers, the authority shall require the company to submit the
28 following information as part of its application: a full economic
29 analysis of all locations under consideration by the company; all
30 lease agreements, ownership documents, or substantially similar
31 documentation for the business's current in-State locations; and all
32 lease agreements, ownership documents, or substantially similar
33 documentation for the potential out-of-State location alternatives, to
34 the extent they exist. Based on this information, and any other
35 information deemed relevant by the authority, the authority shall
36 independently verify and confirm, by way of making a factual
37 finding by separate vote of the authority's board, the business's
38 assertion that the jobs are actually at risk of leaving the State,
39 before a business may be awarded any tax credits under this section.

40 b. A business shall apply for the credit ~~'[within five years after~~
41 ~~the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.)]~~ prior to
42 July 1, 2014¹, and shall submit its documentation for approval of its
43 credit amount ~~'[within eight years after the effective date of~~
44 ~~P.L.2007, c.346 (C.34:1B-207 et seq.)]~~ no later than July 28, 2017¹.

45 c. (1) The amount of credit allowed shall, except as otherwise
46 provided, be equal to the capital investment made by the business,
47 or the capital investment represented by the business' leased area, or

1 area owned by the business as a condominium, and shall be taken
2 over a 10-year period, at the rate of one-tenth of the total amount of
3 the business' credit for each tax accounting or privilege period of
4 the business, beginning with the tax period in which the business is
5 first certified by the authority as having met the investment capital
6 and employment qualifications, subject to any reduction or
7 disqualification as provided by subsection d. of this section as
8 determined by annual review by the authority. In conducting its
9 annual review, the authority may require a business to submit any
10 information determined by the authority to be necessary and
11 relevant to its review.

12 The credit amount for any tax period ending after ¹【the date
13 eight years after the effective date of P.L.2007, c.346 (C.34:1B-207
14 et seq.)】 July 28, 2017¹ during which the documentation of a
15 business' credit amount remains uncertified shall be forfeited,
16 although credit amounts for the remainder of the years of the 10-
17 year credit period shall remain available to it.

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

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

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

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

46 d. (1) If, in any tax period, fewer than 200 full-time employees
47 of the business at the qualified business facility are employed in
48 new full-time positions, the amount of the credit otherwise

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

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

27 (3) If, in any tax period, (a) the number of full-time employees
28 employed by the business at the qualified business facility located
29 in an urban transit hub within an eligible municipality drops below
30 250, or (b) the number of full-time employees, who are not the
31 subject of intra-State job transfers, pursuant to paragraph (8) of
32 subsection a. of this section, employed by the business at any other
33 business facility in the State, whether or not located in an urban
34 transit hub within an eligible municipality, drops by more than 20
35 percent from the number of full-time employees in its workforce in
36 the last tax accounting or privilege period prior to the credit amount
37 approval under this section, then the business shall forfeit its credit
38 amount for that tax period and each subsequent tax period, until the
39 first tax period for which documentation demonstrating the
40 restoration of the number of full-time employees employed by the
41 business at the qualified business facility to 250 or an increase
42 above the 20 percent reduction has been reviewed and approved by
43 the authority, for which tax period and each subsequent tax period
44 the full amount of the credit shall be allowed.

45 (4) (i) If the qualified business facility is sold in whole or in part
46 during the 10-year eligibility period the new owner shall not acquire
47 the capital investment of the seller and the seller shall forfeit all
48 credits for the tax period in which the sale occurs and all subsequent

1 tax periods, provided however that any credits of tenants shall
2 remain unaffected.

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

8 e. (1) The Executive Director of the New Jersey Economic
9 Development Authority, in consultation with the Director of the
10 Division of Taxation in the Department of the Treasury, shall adopt
11 rules in accordance with the "Administrative Procedure Act,"
12 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
13 this act, including but not limited to: examples of and the
14 determination of capital investment; the enumeration of eligible
15 municipalities; specific delineation of urban transit hubs; the
16 determination of the limits, if any, on the expense or type of
17 furnishings that may constitute capital improvements; the
18 promulgation of procedures and forms necessary to apply for a
19 credit, including the enumeration of the certification procedures and
20 allocation of tax credits for different phases of a qualified business
21 facility or mixed use project; and provisions for credit applicants to
22 be charged an initial application fee, and ongoing service fees, to
23 cover the administrative costs related to the credit.

24 (2) Through regulation, the Economic Development Authority
25 shall establish standards based on the green building manual
26 prepared by the Commissioner of Community Affairs pursuant to
27 section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of
28 renewable energy, energy-efficient technology, and non-renewable
29 resources in order to reduce environmental degradation and
30 encourage long-term cost reduction.
31 (cf: P.L.2011, c.149, s.11)

32

33 ¹2. Section 35 of P.L.2009, c.90 (C.34:1B-209.3) is amended to
34 read as follows:

35 35. a. (1) A developer, upon application to and approval from the
36 authority, shall be allowed a credit of up to 35 percent of its capital
37 investment, made after the effective date of P.L.2009, c.90
38 (C.52:27D-489a et al.) but prior to its submission of documentation
39 pursuant to subsection c. of this section, in a qualified residential
40 project, pursuant to the restrictions and requirements of this section.
41 To be eligible for any tax credits authorized under this section, a
42 developer shall demonstrate to the authority, through a project pro
43 forma analysis at the time of application, that the qualified
44 residential project is likely to be realized with the provision of tax
45 credits at the level requested but is not likely to be accomplished by
46 private enterprise without the tax credits. The value of all credits
47 approved by the authority pursuant to P.L.2009, c.90 (C.52:27D-
48 489a et al.) for qualified residential projects may be up to

1 \$150,000,000, except as may be increased by the authority as set
2 forth below; provided, however, that the combined value of all
3 credits approved by the authority pursuant to both P.L.2007, c.346
4 (C.34:1B-207 et seq.) and P.L.2009, c.90 (C.52:27D-489a et al.)
5 shall not exceed ~~[\$1,500,000,000]~~ \$1,750,000,000. The authority
6 shall monitor application and allocation activity under P.L.2007,
7 c.346 (C.34:1B-207 et seq.), and if sufficient credits are available
8 after taking into account allocation under P.L.2007, c.346 (C.34:1B-
9 207 et seq.) to those qualified business facilities for which
10 applications have been filed or for which applications are
11 reasonably anticipated, and if the executive director judges certain
12 qualified residential projects to be meritorious, the aforementioned
13 \$150,000,000 cap may, in the discretion of the executive director,
14 be exceeded for allocation to qualified residential projects in such
15 amounts as the executive director deems reasonable, justified, and
16 appropriate. In allocating all credits to qualified residential projects
17 under this section, the executive director shall take into account,
18 together with other factors deemed relevant by the executive
19 director: input from the municipality in which the project is to be
20 located, whether the project furthers specific State or municipal
21 planning and development objectives, or both, and whether the
22 project furthers a public purpose, such as catalyzing urban
23 development or maximizing the value of vacant, dilapidated,
24 outmoded, government-owned, or underutilized property, or both.

25 (2) A developer shall make or acquire capital investments
26 totaling not less than \$50,000,000 in a qualified residential project
27 to be eligible for a credit under this section. A developer that
28 acquires a qualified residential project shall also be deemed to have
29 acquired the capital investment made or acquired by the seller.

30 (3) The capital investment requirement may be met by the
31 developer or by one or more of its affiliates.

32 (4) A developer of a mixed use project shall be allowed a credit
33 pursuant to subparagraph (a) or (b) of this paragraph, but not both.

34 (a) A developer shall be allowed a credit in accordance with this
35 section for a qualified residential project that includes a mixed use
36 project.

37 (b) A developer shall be allowed a credit of up to 35 percent of
38 its capital investment, made after the effective date of P.L.2011,
39 c.89 but prior to its submission of documentation pursuant to
40 subsection c. of this section, in a qualified residential project that is
41 part of a mixed use project, provided that: (a) the capital
42 investment in the qualified residential project represents at least
43 \$17,500,000 of the total capital investment in the mixed use project;
44 and (b) the total capital investment in the mixed use project of
45 which the qualified residential project is a part is not less than
46 \$50,000,000. The allowance of credits under this paragraph shall
47 be subject to the restrictions and requirements, to the extent that
48 those are not inconsistent with the provisions of this paragraph, set

1 forth in paragraphs (1) through (3) of this subsection, including but
2 not limited to the requirement prescribed in paragraph (1) of this
3 subsection that the developer shall demonstrate to the authority,
4 through a project pro forma analysis at the time of application, that
5 the qualified residential project is likely to be realized with the
6 provision of tax credits at the level requested but is not likely to be
7 accomplished by private enterprise without the tax credits.

8 As used in this subparagraph:

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

11 b. A developer shall apply for the credit **【within five years**
12 **after the effective date of P.L.2009, c.90 (C.52:27D-489a et al.)】**
13 **prior to July 1, 2014**, and a developer shall submit its
14 documentation for approval of its credit amount **【within eight years**
15 **after the effective date of P.L.2009, c.90 (C.52:27D-489a et al.)】** **no**
16 **later than July 28, 2017**.

17 c. The credit shall be administered in accordance with the
18 provisions of subsections c. and e. of section 3 of P.L.2007, c.346
19 (C.34:1B-209), as amended by section 32 of P.L.2009, c.90, and
20 section 33 of P.L.2009, c.90 (C.34:1B-209.1), except that (1) all
21 references therein to "business" and "qualified business facility"
22 shall be deemed to refer respectively to "developer" and "qualified
23 residential project," as such terms are defined in section 34 of
24 P.L.2009, c.90 (C.34:1B-209.2) and (2) all references therein to
25 credits claimed by tenants and to reductions or disqualifications in
26 credits as determined by annual review of the authority shall be
27 disregarded. Provided however, for purposes of a "mixed use
28 project" as that term is used and defined pursuant to subparagraph
29 (b) of paragraph (4) of subsection a. of this section, "qualified
30 business facility" means that term as defined pursuant to section 2
31 of P.L.2007, c.346 (C.34:1B-208).¹

32 (cf: P.L.2011, c.89, s.4)

33
34 ¹3. Section 6 of P.L.2010, c.57 (C.34:1B-209.4) is amended to
35 read as follows:

36 6. a. (1) A business, upon application to and approval from the
37 authority, shall be allowed a credit of 100 percent of its capital
38 investment, made after the effective date of P.L.2010, c.57 (C.48:3-
39 87.1 et al.) but prior to its submission of documentation pursuant to
40 subsection c. of this section, in a qualified wind energy facility
41 located within an eligible wind energy zone, pursuant to the
42 restrictions and requirements of this section. To be eligible for any
43 tax credits authorized under this section, a business shall
44 demonstrate to the authority, at the time of application, that the
45 State's financial support of the proposed capital investment in a
46 qualified wind energy facility will yield a net positive benefit to the
47 State. The value of all credits approved by the authority pursuant to

1 this section may be up to \$100,000,000, except as may be increased
2 by the authority as set forth below; provided, however, that the
3 combined value of all credits approved by the authority pursuant to
4 P.L.2007, c.346 (C.34:1B-207 et seq.), P.L.2009, c.90 (C.52:27D-
5 489a et al.), and P.L.2010, c.57 (C.48:3-87.1 et al.) shall not exceed
6 ~~[\$1,500,000,000]~~ \$1,750,000,000. The authority shall monitor
7 application and allocation activity under P.L.2007, c.346 after
8 taking into account the allocation under P.L.2007, c.346 and if
9 sufficient credits are available to those qualified business facilities
10 for which applications have been filed or for which applications are
11 reasonably anticipated, and if the chief executive officer judges
12 certain qualified offshore wind projects to be meritorious, the
13 aforementioned cap may, in the discretion of the chief executive
14 officer, be exceeded for allocation to qualified wind energy
15 facilities in such amounts as the chief executive officer deems
16 reasonable, justified and appropriate.

17 (2) (a) A business, other than a tenant eligible pursuant to
18 subparagraph (b) of this paragraph, shall make or acquire capital
19 investments totaling not less than \$50,000,000 in a qualified wind
20 energy facility, at which the business, including tenants at the
21 qualified wind energy facility, shall employ at least 300 new, full-
22 time employees, to be eligible for a credit under this section. A
23 business that acquires a qualified wind energy facility after the
24 effective date of P.L.2010, c.57 (C.48:3-87.1 et al.) shall also be
25 deemed to have acquired the capital investment made or acquired
26 by the seller.

27 (b) A business that is a tenant in the qualified wind energy
28 facility, the owner of which has made or acquired capital
29 investments in the facility totaling more than \$50,000,000, shall
30 occupy a leased area of the qualified wind energy facility that
31 represents at least \$17,500,000 of the capital investment in the
32 qualified wind energy facility at which at least 300 new, full-time
33 employees in the aggregate are employed, to be eligible for a credit
34 under this section. The amount of capital investment in a facility
35 that a leased area represents shall be equal to that percentage of the
36 owner's total capital investment in the facility that the percentage of
37 net leasable area leased by the tenant is of the total net leasable area
38 of the qualified business facility. Capital investments made by a
39 tenant shall be deemed to be included in the calculation of the
40 capital investment made or acquired by the owner, but only to the
41 extent necessary to meet the owner's minimum capital investment of
42 \$50,000,000. Capital investments made by a tenant and not
43 allocated to meet the owner's minimum capital investment threshold
44 of \$50,000,000 shall be added to the amount of capital investment
45 represented by the tenant's leased area in the qualified wind energy
46 facility.

47 (c) The calculation of the number of new, full-time employees
48 required pursuant to subparagraphs (a) and (b) of this paragraph

1 may include the number of new, full-time positions resulting from
2 an equipment supply coordination agreement with equipment
3 manufacturers, suppliers, installers and operators associated with
4 the supply chain required to support the qualified wind energy
5 facility.

6 For the purposes of this paragraph, "full time employee" shall
7 not include an employee who is a resident of another state and
8 whose income is not subject to the "New Jersey Gross Income Tax
9 Act," N.J.S.54A:1-1 et seq., unless that state has entered into a
10 reciprocity agreement with the State of New Jersey, provided that
11 any employee whose work is provided pursuant to a collective
12 bargaining agreement with the port district in the wind energy zone
13 may be included.

14 (3) A business shall not be allowed a tax credit pursuant to this
15 section if the business participates in a business employment
16 incentive grant relating to the same capital and employees that
17 qualify the business for this credit, or if the business receives
18 assistance pursuant to the "Business Retention and Relocation
19 Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.). A business
20 that is allowed a tax credit under this section shall not be eligible
21 for incentives authorized pursuant to the "Municipal Rehabilitation
22 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et
23 al.).

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

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

32 c. The credit allowed pursuant to this section shall be
33 administered in accordance with the provisions of subsection c. of
34 section 3 of P.L.2007, c.346 (C.34:1B-209) and section 33 of
35 P.L.2009, c.90 (C.34:1B-209.1), except that all references therein to
36 "qualified business facility" shall be deemed to refer to "qualified
37 wind energy facility," as that term is defined in subsection f. of this
38 section.

39 d. The amount of the credit allowed pursuant to this section
40 shall, except as otherwise provided, be equal to the capital
41 investment made by the business, or the capital investment
42 represented by the business' leased area, and shall be taken over a
43 10-year period, at the rate of one-tenth of the total amount of the
44 business' credit for each tax accounting or privilege period of the
45 business, beginning with the tax period in which the business is first
46 approved by the authority as having met the investment capital and
47 employment qualifications, subject to any disqualification as
48 determined by annual review by the authority. In conducting its

1 annual review, the authority may require a business to submit any
2 information determined by the authority to be necessary and
3 relevant to its review. The credit amount for any tax period ending
4 after the date eight years after the effective date of P.L.2007, c.346
5 (C.34:1B-207 et seq.) during which the documentation of a
6 business' credit amount remains unapproved shall be forfeited,
7 although credit amounts for the remainder of the years of the 10-
8 year credit period shall remain available. The amount of the credit
9 allowed for a tax period to a business that is a tenant in a qualified
10 wind energy facility shall not exceed the business' total lease
11 payments for occupancy of the qualified wind energy facility for the
12 tax period.

13 e. The authority shall adopt rules in accordance with the
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
15 seq.) as are necessary to implement this section, including but not
16 limited to: examples of and the determination of capital investment;
17 nature of businesses and employment positions constituting and
18 participating in an equipment supply coordination agreement;
19 determination of the types of businesses that may be eligible and
20 expenses that may constitute capital improvements; promulgation of
21 procedures and forms necessary to apply for a credit; and provisions
22 for applicants to be charged an initial application fee, and ongoing
23 service fees, to cover the administrative costs related to the credit.

24 The rules established by the authority pursuant to this subsection
25 shall be effective immediately upon filing with the Office of
26 Administrative Law and shall be effective for a period not to exceed
27 12 months and may, thereafter, be amended, adopted or readopted
28 in accordance with the provisions of the "Administrative Procedure
29 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

30 f. As used in this section: the terms "authority," "business,"
31 and "capital investment" shall have the same meanings as defined in
32 section 2 of the "Urban Transit Hub Tax Credit Act," P.L.2007,
33 c.346 (C.34:1B-208), except that all references therein to "qualified
34 business facility" shall be deemed to refer to "qualified wind energy
35 facility" as defined in this subsection.

36 In addition, as used in this section:

37 "Equipment supply coordination agreement" means an agreement
38 between a business and equipment manufacturer, supplier, installer,
39 and operator that supports a qualified offshore wind project, or
40 other wind energy project as determined by the authority, and that
41 indicates the number of new, full-time jobs to be created by the
42 agreement participants towards the employment requirement as set
43 forth in paragraph (2) of subsection a. of this section.

44 "Qualified offshore wind project" means the same as the term is
45 defined in section 3 of P.L.1999, c.23 (C.48:3-51).

46 "Qualified wind energy facility" means any building, complex of
47 buildings, or structural components of buildings, including water
48 access infrastructure, and all machinery and equipment used in the

1 manufacturing, assembly, development or administration of
2 component parts that support the development and operation of a
3 qualified offshore wind project, or other wind energy project as
4 determined by the authority, and that are located in a wind energy
5 zone.

6 "Wind energy zone" means property located in the South Jersey
7 Port District established pursuant to "The South Jersey Port
8 Corporation Act," P.L.1968, c.60 (C.12:11A-1 et seq.).¹
9 (cf: P.L.2010, c.57, s.6)

10

11 ~~'[2.]~~ 4.¹ Section 6 of P.L.2011, c.149 (C. 34:1B-247) is
12 amended to read as follows:

13 6. a. (1) The value of all credits approved by the authority
14 pursuant to P.L.2011, c.149 (C.34:1B-242 et al.) shall not exceed
15 ~~[\$200,000,000]~~ ~~'[\$400,000,000]~~ \$200,000,000¹, except that the
16 value of all credits approved by the authority pursuant to this
17 section may exceed ~~[\$200,000,000]~~ ~~'[\$400,000,000]~~
18 \$200,000,000¹ if the board of the authority determines the credits to
19 be reasonable, justifiable, and appropriate; provided, however, the
20 combined value of all credits approved by the authority pursuant to
21 P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L.2011, c.149
22 (C.34:1B-242 et al.) shall not exceed ~~[\$1,500,000,000]~~
23 ~~'[\$2,500,000,000]~~ \$1,750,000,000¹.

24 (2) A business, including any affiliate of the business or any
25 business that is a tenant within any qualified business facility, shall
26 make or acquire capital investments totaling not less than
27 \$20,000,000 in a qualified business facility, at which the business
28 shall employ not fewer than 100 full-time employees to be eligible
29 for a credit pursuant to P.L.2011, c.149. A business that acquires or
30 leases a qualified business facility shall also be deemed to have
31 acquired the capital investment made or acquired by the seller or
32 landlord, as the case may be.

33 (3) A business shall not be allowed tax credits pursuant to
34 P.L.1996, c.25 (C.34:1B-112 et seq.) or P.L.1996, c.26 (C.34:1B-
35 124 et seq.) relating to the same capital and employees that qualify
36 the business for tax credits pursuant to P.L.2011, c.149. A business
37 that is allowed a tax credit under this section shall not be eligible
38 for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1
39 et al.). A business shall not qualify for a tax credit under this
40 section, based upon capital investment and employment of full-time
41 employees, if that capital investment or employment was the basis
42 for which a grant was provided to the business pursuant to the
43 "Urban Transit Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-207
44 et seq.).

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

1 (5) The capital investment of the owner of a qualified business
2 facility is that percentage of the capital investment made or
3 acquired by the owner of the building that the percentage of net
4 leasable area of the qualified business facility not leased to tenants
5 is of the total net leasable area of the qualified business facility. For
6 a business that is a tenant, the amount of capital investment in a
7 facility that a leased area represents shall be equal to that
8 percentage of the owner's total capital investment in the facility that
9 the percentage of net leasable area leased by the tenant is of the
10 total net leasable area of the qualified business facility. Capital
11 investments made by a tenant shall be deemed to be included in the
12 calculation of the capital investment made or acquired by the
13 owner, but only to the extent necessary to meet the owner's
14 minimum capital investment of \$20,000,000. Capital investments
15 made by a tenant and not allocated to meet the owner's minimum
16 capital investment threshold of \$20,000,000 shall be added to the
17 amount of capital investment represented by the tenant's leased area
18 in the qualified business facility.

19 b. A business shall apply for the tax credit prior to July 1,
20 2014, and shall submit its documentation indicating that it has met
21 the capital investment and employment specified in the project
22 agreement for certification of its credit amount no later than July
23 28, 2017.

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

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

39 The credit amount that may be taken for a tax period of the
40 business that exceeds the final liabilities of the business for the tax
41 period may be carried forward for use by the business in the next 20
42 successive tax periods, and shall expire thereafter, provided that the
43 value of all credits approved by the authority against tax liabilities
44 pursuant to P.L.2011, c.149, in any fiscal year shall not exceed
45 \$150,000,000 and the combined value of all credits approved by the
46 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and
47 P.L.2011, c.149 (C.34:1B-242 et al.) shall not exceed
48 **[\$1,500,000,000] ¹[\$2,500,000,000] \$1,750,000,000¹.**

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

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

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

22 d. (1) If, in any tax period, the business reduces the total
23 number of full-time employees in its Statewide workforce by more
24 than 20 percent from the number of full-time employees in its
25 Statewide workforce in the last tax period prior to the credit amount
26 approval under section 3 of P.L.2011, c.149 (C.34:1B-244), then the
27 business shall forfeit its credit amount for that tax period and each
28 subsequent tax period, until the first tax period for which
29 documentation demonstrating the restoration of the business'
30 Statewide workforce to the threshold levels required by this
31 paragraph has been reviewed and approved by the authority, for
32 which tax period and each subsequent tax period the full amount of
33 the credit shall be allowed.

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

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

S1562 [1R]

15

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

6 (cf: P.L.2011, c.149, s.6)

7

8 **'[3.] 5.'** This act shall take effect immediately.

9

10

11

12

13 _____
14 Increases amount of tax credits authorized to be issued under
15 Urban Transit Hub Tax Credit program and extends application
deadline.

SENATE, No. 1562

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 9, 2012

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator BARBARA BUONO

District 18 (Middlesex)

Co-Sponsored by:

Senator Ruiz

SYNOPSIS

Increases maximum total amount of tax credits allowable under “Urban Transit Hub Tax Credit Act” from \$1,500,000,000 to \$2,500,000,000, and under “Grow New Jersey Assistance Act” from \$200,000,000 to \$400,000,000.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/9/2012)

1 AN ACT increasing the total value of tax credits allowable under the
2 “Urban Transit Hub Tax Credit Act” and the “Grow New Jersey
3 Assistance Act,” amending P.L.2007, c.346 and P.L.2011, c.149.
4

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

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

10 3. a. (1) A business, upon application to and approval from the
11 authority, shall be allowed a credit of 100 percent of its capital
12 investment, made after the effective date of P.L.2007, c.346
13 (C.34:1B-207 et seq.) but prior to its submission of documentation
14 pursuant to subsection c. of this section, in a qualified business
15 facility within an eligible municipality, pursuant to the restrictions
16 and requirements of this section. To be eligible for any tax credits
17 authorized under this section, a business shall demonstrate to the
18 authority, at the time of application, that the State's financial
19 support of the proposed capital investment in a qualified business
20 facility will yield a net positive benefit to both the State and the
21 eligible municipality. The value of all credits approved by the
22 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall
23 not exceed ~~[\$1,500,000,000]~~ \$2,500,000,000.

24 (2) A business, other than a tenant eligible pursuant to
25 paragraph (3) of this subsection, shall make or acquire capital
26 investments totaling not less than \$50,000,000 in a qualified
27 business facility, at which the business shall employ not fewer than
28 250 full-time employees to be eligible for a credit under this
29 section. A business that acquires a qualified business facility shall
30 also be deemed to have acquired the capital investment made or
31 acquired by the seller.

32 (3) A business that is a tenant in a qualified business facility, the
33 owner of which has made or acquired capital investments in the
34 facility totaling not less than \$50,000,000, shall occupy a leased
35 area of the qualified business facility that represents at least
36 \$17,500,000 of the capital investment in the facility at which the
37 tenant business and up to two other tenants in the qualified business
38 facility shall employ not fewer than 250 full-time employees in the
39 aggregate to be eligible for a credit under this section. The amount
40 of capital investment in a facility that a leased area represents shall
41 be equal to that percentage of the owner's total capital investment in
42 the facility that the percentage of net leasable area leased by the
43 tenant is of the total net leasable area of the qualified business
44 facility. Capital investments made by a tenant shall be deemed to
45 be included in the calculation of the capital investment made or

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

Matter underlined thus is new matter.

1 acquired by the owner, but only to the extent necessary to meet the
2 owner's minimum capital investment of \$50,000,000. Capital
3 investments made by a tenant and not allocated to meet the owner's
4 minimum capital investment threshold of \$50,000,000 shall be
5 added to the amount of capital investment represented by the
6 tenant's leased area in the qualified business facility.

7 (4) A business shall not be allowed tax credits under this section
8 if the business participates in a business employment incentive
9 grant relating to the same capital and employees that qualify the
10 business for this credit, or if the business receives assistance
11 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is
12 allowed a tax credit under this section shall not be eligible for
13 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et
14 al.). A business shall not qualify for a tax credit under this section,
15 based upon capital investment and employment of full-time
16 employees, if that capital investment or employment was the basis
17 for which a grant was provided to the business pursuant to the
18 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-
19 237 et seq.).

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

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

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

47 (8) In determining whether a proposed capital investment will
48 yield a net positive benefit, the authority shall not consider the

1 transfer of an existing job from one location in the State to another
2 location in the State as the creation of a new job, unless (a) the
3 business proposes to transfer existing jobs to a municipality in the
4 State as part of a consolidation of business operations from two or
5 more other locations that are not in the same municipality whether
6 in-State or out-of-State, or (b) the business's chief executive officer,
7 or equivalent officer, submits a certification to the authority
8 indicating that the existing jobs are at risk of leaving the State and
9 that the business's chief executive officer, or equivalent officer, has
10 reviewed the information submitted to the authority and that the
11 representations contained therein are accurate, and the business
12 intends to employ not fewer than 500 full-time employees in the
13 qualified business facility. In the event that this certification by the
14 business's chief executive officer, or equivalent officer, is found to
15 be willfully false, the authority may revoke any award of tax credits
16 in their entirety, which revocation shall be in addition to any other
17 criminal or civil penalties that the business and the officer may be
18 subject to. When considering an application involving intra-State
19 job transfers, the authority shall require the company to submit the
20 following information as part of its application: a full economic
21 analysis of all locations under consideration by the company; all
22 lease agreements, ownership documents, or substantially similar
23 documentation for the business's current in-State locations; and all
24 lease agreements, ownership documents, or substantially similar
25 documentation for the potential out-of-State location alternatives, to
26 the extent they exist. Based on this information, and any other
27 information deemed relevant by the authority, the authority shall
28 independently verify and confirm, by way of making a factual
29 finding by separate vote of the authority's board, the business's
30 assertion that the jobs are actually at risk of leaving the State,
31 before a business may be awarded any tax credits under this section.

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

37 c. (1) The amount of credit allowed shall, except as otherwise
38 provided, be equal to the capital investment made by the business,
39 or the capital investment represented by the business' leased area, or
40 area owned by the business as a condominium, and shall be taken
41 over a 10-year period, at the rate of one-tenth of the total amount of
42 the business' credit for each tax accounting or privilege period of
43 the business, beginning with the tax period in which the business is
44 first certified by the authority as having met the investment capital
45 and employment qualifications, subject to any reduction or
46 disqualification as provided by subsection d. of this section as
47 determined by annual review by the authority. In conducting its
48 annual review, the authority may require a business to submit any

1 information determined by the authority to be necessary and
2 relevant to its review.

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

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

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

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

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

37 d. (1) If, in any tax period, fewer than 200 full-time employees
38 of the business at the qualified business facility are employed in
39 new full-time positions, the amount of the credit otherwise
40 determined pursuant to final calculation of the award of tax credits
41 pursuant to subsection c. of this section shall be reduced by 20
42 percent for that tax period and each subsequent tax period until the
43 first period for which documentation demonstrating the restoration
44 of the 200 full-time employees employed in new full-time positions
45 at the qualified business facility has been reviewed and approved by
46 the authority, for which tax period and each subsequent tax period
47 the full amount of the credit shall be allowed; provided, however,
48 that for businesses applying before January 1, 2010, there shall be

1 no reduction if a business relocates to an urban transit hub from
2 another location or other locations in the same municipality. For
3 the purposes of this paragraph, a "new full-time position" means a
4 position created by the business at the qualified business facility
5 that did not previously exist in this State.

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

18 (3) If, in any tax period, (a) the number of full-time employees
19 employed by the business at the qualified business facility located
20 in an urban transit hub within an eligible municipality drops below
21 250, or (b) the number of full-time employees, who are not the
22 subject of intra-State job transfers, pursuant to paragraph (8) of
23 subsection a. of this section, employed by the business at any other
24 business facility in the State, whether or not located in an urban
25 transit hub within an eligible municipality, drops by more than 20
26 percent from the number of full-time employees in its workforce in
27 the last tax accounting or privilege period prior to the credit amount
28 approval under this section, then the business shall forfeit its credit
29 amount for that tax period and each subsequent tax period, until the
30 first tax period for which documentation demonstrating the
31 restoration of the number of full-time employees employed by the
32 business at the qualified business facility to 250 or an increase
33 above the 20 percent reduction has been reviewed and approved by
34 the authority, for which tax period and each subsequent tax period
35 the full amount of the credit shall be allowed.

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

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

47 e. (1) The Executive Director of the New Jersey Economic
48 Development Authority, in consultation with the Director of the

1 Division of Taxation in the Department of the Treasury, shall adopt
2 rules in accordance with the "Administrative Procedure Act,"
3 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
4 this act, including but not limited to: examples of and the
5 determination of capital investment; the enumeration of eligible
6 municipalities; specific delineation of urban transit hubs; the
7 determination of the limits, if any, on the expense or type of
8 furnishings that may constitute capital improvements; the
9 promulgation of procedures and forms necessary to apply for a
10 credit, including the enumeration of the certification procedures and
11 allocation of tax credits for different phases of a qualified business
12 facility or mixed use project; and provisions for credit applicants to
13 be charged an initial application fee, and ongoing service fees, to
14 cover the administrative costs related to the credit.

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

22 (cf: P.L.2011, c.149, s.11)

23

24 2. Section 6 of P.L.2011, c.149 (C. 34:1B-247) is amended to
25 read as follows:

26 6. a. (1) The value of all credits approved by the authority
27 pursuant to P.L.2011, c.149 (C.34:1B-242 et al.) shall not exceed
28 ~~【\$200,000,000】~~ \$400,000,000, except that the value of all credits
29 approved by the authority pursuant to this section may exceed
30 ~~【\$200,000,000】~~ \$400,000,000 if the board of the authority
31 determines the credits to be reasonable, justifiable, and appropriate;
32 provided, however, the combined value of all credits approved by
33 the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and
34 P.L.2011, c.149 (C.34:1B-242 et al.) shall not exceed
35 ~~【\$1,500,000,000】~~ \$2,500,000,000.

36 (2) A business, including any affiliate of the business or any
37 business that is a tenant within any qualified business facility, shall
38 make or acquire capital investments totaling not less than
39 \$20,000,000 in a qualified business facility, at which the business
40 shall employ not fewer than 100 full-time employees to be eligible
41 for a credit pursuant to P.L.2011, c.149. A business that acquires or
42 leases a qualified business facility shall also be deemed to have
43 acquired the capital investment made or acquired by the seller or
44 landlord, as the case may be.

45 (3) A business shall not be allowed tax credits pursuant to
46 P.L.1996, c.25 (C.34:1B-112 et seq.) or P.L.1996, c.26 (C.34:1B-
47 124 et seq.) relating to the same capital and employees that qualify
48 the business for tax credits pursuant to P.L.2011, c.149. A business

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

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

12 (5) The capital investment of the owner of a qualified business
13 facility is that percentage of the capital investment made or
14 acquired by the owner of the building that the percentage of net
15 leasable area of the qualified business facility not leased to tenants
16 is of the total net leasable area of the qualified business facility. For
17 a business that is a tenant, the amount of capital investment in a
18 facility that a leased area represents shall be equal to that
19 percentage of the owner's total capital investment in the facility that
20 the percentage of net leasable area leased by the tenant is of the
21 total net leasable area of the qualified business facility. Capital
22 investments made by a tenant shall be deemed to be included in the
23 calculation of the capital investment made or acquired by the
24 owner, but only to the extent necessary to meet the owner's
25 minimum capital investment of \$20,000,000. Capital investments
26 made by a tenant and not allocated to meet the owner's minimum
27 capital investment threshold of \$20,000,000 shall be added to the
28 amount of capital investment represented by the tenant's leased area
29 in the qualified business facility.

30 b. A business shall apply for the tax credit prior to July 1,
31 2014, and shall submit its documentation indicating that it has met
32 the capital investment and employment specified in the project
33 agreement for certification of its credit amount no later than July
34 28, 2017.

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

45 The credit amount for any tax period ending after July 28, 2017,
46 during which the documentation of a business' credit amount
47 remains uncertified shall be forfeited, although credit amounts for

1 the remainder of the years of the 10-year credit period shall remain
2 available to it.

3 The credit amount that may be taken for a tax period of the
4 business that exceeds the final liabilities of the business for the tax
5 period may be carried forward for use by the business in the next 20
6 successive tax periods, and shall expire thereafter, provided that the
7 value of all credits approved by the authority against tax liabilities
8 pursuant to P.L.2011, c.149, in any fiscal year shall not exceed
9 \$150,000,000 and the combined value of all credits approved by the
10 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and
11 P.L.2011, c.149 (C.34:1B-242 et al.) shall not exceed
12 **[\$1,500,000,000] \$2,500,000,000.**

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

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

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

34 d. (1) If, in any tax period, the business reduces the total
35 number of full-time employees in its Statewide workforce by more
36 than 20 percent from the number of full-time employees in its
37 Statewide workforce in the last tax period prior to the credit amount
38 approval under section 3 of P.L.2011, c.149 (C.34:1B-244), then the
39 business shall forfeit its credit amount for that tax period and each
40 subsequent tax period, until the first tax period for which
41 documentation demonstrating the restoration of the business'
42 Statewide workforce to the threshold levels required by this
43 paragraph has been reviewed and approved by the authority, for
44 which tax period and each subsequent tax period the full amount of
45 the credit shall be allowed.

46 (2) If, in any tax period, the number of full-time employees
47 employed by the business at the qualified business facility located
48 within a qualified incentive area drops below 100 or 80 percent of

1 the number of new and retained full-time jobs specified in the
2 project agreement, then the business shall forfeit its credit amount
3 for that tax period and each subsequent tax period, until the first tax
4 period for which documentation demonstrating the restoration of the
5 number of full-time employees employed by the business at the
6 qualified business facility to 100.

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

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

18 (cf: P.L.2011, c.149, s.6)

19

20 3. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill increases the maximum amount of tax credits allowable
26 under the "Urban Transit Hub Tax Credit Act" from \$1,500,000,000
27 to \$2,500,000,000, and the maximum amount of tax credits
28 allowable under the "Grow New Jersey Assistance Act" from
29 \$200,000,000 to \$400,000,000.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 1562

STATE OF NEW JERSEY

DATED: FEBRUARY 16, 2012

The Senate Economic Growth Committee reports favorably Senate Bill No. 1562.

This bill increases the maximum amount of tax credits allowable under the “Urban Transit Hub Tax Credit Act,” P.L.2007, c.346 (C.34:1B-207 et seq.), from \$1.5 billion to \$2.5 billion, and the maximum amount of tax credits allowable under the “Grow New Jersey Assistance Act,” P.L.2011, c.149 (C.34:1B-242 et al.), from \$200 million to \$400 million.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 1562
STATE OF NEW JERSEY
215th LEGISLATURE

DATED: MARCH 8, 2012

SUMMARY

- Synopsis:** Increases maximum total amount of tax credits allowable under "Urban Transit Hub Tax Credit Act" from \$1,500,000,000 to \$2,500,000,000, and under "Grow New Jersey Assistance Act" from \$200,000,000 to \$400,000,000.
- Type of Impact:** Unknown net effect of three countervailing impacts: 1) a recurring revenue loss to the State General Fund and the Property Tax Relief Fund from awarding tax credits; 2) a recurring revenue increase to the State General Fund, Property Tax Relief Fund, and local governments from receipts catalyzed by credit-induced economic activity; 3) recurring opportunity costs to State from granting credits.
- Agencies Affected:** Department of the Treasury.
 New Jersey Economic Development Authority.
 Local Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2012 and 2013</u>	<u>FY 2014 through 2027</u>	<u>FY 2028</u>
Direct State Revenue Loss	\$0	Up to \$1,000,000,000	\$0
State Opportunity Cost	Indeterminate — See comments below		
Indirect State Revenue Gain	Indeterminate — See comments below		
Indirect Local Revenue Gain	Indeterminate — See comments below		

- The Office of Legislative Services (OLS) can project neither the direction nor the magnitude of the bill's net fiscal impact on the State and local governments. On the one side of the ledger, the OLS estimates that the bill will produce a total State revenue loss of up to \$1 billion through FY 2027 from awarding additional Urban Transit Hub and Grow New Jersey tax credits plus their indeterminate opportunity costs—opportunity costs capture the fiscal benefits the State forgoes as spending is redirected from one economic activity to another. On the other side of the ledger, additional tax credits that are essential to the realization of capital projects in designated areas will also generate indirect fiscal benefits to the State and local governments that may, or may not, exceed the cost and opportunity cost of providing the financial assistance.

- The estimated \$1 billion maximum State revenue loss through FY 2027 reflects the difference between the urban transit hub tax credit program's current \$1.5 billion cap and the bill's \$2.5 billion cap. The increase in the Grow New Jersey tax credit program cap is immaterial for the calculation of the bill's maximum cost, considering that the program is scored against the urban transit hub cap.
- The New Jersey Economic Development Authority (EDA) has awarded \$916.1 million in urban transit hub tax credits to 15 projects through February 7, 2012. The Grow New Jersey tax credit program, on the other hand, does not yet have a track record, given that its enabling legislation, P.L.2011, c.149, was only signed into law on January 5, 2012.
- Capital projects for which the tax credits will serve as the impetus will also generate indirect fiscal benefits to the State and local governments. In the converse, extending tax credits to capital projects that investors would also undertake absent the incentive will produce sunk costs to the State, or an expense without a benefit, as the tax credit awards will have no bearing on the decision to pursue the capital investment. Consequently, the indirect fiscal effects from investments that would be made anyway have to be excluded from the analysis. Applying this general principle to this bill, it is reasonable to expect that most of the tax credits' indirect effects will count as a benefit. This is so because credits can only be awarded if a project passes the net benefit test. As part of that test, the EDA excludes from the analysis the indirect benefits from jobs not deemed new to the State or "at risk" or a "suburban to urban move." Therefore, most tax credits will produce an indirect revenue gain to the State except for tax credits that are awarded for a relocation of jobs from a suburban area of the State to an urban area or that are awarded based on an incorrect assessment regarding the likelihood of a job created or retained within New Jersey absent a credit award. It remains unclear, however, whether or not the indirect revenue gains attributable to the credits will exceed the direct State revenue loss and opportunity cost they will cause.

BILL DESCRIPTION

Senate Bill No. 1562 of 2012 raises the total lifetime cap on the urban transit hub tax credit program from \$1.5 billion to \$2.5 billion. It also increases the total lifetime cap on Grow New Jersey Assistance Program tax credits, which are counted against the urban transit hub tax credit cap, from \$200 million to \$400 million.

A) Urban Transit Hub Tax Credit Program: The bill raises the total lifetime cap on urban transit hub tax credits from \$1.5 billion to \$2.5 billion. Under the program, the State awards tax credits to taxpayers who make eligible capital investments in real property in urban transit hubs.

Urban transit hubs are the area within a one-half mile radius around a rail or light rail station in Camden, East Orange, Elizabeth, Hoboken, Jersey City, Newark, New Brunswick, Paterson, and Trenton, with the Camden urban transit hub covering the area within a one-mile radius around a rail or light rail station. In addition, there is an urban transit hub in the area within a one-mile radius of a rail or light rail station that is subject to a Choice Neighborhoods Transformation Plan. (The only New Jersey Choice Neighborhood is currently in Jersey City at the McGinley Square – Montgomery Corridor.) Acute care medical facilities and closed hospitals located within a one-mile radius of a rail or light rail station also qualify for tax credits.

To qualify for a business facility tax credit of up to 100 percent of the investment under the urban transit hub tax credit program, a capital investment in real property must: a) equal at least

\$50 million; b) pave the way for at least 250 full-time employees working in the business facility; c) be made within eight years from January 13, 2008, the effective date of P.L.2007, c.346; and, d) under most circumstances, yield a net positive benefit to the State and the municipality hosting the transit hub.

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

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

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

B) Grow New Jersey Assistance Program: The bill doubles the total lifetime cap on Grow New Jersey Assistance Program tax credits from \$200 million to \$400 million. The credits are counted against the cap for urban transit hub tax credits and are subject to an annual \$150 million ceiling.

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

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

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

But a total tax credit award cannot exceed the value of a project's certified capital investment and must be taken in ten annual installments with each installment equal to the lesser of one-tenth of the certified capital investment or \$4 million. If the business does not have a sufficient

tax liability against which to offset the tax credit, the business may carry any unused balance forward for 20 years or sell it to another taxpayer. Tax credit amounts may be reduced or revoked if the business fails to meet its New Jersey full-time employment target as specified in the tax credit agreement.

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

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS can determine neither the direction nor the magnitude of the net fiscal impact on the State and affected local governments of the bill's increase in the caps of the urban transit hub tax credit program and the Grow New Jersey Assistance Program. In general, the State net fiscal impact is calculated by adding the direct revenue loss from granting additional tax credits and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain from granting the tax credits. In addition, the bill is also likely to accrue an indirect revenue gain to local governments.

Although the OLS is able to pinpoint the bill's maximum direct revenue loss, it cannot calculate its opportunity cost or its offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on the characteristics of capital investments that will earn tax credits.

Direct Fiscal Impact: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund from raising the urban transit hub tax credit program cap could be as high as \$1 billion accumulated over several years, or the difference between the program's current \$1.5 billion cap and the bill's proposed \$2.5 billion cap. The increase in the cap for Grow New Jersey tax credits is immaterial for the calculation of the bill's maximum cost, considering that the program is scored against the urban transit hub tax credit cap.

The OLS projects that the bill will not trigger a State revenue loss before FY 2014 and after FY 2027. Since capital investments must be incurred after the bill's date of enactment and since tax credits are contingent upon project completion, the OLS surmises that no credit reflecting the bill's expanded tax credit eligibility will be claimed until at least FY 2014. Businesses also have ten years in which to apply a tenth of the credit's total value per year. If an urban transit hub credit was approved for a business facility at the end of the eight-year window for creditable expenditures in qualified business facilities (on or before January 12, 2016), the last credit could be claimed in the tax year including January 2025, which would be in FY 2026. If an urban transit hub credit was approved for a residential project at the end of the eight-year window for creditable expenditures in qualified residential units (on or before July 28, 2017), the last credit

could be claimed in the tax year including July 2026, which would be in FY 2027. Since Grow New Jersey tax credit applications must be submitted by July 1, 2014 and since credits are paid in ten annual installments following the completion of a capital project, the timeline for Grow New Jersey tax credits is similar to that of urban transit hub tax credits.

Irrespective of the exact magnitude of the bill's revenue loss to the State, taxpayers availing themselves of the tax credit will share their benefit with the federal government. This will be so because taxpayers can deduct their State and local income tax payments on their federal income tax returns. Consequently, a lower New Jersey corporation business tax liability translates into a lower federal deduction, and thus a higher federal income tax liability. At the federal corporation income tax rate of 35 percent, for example, taxpayers receiving a State tax credit will therefore only hold on to 65 percent of the tax credit amount, while the remaining 35 percent of the benefit will accrue to the United States government.

As of February 7, 2012, the EDA has awarded \$916.1 million in urban transit hub tax credits to 15 projects. The Grow New Jersey tax credit program does not yet have a track record, given that its enabling legislation, P.L.2011, c.149, was only signed into law on January 5, 2012.

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

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

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

Notwithstanding that caveat, it is reasonable to expect that most of the indirect effects of tax credits awarded will count as a benefit to the State. This is so because credits can only be awarded if a project passes the net benefit test. As part of that test, the EDA excludes from the analysis the indirect benefits from jobs not deemed new to the State or "at risk" or a "suburban to urban move." Therefore, most tax credits will produce an indirect revenue gain to the State except for tax credits that are awarded for a relocation of jobs from a suburban area of the State to an urban area or that are awarded based on an incorrect assessment regarding the likelihood of a job created or retained within New Jersey absent a credit award. It remains unclear, however,

whether or not the indirect revenue gains ascribable to the credits will exceed the direct State revenue loss and opportunity cost they will cause.

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

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

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Lead Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

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

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1562

STATE OF NEW JERSEY

DATED: MARCH 8, 2012

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1562.

The bill increases the maximum amount of tax credits allowable under the “Urban Transit Hub Tax Credit Act,” P.L.2007, c.346 (C.34:1B-207 et seq.), from \$1.5 billion to \$2.5 billion, and the maximum amount of tax credits allowable under the “Grow New Jersey Assistance Act,” P.L.2011, c.149 (C.34:1B-242 et al.), from \$200 million to \$400 million.

A) Urban Transit Hub Tax Credit Program: The bill raises the total lifetime cap on urban transit hub tax credits from \$1.5 billion to \$2.5 billion. Under the program, the State awards tax credits to taxpayers who make eligible capital investments in real property in urban transit hubs.

Urban transit hubs are the area within a one-half mile radius around a rail or light rail station in Camden, East Orange, Elizabeth, Hoboken, Jersey City, Newark, New Brunswick, Paterson, and Trenton, with the Camden urban transit hub covering the area within a one-mile radius around a rail or light rail station. In addition, there is an urban transit hub in the area within a one-mile radius of a rail or light rail station that is subject to a Choice Neighborhoods Transformation Plan. (The only New Jersey Choice Neighborhood is currently in Jersey City at the McGinley Square – Montgomery Corridor.) Acute care medical facilities and closed hospitals located within a one-mile radius of a rail or light rail station also qualify for tax credits.

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

Tenants in qualified business facilities may also receive a credit if they occupy space in the facility that represents at least \$17.5 million of the capital investment and employ at least 250 persons in the facility. If fewer than 200 of the 250 full-time positions in a

business facility represent a net gain to New Jersey, then the tax credit is limited to 80 percent of the qualified capital investment.

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

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

B) Grow New Jersey Assistance Program: The bill doubles the total lifetime cap on Grow New Jersey Assistance Program tax credits from \$200 million to \$400 million. The credits are counted against the cap for urban transit hub tax credits and are subject to an annual \$150 million ceiling.

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

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

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

But a total tax credit award cannot exceed the value of a project's certified capital investment and must be taken in ten annual installments with each installment equal to the lesser of one-tenth of the certified capital investment or \$4 million. If the business does not have a sufficient tax liability against which to offset the tax credit, the business may carry any unused balance forward for 20 years or sell it to another taxpayer. Tax credit amounts may be reduced or revoked if the business fails to meet its New Jersey full-time employment target as specified in the tax credit agreement.

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

FISCAL IMPACT:

The Office of Legislative Services (OLS) can project neither the direction nor the magnitude of the bill's net fiscal impact on the State and local governments. On the one side of the ledger, the OLS estimates that the bill will produce a total State revenue loss of up to \$1 billion through FY 2027 from awarding additional Urban Transit Hub and Grow New Jersey tax credits plus their indeterminate opportunity costs—opportunity costs capture the fiscal benefits the State forgoes as spending is redirected from one economic activity to another. On the other side of the ledger, additional tax credits that are essential to the realization of capital projects in designated areas will also generate indirect fiscal benefits to the State and local governments that may, or may not, exceed the cost and opportunity cost of providing the financial assistance.

The estimated \$1 billion maximum State revenue loss through FY 2027 reflects the difference between the urban transit hub tax credit program's current \$1.5 billion cap and the bill's \$2.5 billion cap. The increase in the Grow New Jersey tax credit program cap is immaterial for the calculation of the bill's maximum cost, considering that the program is scored against the urban transit hub cap.

The New Jersey Economic Development Authority (EDA) has awarded \$916.1 million in urban transit hub tax credits to 15 projects through February 7, 2012. The Grow New Jersey tax credit program, on the other hand, does not yet have a track record, given that its enabling legislation, P.L.2011, c.149, was only signed into law on January 5, 2012.

Capital projects for which the tax credits will serve as the impetus will also generate indirect fiscal benefits to the State and local governments. In the converse, extending tax credits to capital projects that investors would also undertake absent the incentive will produce sunk costs to the State, or an expense without a benefit, as the tax credit awards will have no bearing on the decision to pursue the capital investment. Consequently, the indirect fiscal effects from investments that would be made anyway have to be excluded from the analysis. Applying this general principle to this bill, it is reasonable to expect that most of the tax credits' indirect effects will count as a benefit. This is so because credits can only be awarded if a project passes the net benefit test. As part of that test, the EDA excludes from the analysis the indirect benefits from jobs not deemed new to the State or "at risk" or a "suburban to urban move." Therefore, most tax credits will produce an indirect revenue gain to the State except for tax credits that are awarded for a relocation of jobs from a suburban area of the State to an urban area or that are awarded based on an incorrect assessment regarding the likelihood of a job created or retained within New Jersey absent a credit award. It remains unclear, however, whether or not the indirect revenue gains attributable to the credits will exceed the direct State revenue loss and opportunity cost they will cause.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

SENATE, No. 1562

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 21, 2012

The Assembly Budget Committee reports favorably Senate Bill No. 1562, with committee amendments.

As amended, this bill amends the Urban Transit Hub Tax Credit Act to increase the cap on the total amount of tax credits authorized under the act by \$250,000,000 to a total of \$1,750,000,000. The bill also amends the Urban Transit Hub Tax Credit Act by extending the application deadline to July 1, 2014, so that it is consistent with the application deadline contained within the Grow NJ Assistance Act, except that the deadline for applications for tax credits for wind energy facilities established under P.L.2010, c.57 (C.34:1B-209.4) will not be extended.

The bill takes effect immediately upon enactment.

As amended and reported, the bill is identical to Assembly Bill No. 3154, as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot project the direction or magnitude of the bill's net fiscal impact on the State and local governments.

On the one side of the ledger, the OLS notes that the bill will produce a State revenue loss of up to \$250 million through Fiscal Year 2027 from the awarding of additional Urban Transit Hub and Grow New Jersey tax credits plus their indeterminate opportunity costs forgone as spending is redirected from one economic activity to another.

On the other side, the OLS notes additional tax credits that are essential to the realization of capital projects in designated areas will generate indirect fiscal benefits to the State and local governments that may, or may not, exceed the cost and opportunity cost of providing the financial assistance.

The OLS notes that the estimated \$250 million maximum State revenue loss through Fiscal Year 2027 reflects the difference between the urban transit hub tax credit program's current \$1.5 billion cap and the bill's \$1.75 billion cap. The increase in the Grow New Jersey tax credit program cap is immaterial for the calculation of the bill's

maximum cost, considering that the program is scored against the urban transit hub cap.

The OLS notes that the New Jersey Economic Development Authority has awarded \$916.1 million in urban transit hub tax credits to 15 projects through February 7, 2012. The Grow NJ tax credit program does not have a track record, given that the program's enabling legislation was enacted on January 5, 2012.

COMMITTEE AMENDMENTS:

The amendments to the bill:

-- decrease the cap on the total amount of tax credits authorized to be approved under the Urban Transit Hub Tax Credit program from \$2,500,000,000 to \$1,750,000,000;

-- restore the cap on the total amount of tax credits authorized to be approved under the Grow NJ Assistance program to \$200,000,000; and

-- extend the application deadline under the Urban Transit Hub Tax Credit program to July 1, 2014.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1562 STATE OF NEW JERSEY 215th LEGISLATURE

DATED: AUGUST 3, 2012

SUMMARY

- Synopsis:** Increases amount of tax credits authorized to be issued under Urban Transit Hub Tax Credit program and extends application deadline.
- Type of Impact:** Unknown net effect of three countervailing impacts: 1) a recurring revenue loss to the State General Fund and the Property Tax Relief Fund from awarding tax credits; 2) a recurring revenue increase to the State General Fund, Property Tax Relief Fund, and local governments from receipts catalyzed by credit-induced economic activity; 3) recurring opportunity costs to State from granting credits.
- Agencies Affected:** Department of the Treasury.
New Jersey Economic Development Authority.
Local Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2013 and 2014</u>	<u>FY 2015 through 2028</u>	<u>FY 2029</u>
Direct State Revenue Loss	\$0	Up to \$250,000,000	\$0
State Opportunity Cost	Indeterminate — See comments below		
Indirect State Revenue Gain	Indeterminate — See comments below		
Indirect Local Revenue Gain	Indeterminate — See comments below		

- The Office of Legislative Services (OLS) can project neither the direction nor the magnitude of the bill's net fiscal impact on the State and local governments.
- On the one side of the ledger, the OLS estimates that the bill will produce a total State revenue loss of up to \$250 million through FY 2028 from awarding additional Urban Transit Hub tax credits plus their indeterminate opportunity costs—opportunity costs capture the fiscal benefits the State forgoes as spending is redirected from one economic activity to another. The estimated \$250 million maximum State revenue loss through FY 2028 reflects the difference between the tax credit program's current \$1.5 billion cap and the bill's revised \$1.75 billion cap. The New Jersey Economic Development Authority (EDA) has awarded

\$977.1 million in urban transit hub tax credits to 18 projects through June 13, 2012.

- On the other side of the ledger, additional tax credits that are essential to the realization of capital projects in designated areas will also generate indirect fiscal benefits to the State and local governments that may, or may not, exceed the cost and opportunity cost of providing the financial assistance. The OLS, however, cannot gauge the number, type, and scale of tax credit-induced capital projects and their ensuing indirect effects on State and local government tax receipts.
- The indirect fiscal effects from capital projects that would be undertaken with or without the tax credit have to be excluded from the analysis. This is so because whenever the tax credit has no bearing on the decision to carry out a project, it merely produces sunk costs to the State, or an expense without a benefit. Applying this general principle to this bill, it is reasonable to expect that most of the tax credits' indirect effects will count as a benefit. This is so because credits can only be awarded if a project passes the net benefit test. As part of that test, the EDA excludes from the analysis the indirect benefits from jobs that are neither "at risk" nor classified as a "suburban to urban move" nor otherwise deemed new jobs to the State. Therefore, only those tax credits will not produce an indirect revenue gain to the State that represent a relocation of jobs from a suburban area of the State to an urban area or that represent an incorrect assessment regarding the likelihood of a job created or retained within New Jersey absent a credit award. It remains unclear, however, whether or not the indirect revenue gains attributable to the credits will exceed the direct State revenue loss and opportunity cost they will cause.

BILL DESCRIPTION

Senate Bill No. 1562 (1R) of 2012 raises the total lifetime cap on the urban transit hub tax credit program by \$250 million from \$1.5 billion to \$1.75 billion and extends the deadline for initial tax credit application submissions from January 13, 2013 to July 1, 2014 and for final tax credit application submissions from January 12, 2016 to July 28, 2017.

Under the program the State awards tax credits to taxpayers who make eligible capital investments in real property in urban transit hubs. Urban transit hubs are the area within a one-half mile radius around a rail or light rail station in Camden, East Orange, Elizabeth, Hoboken, Jersey City, Newark, New Brunswick, Paterson, and Trenton, with the Camden urban transit hub covering the area within a one-mile radius around a rail or light rail station. In addition, there is an urban transit hub in the area within a one-mile radius of a rail or light rail station that is subject to a Choice Neighborhoods Transformation Plan. (The only New Jersey Choice Neighborhood is currently in Jersey City at the McGinley Square – Montgomery Corridor.) Acute care medical facilities and closed hospitals located within a one-mile radius of a rail or light rail station also qualify for tax credits.

To qualify for a business facility tax credit of up to 100 percent of the investment under the urban transit hub tax credit program, a capital investment in real property must: a) equal at least \$50 million; b) pave the way for at least 250 full-time employees working in the business facility; c) be made by July 28, 2017 under the bill; and, d) under most circumstances, yield a net positive benefit to the State and the municipality hosting the transit hub.

Tenants in qualified business facilities may also receive a credit if they occupy space in the facility that represents at least \$17.5 million of the capital investment and employ at least 250

persons in the facility. If fewer than 200 of the 250 full-time positions in a business facility represent a net gain to New Jersey, then the tax credit maxes out at 80 percent of the qualified capital investment.

To qualify for a residential tax credit of up to 35 percent of the investment, an investment in a residential project must: a) equal at least \$50 million; b) be made by July 28, 2017 under the bill; and c) not occur absent the receipt of a tax credit.

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

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS can determine neither the direction nor the magnitude of the net fiscal impact on the State and affected local governments of the bill's increase in the urban transit hub tax credit program cap and its extension of the program's initial and final tax credit application submission deadlines. In general, the State net fiscal impact is calculated by adding the direct revenue loss from granting additional tax credits and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain from granting the tax credits. In addition, the bill is also likely to accrue an indirect revenue gain to local governments.

Although the OLS is able to pinpoint the bill's maximum direct revenue loss, it cannot calculate its opportunity cost or its offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on the characteristics of capital investments that will earn tax credits.

Direct Fiscal Impact: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund from raising the urban transit hub tax credit program cap and extending the program's initial and final tax credit application submission deadlines could be as high as \$250 million accumulated over several years, or the difference between the program's current \$1.5 billion cap and the bill's revised \$1.75 billion cap. As of June 13, 2012, the EDA has awarded \$977.1 million in urban transit hub tax credits to 18 projects.

The OLS projects that the bill will not trigger a State revenue loss before FY 2015 and after FY 2028. Since capital investments must be incurred after the bill's date of enactment and since the receipt of tax credits is contingent upon project completion, the OLS surmises that no credit reflecting the bill's expanded tax credit eligibility will be claimed until at least FY 2015. Businesses and developers also have ten years in which to apply a tenth of the credit's total value per year. If an urban transit hub credit was approved soon after July 28, 2017 (the last day on

which applicants can submit their final tax credit application documents), the last credit could be claimed in the tax year including the second half of 2026, which could be as late as in FY 2028.

Irrespective of the exact magnitude of the bill's revenue loss to the State, taxpayers availing themselves of the tax credit will share their benefit with the federal government. This will be so because taxpayers can deduct their State and local income tax payments on their federal income tax returns. Consequently, a lower New Jersey corporation business tax liability translates into a lower federal deduction, and thus a higher federal income tax liability. At the federal corporation income tax rate of 35 percent, for example, taxpayers receiving a State tax credit will therefore only hold on to 65 percent of the tax credit amount, while the remaining 35 percent of the benefit will accrue to the United States government.

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

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

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

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

Lastly, the OLS notes that any estimate of the credit's New Jersey feedback effects must also exclude from the total feedback effects the portion of the credit-induced spending that would leak into other jurisdictions. A New York resident holding a job in New Jersey would have a

New Jersey income tax liability, but most of the New Yorker's private spending might not occur in this State.

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

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Lead Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

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

ASSEMBLY, No. 3154

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 21, 2012

Sponsored by:

Assemblyman ALBERT COUTINHO

District 29 (Essex)

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman RUBEN J. RAMOS, JR.

District 33 (Hudson)

SYNOPSIS

Increases amount of tax credits authorized to be issued under Urban Transit Hub Tax Credit program and extends application deadline.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/26/2012)

A3154 COUTINHO, PRIETO

2

1 AN ACT increasing the amount of tax credits authorized to be issued
2 under the Urban Transit Hub Tax Credit program, extending the
3 application deadline, and amending various parts of the statutory
4 law.

5

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

8

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

11 3. a. (1) A business, upon application to and approval from the
12 authority, shall be allowed a credit of 100 percent of its capital
13 investment, made after the effective date of P.L.2007, c.346
14 (C.34:1B-207 et seq.) but prior to its submission of documentation
15 pursuant to subsection c. of this section, in a qualified business
16 facility within an eligible municipality, pursuant to the restrictions
17 and requirements of this section. To be eligible for any tax credits
18 authorized under this section, a business shall demonstrate to the
19 authority, at the time of application, that the State's financial
20 support of the proposed capital investment in a qualified business
21 facility will yield a net positive benefit to both the State and the
22 eligible municipality. The value of all credits approved by the
23 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall
24 not exceed **[\$1,500,000,000] \$1,750,000,000**.

25 (2) A business, other than a tenant eligible pursuant to
26 paragraph (3) of this subsection, shall make or acquire capital
27 investments totaling not less than \$50,000,000 in a qualified
28 business facility, at which the business shall employ not fewer than
29 250 full-time employees to be eligible for a credit under this
30 section. A business that acquires a qualified business facility shall
31 also be deemed to have acquired the capital investment made or
32 acquired by the seller.

33 (3) A business that is a tenant in a qualified business facility, the
34 owner of which has made or acquired capital investments in the
35 facility totaling not less than \$50,000,000, shall occupy a leased
36 area of the qualified business facility that represents at least
37 \$17,500,000 of the capital investment in the facility at which the
38 tenant business and up to two other tenants in the qualified business
39 facility shall employ not fewer than 250 full-time employees in the
40 aggregate to be eligible for a credit under this section. The amount
41 of capital investment in a facility that a leased area represents shall
42 be equal to that percentage of the owner's total capital investment in
43 the facility that the percentage of net leasable area leased by the
44 tenant is of the total net leasable area of the qualified business
45 facility. Capital investments made by a tenant shall be deemed to

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

Matter underlined thus is new matter.

1 be included in the calculation of the capital investment made or
2 acquired by the owner, but only to the extent necessary to meet the
3 owner's minimum capital investment of \$50,000,000. Capital
4 investments made by a tenant and not allocated to meet the owner's
5 minimum capital investment threshold of \$50,000,000 shall be
6 added to the amount of capital investment represented by the
7 tenant's leased area in the qualified business facility.

8 (4) A business shall not be allowed tax credits under this section
9 if the business participates in a business employment incentive
10 grant relating to the same capital and employees that qualify the
11 business for this credit, or if the business receives assistance
12 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is
13 allowed a tax credit under this section shall not be eligible for
14 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-
15 1 et al.). A business shall not qualify for a tax credit under this
16 section, based upon capital investment and employment of full-time
17 employees, if that capital investment or employment was the basis
18 for which a grant was provided to the business pursuant to the
19 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-
20 237 et seq.).

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

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

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

48 (8) In determining whether a proposed capital investment will
49 yield a net positive benefit, the authority shall not consider the

1 transfer of an existing job from one location in the State to another
2 location in the State as the creation of a new job, unless (a) the
3 business proposes to transfer existing jobs to a municipality in the
4 State as part of a consolidation of business operations from two or
5 more other locations that are not in the same municipality whether
6 in-State or out-of-State, or (b) the business's chief executive officer,
7 or equivalent officer, submits a certification to the authority
8 indicating that the existing jobs are at risk of leaving the State and
9 that the business's chief executive officer, or equivalent officer, has
10 reviewed the information submitted to the authority and that the
11 representations contained therein are accurate, and the business
12 intends to employ not fewer than 500 full-time employees in the
13 qualified business facility. In the event that this certification by the
14 business's chief executive officer, or equivalent officer, is found to
15 be willfully false, the authority may revoke any award of tax credits
16 in their entirety, which revocation shall be in addition to any other
17 criminal or civil penalties that the business and the officer may be
18 subject to. When considering an application involving intra-State
19 job transfers, the authority shall require the company to submit the
20 following information as part of its application: a full economic
21 analysis of all locations under consideration by the company; all
22 lease agreements, ownership documents, or substantially similar
23 documentation for the business's current in-State locations; and all
24 lease agreements, ownership documents, or substantially similar
25 documentation for the potential out-of-State location alternatives, to
26 the extent they exist. Based on this information, and any other
27 information deemed relevant by the authority, the authority shall
28 independently verify and confirm, by way of making a factual
29 finding by separate vote of the authority's board, the business's
30 assertion that the jobs are actually at risk of leaving the State,
31 before a business may be awarded any tax credits under this section.

32 b. A business shall apply for the credit **【within five years after**
33 **the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.)】** prior to
34 July 1, 2014, and shall submit its documentation for approval of its
35 credit amount **【within eight years after the effective date of**
36 **P.L.2007, c.346 (C.34:1B-207 et seq.)】** no later than July 28, 2017.

37 c. (1) The amount of credit allowed shall, except as otherwise
38 provided, be equal to the capital investment made by the business,
39 or the capital investment represented by the business' leased area, or
40 area owned by the business as a condominium, and shall be taken
41 over a 10-year period, at the rate of one-tenth of the total amount of
42 the business' credit for each tax accounting or privilege period of
43 the business, beginning with the tax period in which the business is
44 first certified by the authority as having met the investment capital
45 and employment qualifications, subject to any reduction or
46 disqualification as provided by subsection d. of this section as
47 determined by annual review by the authority. In conducting its
48 annual review, the authority may require a business to submit any

1 information determined by the authority to be necessary and
2 relevant to its review.

3 The credit amount for any tax period ending after [the date eight
4 years after the effective date of P.L.2007, c.346 (C.34:1B-207 et
5 seq.)] July 28, 2017 during which the documentation of a business'
6 credit amount remains uncertified shall be forfeited, although credit
7 amounts for the remainder of the years of the 10-year credit period
8 shall remain available to it.

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

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

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

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

37 d. (1) If, in any tax period, fewer than 200 full-time employees
38 of the business at the qualified business facility are employed in
39 new full-time positions, the amount of the credit otherwise
40 determined pursuant to final calculation of the award of tax credits
41 pursuant to subsection c. of this section shall be reduced by 20
42 percent for that tax period and each subsequent tax period until the
43 first period for which documentation demonstrating the restoration
44 of the 200 full-time employees employed in new full-time positions
45 at the qualified business facility has been reviewed and approved by
46 the authority, for which tax period and each subsequent tax period
47 the full amount of the credit shall be allowed; provided, however,
48 that for businesses applying before January 1, 2010, there shall be
49 no reduction if a business relocates to an urban transit hub from

1 another location or other locations in the same municipality. For
2 the purposes of this paragraph, a "new full-time position" means a
3 position created by the business at the qualified business facility
4 that did not previously exist in this State.

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

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

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

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

46 e. (1) The Executive Director of the New Jersey Economic
47 Development Authority, in consultation with the Director of the
48 Division of Taxation in the Department of the Treasury, shall adopt
49 rules in accordance with the "Administrative Procedure Act,"

1 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
2 this act, including but not limited to: examples of and the
3 determination of capital investment; the enumeration of eligible
4 municipalities; specific delineation of urban transit hubs; the
5 determination of the limits, if any, on the expense or type of
6 furnishings that may constitute capital improvements; the
7 promulgation of procedures and forms necessary to apply for a
8 credit, including the enumeration of the certification procedures and
9 allocation of tax credits for different phases of a qualified business
10 facility or mixed use project; and provisions for credit applicants to
11 be charged an initial application fee, and ongoing service fees, to
12 cover the administrative costs related to the credit.

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

20 (cf: P.L.2011, c.149, s.11)

21

22 2. Section 35 of P.L.2009, c.90 (C.34:1B-209.3) is amended to
23 read as follows:

24 35. a. (1) A developer, upon application to and approval from
25 the authority, shall be allowed a credit of up to 35 percent of its
26 capital investment, made after the effective date of P.L.2009, c.90
27 (C.52:27D-489a et al.) but prior to its submission of documentation
28 pursuant to subsection c. of this section, in a qualified residential
29 project, pursuant to the restrictions and requirements of this section.
30 To be eligible for any tax credits authorized under this section, a
31 developer shall demonstrate to the authority, through a project pro
32 forma analysis at the time of application, that the qualified
33 residential project is likely to be realized with the provision of tax
34 credits at the level requested but is not likely to be accomplished by
35 private enterprise without the tax credits. The value of all credits
36 approved by the authority pursuant to P.L.2009, c.90 (C.52:27D-
37 489a et al.) for qualified residential projects may be up to
38 \$150,000,000, except as may be increased by the authority as set
39 forth below; provided, however, that the combined value of all
40 credits approved by the authority pursuant to both P.L.2007, c.346
41 (C.34:1B-207 et seq.) and P.L.2009, c.90 (C.52:27D-489a et al.)
42 shall not exceed ~~[\$1,500,000,000]~~ \$1,750,000,000. The authority
43 shall monitor application and allocation activity under P.L.2007,
44 c.346 (C.34:1B-207 et seq.), and if sufficient credits are available
45 after taking into account allocation under P.L.2007, c.346 (C.34:1B-
46 207 et seq.) to those qualified business facilities for which
47 applications have been filed or for which applications are
48 reasonably anticipated, and if the executive director judges certain
49 qualified residential projects to be meritorious, the aforementioned

1 \$150,000,000 cap may, in the discretion of the executive director,
2 be exceeded for allocation to qualified residential projects in such
3 amounts as the executive director deems reasonable, justified, and
4 appropriate. In allocating all credits to qualified residential projects
5 under this section, the executive director shall take into account,
6 together with other factors deemed relevant by the executive
7 director: input from the municipality in which the project is to be
8 located, whether the project furthers specific State or municipal
9 planning and development objectives, or both, and whether the
10 project furthers a public purpose, such as catalyzing urban
11 development or maximizing the value of vacant, dilapidated,
12 outmoded, government-owned, or underutilized property, or both.

13 (2) A developer shall make or acquire capital investments
14 totaling not less than \$50,000,000 in a qualified residential project
15 to be eligible for a credit under this section. A developer that
16 acquires a qualified residential project shall also be deemed to have
17 acquired the capital investment made or acquired by the seller.

18 (3) The capital investment requirement may be met by the
19 developer or by one or more of its affiliates.

20 (4) A developer of a mixed use project shall be allowed a credit
21 pursuant to subparagraph (a) or (b) of this paragraph, but not both.

22 (a) A developer shall be allowed a credit in accordance with this
23 section for a qualified residential project that includes a mixed use
24 project.

25 (b) A developer shall be allowed a credit of up to 35 percent of
26 its capital investment, made after the effective date of P.L.2011,
27 c.89 but prior to its submission of documentation pursuant to
28 subsection c. of this section, in a qualified residential project that is
29 part of a mixed use project, provided that: (a) the capital
30 investment in the qualified residential project represents at least
31 \$17,500,000 of the total capital investment in the mixed use project;
32 and (b) the total capital investment in the mixed use project of
33 which the qualified residential project is a part is not less than
34 \$50,000,000. The allowance of credits under this paragraph shall
35 be subject to the restrictions and requirements, to the extent that
36 those are not inconsistent with the provisions of this paragraph, set
37 forth in paragraphs (1) through (3) of this subsection, including but
38 not limited to the requirement prescribed in paragraph (1) of this
39 subsection that the developer shall demonstrate to the authority,
40 through a project pro forma analysis at the time of application, that
41 the qualified residential project is likely to be realized with the
42 provision of tax credits at the level requested but is not likely to be
43 accomplished by private enterprise without the tax credits.

44 As used in this subparagraph:

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

47 b. A developer shall apply for the credit [within five years
48 after the effective date of P.L.2009, c.90 (C.52:27D-489a et al.)]
49 prior to July 1, 2014, and a developer shall submit its

1 documentation for approval of its credit amount **【within eight years**
2 **after the effective date of P.L.2009, c.90 (C.52:27D-489a et al.)】** no
3 later than July 28, 2017.

4 c. The credit shall be administered in accordance with the
5 provisions of subsections c. and e. of section 3 of P.L.2007, c.346
6 (C.34:1B-209), as amended by section 32 of P.L.2009, c.90, and
7 section 33 of P.L.2009, c.90 (C.34:1B-209.1), except that (1) all
8 references therein to "business" and "qualified business facility"
9 shall be deemed to refer respectively to "developer" and "qualified
10 residential project," as such terms are defined in section 34 of
11 P.L.2009, c.90 (C.34:1B-209.2) and (2) all references therein to
12 credits claimed by tenants and to reductions or disqualifications in
13 credits as determined by annual review of the authority shall be
14 disregarded. Provided however, for purposes of a "mixed use
15 project" as that term is used and defined pursuant to subparagraph
16 (b) of paragraph (4) of subsection a. of this section, "qualified
17 business facility" means that term as defined pursuant to section 2
18 of P.L.2007, c.346 (C.34:1B-208).
19 (cf: P.L.2011, c.89, s.4)

20

21 3. Section 6 of P.L.2010, c.57 (C.34:1B-209.4) is amended to
22 read as follows:

23 6. a. (1) A business, upon application to and approval from the
24 authority, shall be allowed a credit of 100 percent of its capital
25 investment, made after the effective date of P.L.2010, c.57 (C.48:3-
26 87.1 et al.) but prior to its submission of documentation pursuant to
27 subsection c. of this section, in a qualified wind energy facility
28 located within an eligible wind energy zone, pursuant to the
29 restrictions and requirements of this section. To be eligible for any
30 tax credits authorized under this section, a business shall
31 demonstrate to the authority, at the time of application, that the
32 State's financial support of the proposed capital investment in a
33 qualified wind energy facility will yield a net positive benefit to the
34 State. The value of all credits approved by the authority pursuant to
35 this section may be up to \$100,000,000, except as may be increased
36 by the authority as set forth below; provided, however, that the
37 combined value of all credits approved by the authority pursuant to
38 P.L.2007, c.346 (C.34:1B-207 et seq.), P.L.2009, c.90 (C.52:27D-
39 489a et al.), and P.L.2010, c.57 (C.48:3-87.1 et al.) shall not exceed
40 **【\$1,500,000,000】** \$1,750,000,000. The authority shall monitor
41 application and allocation activity under P.L.2007, c.346 after
42 taking into account the allocation under P.L.2007, c.346 and if
43 sufficient credits are available to those qualified business facilities
44 for which applications have been filed or for which applications are
45 reasonably anticipated, and if the chief executive officer judges
46 certain qualified offshore wind projects to be meritorious, the
47 aforementioned cap may, in the discretion of the chief executive
48 officer, be exceeded for allocation to qualified wind energy

1 facilities in such amounts as the chief executive officer deems
2 reasonable, justified and appropriate.

3 (2) (a) A business, other than a tenant eligible pursuant to
4 subparagraph (b) of this paragraph, shall make or acquire capital
5 investments totaling not less than \$50,000,000 in a qualified wind
6 energy facility, at which the business, including tenants at the
7 qualified wind energy facility, shall employ at least 300 new, full-
8 time employees, to be eligible for a credit under this section. A
9 business that acquires a qualified wind energy facility after the
10 effective date of P.L.2010, c.57 (C.48:3-87.1 et al.) shall also be
11 deemed to have acquired the capital investment made or acquired
12 by the seller.

13 (b) A business that is a tenant in the qualified wind energy
14 facility, the owner of which has made or acquired capital
15 investments in the facility totaling more than \$50,000,000, shall
16 occupy a leased area of the qualified wind energy facility that
17 represents at least \$17,500,000 of the capital investment in the
18 qualified wind energy facility at which at least 300 new, full-time
19 employees in the aggregate are employed, to be eligible for a credit
20 under this section. The amount of capital investment in a facility
21 that a leased area represents shall be equal to that percentage of the
22 owner's total capital investment in the facility that the percentage of
23 net leasable area leased by the tenant is of the total net leasable area
24 of the qualified business facility. Capital investments made by a
25 tenant shall be deemed to be included in the calculation of the
26 capital investment made or acquired by the owner, but only to the
27 extent necessary to meet the owner's minimum capital investment of
28 \$50,000,000. Capital investments made by a tenant and not
29 allocated to meet the owner's minimum capital investment threshold
30 of \$50,000,000 shall be added to the amount of capital investment
31 represented by the tenant's leased area in the qualified wind energy
32 facility.

33 (c) The calculation of the number of new, full-time employees
34 required pursuant to subparagraphs (a) and (b) of this paragraph
35 may include the number of new, full-time positions resulting from
36 an equipment supply coordination agreement with equipment
37 manufacturers, suppliers, installers and operators associated with
38 the supply chain required to support the qualified wind energy
39 facility.

40 For the purposes of this paragraph, "full time employee" shall
41 not include an employee who is a resident of another state and
42 whose income is not subject to the "New Jersey Gross Income Tax
43 Act," N.J.S.54A:1-1 et seq., unless that state has entered into a
44 reciprocity agreement with the State of New Jersey, provided that
45 any employee whose work is provided pursuant to a collective
46 bargaining agreement with the port district in the wind energy zone
47 may be included.

48 (3) A business shall not be allowed a tax credit pursuant to this
49 section if the business participates in a business employment

1 incentive grant relating to the same capital and employees that
2 qualify the business for this credit, or if the business receives
3 assistance pursuant to the "Business Retention and Relocation
4 Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.). A business
5 that is allowed a tax credit under this section shall not be eligible
6 for incentives authorized pursuant to the "Municipal Rehabilitation
7 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et
8 al.).

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

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

17 c. The credit allowed pursuant to this section shall be
18 administered in accordance with the provisions of subsection c. of
19 section 3 of P.L.2007, c.346 (C.34:1B-209) and section 33 of
20 P.L.2009, c.90 (C.34:1B-209.1), except that all references therein to
21 "qualified business facility" shall be deemed to refer to "qualified
22 wind energy facility," as that term is defined in subsection f. of this
23 section.

24 d. The amount of the credit allowed pursuant to this section
25 shall, except as otherwise provided, be equal to the capital
26 investment made by the business, or the capital investment
27 represented by the business' leased area, and shall be taken over a
28 10-year period, at the rate of one-tenth of the total amount of the
29 business' credit for each tax accounting or privilege period of the
30 business, beginning with the tax period in which the business is first
31 approved by the authority as having met the investment capital and
32 employment qualifications, subject to any disqualification as
33 determined by annual review by the authority. In conducting its
34 annual review, the authority may require a business to submit any
35 information determined by the authority to be necessary and
36 relevant to its review. The credit amount for any tax period ending
37 after the date eight years after the effective date of P.L.2007, c.346
38 (C.34:1B-207 et seq.) during which the documentation of a
39 business' credit amount remains unapproved shall be forfeited,
40 although credit amounts for the remainder of the years of the 10-
41 year credit period shall remain available. The amount of the credit
42 allowed for a tax period to a business that is a tenant in a qualified
43 wind energy facility shall not exceed the business' total lease
44 payments for occupancy of the qualified wind energy facility for the
45 tax period.

46 e. The authority shall adopt rules in accordance with the
47 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
48 seq.) as are necessary to implement this section, including but not
49 limited to: examples of and the determination of capital investment;

1 nature of businesses and employment positions constituting and
2 participating in an equipment supply coordination agreement;
3 determination of the types of businesses that may be eligible and
4 expenses that may constitute capital improvements; promulgation of
5 procedures and forms necessary to apply for a credit; and provisions
6 for applicants to be charged an initial application fee, and ongoing
7 service fees, to cover the administrative costs related to the credit.

8 The rules established by the authority pursuant to this subsection
9 shall be effective immediately upon filing with the Office of
10 Administrative Law and shall be effective for a period not to exceed
11 12 months and may, thereafter, be amended, adopted or readopted
12 in accordance with the provisions of the "Administrative Procedure
13 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

14 f. As used in this section: the terms "authority," "business,"
15 and "capital investment" shall have the same meanings as defined in
16 section 2 of the "Urban Transit Hub Tax Credit Act," P.L.2007,
17 c.346 (C.34:1B-208), except that all references therein to "qualified
18 business facility" shall be deemed to refer to "qualified wind energy
19 facility" as defined in this subsection.

20 In addition, as used in this section:

21 "Equipment supply coordination agreement" means an agreement
22 between a business and equipment manufacturer, supplier, installer,
23 and operator that supports a qualified offshore wind project, or
24 other wind energy project as determined by the authority, and that
25 indicates the number of new, full-time jobs to be created by the
26 agreement participants towards the employment requirement as set
27 forth in paragraph (2) of subsection a. of this section.

28 "Qualified offshore wind project" means the same as the term is
29 defined in section 3 of P.L.1999, c.23 (C.48:3-51).

30 "Qualified wind energy facility" means any building, complex of
31 buildings, or structural components of buildings, including water
32 access infrastructure, and all machinery and equipment used in the
33 manufacturing, assembly, development or administration of
34 component parts that support the development and operation of a
35 qualified offshore wind project, or other wind energy project as
36 determined by the authority, and that are located in a wind energy
37 zone.

38 "Wind energy zone" means property located in the South Jersey
39 Port District established pursuant to "The South Jersey Port
40 Corporation Act," P.L.1968, c.60 (C.12:11A-1 et seq.).

41 (cf: P.L.2010, c.57, s.6)

42
43 4. Section 6 of P.L.2011, c.149 (C.34:1B-247) is amended to
44 read as follows:

45 6. a. (1) The value of all credits approved by the authority
46 pursuant to P.L.2011, c.149 (C.34:1B-242 et al.) shall not exceed
47 \$200,000,000, except that the value of all credits approved by the
48 authority pursuant to this section may exceed \$200,000,000 if the
49 board of the authority determines the credits to be reasonable,

1 justifiable, and appropriate; provided, however, the combined value
2 of all credits approved by the authority pursuant to P.L.2007, c.346
3 (C.34:1B-207 et seq.) and P.L.2011, c.149 (C.34:1B-242 et al.)
4 shall not exceed ~~【\$1,500,000,000】~~ \$1,750,000,000.

5 (2) A business, including any affiliate of the business or any
6 business that is a tenant within any qualified business facility, shall
7 make or acquire capital investments totaling not less than
8 \$20,000,000 in a qualified business facility, at which the business
9 shall employ not fewer than 100 full-time employees to be eligible
10 for a credit pursuant to P.L.2011, c.149. A business that acquires or
11 leases a qualified business facility shall also be deemed to have
12 acquired the capital investment made or acquired by the seller or
13 landlord, as the case may be.

14 (3) A business shall not be allowed tax credits pursuant to
15 P.L.1996, c.25 (C.34:1B-112 et seq.) or P.L.1996, c.26 (C.34:1B-
16 124 et seq.) relating to the same capital and employees that qualify
17 the business for tax credits pursuant to P.L.2011, c.149. A business
18 that is allowed a tax credit under this section shall not be eligible
19 for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-
20 1 et al.). A business shall not qualify for a tax credit under this
21 section, based upon capital investment and employment of full-time
22 employees, if that capital investment or employment was the basis
23 for which a grant was provided to the business pursuant to the
24 "Urban Transit Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-
25 207 et seq.).

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

29 (5) The capital investment of the owner of a qualified business
30 facility is that percentage of the capital investment made or
31 acquired by the owner of the building that the percentage of net
32 leasable area of the qualified business facility not leased to tenants
33 is of the total net leasable area of the qualified business facility. For
34 a business that is a tenant, the amount of capital investment in a
35 facility that a leased area represents shall be equal to that
36 percentage of the owner's total capital investment in the facility that
37 the percentage of net leasable area leased by the tenant is of the
38 total net leasable area of the qualified business facility. Capital
39 investments made by a tenant shall be deemed to be included in the
40 calculation of the capital investment made or acquired by the
41 owner, but only to the extent necessary to meet the owner's
42 minimum capital investment of \$20,000,000. Capital investments
43 made by a tenant and not allocated to meet the owner's minimum
44 capital investment threshold of \$20,000,000 shall be added to the
45 amount of capital investment represented by the tenant's leased area
46 in the qualified business facility.

47 b. A business shall apply for the tax credit prior to July 1,
48 2014, and shall submit its documentation indicating that it has met
49 the capital investment and employment specified in the project

1 agreement for certification of its credit amount no later than July
2 28, 2017.

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

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

18 The credit amount that may be taken for a tax period of the
19 business that exceeds the final liabilities of the business for the tax
20 period may be carried forward for use by the business in the next 20
21 successive tax periods, and shall expire thereafter, provided that the
22 value of all credits approved by the authority against tax liabilities
23 pursuant to P.L.2011, c.149, in any fiscal year shall not exceed
24 \$150,000,000 and the combined value of all credits approved by the
25 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and
26 P.L.2011, c.149 (C.34:1B-242 et al.) shall not exceed
27 ~~[\$1,500,000,000]~~ \$1,750,000,000.

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

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

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

1 d. (1) If, in any tax period, the business reduces the total
2 number of full-time employees in its Statewide workforce by more
3 than 20 percent from the number of full-time employees in its
4 Statewide workforce in the last tax period prior to the credit amount
5 approval under section 3 of P.L.2011, c.149 (C.34:1B-244), then the
6 business shall forfeit its credit amount for that tax period and each
7 subsequent tax period, until the first tax period for which
8 documentation demonstrating the restoration of the business'
9 Statewide workforce to the threshold levels required by this
10 paragraph has been reviewed and approved by the authority, for
11 which tax period and each subsequent tax period the full amount of
12 the credit shall be allowed.

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

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

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

33 (cf: P.L.2011, c.149, s.6)

34

35 5. This act shall take effect immediately.

36

37

38

STATEMENT

39

40 This bill amends the Urban Transit Hub Tax Credit Act to
41 increase the cap on the total amount of tax credits authorized under
42 the act by \$250,000,000 to a total of \$1,750,000,000. The bill also
43 amends the Urban Transit Hub tax Credit Act by extending the
44 application deadline to July 1, 2014, so that it is consistent with the
45 application deadline contained within the Grow NJ Assistance Act,
46 except that the deadline for applications for tax credits for wind
47 energy facilities established under P.L.2010, c.57 (C.34:1B-209.4)
48 would not be extended.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3154

STATE OF NEW JERSEY

DATED: JUNE 21, 2012

The Assembly Budget Committee reports favorably Assembly Bill No. 3154.

This bill amends the Urban Transit Hub Tax Credit Act to increase the cap on the total amount of tax credits authorized under the act by \$250,000,000 to a total of \$1,750,000,000. The bill also amends the Urban Transit Hub Tax Credit Act by extending the application deadline to July 1, 2014, so that it is consistent with the application deadline contained within the Grow NJ Assistance Act, except that the deadline for applications for tax credits for wind energy facilities established under P.L.2010, c.57 (C.34:1B-209.4) will not be extended.

The bill takes effect immediately upon enactment.

As reported, this bill is identical to Senate Bill No. 1562, as amended and reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot project the direction or magnitude of the bill's net fiscal impact on the State and local governments.

On the one side of the ledger, the OLS notes that the bill will produce a State revenue loss of up to \$250 million through Fiscal Year 2027 from the awarding of additional Urban Transit Hub and Grow New Jersey tax credits plus their indeterminate opportunity costs forgone as spending is redirected from one economic activity to another.

On the other side, the OLS notes additional tax credits that are essential to the realization of capital projects in designated areas will generate indirect fiscal benefits to the State and local governments that may, or may not, exceed the cost and opportunity cost of providing the financial assistance.

The OLS notes that the estimated \$250 million maximum State revenue loss through Fiscal Year 2027 reflects the difference between the urban transit hub tax credit program's current \$1.5 billion cap and the bill's \$1.75 billion cap. The increase in the Grow New Jersey tax credit program cap is immaterial for the calculation of the bill's maximum cost, considering that the program is scored against the urban transit hub cap.

The OLS notes that the New Jersey Economic Development Authority has awarded \$916.1 million in urban transit hub tax credits to 15 projects through February 7, 2012. The Grow NJ tax credit program does not have a track record, given that the program's enabling legislation was enacted on January 5, 2012.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3154
STATE OF NEW JERSEY
215th LEGISLATURE

DATED: AUGUST 13, 2012

SUMMARY

- Synopsis:** Increases amount of tax credits authorized to be issued under Urban Transit Hub Tax Credit program and extends application deadline.
- Type of Impact:** Unknown net effect of three countervailing impacts: 1) a recurring revenue loss to the State General Fund and the Property Tax Relief Fund from awarding tax credits; 2) a recurring revenue increase to the State General Fund, Property Tax Relief Fund, and local governments from receipts catalyzed by credit-induced economic activity; 3) recurring opportunity costs to State from granting credits.
- Agencies Affected:** Department of the Treasury.
 New Jersey Economic Development Authority.
 Local Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2013 and 2014</u>	<u>FY 2015 through 2028</u>	<u>FY 2029</u>
Direct State Revenue Loss	\$0	Up to \$250,000,000	\$0
State Opportunity Cost	Indeterminate — See comments below		
Indirect State Revenue Gain	Indeterminate — See comments below		
Indirect Local Revenue Gain	Indeterminate — See comments below		

- The Office of Legislative Services (OLS) can project neither the direction nor the magnitude of the bill's net fiscal impact on the State and local governments.
- On the one side of the ledger, the OLS estimates that the bill will produce a total State revenue loss of up to \$250 million through FY 2028 from awarding additional Urban Transit Hub tax credits plus their indeterminate opportunity costs—opportunity costs capture the fiscal benefits the State forgoes as spending is redirected from one economic activity to another. The estimated \$250 million maximum State revenue loss through FY 2028 reflects the difference between the tax credit program's current \$1.5 billion cap and the bill's revised \$1.75 billion cap. The New Jersey Economic Development Authority (EDA) has awarded \$977.1 million in urban transit hub tax credits to 18 projects through June 13, 2012.

- On the other side of the ledger, additional tax credits that are essential to the realization of capital projects in designated areas will also generate indirect fiscal benefits to the State and local governments that may, or may not, exceed the cost and opportunity cost of providing the financial assistance. The OLS, however, cannot gauge the number, type, and scale of tax credit-induced capital projects and their ensuing indirect effects on State and local government tax receipts.
- The indirect fiscal effects from capital projects that would be undertaken with or without the tax credit have to be excluded from the analysis. This is so because whenever the tax credit has no bearing on the decision to carry out a project, it merely produces sunk costs to the State, or an expense without a benefit. Applying this general principle to this bill, it is reasonable to expect that most of the tax credits' indirect effects will count as a benefit. This is so because credits can only be awarded if a project passes the net benefit test. As part of that test, the EDA excludes from the analysis the indirect benefits from jobs that are neither "at risk" nor classified as a "suburban to urban move" nor otherwise deemed new jobs to the State. Therefore, only those tax credits will not produce an indirect revenue gain to the State that represent a relocation of jobs from a suburban area of the State to an urban area or that represent an incorrect assessment regarding the likelihood of a job created or retained within New Jersey absent a credit award. It remains unclear, however, whether or not the indirect revenue gains attributable to the credits will exceed the direct State revenue loss and opportunity cost they will cause.

BILL DESCRIPTION

Assembly Bill No. 3154 of 2012 raises the total lifetime cap on the urban transit hub tax credit program by \$250 million from \$1.5 billion to \$1.75 billion and extends the deadline for initial tax credit application submissions from January 13, 2013 to July 1, 2014 and for final tax credit application submissions from January 12, 2016 to July 28, 2017.

Under the program the State awards tax credits to taxpayers who make eligible capital investments in real property in urban transit hubs. Urban transit hubs are the area within a one-half mile radius around a rail or light rail station in Camden, East Orange, Elizabeth, Hoboken, Jersey City, Newark, New Brunswick, Paterson, and Trenton, with the Camden urban transit hub covering the area within a one-mile radius around a rail or light rail station. In addition, there is an urban transit hub in the area within a one-mile radius of a rail or light rail station that is subject to a Choice Neighborhoods Transformation Plan. (The only New Jersey Choice Neighborhood is currently in Jersey City at the McGinley Square – Montgomery Corridor.) Acute care medical facilities and closed hospitals located within a one-mile radius of a rail or light rail station also qualify for tax credits.

To qualify for a business facility tax credit of up to 100 percent of the investment under the urban transit hub tax credit program, a capital investment in real property must: a) equal at least \$50 million; b) pave the way for at least 250 full-time employees working in the business facility; c) be made by July 28, 2017 under the bill; and, d) under most circumstances, yield a net positive benefit to the State and the municipality hosting the transit hub.

Tenants in qualified business facilities may also receive a credit if they occupy space in the facility that represents at least \$17.5 million of the capital investment and employ at least 250 persons in the facility. If fewer than 200 of the 250 full-time positions in a business facility

represent a net gain to New Jersey, then the tax credit maxes out at 80 percent of the qualified capital investment.

To qualify for a residential tax credit of up to 35 percent of the investment, an investment in a residential project must: a) equal at least \$50 million; b) be made by July 28, 2017 under the bill; and c) not occur absent the receipt of a tax credit.

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

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS can determine neither the direction nor the magnitude of the net fiscal impact on the State and affected local governments of the bill's increase in the urban transit hub tax credit program cap and its extension of the program's initial and final tax credit application submission deadlines. In general, the State net fiscal impact is calculated by adding the direct revenue loss from granting additional tax credits and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain from granting the tax credits. In addition, the bill is also likely to accrue an indirect revenue gain to local governments.

Although the OLS is able to pinpoint the bill's maximum direct revenue loss, it cannot calculate its opportunity cost or its offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on the characteristics of capital investments that will earn tax credits.

Direct Fiscal Impact: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund from raising the urban transit hub tax credit program cap and extending the program's initial and final tax credit application submission deadlines could be as high as \$250 million accumulated over several years, or the difference between the program's current \$1.5 billion cap and the bill's revised \$1.75 billion cap. As of June 13, 2012, the EDA has awarded \$977.1 million in urban transit hub tax credits to 18 projects.

The OLS projects that the bill will not trigger a State revenue loss before FY 2015 and after FY 2028. Since capital investments must be incurred after the bill's date of enactment and since the receipt of tax credits is contingent upon project completion, the OLS surmises that no credit reflecting the bill's expanded tax credit eligibility will be claimed until at least FY 2015. Businesses and developers also have ten years in which to apply a tenth of the credit's total value per year. If an urban transit hub credit was approved soon after July 28, 2017 (the last day on

which applicants can submit their final tax credit application documents), the last credit could be claimed in the tax year including the second half of 2026, which could be as late as in FY 2028.

Irrespective of the exact magnitude of the bill's revenue loss to the State, taxpayers availing themselves of the tax credit will share their benefit with the federal government. This will be so because taxpayers can deduct their State and local income tax payments on their federal income tax returns. Consequently, a lower New Jersey corporation business tax liability translates into a lower federal deduction, and thus a higher federal income tax liability. At the federal corporation income tax rate of 35 percent, for example, taxpayers receiving a State tax credit will therefore only hold on to 65 percent of the tax credit amount, while the remaining 35 percent of the benefit will accrue to the United States government.

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

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

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

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

Lastly, the OLS notes that any estimate of the credit's New Jersey feedback effects must also exclude from the total feedback effects the portion of the credit-induced spending that would leak into other jurisdictions. A New York resident holding a job in New Jersey would have a

New Jersey income tax liability, but most of the New Yorker's private spending might not occur in this State.

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

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Lead Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

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