54A:14-13 et al.

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2013 **CHAPTER:** 14

NJSA: 54A:14-13 et al. ("New Jersey Angel Investor Tax Credit Act;" provides credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses)

BILL NO: S581 (Substituted for A1084)

SPONSOR(S) Madden and others

DATE INTRODUCED: January 10, 2012

COMMITTEE: **ASSEMBLY:** Budget

SENATE: Economic Growth
Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 17, 2012

SENATE: August 20, 2012

DATE OF APPROVAL: January 31, 2013

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First Reprint enacted)

S581

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

COMMITTEE STATEMENT: **ASSEMBLY**: Yes

SENATE: Yes Economic Growth
Budget and Appropr.

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

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

A1084

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

COMMITTEE STATEMENT: **ASSEMBLY**: Yes

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

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: Yes

"Bill offering breaks for 'angel investors' signed," The Record, 2-1-13
"'Angel Investor' Tax Incentives Now Law in New Jersey," NewJerseyNewsroom.com, 2-1-13

LAW/RWH

§4 - C.54A:4-13
§5 - Note

(CORRECTED COPY)

P.L.2013, CHAPTER 14, ***approved January 25, 2013***

Senate, No. 581 ***(First Reprint)***

AN ACT providing credits against certain taxes for investing in New Jersey emerging technology businesses, and amending P.L.1997, c.349, and supplementing chapter 4 of Title 54A of the New Jersey Statutes.

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

1. Section 1 of P.L.1997, c.349 (C.54:10A-5.28) is amended to read as follows:

1. [This act] Sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through 54:10A-5.30) and section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be known and may be cited as the "[Small] New [Jersey-based High-Technology Business Investment] Jersey Angel Investor Tax Credit Act."

(cf: P.L.1997, c.349, s.1)

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

2. As used in this act:

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

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

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

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

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate SEG committee amendments adopted February 6, 2012.

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

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

"Director" means the Director of the Division of Taxation in the Department of the Treasury[;].

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

["Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources;]

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

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

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

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

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

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

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

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

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

"Related person" means:

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

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

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

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

["Small New Jersey-based high-technology business" means a corporation doing business, employing or owning capital or property, or maintaining an office, in this State that has qualified research expenses paid or incurred for research conducted in this State or conducts pilot scale manufacturing in this State, and has fewer than 225 employees, of whom 75% are New Jersey-based employees filling a position or job in this State; and]

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

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

(cf: P.L.1997, c.349, s.2)

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

3. a. A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic Development Authority and in consultation with the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 10% of the qualified investment made by the taxpayer [during each of the three tax years

beginning on or after January 1 next following enactment of this act,】 in a 【small】 New 【Jersey-based high-technology】 Jersey emerging technology business, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer. 【An unused credit may be carried forward for use in future years, subject to the $500,000 per year limitation.】

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

【The tax imposed for a tax year pursuant to section 5 of P.L.1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), then by any credit allowed under section 3 of P.L.1993, c.170 (C.54:10A-5.6), then by any credit allowed under section 3 or 4 of P.L.1993, c.171 (C.54:10A-5.18 or C.54:10A-5.19), then by any credit allowed under section 1 of P.L.1993, c.175 (C.54:10A-5.24), and then by any credit allowed under section 1 of P.L.1993, c.150 (C.27:26A-15), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the credits' tax years. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162】 Notwithstanding any other provision of law, the order of priority in which the credit allowed by this section and any other credits allowed by law may be taken shall be as prescribed by the director.

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

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

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

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

(cf: P.L.1997, c.349, s.3)

4. (New section) a. A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic

Development Authority, and in consultation with the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 10 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, up to a maximum allowed credit of $500,000 for the taxable year for each qualified investment made by the taxpayer.

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

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

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

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

e. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Related person" means:

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

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

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

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

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

5. This act shall take effect immediately and section 3 shall apply to privilege periods beginning on or after January 1, [1]**[**2011**]**

2012[1] and section 4 shall apply to taxable years beginning on or after January 1, [1]**[**2011**]** 2012[1].

"New Jersey Angel Investor Tax Credit Act"; provides credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses.

SENATE, No. 581

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:
Senator FRED H. MADDEN, JR.
District 4 (Camden and Gloucester)
Senator LORETTA WEINBERG
District 37 (Bergen)

Co-Sponsored by:
Senators Stack, Sarlo, Cunningham, Van Drew, Beach, A.R.Bucco, Gordon, Greenstein and Ruiz

SYNOPSIS

"New Jersey Angel Investor Tax Credit Act;" provides credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

AN ACT providing credits against certain taxes for investing in New Jersey emerging technology businesses, and amending P.L.1997, c.349, and supplementing chapter 4 of Title 54A of the New Jersey Statutes.

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

1. Section 1 of P.L.1997, c.349 (C.54:10A-5.28) is amended to read as follows:

1. **[**This act**]** Sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through 54:10A-5.30) and section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be known and may be cited as the "**[**Small**]** New **[**Jersey-based High-Technology Business Investment**]** Jersey Angel Investor Tax Credit Act."

(cf: P.L.1997, c.349, s.1)

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

2. As used in this act:

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

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

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

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

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.

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

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

"Director" means the Director of the Division of Taxation in the Department of the Treasury[;].

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

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

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"New Jersey emerging technology business" means a company doing business, employing or owning capital or property, or maintaining an office, in this State that has qualified research expenses paid or incurred for research conducted in this State or conducts pilot scale manufacturing in this State, and has fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey.

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

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

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

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

"Related person" means:

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

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

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

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

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

["Small New Jersey-based high-technology business" means a corporation doing business, employing or owning capital or property, or maintaining an office, in this State that has qualified research expenses paid or incurred for research conducted in this State or conducts pilot scale manufacturing in this State, and has fewer than 225 employees, of whom 75% are New Jersey-based employees filling a position or job in this State; and]

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

(cf: P.L.1997, c.349, s.2)

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

3. a. A taxpayer, upon approval of the taxpayer’s application therefor by the New Jersey Economic Development Authority and in consultation with the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 10% of the qualified investment made by the taxpayer [during each of the three tax years beginning on or after January 1 next following enactment of this act,] in a [small] New [Jersey-based high-technology] Jersey emerging technology business, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer. [An unused credit may be carried forward for use in future years, subject to the $500,000 per year limitation.]

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

[The tax imposed for a tax year pursuant to section 5 of P.L.1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c.227

(C.55:19-13), then by any credit allowed pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), then by any credit allowed under section 3 of P.L.1993, c.170 (C.54:10A-5.6), then by any credit allowed under section 3 or 4 of P.L.1993, c.171 (C.54:10A-5.18 or C.54:10A-5.19), then by any credit allowed under section 1 of P.L.1993, c.175 (C.54:10A-5.24), and then by any credit allowed under section 1 of P.L.1993, c.150 (C.27:26A-15), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the credits' tax years. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.】 <u>Notwithstanding any other provision of law, the order of priority in which the credit allowed by this section and any other credits allowed by law may be taken shall be as prescribed by the director.</u>

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

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

<u>e. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall</u>

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

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

(cf: P.L.1997, c.349, s.3)

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

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

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

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

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

e. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

"New Jersey emerging technology business" means a company doing business, employing or owning capital or property, or maintaining an office, in this State that has qualified research expenses paid or incurred for research conducted in this State or conducts pilot scale manufacturing in this State, and has fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey.

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

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

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

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

"Related person" means:

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

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

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

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

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

5. This act shall take effect immediately and section 3 shall apply to privilege periods beginning on or after January 1, 2011 and section 4 shall apply to taxable years beginning on or after January 1, 2011.

STATEMENT

The bill designated the "New Jersey Angel Investor Tax Credit Act,” revives the expired Small New Jersey-based High Technology Business Investment Tax Credit by establishing credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses. Subject to certain limitations, the corporation business and gross income tax credits equal ten percent of a taxpayer’s qualified investment in an emerging technology company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey. Purchase, production, and research agreements qualify as creditable investments. The permanent program is subject to a $25 million annual cap. In addition, tax credit recipients cannot claim tax credits for that part of an investment in a single company that exceeds $500,000. If the tax credit amount exceeds a gross income taxpayer's tax liability, the State will issue a refund to the taxpayer in the amount of the excess; while a corporation business taxpayer may choose between having the amount of the excess refunded or carried forward to be applied against tax liabilities in the next 15 years.

The legislation recognizes that angel investors can play a vital part in New Jersey's economic recovery. Angel investments are equity placements by high net worth individuals into high-risk start-up ventures. Some angel investors do not just invest in, but also mentor, coach, and assist promising start-up enterprises. A 2010 working paper by William R. Kerr, Josh Lerner, and Antoinette Schoar of the Harvard Business School, "The Consequences of Entrepreneurial Finance: A Regression Discontinuity Analysis," shows that start-up firms receiving angel capital have a significantly higher rate of survival, faster growth, and superior access to fundraising outside the angel group than early-stage firms devoid of angel financing. It is therefore in New Jersey's best interest to encourage angel investors to examine and invest in New Jersey technology start-up businesses, as successful start-ups create jobs, generate wealth, and enhance the overall well-being in the State.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 581

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 6, 2012

The Senate Economic Growth Committee reports favorably Senate Bill No. 581 with committee amendments.

As amended, Senate Bill No. 581, designated as the "New Jersey Angel Investor Tax Credit Act," revives the expired Small New Jersey-based High Technology Business Investment Tax Credit. (In corporate parlance, "angel investments" are equity placements by high net worth individuals into high-risk start-up ventures.) The bill establishes credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses. The bill, as amended, defines a New Jersey emerging technology business as a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State and: (1) has qualified research expenses paid or incurred for research conducted in this State; (2) conducts pilot scale manufacturing in this State; or (3) conducts technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

Subject to certain limitations, the corporation business and gross income tax credits equal 10 percent of a taxpayer's qualified investment in an emerging technology company, up to a maximum allowed credit of $500,000 per year for each qualified investment. If the tax credit amount exceeds a gross income taxpayer's tax liability, the State will issue a refund to the taxpayer in the amount of the excess; while a corporation business taxpayer may choose between having the amount of the excess refunded or carried forward to be applied against tax liabilities in the next 15 years. Purchase, production, and research agreements qualify as creditable investments, as do transactions in exchange for stocks, interests in partnerships or joint ventures, licenses, rights to use technology, marketing rights, warrants, and options. The program is subject to a $25 million annual cap.

The committee amended the bill to delay eligibility for the tax credit to privilege periods and taxable years, as appropriate, beginning on or after January 1, 2012 and to amend the definition of a New Jersey emerging technology business to include companies that conduct technology commercialization in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 581

STATE OF NEW JERSEY

DATED: MARCH 8, 2012

The Senate Budget and Appropriations Committee reports favorable Senate Bill No. 581 (1R).

The bill, designated as the "New Jersey Angel Investor Tax Credit Act," revives the expired Small New Jersey-based High Technology Business Investment Tax Credit. (In corporate parlance, "angel investments" are equity placements by high net worth individuals into high-risk start-up ventures.) The bill establishes credits against corporation business and gross income taxes for angel investor cash investments in New Jersey emerging technology businesses. Subject to certain limitations, the corporation business and gross income tax credits equal ten percent of a taxpayer's qualified investment in an emerging technology company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey. The emerging technology company must employ or own capital or property, or maintain an office in this State and: (1) have qualified research expenses paid or incurred for research conducted in this State; (2) conduct pilot scale manufacturing in this State; or (3) conduct technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

Subject to certain limitations, the corporation business and gross income tax credits equal 10 percent of a taxpayer's qualified investment in an emerging technology company, up to a maximum allowed credit of $500,000 per year for each qualified investment. If the tax credit amount exceeds a gross income taxpayer's tax liability, the State will issue a refund to the taxpayer in the amount of the excess; while a corporation business taxpayer may choose between having the amount of the excess refunded or carried forward to be applied against tax liabilities in the next 15 years. Purchase, production, and research agreements qualify as creditable investments, as do transactions in exchange for stocks, interests in partnerships or joint ventures, licenses, rights to use technology, marketing rights,

warrants, and options. The program is subject to a $25 million annual cap.

FISCAL IMPACT:

The Office of Legislative Services (OLS) projects, based on the performance of similar tax credit programs in Arizona and Ohio, that this bill will depress State revenue collections by $1.1 million to $2.5 million per year. The range translates into 1.22 percent to 2.88 percent of $870 million in estimated annual capital venture and angel investments in New Jersey earning a ten percent tax credit.

In addition, the bill could produce an indirect revenue gain to the State that may offset, in whole or in part, the direct revenue loss and opportunity cost the State may incur in granting angel investor tax credits. The OLS cautions, however, that not every dollar awarded as a tax credit will yield a return to the State in the form of additional investments in New Jersey emerging technology businesses. Only tax credit-induced investments that would not occur absent the tax credit will yield a return for the State's tax credit spending. Investments that receive the tax credit but that also would be undertaken without the credit, on the other hand, represent sunk costs to the State, or an expense without a benefit. The OLS, however, is not in a position to gauge the amount of tax credit-induced angel investments and the ensuing impact on New Jersey's employment, income, wealth, population, and tax receipts.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 581

STATE OF NEW JERSEY
215th LEGISLATURE

DATED: AUGUST 16, 2012

SUMMARY

Synopsis: "New Jersey Angel Investor Tax Credit Act;" provides credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses.

Type of Impact: Negative net annual impact of three countervailing effects: 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 tax credit-induced economic activity; 3) recurring opportunity costs to State from awarding tax credits.

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

Office of Legislative Services Estimate

Fiscal Impact	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015
Direct State Revenue Loss	$1,100,000 to $2,500,000 per Fiscal Year		
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) projects that the bill's net fiscal impact on the State and local governments will be a loss of indeterminate magnitude. On the one side of the ledger, the OLS estimates that the bill will produce an annual State revenue loss ranging from $1.1 million to $2.5 million from awarding 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, tax credits that directly cause additional economic activity by the recipient of the investment will also generate indeterminate indirect fiscal benefits to the State and local governments that may partially offset the revenue loss and opportunity cost of providing the financial assistance.

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- Based on the performance of similar tax credit programs in Arizona and Ohio, the OLS determines that this bill will depress State revenue collections by $1.1 million to $2.5 million per year. The range translates into 1.22 percent to 2.88 percent of $870 million in estimated annual capital venture and angel investments in New Jersey earning a ten percent tax credit.

- Investments for which the tax credits will serve as the impetus will also generate indirect fiscal benefits to the State and local governments. In the converse, extending tax credits to investments 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 place the investments. Consequently, the indirect fiscal effects from investments that would be made anyway have to be excluded from the analysis. Given that the bill does not limit tax credits to investments directly caused by the credit, the OLS expects the bill's indirect revenue gain to fall below its direct State revenue loss, as credits are likely to be extended to investments that would be made anyway. The OLS, however, cannot gauge the volume of credit-induced investments and their ensuing indirect effects on State and local government tax receipts.

BILL DESCRIPTION

Senate Bill No. 581 (1R) of 2012 establishes credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses as the term is defined in the bill. Subject to certain limitations, the tax credits equal ten percent of a taxpayer's qualified investment in an emerging technology company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey. Purchase, production, and research agreements qualify as creditable investments. The permanent program is subject to a $25 million annual cap. In addition, tax credit recipients cannot claim tax credits for that part of an investment in a single company that exceeds $500,000. If the tax credit amount exceeds a gross income taxpayer's tax liability, the State will issue a refund to the taxpayer in the amount of the excess; while a corporation business taxpayer may choose between having the amount of the excess refunded or carried forward to be applied against tax liabilities in the next 15 years.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill's net fiscal impact on the State and local governments will be a loss of indeterminate magnitude. In general, the State fiscal net impact is calculated by adding the direct revenue loss from granting the tax credits and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain from granting the tax credits. In addition, the bill is also likely to accrue an indirect revenue gain to local governments. Although the OLS projects that the bill's direct revenue loss will range from $1.1 million to $2.5 million per year, it cannot calculate its opportunity cost or offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on the use of creditable investments by recipient firms and the ways in which the State would make use of the amounts allocated to the tax credits if the bill was not enacted.

Direct State Revenue Loss: Based on the performance of similar tax credit programs in Arizona and Ohio, the OLS projects that this bill will lower State revenue collections by $1.1 million to $2.5 million per year. The range translates into 1.22 percent to 2.88 percent of $870 million in estimated annual capital venture and angel investments in New Jersey earning a ten percent tax credit.

The OLS estimates that $870 million in venture capital and angel investments occur in New Jersey each year. The MoneyTree Report by PricewaterhouseCoopers and the National Venture Capital Association indicates that $468 million in venture capital investments took place in New Jersey in 2010, representing 2.16 percent of the national total. To that figure the OLS adds $404 million in estimated 2010 angel investments, or 2.16 percent (the New Jersey share of nationwide 2010 venture capital investments) times the $20.1 billion in 2010 national angel investments, as related by the Center for Venture Research at the University of New Hampshire.

Based on the experience of Arizona and Ohio, the OLS projects that the $870 million in annual venture capital and angel investments in New Jersey will translate into $1.1 million to $2.5 million in tax credits. The estimate's lower bound reflects Arizona's experience, where an estimated 1.22 percent of estimated venture capital and angel investments resulted in tax credits in 2010 ($581,000 in tax credits at a tax credit rate of 30 percent of qualified investments, $85 million in capital venture investments as indicated in the MoneyTree Report, and $73 million angel investments calculated by the OLS using the same method it employed in estimating New Jersey angel investments). Applying the 1.22 percent ratio to the $870 million in estimated New Jersey venture capital and angel investments and then applying the ten percent tax credit rate to the product yields an annual tax credit cost of about $1.1 million.

The estimate's upper bound reflects Ohio's experience, where an estimated 4.32 percent of estimated 2010 venture capital and angel investments resulted in tax credits in 2010 ($3.7 million in tax credits at a tax credit rate of 25 percent of qualified investments, $184 million in capital venture investments as indicated in the MoneyTree Report, and $159 million angel investments calculated by the OLS using the same method it employed in estimating New Jersey angel investments). Applying the 4.32 percent ratio to the $870 million in estimated New Jersey venture capital and angel investments and applying the ten percent tax credit rate to the product yields an annual tax credit cost of about $3.8 million. Since the eligibility criteria under this bill are more stringent than those of the Ohio tax credit (the bill requires that investments must be placed in small businesses of whose workforce at least 75 percent are located in New Jersey, while the requirement is only at least 50 percent in Ohio), the OLS reduces its $3.8 million estimate of annual credit cost by a third to $2.5 million.

Irrespective of the exact magnitude of the bill's revenue loss to the State, taxpayers earning tax credits will share their benefit with the federal government. This will be so because taxpayers can deduct their State and local income tax payments on their federal income tax returns. Consequently, a lower New Jersey gross income tax liability translates into a lower federal deduction, and thus a higher federal income tax liability. At the federal personal income tax rate of 15 percent for long-term capital gain income, taxpayers receiving a State tax credit will therefore only hold on to 85 percent of the tax credit amount, while the remaining 15 percent of the benefit will accrue to the United States government.

Lastly, the OLS notes that the State provided $90,000 in tax credits under the expired small New Jersey-based high-technology business investment tax credit during the credit's three-year existence for ten percent of qualified investments by corporation business taxpayers in small New Jersey-based high-technology businesses. Although this bill renews the previous tax credit's eligibility criteria, it does make the credit newly available to gross income taxpayers as well, which should augment the resultant revenue loss relative to the previous tax credit.

Indirect State and Local Revenue Gain: The bill may generate an indeterminate indirect revenue gain to the State and local governments that may partially offset the direct State revenue loss from, and State opportunity cost of, providing the tax credits. But since the OLS cannot reliably estimate the amount of tax credit-induced investments in New Jersey emerging technology businesses and the latter's use thereof, it cannot quantify the tax incentives' indirect effects on State and local government tax receipts. Notwithstanding that limitation, the OLS fully expects the bill's credit-induced indirect fiscal effects to be less than the bill's direct State revenue loss, for the bill does not require that only those investments qualify for tax credits that are causally linked to the receipt of the tax credit. This concern matters because, for reasons explained below, tax credits awarded for investments that would have been made with or without the credit produce secondary fiscal effects that must be excluded from the analysis.

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

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 investments in New Jersey emerging technology businesses will invariably divert resources from policy alternatives to which they would have been applied absent the tax credit. Therefore, if, instead of this legislation, the State invested in road construction, for example, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on providing incentives to invest in New Jersey emerging technology businesses 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 BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 581

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2012

The Assembly Budget Committee reports favorably Senate Bill No. 581 (1R).

This bill is entitled the "New Jersey Angel Investor Tax Credit Act." The bill revives the expired Small New Jersey-based High Technology Business Investment Tax Credit. (In corporate parlance, "angel investments" are equity placements by high net worth individuals into high-risk start-up ventures.)

The bill establishes credits against corporation business and gross income taxes for angel investor cash investments in New Jersey emerging technology businesses. Subject to certain limitations, the corporation business and gross income tax credits equal ten percent of a taxpayer's qualified investment in an emerging technology company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey. The emerging technology company must employ or own capital or property, or maintain an office in this State and: (1) have qualified research expenses paid or incurred for research conducted in this State; (2) conduct pilot scale manufacturing in this State; or (3) conduct technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

Subject to certain limitations, the corporation business and gross income tax credits equal ten percent of a taxpayer's qualified investment in an emerging technology company, up to a maximum allowed credit of $500,000 per year for each qualified investment. If the tax credit amount exceeds a gross income taxpayer's tax liability, the State will issue a refund to the taxpayer in the amount of the excess; while a corporation business taxpayer may choose between having the amount of the excess refunded or carried forward to be applied against tax liabilities in the next 15 years. Purchase, production, and research agreements qualify as creditable investments, as do transactions in exchange for stocks, interests in partnerships or joint ventures, licenses, rights to use technology, marketing rights,

warrants, and options. The program is subject to a $25 million annual cap.

As reported, this bill is identical to Assembly Bill No. 1084, as amended and reported by the Committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) projects, based on the performance of similar tax credit programs in Arizona and Ohio, that this bill will lower State revenue collections by $1.4 million to $3.6 million per year. The range translates into 1.66 percent to 4.17 percent of $856 million in estimated annual capital venture and angel investments in New Jersey earning a ten percent tax credit.

In addition, the bill could produce an indirect revenue gain to the State that may offset, in whole or in part, the direct revenue loss and opportunity cost the State may incur in granting angel investor tax credits. The OLS cautions, however, that not every dollar awarded as a tax credit will yield a return to the State in the form of additional investments in New Jersey emerging technology businesses. Only tax credit-induced investments that would not occur absent the tax credit will yield a return for the State’s tax credit spending. Investments that receive the tax credit but that also would be undertaken without the credit, on the other hand, represent sunk costs to the State, or an expense without a benefit. The OLS, however, is not in a position to gauge the amount of tax credit-induced angel investments and the ensuing impact on New Jersey’s employment, income, wealth, population, and tax receipts.

ASSEMBLY, No. 1084

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Assemblyman GARY S. SCHAER
District 36 (Bergen and Passaic)
Assemblyman NELSON T. ALBANO
District 1 (Atlantic, Cape May and Cumberland)
Assemblyman WAYNE P. DEANGELO
District 14 (Mercer and Middlesex)
Assemblyman REED GUSCIORA
District 15 (Hunterdon and Mercer)
Assemblyman RUBEN J. RAMOS, JR.
District 33 (Hudson)

Co-Sponsored by:
Assemblymen Milam, Fuentes, O'Donnell, Caputo, Johnson, Mainor, Assemblywoman Tucker, Assemblymen Conaway, Coutinho, Assemblywoman Riley, Assemblymen Wisniewski, Chivukula, Giblin, Burzichelli, Assemblywomen Wagner, Lampitt, Assemblyman Moriarty, Assemblywoman Handlin, Assemblyman Benson, Assemblywoman Watson Coleman, Assemblymen Eustace and Wimberly

SYNOPSIS

"New Jersey Angel Investor Tax Credit Act;" provides credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

(Sponsorship Updated As Of: 12/14/2012)

AN ACT providing credits against certain taxes for investing in New Jersey emerging technology businesses, and amending P.L.1997, c.349, and supplementing chapter 4 of Title 54A of the New Jersey Statutes.

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

1. Section 1 of P.L.1997, c.349 (C.54:10A-5.28) is amended to read as follows:

1. **[**This act**]** Sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through 54:10A-5.30) and section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be known and may be cited as the "**[**Small**]** New **[**Jersey-based High-Technology Business Investment**]** Jersey Angel Investor Tax Credit Act."

(cf: P.L.1997, c.349, s.1)

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

2. As used in this act:

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

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

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

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

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.

or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986[, 26 U.S.C.s.267] <u>(26 U.S.C. s.267)</u>, other than paragraph (3) of subsection (c) of that section[;]<u>.</u>

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

"Director" means the Director of the Division of Taxation in the Department of the Treasury[;]<u>.</u>

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

["Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources;]

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

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

<u>"New Jersey emerging technology business" means a company doing business, employing or owning capital or property, or maintaining an office, in this State that has qualified research expenses paid or incurred for research conducted in this State or conducts pilot scale manufacturing in this State, and has fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey.</u>

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

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

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

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

"Related person" means:

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

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

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

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

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

["Small New Jersey-based high-technology business" means a corporation doing business, employing or owning capital or property, or maintaining an office, in this State that has qualified research expenses paid or incurred for research conducted in this State or conducts pilot scale manufacturing in this State, and has fewer than 225 employees, of whom 75% are New Jersey-based employees filling a position or job in this State; and⟧

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

(cf: P.L.1997, c.349, s.2)

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

3. a. A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic Development Authority and in consultation with the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 10% of the qualified investment made by the taxpayer ⟦during each of the three tax years beginning on or after January 1 next following enactment of this act,⟧ in a ⟦small⟧ New ⟦Jersey-based high-technology⟧ Jersey emerging technology business, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer. ⟦An unused credit may be carried forward for use in future years, subject to the $500,000 per year limitation.⟧

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

⟦The tax imposed for a tax year pursuant to section 5 of P.L.1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), then by any credit allowed under section 3 of P.L.1993, c.170 (C.54:10A-5.6), then by any credit allowed under section 3 or 4 of P.L.1993, c.171 (C.54:10A-5.18 or C.54:10A-5.19), then by any credit allowed under section 1 of P.L.1993, c.175 (C.54:10A-5.24), and then by any credit allowed under section 1 of P.L.1993, c.150 (C.27:26A-15), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the credits' tax years. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.⟧ Notwithstanding any other provision of law, the order of priority in which the credit allowed by this section and any other credits allowed by law may be taken shall be as prescribed by the director.

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

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

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

The amount of credits approved by the Executive Director of the New Jersey Economic Development Authority, and in consultation with the director, pursuant to subsection a. of this section and pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not exceed a cumulative total of

<u>$25,000,000 in any calendar year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits under this section and section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) are not in excess of the amount of credits available.</u>
(cf: P.L.1997, c.349, s.3)

4. (New section) a. A taxpayer, upon approval of the taxpayer’s application therefor by the New Jersey Economic Development Authority, and in consultation with the director, shall be allowed a credit against the tax otherwise due for the taxable year under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in an amount equal to 10 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, up to a maximum allowed credit of $500,000 for the taxable year for each qualified investment made by the taxpayer.

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

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

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

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

e. As used in this section:

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

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

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

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

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

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

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

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

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

"New Jersey emerging technology business" means a company doing business, employing or owning capital or property, or maintaining an office, in this State that has qualified research expenses paid or incurred for research conducted in this State or conducts pilot scale manufacturing in this State, and has fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey.

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

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

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

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

"Related person" means:

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

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

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

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

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

5. This act shall take effect immediately and section 3 shall apply to privilege periods beginning on or after January 1, 2011 and section 4 shall apply to taxable years beginning on or after January 1, 2011.

STATEMENT

This bill, the "New Jersey Angel Investor Tax Credit Act," revives the expired Small New Jersey-based High Technology Business Investment Tax Credit by establishing credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses. Subject to certain limitations, the corporation business and gross income tax credits equal ten percent of a taxpayer's qualified investment in an emerging technology company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey. Purchase, production, and research agreements qualify as creditable investments. The permanent program is subject to a $25 million annual cap. In addition, tax credit recipients cannot claim tax credits for that part of an investment in a single company that exceeds $500,000. If the tax credit amount exceeds a gross income taxpayer's tax liability, the State will issue a refund to the taxpayer in the amount of the excess; while a corporation business taxpayer may choose between having the amount of the excess refunded or carried forward to be applied against tax liabilities in the next 15 years.

The legislation recognizes that angel investors can play a vital part in New Jersey's economic recovery. Angel investments are equity placements by high net worth individuals into high-risk start-up ventures. Some angel investors do not just invest in, but also mentor, coach, and assist promising start-up enterprises. A 2010 working paper by William R. Kerr, Josh Lerner, and Antoinette Schoar of the Harvard Business School, "The Consequences of Entrepreneurial Finance: A Regression Discontinuity Analysis," shows that start-up firms receiving angel capital have a significantly higher rate of survival, faster growth, and superior access to fundraising outside the angel group than early-stage firms devoid of angel financing. It is therefore in New Jersey's best interest to encourage angel investors to examine and invest in New Jersey technology start-up businesses, as successful start-ups create jobs, generate wealth, and enhance the overall well-being in the state.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1084

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2012

The Assembly Budget Committee reports favorably Assembly Bill No. 1084, with committee amendments.

As amended, this bill is entitled the "New Jersey Angel Investor Tax Credit Act." The bill revives the expired Small New Jersey-based High Technology Business Investment Tax Credit. (In corporate parlance, "angel investments" are equity placements by high net worth individuals into high-risk start-up ventures.)

The bill establishes credits against corporation business and gross income taxes for angel investor cash investments in New Jersey emerging technology businesses. Subject to certain limitations, the corporation business and gross income tax credits equal ten percent of a taxpayer's qualified investment in an emerging technology company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey. The emerging technology company must employ or own capital or property, or maintain an office in this State and: (1) have qualified research expenses paid or incurred for research conducted in this State; (2) conduct pilot scale manufacturing in this State; or (3) conduct technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

Subject to certain limitations, the corporation business and gross income tax credits equal ten percent of a taxpayer's qualified investment in an emerging technology company, up to a maximum allowed credit of $500,000 per year for each qualified investment. If the tax credit amount exceeds a gross income taxpayer's tax liability, the State will issue a refund to the taxpayer in the amount of the excess; while a corporation business taxpayer may choose between having the amount of the excess refunded or carried forward to be applied against tax liabilities in the next 15 years. Purchase, production, and research agreements qualify as creditable investments, as do transactions in exchange for stocks, interests in partnerships or joint ventures, licenses, rights to use technology, marketing rights,

warrants, and options. The program is subject to a $25 million annual cap.

This bill was pre-filed for introduction in the 2012-2013 legislative session, pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

As amended and reported, this bill is identical to Senate Bill No. 581(1R), as also reported by the Committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) projects, based on the performance of similar tax credit programs in Arizona and Ohio, that this bill will lower State revenue collections by $1.4 million to $3.6 million per year. The range translates into 1.66 percent to 4.17 percent of $856 million in estimated annual capital venture and angel investments in New Jersey earning a ten percent tax credit.

In addition, the bill could produce an indirect revenue gain to the State that may offset, in whole or in part, the direct revenue loss and opportunity cost the State may incur in granting angel investor tax credits. The OLS cautions, however, that not every dollar awarded as a tax credit will yield a return to the State in the form of additional investments in New Jersey emerging technology businesses. Only tax credit-induced investments that would not occur absent the tax credit will yield a return for the State’s tax credit spending. Investments that receive the tax credit but that also would be undertaken without the credit, on the other hand, represent sunk costs to the State, or an expense without a benefit. The OLS, however, is not in a position to gauge the amount of tax credit-induced angel investments and the ensuing impact on New Jersey’s employment, income, wealth, population, and tax receipts.

COMMITTEE AMENDMENTS:

The amendments contain three components:

(i) Updating the effective date to apply to tax accounting periods beginning on or after January 1, 2012;

(ii) Expanding the definition of a New Jersey emerging technology business to include a company that conducts technology commercialization in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology; and

(iii) Making technical changes.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1084

STATE OF NEW JERSEY

215th LEGISLATURE

DATED: DECEMBER 28, 2012

SUMMARY

Synopsis: "New Jersey Angel Investor Tax Credit Act;" provides credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses.

Type of Impact: Negative net impact of three countervailing effects: 1) a recurring revenue loss to the State General Fund and 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 tax credit-induced economic activity; 3) recurring opportunity costs to the State from awarding tax credits.

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

Office of Legislative Services Estimate

Fiscal Impact	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015
Direct State Revenue Loss	$1,400,000 to $3,600,000 per Fiscal Year		
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) projects that the bill's fiscal net impact on the State and local governments will be a loss of indeterminate magnitude. The State fiscal net impact is calculated by adding the direct revenue loss from awarding tax credits and its 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 generated by the tax credits. The bill might also accrue an indirect revenue gain to local governments.

- On the one side of the ledger, the OLS estimates that the legislation will produce an annual $1.4 million to $3.6 million direct State revenue loss from granting tax credits for investments in New Jersey emerging technology businesses plus the tax credits'

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indeterminate opportunity costs. The OLS estimate is based on the performance of similar tax credit programs in Arizona and Ohio, and the estimated range of $1.4 million to $3.6 million translates into 1.66 percent to 4.17 percent of $856 million in estimated annual capital venture and angel investments in New Jersey earning a ten percent tax credit.

- On the other side of the ledger, additional investments in New Jersey emerging technology businesses that are *directly caused* by the tax credit program will also generate indeterminate indirect fiscal benefits to the State and local governments that will partially offset the tax credits' direct revenue loss and opportunity costs.

- Indirect fiscal effects from investments in New Jersey emerging technology businesses that would be made with or without the tax credit program, on the other hand, must be excluded from the analysis. This is so because whenever a tax credit award has no bearing on the decision to invest, it merely produces sunk costs to the State, or an expense without a benefit, as the indirect fiscal benefits will be generated irrespective of the receipt of the tax credit.

BILL DESCRIPTION

Assembly Bill No. 1084 (1R) of 2012 establishes credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses as the term is defined in the bill. Subject to certain limitations, the tax credits equal ten percent of a taxpayer's qualified investment in an emerging technology company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey. Purchase, production, and research agreements qualify as creditable investments. The permanent program is subject to a $25 million annual cap. In addition, tax credit recipients cannot claim tax credits for that part of an investment in a single company that exceeds $500,000. If the tax credit amount exceeds a gross income taxpayer's tax liability, the State will issue a refund to the taxpayer in the amount of the excess; while a corporation business taxpayer may choose between having the amount of the excess refunded or carried forward to be applied against tax liabilities in the next 15 years.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill's fiscal net impact on the State and local governments will be a loss of indeterminate magnitude. The State fiscal net impact is calculated by adding the direct revenue loss from awarding tax credits and its 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 generated by the tax credits. In addition, the bill might accrue an indirect revenue gain to local governments.

Direct State Revenue Loss: Based on the performance of similar tax credit programs in Arizona and Ohio, the OLS projects that this bill will lower State revenue collections by $1.4 million to $3.6 million per year. The range translates into 1.66 percent to 4.17 percent of $856 million in estimated annual capital venture and angel investments in New Jersey earning a ten percent tax credit.

The OLS estimates that $856 million in venture capital and angel investments occur in New Jersey each year. The MoneyTree Report by PricewaterhouseCoopers and the National Venture Capital Association indicates that $485 million in venture capital investments took place in New Jersey in 2011, representing 1.65 percent of the national total. To that figure the OLS adds $370 million in estimated 2011 angel investments, or 1.65 percent (the New Jersey share of nationwide 2011 venture capital investments) times the $22.5 billion in 2011 national angel investments, as related by the Center for Venture Research at the University of New Hampshire.

Based on the experience of Arizona and Ohio, the OLS projects that the estimated $856 million in annual venture capital and angel investments in New Jersey will translate into $1.4 million to $2.6 million in tax credits. The estimate's lower bound reflects Arizona's experience, where an estimated 1.66 percent of estimated venture capital and angel investments resulted in tax credits in tax year 2010 ($791,000 in tax credits at a tax credit rate of 30 percent of qualified investments, $85 million in capital venture investments as indicated in the MoneyTree Report, and $73 million angel investments calculated by the OLS using the same method it employed in estimating New Jersey angel investments). Applying the 1.66 percent ratio to the $856 million in estimated New Jersey venture capital and angel investments and then applying the bill's ten percent tax credit rate to the product yields an annual tax credit cost of about $1.4 million.

The estimate's upper bound reflects Ohio's experience, where an estimated 6.22 percent of estimated 2010 venture capital and angel investments resulted in tax credits in tax year 2010 ($5.3 million in tax credits at a tax credit rate of 25 percent of qualified investments, $184 million in capital venture investments as indicated in the MoneyTree Report, and $159 million angel investments calculated by the OLS using the same method it employed in estimating New Jersey angel investments). Applying the 6.22 percent ratio to the $856 million in estimated New Jersey venture capital and angel investments and applying the bill's ten percent tax credit rate to the product yields an annual tax credit cost of about $5.3 million. Since the eligibility criteria under this bill are more stringent than those of the Ohio tax credit (the bill requires that investments must be placed in small businesses of whose workforce at least 75 percent are located in New Jersey, while the requirement is only at least 50 percent in Ohio), the OLS reduces its $5.3 million estimate of annual credit cost by a third to $3.6 million.

Irrespective of the exact magnitude of the bill's revenue loss to the State, taxpayers earning tax credits will share their benefit with the federal government. This will be so because taxpayers can deduct their State and local income tax payments on their federal income tax returns. Consequently, a lower New Jersey gross income tax liability translates into a lower federal deduction, and thus a higher federal income tax liability. At the federal personal income tax rate of 15 percent for long-term capital gain income, taxpayers receiving a State tax credit will therefore only hold on to 85 percent of the tax credit amount, while the remaining 15 percent of the benefit will accrue to the United States government.

Lastly, the OLS notes that the State provided $90,000 in tax credits under the expired small New Jersey-based high-technology business investment tax credit during the credit's three-year existence for ten percent of qualified investments by corporation business taxpayers in small New Jersey-based high-technology businesses. Although this bill renews the previous tax credit's eligibility criteria, it does make the credit newly available to gross income taxpayers as well, which should augment the resultant revenue loss relative to the previous tax credit.

Indirect State and Local Revenue Gain: The bill may generate an indeterminate indirect revenue gain to the State and local governments that may partially offset the direct State revenue loss from, and State opportunity cost of, providing the tax credits. But since the OLS cannot reliably estimate the amount of tax credit-induced investments in New Jersey emerging technology businesses and the latter's use thereof, it cannot quantify the tax incentives' indirect effects on State and local government tax receipts. Notwithstanding that limitation, the OLS fully expects the bill's credit-induced indirect fiscal effects to be less than the bill's direct State revenue loss, for the bill does not require that only those investments qualify for tax credits that are causally linked to the receipt of the tax credit. This concern matters because, for reasons explained below, tax credits awarded for investments that would have been made with or without the credit produce secondary fiscal effects that must be excluded from the analysis.

In general, any indirect revenue gain will result from the economic ramifications of tax credit-induced behavior changes. Once businesses and individuals will receive payments they would not have received absent the incentive, at least a portion of these payments will newly circulate in New Jersey's economy. As these ramifications will flow through the economy, they will affect State and local revenue collections. Indirect fiscal effects encompass secondary tax collections from credit-induced capital investments (such as enhanced gross income tax collections from employees whose positions are created because of the tax credit and increased property tax collections if the creditable investment results in a capital project that appreciates the value of a property) and credit-induced spending by all impacted firms and their employees (such as employees whose positions are created 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 investments in New Jersey emerging technology businesses that benefit 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 investment's secondary effects cannot be attributed to the bill.

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

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

Governor Chris Christie Acts to Spur Investment and Growth in New Jersey's Innovative and Emerging Technology Businesses

Thursday, January 31, 2013 Tags: Jobs and the Economy

$25 Million Angel Investor Tax Credit Program Will Encourage Early Investment in New Jersey's Emerging Innovative Businesses

Trenton, NJ – Continuing his commitment to implement pro-growth initiatives and targeted, job-creating tax relief to invest in New Jersey's economic development, Governor Christie today signed legislation creating an angel investor tax credit program to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

The bill, S-581, provides tax credits for up to 10 percent of a qualified investment in an emerging technology business with a physical presence in New Jersey and that conducts research, manufacturing, or technology commercialization in the state. New Jersey does not presently offer credits against either the corporate business tax or gross income tax for investments in emerging industries.

"Many innovations that make it to market across the world begin here in New Jersey in cornerstone industries like pharmaceuticals and the life sciences and information technology with high-skill, high-wage jobs that anchor our economy and communities," said Governor Christie. "To secure our state's leadership in these fields and foster growth and innovation in cutting-edge emerging technology industries, we must have policies that support New Jersey's own start-ups in these fields. This Angel Investor Tax Credit program will help achieve just that by incentivizing millions of dollars in private investment in New Jersey's entrepreneurial businesses, with jobs right here in the Garden State, to research, test, or commercialize the next advancements in our society."

Qualified businesses will have 225 employees or fewer, with 75 percent of those filling a position in New Jersey, and operate in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology They will also meet one of the following work or research criteria in New Jersey: have qualified research expenses paid or incurred for research conducted in New Jersey or conduct pilot scale manufacturing in this state; or conduct technology commercialization in the state. Credits will be capped at $500,000 for each qualified investment and the total program is subject to an annual cap of $25 million.

S-581 was sponsored by Senators Fred Madden (D-Camden and Gloucester), Loretta Weinberg (D-Bergen), Paul Sarlo (D-Bergen and Passaic) and Assemblymembers Annette Quijano (D-Union), Gary Schaer (D-Bergen and Passaic), Nelson Albano (D-Atlantic, Cape May and Cumberland), Wayne DeAngelo (D-Mercer and Middlesex), Reed Gusciora (D-Hunterdon and Mercer), and Ruben Ramos (D-Hudson).

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