34:1B-120; 34:1B-129; 34:1B-209 et al
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2022 **CHAPTER:** 134

NJSA: 34:1B-120; 34:1B-129; 34:1B-209 et al
(Concerns accommodations related to COVID-19 public health emergency for businesses participating in certain State economic development programs.)

BILL NO: A4929 (Substituted for S3379 (1R))

SPONSOR(S) Eliana Pintor Marin and others

DATE INTRODUCED: 12/5/2022

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

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 12/15/2022

SENATE: 12/19/2022

DATE OF APPROVAL: 12/22/2022

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second Reprint enacted) Yes

A4929

INTRODUCED BILL: (Includes sponsor(s) statement) Yes

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

SENATE: No

(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 12/20/2022

S3379 (1R)

INTRODUCED BILL: (Includes sponsor(s) statement) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: No

SENATE: Yes Environ. & Energy

(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 12/21/2022

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: Yes

Committee meeting of Senate Environment and Energy Committee: "The Committee will meet to hear testimony from invited guests on reducing food waste and greenhouse gas emissions through food date labeling," December 15, 2022
Library call number: 974.90 P777, 2022h
Available online at https://hdl.handle.net/10929/110432

NEWSPAPER ARTICLES: No

end

P.L. 2022, CHAPTER 134, ***approved December 22, 2022***
Assembly, No. 4929 ***(Second Reprint)***

AN ACT concerning State economic development programs and amending various parts of the statutory law.

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

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

9. <u>a.</u> As determined by the authority, a business which is awarded a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st of each year, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment duration, a certificate of compliance that indicates that the business continues to maintain the number of retained full-time jobs as specified in the project agreement. Upon receipt and review thereof during the tax credit term, the authority shall issue a certificate of compliance indicating the amount of tax credits that the business may apply against liability pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3). Any reduction in the number of retained full-time jobs below the number prescribed under the terms of the project agreement shall proportionately reduce the amount of tax credits the business may apply against liability in that tax period and the credits that may no longer be applied for that tax period shall be forfeited. However, if in any tax period, the number of retained full-time jobs drops below the minimum number of retained full-time jobs indicated in the paragraph of subsection b. of section 7 of P.L.2004, c.65 (C.34:1B-115.3) pursuant to which the project agreement was executed such that the business would no longer be eligible to apply the credits for the number of years for which it was approved, then the authority shall reduce the amount of tax credits the business may apply against liability and the number of years in which the business may apply the tax credits. The grant shall be subject to recapture provisions pursuant to the project agreement.

<u>b. Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee's</u>

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

Matter underlined <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Assembly ACE committee amendments adopted December 5, 2022.
[2]Assembly AAP committee amendments adopted December 12, 2022.

time at the qualified business facility; provided, however, that a business that makes such an election shall satisfy the following criteria:

(1) any full-time employee employed by the business shall spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and

(2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to [1]⟦a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located⟧ the authority, and which payment the authority shall hold [2]⟦, allocate, and distribute⟧ and make available for the provision of loans, guarantees, equity investments, and grants, or other forms of financing[2] to support small business and downtown [2]or commercial corridor[2] activation activities [2]within the municipality in which the qualified business facility is located,[2] as may be designated by the chief executive officer of the authority[1].

(cf: P.L.2010, c.123, s.12)

2. Section 6 of P.L.1996, c.26 (C.34:1B-129) is amended to read as follows:

6. a. The amount of the employment incentive awarded as a grant by the authority shall either be awarded in cash or as a tax credit. In each case, the amount of the grant shall be not less than 10 percent and not more than 50 percent of the withholdings of the business, or not less than 10 percent and not more than 30 percent of the estimated tax of the partners of an eligible partnership whether paid directly by the partner or by the eligible partnership on behalf of the partner's account, or any combination thereof, and shall be subject to the provisions of sections 10 and 11 of P.L.1996, c.26 (C.34:1B-133 and C.34:1B-134). In no case shall the aggregate amount of the employment incentive grant awarded pursuant to a business employment incentive agreement entered into on or after July 1, 2003 exceed an average of $50,000 for all new employees over the term of the grant. The employment incentive shall be based on criteria developed by the authority after considering the following:

(1) The number of eligible positions to be created;

(2) The expected duration of those positions;

(3) The type of contribution the business can make to the long-term growth of the State's economy;

(4) The amount of other financial assistance the business will receive from the State for the project;

(5) The total dollar investment the business is making in the project;

(6) Whether the business is a designated industry;

(7) Impact of the business on State tax revenues; and

(8) Such other related factors determined by the authority.

b. A business may be eligible to be awarded a grant, either in cash or in tax credits, of up to 80 percent of the withholdings of the business or up to 50 percent of the estimated tax of the partners of an eligible partnership if the grant promotes smart growth and the goals, strategies, and policies of the State Development and Redevelopment Plan, established pursuant to section 5 of P.L.1985, c.398 (C.52:18A-200), as determined by and based upon criteria promulgated by the authority following consultation with the Office of State Planning in the Department of State.

c. The term of the grant shall not exceed 10 years.

d. At the discretion of the authority, the grant may apply to new employees or partners in eligible positions created during the base years, and during the remainder of the term of the grant.

e. Within 180 days of the date of enactment of P.L.2015, c.194 (C.34:1B-137.1 et al.), a business that was approved for a grant prior to the enactment of P.L.2015, c.194 (C.34:1B-137.1 et al.), may direct the authority to convert the grant to a tax credit against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The direction to convert the grant to a tax credit shall be irrevocable. An approved tax credit shall be issued in the manner and for the amounts as follows and may only be applied in the tax period for which they are issued and shall not be carried forward:

(1) For grants accrued but not paid during calendar years 2008 through 2013, the tax credit shall be equal to an approved amount and shall be issued in five installments over a five-year period beginning in the 2017 tax accounting or privilege period of the business or tax credit transferee in the following percentages: in year one, five percent of the accrued amount; in year two, 20 percent of the accrued amount; in year three, 25 percent of the accrued amount; in year four, 25 percent of the accrued amount; in year five, 25 percent of the accrued amount. To the extent any amount in this paragraph has not been approved by the authority by the commencement of State fiscal year 2017, the aggregate tax credit that would have been issued in State fiscal year 2017 shall be issued in the year the amount is approved and the five-year period shall commence in that fiscal year;

(2) For a grant accrued but not paid during calendar year 2014, the tax credit shall be equal to any approved amount and shall be issued in four equal installments over a four-year period beginning

in the 2019 tax accounting or privilege period of the business or tax credit transferee;

(3) For a grant accrued but not paid during calendar year 2015, the tax credit shall be equal to any approved amount and shall be issued in four equal installments over a four-year period beginning in the 2019 tax accounting or privilege period of the business or tax credit transferee;

(4) For a grant accrued but not paid during calendar year 2016, the tax credit shall be equal to any approved amount and shall be issued in three equal installments over a three-year period beginning in the 2020 tax accounting or privilege period of the business or tax credit transferee;

(5) For a grant accrued but not paid during calendar year 2017, the tax credit shall be equal to any approved amount and shall be issued in three equal installments over a three-year period beginning in the 2020 tax accounting or privilege period of the business or tax credit transferee;

(6) For a grant accrued but not paid during calendar year 2018, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2022 tax accounting or privilege period of the business or tax credit transferee;

(7) For a grant accrued but not paid during calendar year 2019, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2022 tax accounting or privilege period of the business or tax credit transferee;

(8) For a grant accrued but not paid during calendar year 2020, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(9) For a grant accrued but not paid during calendar year 2021, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(10) For a grant accrued but not paid during calendar year 2022, the tax credit shall be equal to any approved amount and shall be paid in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(11) For a grant accrued but not paid during calendar year 2023, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(12) For a grant accrued but not paid during calendar year 2024, the tax credit shall be equal to any approved amount and shall be issued in the 2025 tax accounting or privilege period of the business or tax credit transferee; and

(13) For a grant accrued but not paid during calendar year 2025, the tax credit shall be equal to any approved amount and shall be issued in the 2025 tax accounting or privilege period of the business or tax credit transferee.

f. The amount of the credit allowed pursuant to this section shall be applied against the tax otherwise due under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5, prior to all other credits and payments. If the credit exceeds the amount of tax liability otherwise due from a business that pays taxes under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5, that amount of excess shall be 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.

g. (1) A business that does not pay taxes under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 may apply to the executive director of the authority for a tax credit transfer certificate, covering one or more years.

(2) A business that has received a tax credit pursuant to subsection e. of this section, which credit exceeds the amount of the tax liability otherwise due, may apply to the executive director of the authority for a tax credit transfer certificate, covering one or more years.

(3) Upon the executive director's approval of an application for a tax credit transfer certificate, the division shall review and issue the tax credit transfer certificate. The tax credit transfer certificate, upon receipt thereof by the business, may be sold or assigned, in full or in part, in an amount not less than $100,000, or the amount of the refundable tax credit issued if less than $100,000, of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The tax credit transfer certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present

value which shall be permitted. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same privileges, limitations, and conditions that apply to the use of the credit by the business that originally applied for and was allowed the tax credit, including treating the amount of excess as an overpayment under subsection f. of this section. The tax credit transferee may not transfer its tax credit to any other party.

h. Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee's time at the qualified business facility; provided, however, that a business that makes such an election shall satisfy the following criteria:

(1) any full-time employee employed by the business shall spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and

(2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to [1][a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located] the authority, and which payment the authority shall hold [2][, allocate, and distribute] and make available for the provision of loans, guarantees, equity investments, and grants, or other forms of financing[2] to support small business and downtown [2]or commercial corridor[2] activation activities [2]within the municipality in which the qualified business facility is located,[2] as may be designated by the chief executive officer of the authority[1].

(cf: P.L.2017, c.12, s.1)

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

3. a. (1) A business, upon application to and approval from the authority, shall be allowed a credit of 100 percent of its capital investment, made after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility within an eligible municipality, pursuant to the restrictions and requirements of this section. To be eligible for any tax credits authorized under this section, a business shall demonstrate to the

authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality. The value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall not exceed $1,750,000,000, except as may be increased by the authority as set forth in paragraph (5) of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3) and section 6 of P.L.2010, c.57 (C.34:1B-209.4).

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

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

(4) A business shall not be allowed tax credits under this section if the business participates in a business employment incentive agreement, pursuant to P.L.1996, c.26 (C.34:1B-124 et seq.), relating to the same capital and employees that qualify the business for this credit, or if the business receives assistance pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall not qualify for a tax credit under this section, based upon its capital investment and the employment of full-time employees, if that capital investment or employment was the basis

for which a grant was provided to the business pursuant to the "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-237 et seq.).

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

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

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

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

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

b. (1) If applications under this section have been received by the authority prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), then, to the extent that there remains sufficient financial authorization for the award of a tax credit, the authority is authorized to consider those applications and to make awards of tax credits to eligible applicants, provided that the authority shall take final action on those applications no later than December 31, 2013.

(2) A business shall apply for the credit under this section prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), and shall submit its documentation for approval of its credit amount no later than December 31, 2023.

(3) If a business has submitted an application under this section and that application has not been approved for any reason, the lack of approval shall not serve to prejudice in any way the consideration of a new application as may be submitted for the qualified business facility for the provision of incentives offered pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

(4) Tax credits awarded pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) for applications submitted to and approved by the authority prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), shall be administered by the authority in the manner established prior to that date.

(5) With respect to an application received by the authority prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.) for a qualified business facility that is located on or adjacent to the campus of an acute care medical facility, (a) the minimum number of full-time employees required for eligibility under the program may be employed by any number of tenants or other occupants of the

facility, in the aggregate, and the initial satisfaction of the requirement following completion of the project shall be deemed to satisfy the employment requirements of the program in all respects, and (b) if the capital investment in the facility exceeds $100,000,000, the determination of the net positive benefit yield shall be based on the benefits generated during a period of up to 30 years following the completion of the project, as determined by the authority.

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

[1]**[**The credit amount for any tax period ending after December 31, 2023 during which the documentation of a business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it.**]**[1]

The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the value of all credits approved by the authority against tax liabilities pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year shall not exceed $260,000,000.

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

[1]A business may elect to suspend its obligations for the 2020, 2021, 2022, 2023 tax period, or any combination thereof, due to the COVID-19 pandemic, provided that the business shall make such election in writing to the authority before the issuance of the tax credit for the corresponding tax year and such suspension shall extend the term of the eligibility period by a corresponding amount of time. The authority shall modify the approval letter, and the business shall execute the modification within the time period provided by the authority. The modification shall provide that the

failure to submit the annual report due to the suspension shall not be a forfeiture or an uncertified tax period.[1]

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

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

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

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

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

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

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

(5) Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee's time at the qualified business facility; provided, however, that a business that makes such an election shall satisfy the following criteria:

[1]**[**(1)**]** (i)[1] any full-time employee employed by the business shall spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and

[1]**[**(2)**]** (ii)[1] following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to [1]**[**a local economic development entity designated by the chief executive of

the municipality in which the qualified business facility is located] the authority, and which payment the authority shall hold [2][, allocate, and distribute] and make available for the provision of loans, guarantees, equity investments, and grants, or other forms of financing[2] to support small business and downtown [2]or commercial corridor[2] activation activities [2]within the municipality in which the qualified business facility is located,[2] as may be designated by the chief executive officer of the authority[1].

e. (1) The Executive Director of the New Jersey Economic Development Authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement P.L.2007, c.346 (C.34:1B-207 et seq.), including, but not limited to: examples of and the determination of capital investment; the enumeration of eligible municipalities; specific delineation of urban transit hubs; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements; the promulgation of procedures and forms necessary to apply for a credit, including the enumeration of the certification procedures and allocation of tax credits for different phases of a qualified business facility or mixed use project; and provisions for credit applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the credit.

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

[1]f. A business that has executed an approval letter may request before December 31, 2023 to terminate the award, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023, due to the COVID-19 public health emergency; provided that the business shall submit a certification from the business's chief executive officer or equivalent officer stating that the termination is due, directly or indirectly, to the public health emergency and describing the impact of the public health emergency on the business. All credits for the tax period in which the termination is requested and all subsequent tax periods shall be forfeited, provided however that any credits of the business shall remain unaffected. A termination agreement executed by the authority and business shall not be amended.[1]

(cf: P.L.2020, c.138, s.1)

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

6. a. (1) The combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L.2011, c.149 (C.34:1B-242 et al.) prior to December 31, 2013 shall not exceed $1,750,000,000, except as may be increased by the authority as set forth in paragraph (5) of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3). Following the enactment of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), there shall be no monetary cap on the value of credits approved by the authority attributable to the program pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

(2) (Deleted by amendment, P.L.2013, c.161)

(3) (Deleted by amendment, P.L.2013, c.161)

(4) (Deleted by amendment, P.L.2013, c.161)

(5) (Deleted by amendment, P.L.2013, c.161)

b. (1) A business shall submit an application for tax credits prior to July 1, 2019. The authority shall not approve an application for tax credits unless the application was submitted prior to July 1, 2019.

(2) (a) A business shall submit its documentation indicating that it has met the capital investment and employment requirements and all conditions of approvals specified in the incentive agreement for certification of its tax credit amount, to the authority's satisfaction, within three years following the date of approval of its application by the authority. The authority shall have the discretion to grant two six-month extensions of this deadline. If the authority accepts the documentation, the authority shall request that the Division of Taxation in the Department of the Treasury issue a tax credit based on the approved documentation to be used by the business during the eligibility period. Except as provided in subparagraphs (b) and (c) of this paragraph, in no event shall the incentive effective date occur later than four years following the date of approval of an application by the authority.

(b) As of the effective date of P.L.2017, c.314, a business which applied for the tax credit prior to July 1, 2014 under P.L.2011, c.149 (C.34:1B-242 et al.), shall submit its documentation to the authority no later than July 28, 2019, indicating that it has met the capital investment and employment requirements specified in the incentive agreement for certification of its tax credit amount.

(c) If the Governor declares an emergency, then the chief executive officer of the authority shall have the discretion to grant an extension for the duration of the emergency and the board of the authority, upon recommendation of the chief executive officer, may grant two additional six-month extensions; provided that (i) the extensions are due to the economic disruption caused by the emergency; (ii) the project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence; (iii) the eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and (iv) the eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay.

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

(4) A business seeking a credit for a mega project shall apply for the credit within four years after the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

c. (1) In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

The credit amount for any tax period for which the documentation of a business's credit amount remains uncertified as of a date three years after the closing date of that period shall be forfeited, although credit amounts for the remainder of the years of the eligibility period shall remain available to it.

The credit amount may be taken by the tax certificate holder for the tax period for which it was issued or may be carried forward for use by the tax certificate holder in any of the next 20 successive tax periods, and shall expire thereafter. The tax certificate holder may transfer the tax credit amount on or after the date of issuance or at any time within three years of the date of issuance for use by the transferee in the tax period for which it was issued or in any of the next 20 successive tax periods. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years may be taken in any tax period.

A business may elect to suspend its obligations for the 2020 [1]2021, 2022, 2023[1] tax period [1]**[**and, if the public health emergency or state of emergency declared**]** , or any combination thereof,[1] due to the COVID-19 pandemic [1]**[**extends past March 2021, the 2021 tax period**]**[1], provided that the business shall make such election in writing to the authority before the [1]**[**date the annual report is due**]** issuance of the tax credit for the corresponding tax year[1] and such suspension shall extend the term of the eligibility period by a corresponding amount of time. The authority shall amend the incentive agreement, and the business shall execute the amended incentive agreement within the time period provided by the authority. The amended incentive agreement shall provide that the failure to submit the annual report due to the suspension shall not be a forfeiture or an uncertified tax period.

(2) Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director of the Division of Taxation in the Department of the Treasury accompanied by any additional information as the director may require.

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

(4) In order to respond to the profoundly negative impact of the COVID-19 pandemic on the State's economy and finances, the authority may request a tax certificate holder, at the tax certificate holder's discretion, to defer the application of a credit amount allowed pursuant to this section to a later tax period. Upon request, the authority and the tax certificate holder shall negotiate the terms of the deferral, which shall hold the certificate holder harmless, which will be made in the incentive agreement or as an addendum to the incentive agreement.

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

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

(3) (a) If the qualified business facility is sold by the owner in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all

subsequent tax periods, provided however that any credits of the business shall remain unaffected.

(b) In connection with a regional distribution facility of foodstuffs, the business entity or entities which own or lease the facility shall qualify as a business regardless of: (i) the type of the business entity or entities which own or lease the facility; (ii) the ownership or leasing of the facility by more than one business entity; or (iii) the ownership of the business entity or entities which own or lease the facility. The ownership or leasing, whether by members, shareholders, partners, or other owners of the business entity or entities, shall be treated as ownership or leasing by affiliates. The members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility. The business entity or entities may distribute credits to members, shareholders, partners, or other ownership or leasing participants in accordance with their respective interests. If the business entity or entities or their members, shareholders, partners, or other ownership or leasing participants lease space in the facility to members, shareholders, partners, or other ownership or leasing participants or others as tenants in the facility, the leases shall be treated as a lease to an affiliate, and the business entity or entities shall not be subject to forfeiture of the credits. For the purposes of this section, leasing shall include subleasing and tenants shall include subtenants.

(4) (a) For a project located within a Garden State Growth Zone, if, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement, then the business shall be entitled to an increased base credit amount for that tax period and each subsequent tax period, for each additional full-time employee added above the number of full-time employees specified in the incentive agreement, until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount will be adjusted accordingly pursuant to this section.

(b) For a project located within a Garden State Growth Zone which qualifies under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority, and which qualifies for a tax credit pursuant to subsubparagraph (ii) of subparagraphs (a) through (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), if, in any tax period the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement such that the business shall then meet the minimum number of employees required in subparagraph (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), then the authority shall recalculate the total tax credit amount per full-time job by using the certified capital investment of the project allowable under the applicable subsubparagraph and the number of full-time jobs certified on the date of the recalculation and applying those numbers to subparagraph (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount shall be adjusted accordingly pursuant to this section.

e. The authority shall not enter into an incentive agreement with a business that has previously received incentives pursuant to the "Business Retention and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.), the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.), or any other program administered by the authority unless:

(1) the business has satisfied all of its obligations underlying the previous award of incentives or is compliant with section 4 of P.L.2011, c.149 (C.34:1B-245); or

(2) the capital investment incurred and new or retained full-time jobs pledged by the business in the new incentive agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives.

f. A business which has already applied for a tax credit incentive award prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), but who has not yet been approved for the tax credits, or has not executed an agreement with the authority, may proceed under that application or seek to amend the application or reapply for a tax credit incentive award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions of the program.

g. A business that has entered into an incentive agreement may request before December 31, ⟦2022⟧ 2023 to terminate the incentive agreement, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023, due to the COVID-19 public health emergency; provided that the business shall submit a certification from the business's chief executive officer or equivalent officer stating that the termination is due, directly or indirectly, to the public health emergency and describing the impact of the public health emergency on the business. All credits for the tax period in which the termination occurs and all subsequent tax periods shall be forfeited, provided however that any credits of the business shall remain unaffected. [1]A termination agreement executed by the authority and business shall not be amended.[1]

h. A business that has entered into an incentive agreement may request, before December 31, ⟦2021⟧ 2023, to reduce the number of new or retained full-time jobs specified in the incentive agreement based on a certification of the business of the eligible positions at the qualified business facility commencing with the 2020 tax period and, at the discretion of the business, whether the reduction shall continue for each subsequent tax period remaining in the eligibility period, provided that the business maintains the minimum number of new or retained full-time jobs required to be eligible pursuant to subsection c. of section 3 of P.L.2011, c.149 (C.34:1B-244). The reduction in employment shall first apply to the number of new full-time employees, and then shall apply to the number of retained full-time employees.

The authority shall calculate a new tax credit total amount for the 2020 tax period and the remainder of the eligibility period based on the reduced employment and shall amend the incentive agreement to reflect the recalculated award amount. In no event shall the modification result in an increase in employment or tax credit amount.

i. Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee's time at the qualified business facility; provided, however, that a business that makes such an election shall satisfy the following criteria:

(1) any full-time employee employed by the business shall spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and

(2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to [1]⟦a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located⟧ the authority, and which payment the authority shall hold [2]⟦, allocate, and distribute⟧ and make available for the provision of loans, guarantees, equity investments, and grants, or other forms of financing[2] to support small business and downtown [2]or commercial corridor[2] activation activities [2]within the municipality in which the

<u>qualified business facility is located,</u>[2] <u>as may be designated by the chief executive officer of the authority</u>[1]<u>.</u>
(cf: P.L.2021, c.160, s.57)

5. This act shall take effect immediately.

Concerns accommodations related to COVID-19 public health emergency for businesses participating in certain State economic development programs.

ASSEMBLY, No. 4929

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED DECEMBER 5, 2022

Sponsored by:
Assemblywoman ELIANA PINTOR MARIN
District 29 (Essex)

SYNOPSIS

Extends certain accommodations implemented during COVID-19 public health emergency for businesses participating in State economic development programs.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning State economic development programs and amending various parts of the statutory law.

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

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

9. <u>a.</u> As determined by the authority, a business which is awarded a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st of each year, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment duration, a certificate of compliance that indicates that the business continues to maintain the number of retained full-time jobs as specified in the project agreement. Upon receipt and review thereof during the tax credit term, the authority shall issue a certificate of compliance indicating the amount of tax credits that the business may apply against liability pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3). Any reduction in the number of retained full-time jobs below the number prescribed under the terms of the project agreement shall proportionately reduce the amount of tax credits the business may apply against liability in that tax period and the credits that may no longer be applied for that tax period shall be forfeited. However, if in any tax period, the number of retained full-time jobs drops below the minimum number of retained full-time jobs indicated in the paragraph of subsection b. of section 7 of P.L.2004, c.65 (C.34:1B-115.3) pursuant to which the project agreement was executed such that the business would no longer be eligible to apply the credits for the number of years for which it was approved, then the authority shall reduce the amount of tax credits the business may apply against liability and the number of years in which the business may apply the tax credits. The grant shall be subject to recapture provisions pursuant to the project agreement.

<u>b. Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee's time at the qualified business facility; provided, however, that a business that makes such an election shall satisfy the following criteria: (1) any full-time employee employed by the business shall spend at least 10 percent of the employee's time at the qualified</u>

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

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

business facility through the 2023 tax period; and (2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located.

(cf: P.L.2010, c.123, s.12)

2. Section 6 of P.L.1996, c.26 (C.34:1B-129) is amended to read as follows:

6. a. The amount of the employment incentive awarded as a grant by the authority shall either be awarded in cash or as a tax credit. In each case, the amount of the grant shall be not less than 10 percent and not more than 50 percent of the withholdings of the business, or not less than 10 percent and not more than 30 percent of the estimated tax of the partners of an eligible partnership whether paid directly by the partner or by the eligible partnership on behalf of the partner's account, or any combination thereof, and shall be subject to the provisions of sections 10 and 11 of P.L.1996, c.26 (C.34:1B-133 and C.34:1B-134). In no case shall the aggregate amount of the employment incentive grant awarded pursuant to a business employment incentive agreement entered into on or after July 1, 2003 exceed an average of $50,000 for all new employees over the term of the grant. The employment incentive shall be based on criteria developed by the authority after considering the following:

(1) The number of eligible positions to be created;

(2) The expected duration of those positions;

(3) The type of contribution the business can make to the long-term growth of the State's economy;

(4) The amount of other financial assistance the business will receive from the State for the project;

(5) The total dollar investment the business is making in the project;

(6) Whether the business is a designated industry;

(7) Impact of the business on State tax revenues; and

(8) Such other related factors determined by the authority.

b. A business may be eligible to be awarded a grant, either in cash or in tax credits, of up to 80 percent of the withholdings of the business or up to 50 percent of the estimated tax of the partners of an eligible partnership if the grant promotes smart growth and the goals, strategies, and policies of the State Development and Redevelopment Plan, established pursuant to section 5 of P.L.1985, c.398 (C.52:18A-200), as determined by and based upon criteria promulgated by the authority following consultation with the Office of State Planning in the Department of State.

c. The term of the grant shall not exceed 10 years.

d. At the discretion of the authority, the grant may apply to new employees or partners in eligible positions created during the base years, and during the remainder of the term of the grant.

e. Within 180 days of the date of enactment of P.L.2015, c.194 (C.34:1B-137.1 et al.), a business that was approved for a grant prior to the enactment of P.L.2015, c.194 (C.34:1B-137.1 et al.), may direct the authority to convert the grant to a tax credit against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The direction to convert the grant to a tax credit shall be irrevocable. An approved tax credit shall be issued in the manner and for the amounts as follows and may only be applied in the tax period for which they are issued and shall not be carried forward:

(1) For grants accrued but not paid during calendar years 2008 through 2013, the tax credit shall be equal to an approved amount and shall be issued in five installments over a five-year period beginning in the 2017 tax accounting or privilege period of the business or tax credit transferee in the following percentages: in year one, five percent of the accrued amount; in year two, 20 percent of the accrued amount; in year three, 25 percent of the accrued amount; in year four, 25 percent of the accrued amount; in year five, 25 percent of the accrued amount. To the extent any amount in this paragraph has not been approved by the authority by the commencement of State fiscal year 2017, the aggregate tax credit that would have been issued in State fiscal year 2017 shall be issued in the year the amount is approved and the five-year period shall commence in that fiscal year;

(2) For a grant accrued but not paid during calendar year 2014, the tax credit shall be equal to any approved amount and shall be issued in four equal installments over a four-year period beginning in the 2019 tax accounting or privilege period of the business or tax credit transferee;

(3) For a grant accrued but not paid during calendar year 2015, the tax credit shall be equal to any approved amount and shall be issued in four equal installments over a four-year period beginning in the 2019 tax accounting or privilege period of the business or tax credit transferee;

(4) For a grant accrued but not paid during calendar year 2016, the tax credit shall be equal to any approved amount and shall be issued in three equal installments over a three-year period beginning in the 2020 tax accounting or privilege period of the business or tax credit transferee;

(5) For a grant accrued but not paid during calendar year 2017, the tax credit shall be equal to any approved amount and shall be issued in three equal installments over a three-year period

beginning in the 2020 tax accounting or privilege period of the business or tax credit transferee;

(6) For a grant accrued but not paid during calendar year 2018, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2022 tax accounting or privilege period of the business or tax credit transferee;

(7) For a grant accrued but not paid during calendar year 2019, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2022 tax accounting or privilege period of the business or tax credit transferee;

(8) For a grant accrued but not paid during calendar year 2020, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(9) For a grant accrued but not paid during calendar year 2021, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(10) For a grant accrued but not paid during calendar year 2022, the tax credit shall be equal to any approved amount and shall be paid in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(11) For a grant accrued but not paid during calendar year 2023, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(12) For a grant accrued but not paid during calendar year 2024, the tax credit shall be equal to any approved amount and shall be issued in the 2025 tax accounting or privilege period of the business or tax credit transferee; and

(13) For a grant accrued but not paid during calendar year 2025, the tax credit shall be equal to any approved amount and shall be issued in the 2025 tax accounting or privilege period of the business or tax credit transferee.

f. The amount of the credit allowed pursuant to this section shall be applied against the tax otherwise due under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5, prior to all other credits and payments. If the credit exceeds the amount of tax liability otherwise due from a business that pays taxes under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-

2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5, that amount of excess shall be 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.

g. (1) A business that does not pay taxes under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 may apply to the executive director of the authority for a tax credit transfer certificate, covering one or more years.

(2) A business that has received a tax credit pursuant to subsection e. of this section, which credit exceeds the amount of the tax liability otherwise due, may apply to the executive director of the authority for a tax credit transfer certificate, covering one or more years.

(3) Upon the executive director's approval of an application for a tax credit transfer certificate, the division shall review and issue the tax credit transfer certificate. The tax credit transfer certificate, upon receipt thereof by the business, may be sold or assigned, in full or in part, in an amount not less than $100,000, or the amount of the refundable tax credit issued if less than $100,000, of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The tax credit transfer certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same privileges, limitations, and conditions that apply to the use of the credit by the business that originally applied for and was allowed the tax credit, including treating the amount of excess as an overpayment under subsection f. of this section. The tax credit transferee may not transfer its tax credit to any other party.

<u>h. Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee's time at the qualified business facility; provided, however, that a</u>

<u>business that makes such an election shall satisfy the following criteria: (1) any full-time employee employed by the business shall spend at least 10 percent of the employee’s time at the qualified business facility through the 2023 tax period; and (2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located.</u>

(cf: P.L.2017, c.12, s.1)

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

3. a. (1) A business, upon application to and approval from the authority, shall be allowed a credit of 100 percent of its capital investment, made after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility within an eligible municipality, pursuant to the restrictions and requirements of this section. To be eligible for any tax credits authorized under this section, a business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality. The value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall not exceed $1,750,000,000, except as may be increased by the authority as set forth in paragraph (5) of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3) and section 6 of P.L.2010, c.57 (C.34:1B-209.4).

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

(3) A business that is a tenant in a qualified business facility, the owner of which has made or acquired capital investments in the facility totaling not less than $50,000,000, shall occupy a leased area of the qualified business facility that represents at least $17,500,000 of the capital investment in the facility at which the tenant business and up to two other tenants in the qualified business facility shall employ not fewer than 250 full-time employees in the aggregate to be eligible for a credit under this section. The amount

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

(4) A business shall not be allowed tax credits under this section if the business participates in a business employment incentive agreement, pursuant to P.L.1996, c.26 (C.34:1B-124 et seq.), relating to the same capital and employees that qualify the business for this credit, or if the business receives assistance pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall not qualify for a tax credit under this section, based upon its capital investment and the employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-237 et seq.).

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

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

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

limited to, the requirement that the business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality.

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

b. (1) If applications under this section have been received by the authority prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), then, to the extent that there remains sufficient financial authorization for the award of a tax credit, the authority is authorized to consider those applications and to make awards of tax credits to eligible applicants, provided that the authority shall take final action on those applications no later than December 31, 2013.

(2) A business shall apply for the credit under this section prior to the effective date of the "New Jersey Economic Opportunity Act

of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), and shall submit its documentation for approval of its credit amount no later than December 31, 2023.

(3) If a business has submitted an application under this section and that application has not been approved for any reason, the lack of approval shall not serve to prejudice in any way the consideration of a new application as may be submitted for the qualified business facility for the provision of incentives offered pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

(4) Tax credits awarded pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) for applications submitted to and approved by the authority prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), shall be administered by the authority in the manner established prior to that date.

(5) With respect to an application received by the authority prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.) for a qualified business facility that is located on or adjacent to the campus of an acute care medical facility, (a) the minimum number of full-time employees required for eligibility under the program may be employed by any number of tenants or other occupants of the facility, in the aggregate, and the initial satisfaction of the requirement following completion of the project shall be deemed to satisfy the employment requirements of the program in all respects, and (b) if the capital investment in the facility exceeds $100,000,000, the determination of the net positive benefit yield shall be based on the benefits generated during a period of up to 30 years following the completion of the project, as determined by the authority.

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

The credit amount for any tax period ending after December 31, 2023 during which the documentation of a business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it.

The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the value of all credits approved by the authority against tax liabilities pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year shall not exceed $260,000,000.

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

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

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

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

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

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

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

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

<u>(5) Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee’s</u>

<u>time at the qualified business facility; provided, however, that a business that makes such an election shall satisfy the following criteria: (1) any full-time employee employed by the business shall spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and (2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located.</u>

e. (1) The Executive Director of the New Jersey Economic Development Authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement P.L.2007, c.346 (C.34:1B-207 et seq.), including, but not limited to: examples of and the determination of capital investment; the enumeration of eligible municipalities; specific delineation of urban transit hubs; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements; the promulgation of procedures and forms necessary to apply for a credit, including the enumeration of the certification procedures and allocation of tax credits for different phases of a qualified business facility or mixed use project; and provisions for credit applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the credit.

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

(cf: P.L.2020, c.138, s.1)

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

6. a. (1) The combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L.2011, c.149 (C.34:1B-242 et al.) prior to December 31, 2013 shall not exceed $1,750,000,000, except as may be increased by the authority as set forth in paragraph (5) of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3). Following the enactment of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), there shall be no monetary cap on the value of credits approved by the authority attributable to the program

pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

(2) (Deleted by amendment, P.L.2013, c.161)

(3) (Deleted by amendment, P.L.2013, c.161)

(4) (Deleted by amendment, P.L.2013, c.161)

(5) (Deleted by amendment, P.L.2013, c.161)

b. (1) A business shall submit an application for tax credits prior to July 1, 2019. The authority shall not approve an application for tax credits unless the application was submitted prior to July 1, 2019.

(2) (a) A business shall submit its documentation indicating that it has met the capital investment and employment requirements and all conditions of approvals specified in the incentive agreement for certification of its tax credit amount, to the authority's satisfaction, within three years following the date of approval of its application by the authority. The authority shall have the discretion to grant two six-month extensions of this deadline. If the authority accepts the documentation, the authority shall request that the Division of Taxation in the Department of the Treasury issue a tax credit based on the approved documentation to be used by the business during the eligibility period. Except as provided in subparagraphs (b) and (c) of this paragraph, in no event shall the incentive effective date occur later than four years following the date of approval of an application by the authority.

(b) As of the effective date of P.L.2017, c.314, a business which applied for the tax credit prior to July 1, 2014 under P.L.2011, c.149 (C.34:1B-242 et al.), shall submit its documentation to the authority no later than July 28, 2019, indicating that it has met the capital investment and employment requirements specified in the incentive agreement for certification of its tax credit amount.

(c) If the Governor declares an emergency, then the chief executive officer of the authority shall have the discretion to grant an extension for the duration of the emergency and the board of the authority, upon recommendation of the chief executive officer, may grant two additional six-month extensions; provided that (i) the extensions are due to the economic disruption caused by the emergency; (ii) the project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence; (iii) the eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and (iv) the eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay.

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

(4) A business seeking a credit for a mega project shall apply for the credit within four years after the effective date of the "New

Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

c. (1) In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

The credit amount for any tax period for which the documentation of a business's credit amount remains uncertified as of a date three years after the closing date of that period shall be forfeited, although credit amounts for the remainder of the years of the eligibility period shall remain available to it.

The credit amount may be taken by the tax certificate holder for the tax period for which it was issued or may be carried forward for use by the tax certificate holder in any of the next 20 successive tax periods, and shall expire thereafter. The tax certificate holder may transfer the tax credit amount on or after the date of issuance or at any time within three years of the date of issuance for use by the transferee in the tax period for which it was issued or in any of the next 20 successive tax periods. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years may be taken in any tax period.

A business may elect to suspend its obligations for the 2020 tax period and, if the public health emergency or state of emergency declared due to the COVID-19 pandemic extends past March 2021, the 2021 tax period, provided that the business shall make such election in writing to the authority before the date the annual report is due and such suspension shall extend the term of the eligibility period by a corresponding amount of time. The authority shall amend the incentive agreement, and the business shall execute the amended incentive agreement within the time period provided by the authority. The amended incentive agreement shall provide that the failure to submit the annual report due to the suspension shall not be a forfeiture or an uncertified tax period.

(2) Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director of the Division of Taxation in the Department of the Treasury accompanied by any additional information as the director may require.

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

(4) In order to respond to the profoundly negative impact of the COVID-19 pandemic on the State's economy and finances, the authority may request a tax certificate holder, at the tax certificate

holder's discretion, to defer the application of a credit amount allowed pursuant to this section to a later tax period. Upon request, the authority and the tax certificate holder shall negotiate the terms of the deferral, which shall hold the certificate holder harmless, which will be made in the incentive agreement or as an addendum to the incentive agreement.

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

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

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

(b) In connection with a regional distribution facility of foodstuffs, the business entity or entities which own or lease the facility shall qualify as a business regardless of: (i) the type of the business entity or entities which own or lease the facility; (ii) the ownership or leasing of the facility by more than one business entity; or (iii) the ownership of the business entity or entities which own or lease the facility. The ownership or leasing, whether by members, shareholders, partners, or other owners of the business entity or entities, shall be treated as ownership or leasing by affiliates. The members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility. The business entity or entities may distribute credits to members, shareholders, partners, or other ownership or leasing participants in accordance with their respective interests. If the business entity or entities or their members, shareholders, partners, or other ownership or leasing participants lease space in the facility to members, shareholders, partners, or other ownership or leasing participants or others as tenants in the facility, the leases shall be treated as a lease to an affiliate, and the business entity or entities shall not be subject to forfeiture of the credits. For the purposes of this section, leasing shall include subleasing and tenants shall include subtenants.

(4) (a) For a project located within a Garden State Growth Zone, if, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement, then the business shall be entitled to an increased base credit amount for that tax period and each subsequent tax period, for each additional full-time employee added above the number of full-time employees specified in the incentive agreement, until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount will be adjusted accordingly pursuant to this section.

(b) For a project located within a Garden State Growth Zone which qualifies under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority, and which qualifies for a tax credit pursuant to subsubparagraph (ii) of subparagraphs (a) through (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), if, in any tax period the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement such that the business shall then meet the minimum number of employees required in subparagraph (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), then the authority shall recalculate the total tax credit amount per full-time job by using the certified capital investment of the project allowable under the applicable subsubparagraph and the number of full-time jobs certified on the date of the recalculation and applying those numbers to subparagraph (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount shall be adjusted accordingly pursuant to this section.

e. The authority shall not enter into an incentive agreement with a business that has previously received incentives pursuant to the "Business Retention and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.), the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.), or any other program administered by the authority unless:

(1) the business has satisfied all of its obligations underlying the previous award of incentives or is compliant with section 4 of P.L.2011, c.149 (C.34:1B-245); or

(2) the capital investment incurred and new or retained full-time jobs pledged by the business in the new incentive agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives.

f. A business which has already applied for a tax credit incentive award prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), but who has not yet been approved for the tax credits, or has not executed an agreement with the authority, may proceed under that application or seek to amend the application or reapply for a tax credit incentive award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions of the program.

g. A business that has entered into an incentive agreement may request before December 31, 【2022】 2023 to terminate the incentive agreement, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023, due to the COVID-19 public health emergency; provided that the business shall submit a certification from the business's chief executive officer or equivalent officer stating that the termination is due, directly or indirectly, to the public health emergency and describing the impact of the public health emergency on the business. All credits for the tax period in which the termination occurs and all subsequent tax periods shall be forfeited, provided however that any credits of the business shall remain unaffected.

h. A business that has entered into an incentive agreement may request, before December 31, 【2021】 2023, to reduce the number of new or retained full-time jobs specified in the incentive agreement based on a certification of the business of the eligible positions at the qualified business facility commencing with the 2020 tax period and, at the discretion of the business, whether the reduction shall continue for each subsequent tax period remaining in the eligibility period, provided that the business maintains the minimum number of new or retained full-time jobs required to be eligible pursuant to subsection c. of section 3 of P.L.2011, c.149 (C.34:1B-244). The reduction in employment shall first apply to the number of new full-time employees, and then shall apply to the number of retained full-time employees.

The authority shall calculate a new tax credit total amount for the 2020 tax period and the remainder of the eligibility period based on the reduced employment and shall amend the incentive agreement to reflect the recalculated award amount. In no event shall the modification result in an increase in employment or tax credit amount.

<u>i. Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee's time at the qualified business facility; provided, however, that a business that makes such an election shall satisfy the following criteria: (1) any full-time employee employed by the business shall spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and (2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located.</u>

(cf: P.L.2021, c.160, s.57)

5. This act shall take effect immediately.

STATEMENT

This bill provides certain accommodations to businesses participating in the Business Employment Incentive Program, the Business Retention and Relocation Assistance Grant Program, the Grow New Jersey Assistance Program, and the Urban Transit Hub Program.

During the COVID-19 public health emergency, the New Jersey Economic Development Authority (EDA) implemented certain accommodations for businesses that had previously been approved awards under these programs. As part of these accommodations, the EDA waived the requirement that a full-time employee employed by a business participating in any of the programs is to spend at least 80 percent of the employee's time at the qualified business facility to be eligible for an award under the program. The New Jersey Economic Recovery Act of 2020 lowered the requirement for spending time at the qualified business facility to 60 percent of the employee's time.

This bill provides an additional waiver to eligible businesses for the period beginning on July 1, 2022 and ending on December 31, 2023. Specifically, the bill allows businesses to waive the requirement that a full-time employee who is employed by the business is to spend at least 60 percent of the employee's time at the qualified business facility. A business that makes such an election is required to satisfy the following criteria: (1) any full-time employee employed by the business is required to spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and (2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business is required to make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment is to be made to a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located.

During the COVID-19 public health emergency, the EDA also allowed businesses participating in the Grow New Jersey Assistance Program to terminate their program agreements any time before December 31, 2022 without the EDA recapturing previously distributed tax credits. The bill extends this accommodation for one calendar year, allowing business to terminate their program agreements any time before December 31, 2023, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4929

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2022

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 4929, with committee amendments.

This bill, as amended, would provide certain accommodations to businesses participating in the Business Employment Incentive Program (BEIP), the Business Retention and Relocation Assistance Grant (BRAG) Program, the Grow New Jersey Assistance (GROW) Program, and the Urban Transit Hub (HUB) Program.

During the COVID-19 public health emergency, the New Jersey Economic Development Authority (EDA) implemented certain accommodations for businesses that had previously been approved awards under these programs. As part of these accommodations, the EDA waived the requirement that a full-time employee employed by a business participating in any of the programs is to spend at least 80 percent of the employee's time at the qualified business facility to be eligible for an award under the program. The New Jersey Economic Recovery Act of 2020 lowered the requirement for spending time at the qualified business facility to 60 percent of the employee's time.

This bill would provide an additional waiver to eligible businesses for the period beginning on July 1, 2022 and ending on December 31, 2023. Specifically, the bill would allow businesses to waive the requirement that a full-time employee who is employed by the business must spend at least 60 percent of the employee's time at the qualified business facility if the business satisfies the following criteria: (1) any full-time employee employed by the business must spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and (2) the business must pay to EDA five percent of the amount of the tax credit the business receives for the 2022 tax period, which payment EDA would use to support small business and downtown activation activities.

During the COVID-19 public health emergency, the EDA also allowed businesses participating in the Grow New Jersey Assistance Program to terminate their program agreements any time before December 31, 2022 without the EDA recapturing previously distributed tax credits. The bill extends this accommodation for one calendar year, allowing a business to terminate its program agreements any time before December 31, 2023, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023. The bill prohibits any amendment to a termination agreement once executed by the EDA and the business. The bill would provide this same accommodation to a business that has executed an approval letter under the Urban Transit Hub program.

The bill would also extend the time allowed under current law for a business to suspend its obligations under a GROW tax credit, and to extend the term of eligibility for the same period of time. Current law allows a suspension of a business's obligations for the 2020 and 2021 tax periods. The bill would extend this provision to include the 2022 and 2023 tax periods as well. The bill would also extend the ability of a business to suspend its obligations for the same period under the Urban Transit Hub program for the same period of time being afforded to GROW program recipients.

COMMITTEE AMENDMENTS:

Proposed committee amendments would:

(1) require a business which waives the requirement for full-time employees to be on-site at least 60 percent of the employee's time at the qualified business facility (under BEIP, BRAG, GROW, or HUB) to pay to the EDA five percent of the amount of the tax credit the business receives for the 2022 tax period, and requires EDA to use the payment to support small business and downtown activation activities. The bill as introduced would have required payments to be made to a local economic development entity.

(2) extend the ability of a GROW program recipient, and allow a HUB program recipient, to suspend its obligations under an incentive agreement for the 2020-2023 tax periods.

(3) extend the ability of a GROW program recipient to terminate an incentive agreement due to COVID-19 for an additional year, through December 31, 2023, and allow HUB program recipients the same accommodation for the 2020-2023 tax periods.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4929

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2022

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4929 (1R), with committee amendments.

As amended, this bill would provide certain accommodations to businesses participating in the Business Employment Incentive Program (BEIP), the Business Retention and Relocation Assistance Grant (BRAG) Program, the Grow New Jersey Assistance (GROW) Program, and the Urban Transit Hub (HUB) Program.

During the COVID-19 public health emergency, the New Jersey Economic Development Authority (EDA) implemented certain accommodations for businesses that had previously been approved awards under these programs. As part of these accommodations, the EDA waived the requirement that a full-time employee employed by a business participating in any of the programs is to spend at least 80 percent of the employee's time at the qualified business facility to be eligible for an award under the program. The New Jersey Economic Recovery Act of 2020 lowered the requirement for spending time at the qualified business facility to 60 percent of the employee's time.

This bill would provide an additional waiver to eligible businesses for the period beginning on July 1, 2022 and ending on December 31, 2023. Specifically, the bill would allow businesses to waive the requirement that a full-time employee who is employed by the business must spend at least 60 percent of the employee's time at the qualified business facility if the business satisfies the following criteria: (1) any full-time employee employed by the business must spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and (2) the business must pay to EDA five percent of the amount of the tax credit the business receives for the 2022 tax period, which payment EDA would use to support small business and downtown or commercial corridor activation activities within the municipality in which the qualified business facility is located.

During the COVID-19 public health emergency, the EDA also allowed businesses participating in the Grow New Jersey Assistance Program to terminate their program agreements any time before

December 31, 2022 without the EDA recapturing previously distributed tax credits. The bill extends this accommodation for one calendar year, allowing a business to terminate its program agreements any time before December 31, 2023, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023. The bill prohibits any amendment to a termination agreement once executed by the EDA and the business. The bill would provide this same accommodation to a business that has executed an approval letter under the Urban Transit Hub program.

The bill would also extend the time allowed under current law for a business to suspend its obligations under a GROW tax credit, and to extend the term of eligibility for the same period of time. Current law allows a suspension of a business's obligations for the 2020 and 2021 tax periods. The bill would extend this provision to include the 2022 and 2023 tax periods as well. The bill would also extend the ability of a business to suspend its obligations for the same period under the Urban Transit Hub program for the same period of time being afforded to GROW program recipients.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- clarify that a business seeking a waiver that elects to pay to the EDA five percent of the amount of the tax credit the business receives for the 2022 tax period would be used by the EDA to support activation activities within the municipality in which the qualified business facility is located;
- require the EDA to use the funds received from a business seeking a waiver to provide loans, guarantees, equity investments, and grants, or other forms of financing; and
- require that funds received from a business seeking a waiver would be used to support commercial corridor activation activities in addition to small business and downtown activation activities.

FISCAL IMPACT:

The Office of Legislative Services concludes that the bill will have an indeterminate, multi-year net impact on State finances, comprised of the following components:

- A State revenue decrease to the extent that businesses choose to waive the on-site requirements for full-time employees at qualified business facilities. There will also be an increase in State revenues from payments made by those businesses equal to five percent of the tax credit they receive for the 2022 tax period. This will be offset by an increase in State costs because the bill requires the EDA to use the funds received via these payments to support certain economic development activities.

- A State revenue increase due to the termination of incentive agreements under the Grow New Jersey Assistance (Grow) Program or the execution of waiver letters under the Urban Transit Hub (Hub) Program. Exercising this option would prevent businesses that have been awarded tax credits through the GROW and HUB programs from claiming those credits because any tax credits for which the business has not qualified would be forfeited.
- Provisions of the bill allowing GROW and HUB participants to suspend their obligations under those programs would have no fiscal impact. Although the bill suspends the participants' eligibility for tax credits during the suspension period it also extends the period of time for which a business that makes this election is eligible for tax credits. The length of the extension is equal to the length of the suspension period.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4929

STATE OF NEW JERSEY
220th LEGISLATURE

DATED: DECEMBER 21, 2022

SUMMARY

Synopsis: Concerns accommodations related to COVID-19 public health emergency for businesses participating in certain State economic development programs.

Type of Impact: Multi-year increase in State expenditures.
Multi-year net impact on State revenues.

Agencies Affected: Economic Development Authority.

Office of Legislative Services Estimate

Fiscal Impact	**FY 2023 & Annually Thereafter**
State Expenditure Increase	Indeterminate
State Revenue Net Impact	Indeterminate

- The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate increase in State expenditures and have an indeterminate net impact on State revenues over a multi-year period. The OLS lacks the informational basis to project the magnitude and direction of the bill's countervailing State revenue effects.

- The bill will result in a State revenue decrease to the extent that businesses participating in certain State economic development programs choose to waive the on-site requirements for full-time employees at qualified business facilities because the waiver will allow businesses to remain eligible for tax credits which they may not have received under current law.

- The bill will result in an increase in State revenues from payments made by those businesses equal to five percent of the tax credit they received for the 2022 tax period. This will be offset by an increase in State expenditures because the bill requires the Economic Development Authority to use the funds it receives via these payments to support certain economic development activities.

- The termination of incentive agreements by businesses participating in the Grow New Jersey Assistance (GROW) Program and the Urban Transit Hub Tax Credit (HUB) Program will result in an increase in State revenues because these businesses would not be eligible to receive tax credits for which they may have otherwise qualified.

- Provisions of the bill allowing businesses to suspend their obligations under the GROW and HUB programs will have an indeterminate impact on State revenues. The overall impact of these provisions on State revenues will be driven by taxpayer decisions to claim tax credits in future tax years. The OLS cannot predict how individual taxpayer decisions will impact State finances in this regard.

BILL DESCRIPTION

The bill provides certain accommodations to businesses participating in the Business Employment Incentive Program, the Business Retention and Relocation Assistance Grant Program, the GROW Program, and the HUB Program that were impacted by the COVID-19 public health emergency. Some provisions of the bill apply to businesses participating in all four programs while others impact only businesses enrolled in the GROW and HUB programs.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill will result in an indeterminate, multi-year increase in State expenditures and have an indeterminate, multi-year net impact on State revenues.

Suspension of On-site Attendance Requirements. Under current law, businesses participating in the Business Employment Incentive Program, the Business Retention and Relocation Assistance Grant Program, and the GROW and HUB programs are awarded economic development incentives in the form of tax credits for meeting certain program thresholds. One of these program thresholds is the creation or retention of a certain number of full-time jobs at a qualified business facility. The number of jobs created or retained varies depending on the program and the location of the qualified business facility. In order for a full-time job to be counted towards satisfying the program requirements under current law, full-time employees must spend at least 60 percent of their time at the qualified business facility.

The bill allows businesses to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business must spend at least 60 percent of the employee's time at the qualified business facility. A business that elects the waiver must satisfy two criteria. First, any full-time employee employed by the business must spend at least ten percent of the employee's time at the qualified business facility through the 2023 tax period. Second, the business must make a payment to the Economic Development Authority in an amount equal to five percent of the amount of the tax credit that the business receives for the 2022 tax period. The bill requires the Economic Development Authority to use funds received via these payments to support small business activities and downtown activation or commercial corridor activities.

The OLS concludes that the provisions of the bill allowing businesses to waive the on-site requirements for full-time employees at qualified business facilities will result in a decrease in State revenues. Without the changes to the on-site attendance requirement, these businesses would not be eligible to receive tax credits because they would not satisfy all of the current statutory program thresholds through the applicable program, thereby increasing their State tax liabilities. Because the bill allows a business that elects to use the waiver provision to remain eligible to earn the full amount of the tax credit award, State revenues would be lower than they otherwise would be under current law. The OLS cannot predict how many businesses will use the waiver nor the total amount of tax credits that would be forgone if the waiver were not allowed.

The OLS notes that these provisions also will result in an increase in State revenues because the bill requires businesses that forgo the on-site attendance requirements for full-time employees to make a payment to the Economic Development Authority equal to five percent of the tax credit they receive for the 2022 tax period. This will be offset by an increase in State expenditures because the bill requires the authority to use the funds received via these payments to provide loans, guarantees, equity investments, and other forms of financing to support certain economic development activities noted above.

Termination of Incentive Agreements. During the COVID-19 public health emergency, the Economic Development Authority allowed businesses participating in the GROW program to terminate their program agreements any time before December 31, 2022, without the authority recapturing previously distributed tax credits. The bill extends this accommodation to December 31, 2023, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023. The bill provides this same accommodation to a business that executed an approval letter under the HUB program.

The OLS concludes that these provisions of the bill will result in an indeterminate increase in State revenues. Exercising this option would prevent businesses that have been awarded tax credits through the GROW and HUB programs from claiming any credits not issued prior to termination. Any requested but uncertified or unissued tax credits would be forfeited in consideration of the termination. Assuming these businesses remain New Jersey taxpayers, they would have increased tax liabilities in the tax years or privilege periods following termination of the incentive agreement. Information regarding the number of businesses that have already terminated their GROW incentive agreements is not readily available.

According to information available through the Economic Development Authority, incentive agreement termination is available for all projects demonstrating changes to their business model, real estate decision-making, and job declines related to the COVID-19 pandemic. Businesses may terminate their incentive agreement with no ongoing compliance requirements. Tax credits already awarded to businesses are not subject to recapture. Applicants must explain that the impacts of the public health emergency resulted in changes to the business, the business model, or the continued desire to participate in the GROW program. Once executed, a termination agreement cannot be amended by the authority or the business. Incentive termination agreements include a provision allowing the authority to seek recapture of any tax credits if it is determined that a business's decision to leave the program was made without consideration of COVID-19.

Temporary Suspension of Program Obligations. The bill extends the time allowed under current law for a business to suspend its obligations under a GROW tax credit, and to extend the term of eligibility for the same period of time. Current law allows a suspension of a business's obligations for the 2020 and 2021 tax periods. The bill extends this provision to include the 2022 and 2023 tax periods as well. The bill also extends the ability of a business to suspend its obligations under the HUB program for the same period of time being afforded to GROW program participants.

The OLS concludes that these provisions of the bill would have an indeterminate impact on State revenues. Although the bill allows for the suspension of participants' eligibility for tax credits during certain tax periods, it also extends the period of time for which a business that makes this election is eligible for the tax credits. The length of the extension period being equal to the length of the suspension period. This extension would allow businesses to remain eligible to receive tax credits for a longer period of time than allowed under current law. The overall impact of this provision on State revenues will be driven by taxpayer decisions to claim tax credits in future tax years. The OLS cannot predict how individual taxpayer decisions will impact State finances in this regard.

According to the authority, businesses were required to request a suspension of program requirements for tax year 2020 to the due date for their annual report. Businesses were required to request a suspension of program requirements for 2021 after the end of their tax year but before the due date for filing their annual report. Businesses participating in the GROW and HUB programs may receive tax credits for a period of up to ten years. Under current law, businesses participating in the GROW and HUB programs may carry forward unused tax credits for 20 successive tax periods. Given that current law allows these businesses to suspend GROW and HUB program requirements for two years and the bill allows the suspension period to be extended for two additional years, the tax credit carry forward period for businesses that elect to suspend the GROW and HUB program requirements may be extended for up to four additional years.

Section:	*Revenue, Finance, and Appropriations*
Analyst:	*Scott A. Brodsky* *Staff Fiscal and Budget Analyst*
Approved:	*Thomas Koenig* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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

SENATE, No. 3379

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED DECEMBER 5, 2022

Sponsored by:
Senator M. TERESA RUIZ
District 29 (Essex)
Senator NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS

Extends certain accommodations implemented during COVID-19 public health emergency for businesses participating in State economic development programs.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 12/15/2022)

AN ACT concerning State economic development programs and amending various parts of the statutory law.

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

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

9. <u>a.</u> As determined by the authority, a business which is awarded a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st of each year, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment duration, a certificate of compliance that indicates that the business continues to maintain the number of retained full-time jobs as specified in the project agreement. Upon receipt and review thereof during the tax credit term, the authority shall issue a certificate of compliance indicating the amount of tax credits that the business may apply against liability pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3). Any reduction in the number of retained full-time jobs below the number prescribed under the terms of the project agreement shall proportionately reduce the amount of tax credits the business may apply against liability in that tax period and the credits that may no longer be applied for that tax period shall be forfeited. However, if in any tax period, the number of retained full-time jobs drops below the minimum number of retained full-time jobs indicated in the paragraph of subsection b. of section 7 of P.L.2004, c.65 (C.34:1B-115.3) pursuant to which the project agreement was executed such that the business would no longer be eligible to apply the credits for the number of years for which it was approved, then the authority shall reduce the amount of tax credits the business may apply against liability and the number of years in which the business may apply the tax credits. The grant shall be subject to recapture provisions pursuant to the project agreement.

<u>b. Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee's time at the qualified business facility; provided, however, that a business that makes such an election shall satisfy the following criteria: (1) any full-time employee employed by the business shall spend at least 10 percent of the employee's time at the qualified</u>

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

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

<u>business facility through the 2023 tax period; and (2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located.</u>
(cf: P.L.2010, c.123, s.12)

2. Section 6 of P.L.1996, c.26 (C.34:1B-129) is amended to read as follows:

6. a. The amount of the employment incentive awarded as a grant by the authority shall either be awarded in cash or as a tax credit. In each case, the amount of the grant shall be not less than 10 percent and not more than 50 percent of the withholdings of the business, or not less than 10 percent and not more than 30 percent of the estimated tax of the partners of an eligible partnership whether paid directly by the partner or by the eligible partnership on behalf of the partner's account, or any combination thereof, and shall be subject to the provisions of sections 10 and 11 of P.L.1996, c.26 (C.34:1B-133 and C.34:1B-134). In no case shall the aggregate amount of the employment incentive grant awarded pursuant to a business employment incentive agreement entered into on or after July 1, 2003 exceed an average of $50,000 for all new employees over the term of the grant. The employment incentive shall be based on criteria developed by the authority after considering the following:

(1) The number of eligible positions to be created;

(2) The expected duration of those positions;

(3) The type of contribution the business can make to the long-term growth of the State's economy;

(4) The amount of other financial assistance the business will receive from the State for the project;

(5) The total dollar investment the business is making in the project;

(6) Whether the business is a designated industry;

(7) Impact of the business on State tax revenues; and

(8) Such other related factors determined by the authority.

b. A business may be eligible to be awarded a grant, either in cash or in tax credits, of up to 80 percent of the withholdings of the business or up to 50 percent of the estimated tax of the partners of an eligible partnership if the grant promotes smart growth and the goals, strategies, and policies of the State Development and Redevelopment Plan, established pursuant to section 5 of P.L.1985, c.398 (C.52:18A-200), as determined by and based upon criteria promulgated by the authority following consultation with the Office of State Planning in the Department of State.

c. The term of the grant shall not exceed 10 years.

d. At the discretion of the authority, the grant may apply to new employees or partners in eligible positions created during the base years, and during the remainder of the term of the grant.

e. Within 180 days of the date of enactment of P.L.2015, c.194 (C.34:1B-137.1 et al.), a business that was approved for a grant prior to the enactment of P.L.2015, c.194 (C.34:1B-137.1 et al.), may direct the authority to convert the grant to a tax credit against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The direction to convert the grant to a tax credit shall be irrevocable. An approved tax credit shall be issued in the manner and for the amounts as follows and may only be applied in the tax period for which they are issued and shall not be carried forward:

(1) For grants accrued but not paid during calendar years 2008 through 2013, the tax credit shall be equal to an approved amount and shall be issued in five installments over a five-year period beginning in the 2017 tax accounting or privilege period of the business or tax credit transferee in the following percentages: in year one, five percent of the accrued amount; in year two, 20 percent of the accrued amount; in year three, 25 percent of the accrued amount; in year four, 25 percent of the accrued amount; in year five, 25 percent of the accrued amount. To the extent any amount in this paragraph has not been approved by the authority by the commencement of State fiscal year 2017, the aggregate tax credit that would have been issued in State fiscal year 2017 shall be issued in the year the amount is approved and the five-year period shall commence in that fiscal year;

(2) For a grant accrued but not paid during calendar year 2014, the tax credit shall be equal to any approved amount and shall be issued in four equal installments over a four-year period beginning in the 2019 tax accounting or privilege period of the business or tax credit transferee;

(3) For a grant accrued but not paid during calendar year 2015, the tax credit shall be equal to any approved amount and shall be issued in four equal installments over a four-year period beginning in the 2019 tax accounting or privilege period of the business or tax credit transferee;

(4) For a grant accrued but not paid during calendar year 2016, the tax credit shall be equal to any approved amount and shall be issued in three equal installments over a three-year period beginning in the 2020 tax accounting or privilege period of the business or tax credit transferee;

(5) For a grant accrued but not paid during calendar year 2017, the tax credit shall be equal to any approved amount and shall be issued in three equal installments over a three-year period

beginning in the 2020 tax accounting or privilege period of the business or tax credit transferee;

(6) For a grant accrued but not paid during calendar year 2018, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2022 tax accounting or privilege period of the business or tax credit transferee;

(7) For a grant accrued but not paid during calendar year 2019, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2022 tax accounting or privilege period of the business or tax credit transferee;

(8) For a grant accrued but not paid during calendar year 2020, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(9) For a grant accrued but not paid during calendar year 2021, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(10)For a grant accrued but not paid during calendar year 2022, the tax credit shall be equal to any approved amount and shall be paid in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(11)For a grant accrued but not paid during calendar year 2023, the tax credit shall be equal to any approved amount and shall be issued in two equal installments over a two-year period beginning in the 2023 tax accounting or privilege period of the business or tax credit transferee;

(12)For a grant accrued but not paid during calendar year 2024, the tax credit shall be equal to any approved amount and shall be issued in the 2025 tax accounting or privilege period of the business or tax credit transferee; and

(13)For a grant accrued but not paid during calendar year 2025, the tax credit shall be equal to any approved amount and shall be issued in the 2025 tax accounting or privilege period of the business or tax credit transferee.

f. The amount of the credit allowed pursuant to this section shall be applied against the tax otherwise due under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5, prior to all other credits and payments. If the credit exceeds the amount of tax liability otherwise due from a business that pays taxes under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-

2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5, that amount of excess shall be 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.

g. (1) A business that does not pay taxes under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 may apply to the executive director of the authority for a tax credit transfer certificate, covering one or more years.

(2) A business that has received a tax credit pursuant to subsection e. of this section, which credit exceeds the amount of the tax liability otherwise due, may apply to the executive director of the authority for a tax credit transfer certificate, covering one or more years.

(3) Upon the executive director's approval of an application for a tax credit transfer certificate, the division shall review and issue the tax credit transfer certificate. The tax credit transfer certificate, upon receipt thereof by the business, may be sold or assigned, in full or in part, in an amount not less than $100,000, or the amount of the refundable tax credit issued if less than $100,000, of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The tax credit transfer certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same privileges, limitations, and conditions that apply to the use of the credit by the business that originally applied for and was allowed the tax credit, including treating the amount of excess as an overpayment under subsection f. of this section. The tax credit transferee may not transfer its tax credit to any other party.

h. Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee’s time at the qualified business facility; provided, however, that a business that makes such an election shall satisfy the following criteria: (1) any full-time employee employed by the business shall spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and (2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located.

(cf: P.L.2017, c.12, s.1)

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

3. a. (1) A business, upon application to and approval from the authority, shall be allowed a credit of 100 percent of its capital investment, made after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility within an eligible municipality, pursuant to the restrictions and requirements of this section. To be eligible for any tax credits authorized under this section, a business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality. The value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall not exceed $1,750,000,000, except as may be increased by the authority as set forth in paragraph (5) of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3) and section 6 of P.L.2010, c.57 (C.34:1B-209.4).

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

(3) A business that is a tenant in a qualified business facility, the owner of which has made or acquired capital investments in the facility totaling not less than $50,000,000, shall occupy a leased area of the qualified business facility that represents at least $17,500,000 of the capital investment in the facility at which the tenant business and up to two other tenants in the qualified business facility shall employ not fewer than 250 full-time employees in the aggregate to be eligible for a credit under this section. The amount

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

(4) A business shall not be allowed tax credits under this section if the business participates in a business employment incentive agreement, pursuant to P.L.1996, c.26 (C.34:1B-124 et seq.), relating to the same capital and employees that qualify the business for this credit, or if the business receives assistance pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall not qualify for a tax credit under this section, based upon its capital investment and the employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-237 et seq.).

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

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

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

limited to, the requirement that the business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality.

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

b. (1) If applications under this section have been received by the authority prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), then, to the extent that there remains sufficient financial authorization for the award of a tax credit, the authority is authorized to consider those applications and to make awards of tax credits to eligible applicants, provided that the authority shall take final action on those applications no later than December 31, 2013.

(2) A business shall apply for the credit under this section prior to the effective date of the "New Jersey Economic Opportunity Act

of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), and shall submit its documentation for approval of its credit amount no later than December 31, 2023.

(3) If a business has submitted an application under this section and that application has not been approved for any reason, the lack of approval shall not serve to prejudice in any way the consideration of a new application as may be submitted for the qualified business facility for the provision of incentives offered pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

(4) Tax credits awarded pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) for applications submitted to and approved by the authority prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), shall be administered by the authority in the manner established prior to that date.

(5) With respect to an application received by the authority prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.) for a qualified business facility that is located on or adjacent to the campus of an acute care medical facility, (a) the minimum number of full-time employees required for eligibility under the program may be employed by any number of tenants or other occupants of the facility, in the aggregate, and the initial satisfaction of the requirement following completion of the project shall be deemed to satisfy the employment requirements of the program in all respects, and (b) if the capital investment in the facility exceeds $100,000,000, the determination of the net positive benefit yield shall be based on the benefits generated during a period of up to 30 years following the completion of the project, as determined by the authority.

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

The credit amount for any tax period ending after December 31, 2023 during which the documentation of a business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it.

The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the value of all credits approved by the authority against tax liabilities pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year shall not exceed $260,000,000.

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

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

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

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

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

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

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

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

(5) Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee’s

<u>time at the qualified business facility; provided, however, that a business that makes such an election shall satisfy the following criteria: (1) any full-time employee employed by the business shall spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and (2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located.</u>

e. (1) The Executive Director of the New Jersey Economic Development Authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement P.L.2007, c.346 (C.34:1B-207 et seq.), including, but not limited to: examples of and the determination of capital investment; the enumeration of eligible municipalities; specific delineation of urban transit hubs; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements; the promulgation of procedures and forms necessary to apply for a credit, including the enumeration of the certification procedures and allocation of tax credits for different phases of a qualified business facility or mixed use project; and provisions for credit applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the credit.

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

(cf: P.L.2020, c.138, s.1)

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

6. a. (1) The combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L.2011, c.149 (C.34:1B-242 et al.) prior to December 31, 2013 shall not exceed $1,750,000,000, except as may be increased by the authority as set forth in paragraph (5) of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3). Following the enactment of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), there shall be no monetary cap on the value of credits approved by the authority attributable to the program

pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

(2) (Deleted by amendment, P.L.2013, c.161)

(3) (Deleted by amendment, P.L.2013, c.161)

(4) (Deleted by amendment, P.L.2013, c.161)

(5) (Deleted by amendment, P.L.2013, c.161)

b. (1) A business shall submit an application for tax credits prior to July 1, 2019. The authority shall not approve an application for tax credits unless the application was submitted prior to July 1, 2019.

(2) (a) A business shall submit its documentation indicating that it has met the capital investment and employment requirements and all conditions of approvals specified in the incentive agreement for certification of its tax credit amount, to the authority's satisfaction, within three years following the date of approval of its application by the authority. The authority shall have the discretion to grant two six-month extensions of this deadline. If the authority accepts the documentation, the authority shall request that the Division of Taxation in the Department of the Treasury issue a tax credit based on the approved documentation to be used by the business during the eligibility period. Except as provided in subparagraphs (b) and (c) of this paragraph, in no event shall the incentive effective date occur later than four years following the date of approval of an application by the authority.

(b) As of the effective date of P.L.2017, c.314, a business which applied for the tax credit prior to July 1, 2014 under P.L.2011, c.149 (C.34:1B-242 et al.), shall submit its documentation to the authority no later than July 28, 2019, indicating that it has met the capital investment and employment requirements specified in the incentive agreement for certification of its tax credit amount.

(c) If the Governor declares an emergency, then the chief executive officer of the authority shall have the discretion to grant an extension for the duration of the emergency and the board of the authority, upon recommendation of the chief executive officer, may grant two additional six-month extensions; provided that (i) the extensions are due to the economic disruption caused by the emergency; (ii) the project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence; (iii) the eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and (iv) the eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay.

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

(4) A business seeking a credit for a mega project shall apply for the credit within four years after the effective date of the "New

Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

c. (1) In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

The credit amount for any tax period for which the documentation of a business's credit amount remains uncertified as of a date three years after the closing date of that period shall be forfeited, although credit amounts for the remainder of the years of the eligibility period shall remain available to it.

The credit amount may be taken by the tax certificate holder for the tax period for which it was issued or may be carried forward for use by the tax certificate holder in any of the next 20 successive tax periods, and shall expire thereafter. The tax certificate holder may transfer the tax credit amount on or after the date of issuance or at any time within three years of the date of issuance for use by the transferee in the tax period for which it was issued or in any of the next 20 successive tax periods. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years may be taken in any tax period.

A business may elect to suspend its obligations for the 2020 tax period and, if the public health emergency or state of emergency declared due to the COVID-19 pandemic extends past March 2021, the 2021 tax period, provided that the business shall make such election in writing to the authority before the date the annual report is due and such suspension shall extend the term of the eligibility period by a corresponding amount of time. The authority shall amend the incentive agreement, and the business shall execute the amended incentive agreement within the time period provided by the authority. The amended incentive agreement shall provide that the failure to submit the annual report due to the suspension shall not be a forfeiture or an uncertified tax period.

(2) Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director of the Division of Taxation in the Department of the Treasury accompanied by any additional information as the director may require.

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

(4) In order to respond to the profoundly negative impact of the COVID-19 pandemic on the State's economy and finances, the authority may request a tax certificate holder, at the tax certificate

holder's discretion, to defer the application of a credit amount allowed pursuant to this section to a later tax period. Upon request, the authority and the tax certificate holder shall negotiate the terms of the deferral, which shall hold the certificate holder harmless, which will be made in the incentive agreement or as an addendum to the incentive agreement.

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

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

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

(b) In connection with a regional distribution facility of foodstuffs, the business entity or entities which own or lease the facility shall qualify as a business regardless of: (i) the type of the business entity or entities which own or lease the facility; (ii) the ownership or leasing of the facility by more than one business entity; or (iii) the ownership of the business entity or entities which own or lease the facility. The ownership or leasing, whether by members, shareholders, partners, or other owners of the business entity or entities, shall be treated as ownership or leasing by affiliates. The members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility. The business entity or entities may distribute credits to members, shareholders, partners, or other ownership or leasing participants in accordance with their respective interests. If the business entity or entities or their members, shareholders, partners, or other ownership or leasing participants lease space in the facility to members, shareholders, partners, or other ownership or leasing participants or others as tenants in the facility, the leases shall be treated as a lease to an affiliate, and the business entity or entities shall not be subject to forfeiture of the credits. For the purposes of this section, leasing shall include subleasing and tenants shall include subtenants.

(4) (a) For a project located within a Garden State Growth Zone, if, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement, then the business shall be entitled to an increased base credit amount for that tax period and each subsequent tax period, for each additional full-time employee added above the number of full-time employees specified in the incentive agreement, until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount will be adjusted accordingly pursuant to this section.

(b) For a project located within a Garden State Growth Zone which qualifies under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority, and which qualifies for a tax credit pursuant to subsubparagraph (ii) of subparagraphs (a) through (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), if, in any tax period the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement such that the business shall then meet the minimum number of employees required in subparagraph (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), then the authority shall recalculate the total tax credit amount per full-time job by using the certified capital investment of the project allowable under the applicable subsubparagraph and the number of full-time jobs certified on the date of the recalculation and applying those numbers to subparagraph (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount shall be adjusted accordingly pursuant to this section.

e. The authority shall not enter into an incentive agreement with a business that has previously received incentives pursuant to the "Business Retention and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.), the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.), or any other program administered by the authority unless:

(1) the business has satisfied all of its obligations underlying the previous award of incentives or is compliant with section 4 of P.L.2011, c.149 (C.34:1B-245); or

(2) the capital investment incurred and new or retained full-time jobs pledged by the business in the new incentive agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives.

f. A business which has already applied for a tax credit incentive award prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), but who has not yet been approved for the tax credits, or has not executed an agreement with the authority, may proceed under that application or seek to amend the application or reapply for a tax credit incentive award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions of the program.

g. A business that has entered into an incentive agreement may request before December 31, ⟦2022⟧ 2023 to terminate the incentive agreement, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023, due to the COVID-19 public health emergency; provided that the business shall submit a certification from the business's chief executive officer or equivalent officer stating that the termination is due, directly or indirectly, to the public health emergency and describing the impact of the public health emergency on the business. All credits for the tax period in which the termination occurs and all subsequent tax periods shall be forfeited, provided however that any credits of the business shall remain unaffected.

h. A business that has entered into an incentive agreement may request, before December 31, ⟦2021⟧ 2023, to reduce the number of new or retained full-time jobs specified in the incentive agreement based on a certification of the business of the eligible positions at the qualified business facility commencing with the 2020 tax period and, at the discretion of the business, whether the reduction shall continue for each subsequent tax period remaining in the eligibility period, provided that the business maintains the minimum number of new or retained full-time jobs required to be eligible pursuant to subsection c. of section 3 of P.L.2011, c.149 (C.34:1B-244). The reduction in employment shall first apply to the number of new full-time employees, and then shall apply to the number of retained full-time employees.

The authority shall calculate a new tax credit total amount for the 2020 tax period and the remainder of the eligibility period based on the reduced employment and shall amend the incentive agreement to reflect the recalculated award amount. In no event shall the modification result in an increase in employment or tax credit amount.

<u>i. Following the termination of the public health emergency declared by the Governor pursuant to Executive Order No. 103 of 2020, as extended, a business that has entered into an incentive agreement may elect, before December 31, 2023, to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business shall spend at least 60 percent of the employee's time at the qualified business facility; provided, however, that a business that makes such an election shall satisfy the following criteria: (1) any full-time employee employed by the business shall spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and (2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business shall make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment shall be made to a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located.</u>

(cf: P.L.2021, c.160, s.57)

5. This act shall take effect immediately.

STATEMENT

This bill provides certain accommodations to businesses participating in the Business Employment Incentive Program, the Business Retention and Relocation Assistance Grant Program, the Grow New Jersey Assistance Program, and the Urban Transit Hub Program.

During the COVID-19 public health emergency, the New Jersey Economic Development Authority (EDA) implemented certain accommodations for businesses that had previously been approved awards under these programs. As part of these accommodations, the EDA waived the requirement that a full-time employee employed by a business participating in any of the programs is to spend at least 80 percent of the employee's time at the qualified business facility to be eligible for an award under the program. The New Jersey Economic Recovery Act of 2020 lowered the requirement for spending time at the qualified business facility to 60 percent of the employee's time.

This bill provides an additional waiver to eligible businesses for the period beginning on July 1, 2022 and ending on December 31, 2023. Specifically, the bill allows businesses to waive the requirement that a full-time employee who is employed by the business is to spend at least 60 percent of the employee's time at the qualified business facility. A business that makes such an election is required to satisfy the following criteria: (1) any full-time employee employed by the business is required to spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and (2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business is required to make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment is to be made to a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located.

During the COVID-19 public health emergency, the EDA also allowed businesses participating in the Grow New Jersey Assistance Program to terminate their program agreements any time before December 31, 2022 without the EDA recapturing previously distributed tax credits. The bill extends this accommodation for one calendar year, allowing business to terminate their program agreements any time before December 31, 2023, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023.

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 3379

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2022

The Senate Environment and Energy Committee favorably reports Senate Bill No. 3379, with committee amendments.

This bill, as amended by the committee, provides certain accommodations to businesses participating in the Business Employment Incentive Program, the Business Retention and Relocation Assistance Grant Program, the Grow New Jersey Assistance Program, and the Urban Transit Hub Program.

During the COVID-19 public health emergency, the New Jersey Economic Development Authority (EDA) implemented certain accommodations for businesses that had previously been approved awards under these programs. As part of these accommodations, the EDA waived the requirement that a full-time employee employed by a business participating in any of the programs is to spend at least 80 percent of the employee's time at the qualified business facility to be eligible for an award under the program. The New Jersey Economic Recovery Act of 2020 lowered the requirement for spending time at the qualified business facility to 60 percent of the employee's time.

This bill provides an additional waiver to eligible businesses for the period beginning on July 1, 2022 and ending on December 31, 2023. Specifically, the bill allows businesses to waive the requirement that a full-time employee who is employed by the business is to spend at least 60 percent of the employee's time at the qualified business facility. A business that makes such an election is required to satisfy the following criteria: (1) any full-time employee employed by the business is required to spend at least 10 percent of the employee's time at the qualified business facility through the 2023 tax period; and (2) following the receipt by the business of its tax credit certificate or tax credit transfer certificate for the 2022 tax period, the business is required to make a payment of an amount equal to five percent of the amount of tax credit the business receives for the 2022 tax period, which payment is to be made to a local economic development entity designated by the chief executive of the municipality in which the qualified business facility is located.

During the COVID-19 public health emergency, the EDA also allowed businesses participating in the Grow New Jersey Assistance Program to terminate their program agreements any time before

December 31, 2022 without the EDA recapturing previously distributed tax credits. The bill extends this accommodation for one calendar year, allowing business to terminate their program agreements any time before December 31, 2023, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023.

The committee amendments to the bill would:

(1) require a business waiving the requirement for full-time employees to be on-site at least 60 percent of the time at the qualified business facility (under BEIP, BRAG, GROW, or HUB) to pay the EDA, rather than a local economic development entity, five percent of the amount of the tax credit the business receives in 2022 and clarify that the payment to the EDA is to be used to support activation activities within the municipality in which the qualified business facility is located;

(2) require the EDA to use the funds received from a business seeking a waiver to provide loans, guarantees, equity investments, and grants, or other forms of financing;

(3) require that funds received from a business seeking a waiver would be used to support small business and downtown or commercial corridor activation activities;

(4) extend the ability of a GROW program recipient, and allow a HUB program recipient, to suspend its obligations under an incentive agreement for the 2020-2023 tax periods; and

(5) extend the ability of a GROW program recipient to terminate an incentive agreement due to COVID-19 for an additional year, through December 31, 2023, and all HUB program recipients the same accommodation for the 2020-2023 tax periods.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3379

STATE OF NEW JERSEY
220th LEGISLATURE

DATED: DECEMBER 21, 2022

SUMMARY

Synopsis: Concerns accommodations related to COVID-19 public health emergency for businesses participating in certain State economic development programs.

Type of Impact: Multi-year increase in State expenditures.
Multi-year net impact on State revenues.

Agencies Affected: Economic Development Authority.

Office of Legislative Services Estimate

Fiscal Impact	FY 2023 & Annually Thereafter
State Expenditure Increase	Indeterminate
State Revenue Net Impact	Indeterminate

- The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate increase in State expenditures and have an indeterminate net impact on State revenues over a multi-year period. The OLS lacks the informational basis to project the magnitude and direction of the bill's countervailing State revenue effects.

- The bill will result in a State revenue decrease to the extent that businesses participating in certain State economic development programs choose to waive the on-site requirements for full-time employees at qualified business facilities because the waiver will allow businesses to remain eligible for tax credits which they may not have received under current law.

- The bill will result in an increase in State revenues from payments made by those businesses equal to five percent of the tax credit they received for the 2022 tax period. This will be offset by an increase in State expenditures because the bill requires the Economic Development Authority to use the funds it receives via these payments to support certain economic development activities.

- The termination of incentive agreements by businesses participating in the Grow New Jersey Assistance (GROW) Program and the Urban Transit Hub Tax Credit (HUB) Program will result in an increase in State revenues because these businesses would not be eligible to receive tax credits for which they may have otherwise qualified.

- Provisions of the bill allowing businesses to suspend their obligations under the GROW and HUB programs will have an indeterminate impact on State revenues. The overall impact of these provisions on State revenues will be driven by taxpayer decisions to claim tax credits in future tax years. The OLS cannot predict how individual taxpayer decisions will impact State finances in this regard.

BILL DESCRIPTION

The bill provides certain accommodations to businesses participating in the Business Employment Incentive Program, the Business Retention and Relocation Assistance Grant Program, the GROW Program, and the HUB Program that were impacted by the COVID-19 public health emergency. Some provisions of the bill apply to businesses participating in all four programs while others impact only businesses enrolled in the GROW and HUB programs.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill will result in an indeterminate, multi-year increase in State expenditures and have an indeterminate, multi-year net impact on State revenues.

Suspension of On-site Attendance Requirements. Under current law, businesses participating in the Business Employment Incentive Program, the Business Retention and Relocation Assistance Grant Program, and the GROW and HUB programs are awarded economic development incentives in the form of tax credits for meeting certain program thresholds. One of these program thresholds is the creation or retention of a certain number of full-time jobs at a qualified business facility. The number of jobs created or retained varies depending on the program and the location of the qualified business facility. In order for a full-time job to be counted towards satisfying the program requirements under current law, full-time employees must spend at least 60 percent of their time at the qualified business facility.

The bill allows businesses to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business must spend at least 60 percent of the employee's time at the qualified business facility. A business that elects the waiver must satisfy two criteria. First, any full-time employee employed by the business must spend at least ten percent of the employee's time at the qualified business facility through the 2023 tax period. Second, the business must make a payment to the Economic Development Authority in an amount equal to five percent of the amount of the tax credit that the business receives for the 2022 tax period. The bill requires the Economic Development Authority to use funds received via these payments to support small business activities and downtown activation or commercial corridor activities.

The OLS concludes that the provisions of the bill allowing businesses to waive the on-site requirements for full-time employees at qualified business facilities will result in a decrease in State revenues. Without the changes to the on-site attendance requirement, these businesses would not be eligible to receive tax credits because they would not satisfy all of the current statutory program thresholds through the applicable program, thereby increasing their State tax liabilities. Because the bill allows a business that elects to use the waiver provision to remain eligible to earn the full amount of the tax credit award, State revenues would be lower than they otherwise would be under current law. The OLS cannot predict how many businesses will use the waiver nor the total amount of tax credits that would be forgone if the waiver were not allowed.

The OLS notes that these provisions also will result in an increase in State revenues because the bill requires businesses that forgo the on-site attendance requirements for full-time employees to make a payment to the Economic Development Authority equal to five percent of the tax credit they receive for the 2022 tax period. This will be offset by an increase in State expenditures because the bill requires the authority to use the funds received via these payments to provide loans, guarantees, equity investments, and other forms of financing to support certain economic development activities noted above.

Termination of Incentive Agreements. During the COVID-19 public health emergency, the Economic Development Authority allowed businesses participating in the GROW program to terminate their program agreements any time before December 31, 2022, without the authority recapturing previously distributed tax credits. The bill extends this accommodation to December 31, 2023, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023. The bill provides this same accommodation to a business that executed an approval letter under the HUB program.

The OLS concludes that these provisions of the bill will result in an indeterminate increase in State revenues. Exercising this option would prevent businesses that have been awarded tax credits through the GROW and HUB programs from claiming any credits not issued prior to termination. Any requested but uncertified or unissued tax credits would be forfeited in consideration of the termination. Assuming these businesses remain New Jersey taxpayers, they would have increased tax liabilities in the tax years or privilege periods following termination of the incentive agreement. Information regarding the number of businesses that have already terminated their GROW incentive agreements is not readily available.

According to information available through the Economic Development Authority, incentive agreement termination is available for all projects demonstrating changes to their business model, real estate decision-making, and job declines related to the COVID-19 pandemic. Businesses may terminate their incentive agreement with no ongoing compliance requirements. Tax credits already awarded to businesses are not subject to recapture. Applicants must explain that the impacts of the public health emergency resulted in changes to the business, the business model, or the continued desire to participate in the GROW program. Once executed, a termination agreement cannot be amended by the authority or the business. Incentive termination agreements include a provision allowing the authority to seek recapture of any tax credits if it is determined that a business's decision to leave the program was made without consideration of COVID-19.

Temporary Suspension of Program Obligations. The bill extends the time allowed under current law for a business to suspend its obligations under a GROW tax credit, and to extend the term of eligibility for the same period of time. Current law allows a suspension of a business's obligations for the 2020 and 2021 tax periods. The bill extends this provision to include the 2022 and 2023 tax periods as well. The bill also extends the ability of a business to suspend its obligations under the HUB program for the same period of time being afforded to GROW program participants.

The OLS concludes that these provisions of the bill would have an indeterminate impact on State revenues. Although the bill allows for the suspension of participants' eligibility for tax credits during certain tax periods, it also extends the period of time for which a business that makes this election is eligible for the tax credits. The length of the extension period being equal to the length of the suspension period. This extension would allow businesses to remain eligible to receive tax credits for a longer period of time than allowed under current law. The overall impact of this provision on State revenues will be driven by taxpayer decisions to claim tax credits in future tax years. The OLS cannot predict how individual taxpayer decisions will impact State finances in this regard.

According to the authority, businesses were required to request a suspension of program requirements for tax year 2020 to the due date for their annual report. Businesses were required to request a suspension of program requirements for 2021 after the end of their tax year but before the due date for filing their annual report. Businesses participating in the GROW and HUB programs may receive tax credits for a period of up to ten years. Under current law, businesses participating in the GROW and HUB programs may carry forward unused tax credits for 20 successive tax periods. Given that current law allows these businesses to suspend GROW and HUB program requirements for two years and the bill allows the suspension period to be extended for two additional years, the tax credit carry forward period for businesses that elect to suspend the GROW and HUB program requirements may be extended for up to four additional years.

Section:	*Revenue, Finance, and Appropriations*
Analyst:	*Scott A. Brodsky* *Staff Fiscal and Budget Analyst*
Approved:	*Thomas Koenig* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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

Governor Murphy Takes Action on Legislation

12/22/2022

TRENTON – Today, Governor Murphy signed the following bills into law:

S-3241/A-4918 (Vitale, Gopal/Conaway, Jaffer, Lampitt) - Extends temporary waiver of certain basic life support services and specialty care transport unit crewmember requirements
Copy of Statement

A-4295/S-2876 (Jaffer, Mosquera, Swain/Singleton) - Adapts new federal partnership audit regime under gross income tax, ends COVID-related State tax extensions, and eliminates requirement to affirmatively elect New Jersey S Corporation status

A-4929/S-3379 (Pintor Marin, Greenwald, Atkins/Ruiz, Pou) - Concerns accommodations related to COVID-19 public health emergency for businesses participating in certain State economic development programs

A-4957/S-3361 (Jaffer, Kennedy, Caputo/Smith, Stanfield) - Appropriates $64.929 million from constitutionally dedicated CBT revenues for recreation and conservation purposes to DEP for State capital and park development projects

A-4958/S-3342 (Chaparro, Lampitt, Freiman/Beach, Turner) - Appropriates $17,288,315 from constitutionally dedicated CBT revenues to NJ Historic Trust for grants for certain historic preservation projects and associated administrative expenses

A-4959/S-3362 (Spearman, Reynolds-Jackson, Wimberly/Greenstein, Codey) - Appropriates $53,249,310 from constitutionally dedicated CBT revenues to DEP for State acquisition of lands for recreation and conservation purposes, including Blue Acres projects, and Green Acres Program administrative cost