LEGISLATIVE HISTORY CHECKLIST

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LAWS of 1999

CHAPTER: 140

NJSA:34:1B-7.42a
(corporation business tax benefit certificate transfer program)

BILL NO: S1709(Substituted for A3115)

SPONSOR(S): Singer

DATE INTRODUCED: February 25, 1999

COMMITTEE:
ASSEMBLY: -----
*SENATE:*Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATES OF PASSAGE:
*ASSEMBLY:*June 24, 1999
*SENATE:*June 24, 1999

DATE OF APPROVAL: June 28, 1999

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: *YES*1st Reprint
(Amendments during passage denoted by superscript numbers)

S1709

SPONSORS STATEMENT: *Yes* **(Begins on page 5 of original bill)**

COMMITTEE STATEMENT:
ASSEMBLY: *No*
SENATE: *Yes*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *Yes*

A3115

SPONSORS STATEMENT: *Yes* **(Begins on page 5 of original bill)**
Bill and Sponsor Statement identical to S1709

COMMITTEE STATEMENT:

ASSEMBLY: *Yes*
Identical to Senate Committee Statement for S1709
SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

GOVERNOR'S ACTIONS

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

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§1 - C.34:1B-7.42b
§4 - T & E & Note to §§1-3
§5 - Note to §§1-3

P.L. 1999, CHAPTER 140, ***approved June 28, 1999***
Senate, No. 1709 ***(First Reprint)***

AN ACT clarifying the corporation business tax surrendered tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies in this State, amending [1]and supplementing[1] P.L.1997, c.334.

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

[1]1. (New Section) As used in P.L.1997, c.334 (C.34:1B-7.42a et al.):

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L. 1974, c.80 (C.34:1B-4);

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

"Biotechnology company" means an emerging corporation that has its headquarters or base of operations in this State and that is engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a person whose headquarters or base of operations is located in this State, engaged in providing services or products necessary for such research, development, production, or provision;

"New or expanding" means a technology or biotechnology company that has fewer than 225 employees, of whom 75% are New Jersey-based employees filling a position or job in this State; and

"Technology company" means an emerging corporation that has its headquarters or base of operations in this State and that employs some combination of the following: highly educated or trained managers and workers, or both, employed in this State who use sophisticated scientific research service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a

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

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Senate SBA committee amendments adopted June 21, 1999.

product or service.[1]

[1][1.] 2.[1] Section 1 of P.L.1997, c.334 (C.34:1B-7.42a) is amended to read as follows:

1. a. The New Jersey Economic Development Authority shall establish within the New Jersey Emerging Technology and Biotechnology Financial Assistance Program established pursuant to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business tax benefit certificate transfer program to allow new or expanding emerging technology and biotechnology companies in this State[1][, in existence for not more than ten years,][1] with unused amounts of research and development tax credits otherwise allowable which cannot be applied for the credit's tax year due to the limitations of subsection b. of section 1 of P.L.1993, c.175 (C.54:10A-5.24) and unused net operating loss carryover pursuant to subparagraph (B) of paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for use by other corporation business taxpayers in this State, provided that the taxpayer receiving the surrendered tax benefits is not affiliated [1][, pursuant to the attribution rules of section 318 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318,][1] with a corporation that is surrendering its tax benefits under the program established under P.L.1997, c.334. [1]For the purposes of this section, the test of affiliation is whether the same entity directly or indirectly owns or controls 5% or more of the voting rights or 5% or more of the value of all classes of stock of both the taxpayer receiving the benefits and a corporation that is surrendering the benefits.[1] The tax benefits may be used on the corporation business tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate to assist in the funding of costs incurred by the new or expanding emerging technology and biotechnology company.

b. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by new or expanding emerging technology and biotechnology companies in this State with unused but otherwise allowable carryover of research and development tax credits pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable net operating loss carryover pursuant to paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits in exchange for private financial assistance to be made by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate in an amount equal to at least 75% of the amount of the surrendered tax benefit. [1]Provided that the amount of the surrendered tax benefit for a surrendered research and development tax credit carryover is the amount of the credit, and provided that the amount of the surrendered tax benefit for a surrendered net operating loss carryover is the amount of the loss multiplied by the new or expanding emerging technology or biotechnology company's anticipated allocation factor, as determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6) for the tax year in which the benefit is transferred and subsequently multiplied by the corporation business tax rate provided pursuant to subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5).[1] The authority shall [1][not][1] be authorized to approve [1][applications which in total represent] the transfer of no[1] more than [1][$10,000,000 annually in surrendered] $50,000,000 of[1] tax benefits [1]over State fiscal year 2000 and $40,000,000 of tax benefits over each State fiscal year thereafter. If the total amount of transferable tax benefits requested to be surrendered by approved applicants exceeds $50,000,000 for State fiscal year 2000 or $40,000,000 for each State fiscal year thereafter, the authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall not be authorized to approve the transfer of more than $50,000,000 for State fiscal year 2000 or more than $40,000,000 for each State fiscal year thereafter and shall allocate the transfer of tax benefits by approved companies using the following method:

(1) an eligible applicant with $250,000 or less of transferable tax benefits shall be authorized to surrender the entire amount of its transferable tax benefits;

(2) an eligible applicant with more than $250,000 of transferable tax benefits shall be authorized to surrender a minimum of $250,000 of its transferable tax benefits;

(3) an eligible applicant with more than $250,000 of transferable tax benefits that was approved to surrender tax benefits in the prior fiscal year shall be authorized to surrender a minimum of 50% of the transferable tax benefits surrendered in the prior fiscal year or $250,000 whichever is greater, provided that the amount of transferable tax benefits authorized shall not exceed the applicant's transferable tax benefits for the current fiscal year;

(4) an eligible applicant with more than $250,000 shall also be authorized to surrender additional transferable tax benefits determined by multiplying the applicant's transferable tax benefits less the minimum transferable tax benefits that company is authorized to surrender under paragraphs (2) or (3) of this subsection by a fraction, the numerator of which is the total amount of transferable tax benefits that the authority is authorized to approve less the total amount of transferable tax benefit approved under paragraphs (1), (2) and (3) of this subsection and the denominator of which is the total amount of transferable tax benefits requested to be surrendered by all eligible applicants less the total amount of transferable tax benefits approved

under paragraphs (1), (2) and (3) of this subsection.

If the total amount of transferable tax benefits that would be authorized using the above method exceeds $50,000,000 for State fiscal year 2000 or $40,000,000 for each State fiscal year thereafter, then the authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall limit the total amount of tax benefits authorized to be transferred to $50,000,000 for State fiscal year 2000 or $40,000,000 for each State fiscal year thereafter by applying the above method on an apportioned basis.

For purposes of this section transferable tax benefits include an eligible applicant's unused but otherwise allowable carryover of net operating losses multiplied by the applicant's anticipated allocation factor as determined pursuant to section 6 of P.L. 1945, c.162 (C.54:10A-6) for the tax year in which the benefit is transferred and subsequently multiplied by the corporation business tax rate as provided in subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) plus the total amount of the applicant's unused but otherwise allowable carryover of research and development tax credits. An eligible applicant's transferable tax benefits shall be limited to net operating losses and research and development tax credits that the applicant requests to surrender in its application to the authority and shall not, in total, exceed the maximum amount of tax benefits that the applicant is eligible to surrender.

The maximum lifetime value of surrendered tax benefits that a corporation shall be permitted to surrender pursuant to the program is $10,000,000. Applications must be received within 30 days from enactment of P.L. , c. (C.) (now pending before the Legislature as this bill) for State fiscal year 2000 and on or before June 30 for each subsequent State fiscal year[1].

The private financial assistance shall be used to fund expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

c. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax benefits approved pursuant to subsection b. of this section which shall be issued in the form of corporation business tax benefit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least 75% of the amount of the surrendered tax benefit of an emerging technology or biotechnology company in the State. The private financial assistance shall assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program. [1]**[**For the purposes of this section, "surrendered tax benefit" as applied to net operating losses means the amount of unused net operating loss carryover transferred, segregated by the taxable periods in which such losses were accrued by the surrendering corporation, multiplied by the anticipated allocation factor of the surrendering corporation and divided by the buyer's allocation factor reported in the taxable period in which the purchased net operating loss carryover or a portion of the net operating loss carryover is first used to reduce entire net income.**]**[1]

d. The authority shall coordinate the applications for surrender and acquisition of unused but otherwise allowable tax benefits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to new and expanding emerging technology and biotechnology companies in this State. The applications shall be submitted and the authority shall approve or disapprove the applications [1]**[**pursuant to the process and criteria established under section 6 of the "New Jersey Emerging Technology and Biotechnology Financial Assistance Act," P.L.1995, c.137 (C.34:1B-7.42)**]**.

The authority shall, in consultation with the New Jersey Commerce and Economic Growth Commission, the New Jersey Commission on Science and Technology and any institution of higher education in New Jersey, develop criteria for the approval or disapproval of applications. Such criteria shall include, but need not be limited to, an evaluation of the new or expanding emerging technology or biotechnology company's actual or potential scientific and technological viability, a determination that the new or expanding emerging technology or biotechnology company's principal products or services are sufficiently innovative to provide a competitive advantage, a determination that the proposed financial assistance will result in significant growth in permanent, full-time employment in the State, a determination made by the authority that the new or expanding emerging technology or biotechnology company does not have sufficient resources to operate in the short term or cannot secure financial assistance from venture capital, stock issuance, product sales revenue, a parent corporation or other affiliates, bank or any other method of obtaining capital, and a determination that the financial assistance provided pursuant to this act demonstrates the prospect of a significant positive change in the applicant's net income. The authority shall establish the weight of importance to be given each criterion utilized in its application approval process. No application shall be approved in which the new or expanding technology or biotechnology company (1) has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its financial statements; or (2) has demonstrated a ratio in excess of 110% or greater of operating revenues divided by operating expenses in any of the two previous full years of operations as determined on its financial statements; or (3) is directly or indirectly at least 50% owned or controlled by another corporation that has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its financial statements or is part of a consolidated group of affiliated corporations, as filed for federal income tax purposes, that in the aggregate has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its combined financial statements.

Once an application has been approved, the applicant shall be permitted to surrender, subject to the limitations set forth in subsection b. of this section and the net operating loss carryover and research and development tax credit carryover time periods pursuant to subparagraph (B) of paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) and subsection b. of section 1 of P.L.1993, c.175 (C.54:10A-5.24), the surrendered tax benefits that are requested in the application regardless of whether the applicant continues to meet the eligibility criteria set forth in the act in subsequent years[1].

The authority shall require a corporation business taxpayer that acquires a corporation business tax benefit certificate to enter into a written agreement with the new or expanding emerging technology or biotechnology company concerning the terms and conditions of the private financial assistance made in exchange for the certificate. The written agreement may contain terms concerning the maintenance by the new or expanding emerging technology or biotechnology company of a headquarters or a base of operation in this State.

(cf: P.L.1997, c.334, s.1)

[1]**[**2.**]** 3.[1] Section 2 of P.L.1997, c.334 (C.54:10A-4.2) is amended to read as follows:

2. a. Notwithstanding the provisions of paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) to the contrary, a taxpayer that has acquired a corporation business tax benefit certificate pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a net operating loss

carryover deduction shall attach that certificate to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.), and shall [1][otherwise apply the [net operating loss carryover deduction] acquired surrendered tax benefit in accordance with its terms][1] determine the amount of its net operating loss carryover deduction by multiplying the surrendered net operating loss by the new or expanding emerging technology or biotechnology company's anticipated allocation factor determined pursuant to subsection (b) of section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and subsequently dividing the amount by the taxpayer's allocation factor determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6) for the tax year in which the surrendered tax benefit is used. The taxpayer shall otherwise apply the net operating loss carryover deduction[1] as evidenced by the certificate according to the provisions of subsection (k) of section 4 of P.L.1945, c.162 and any rules or regulations the director may adopt to carry out the provisions of this section.

b. A new or expanding emerging technology or biotechnology company that has surrendered an unused net operating loss carryover pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), shall not be allowed a net operating loss carryover deduction based upon the right to such a deduction as evidenced by the corporation business tax benefit certificate and shall attach a copy of the certificate to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.).

(cf: P.L.1997, c.334, s.2)

[1]4. (New Section) Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the New Jersey Economic Development Authority and the Division of Taxation in the Department of the Treasury may adopt, immediately upon filing with the Office of Administrative Law, such regulations as the authority or division respectively deems necessary for it to implement the provisions of P.L. , c. (C.) (now pending before the Legislature as this bill), which regulations shall be effective for a period not to exceed 180 days from the date of the filing. Such regulations may thereafter be amended, adopted or readopted by the authority or the division as the authority or division deems necessary in accordance with the requirements of P.L.1968, c.410.[1]

[1][3.] 5.[1] This act shall take effect immediately and apply to tax years beginning on and after January 1, 1999.

Clarifies the corporation business tax surrendered tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies in this State.

SENATE, No. 1709

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED FEBRUARY 25, 1999

Sponsored by:
Senator ROBERT W. SINGER
District 30 (Burlington, Monmouth and Ocean)

SYNOPSIS

Clarifies the corporation business tax surrendered tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies in this State.

CURRENT VERSION OF TEXT

As introduced.

AN ACT clarifying the corporation business tax surrendered tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies in this State, amending P.L.1997, c.334.

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

1. Section 1 of P.L.1997, c.334 (C.34:1B-7.42a) is amended to read as follows:

1. a. The New Jersey Economic Development Authority shall establish within the New Jersey Emerging Technology and Biotechnology Financial Assistance Program established pursuant to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business tax benefit certificate transfer program to allow new or expanding emerging technology and biotechnology companies in this State, in existence for not more than ten years, with unused amounts of research and development tax credits otherwise allowable which cannot be applied for the credit's tax year due to the limitations of subsection b. of section 1 of P.L.1993, c.175 (C.54:10A-5.24) and unused net operating loss carryover pursuant to subparagraph (B) of paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for use by other corporation business taxpayers in this State, provided that the taxpayer receiving the surrendered tax benefits is not affiliated, pursuant to the attribution rules of section 318 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, with a corporation that is surrendering its tax benefits under the program established under P.L.1997, c.334. The tax benefits may be used on the corporation business tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate to assist in the funding of costs incurred by the new or expanding emerging technology and biotechnology company.

b. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by new or expanding emerging technology and biotechnology companies in this State with unused but otherwise allowable carryover of research and development tax credits pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable net operating loss carryover pursuant to paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits in exchange for private financial assistance to be made by

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

Matter underlined thus is new matter.

the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate in an amount equal to at least 75% of the amount of the surrendered tax benefit. The authority shall not be authorized to approve applications which in total represent more than $10,000,000 annually in surrendered tax benefits. The private financial assistance shall be used to fund expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

c. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax benefits approved pursuant to subsection b. of this section which shall be issued in the form of corporation business tax benefit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least 75% of the amount of the surrendered tax benefit of an emerging technology or biotechnology company in the State. The private financial assistance shall assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program. For the purposes of this section, “surrendered tax benefit” as applied to net operating losses means the amount of unused net operating loss carryover transferred, segregated by the taxable periods in which such losses were accrued by the surrendering corporation, multiplied by the anticipated allocation factor of the surrendering corporation and divided by the buyer’s allocation factor reported in the taxable period in which the purchased net operating loss carryover or a portion of the net operating loss carryover is first used to reduce entire net income.

d. The authority shall coordinate the applications for surrender and acquisition of unused but otherwise allowable tax benefits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to new and expanding emerging technology and biotechnology companies in this State. The applications shall be submitted and the authority shall approve or disapprove the applications pursuant to the process and criteria established under section 6 of the "New Jersey Emerging Technology and Biotechnology Financial Assistance Act," P.L.1995, c.137 (C.34:1B-7.42). The authority shall require a corporation business taxpayer that acquires a corporation business tax benefit certificate to enter into a written agreement with the new or expanding emerging technology or biotechnology company concerning the terms and conditions of the private financial assistance made in exchange for the certificate. The written agreement may contain terms concerning the maintenance by the new or expanding emerging technology or biotechnology company of a headquarters or a base of operation in this State.

(cf: P.L.1997, c.334, s.1)

2. Section 2 of P.L.1997, c.334 (C.54:10A-4.2) is amended to read as follows:

2. a. Notwithstanding the provisions of paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) to the contrary, a taxpayer that has acquired a corporation business tax benefit certificate pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a net operating loss carryover deduction shall attach that certificate to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.), and shall otherwise apply the ⟦net operating loss carryover deduction⟧ <u>acquired surrendered tax benefit in accordance with its terms</u> as evidenced by the certificate according to the provisions of subsection (k) of section 4 of P.L.1945, c.162 and any rules or regulations the director may adopt to carry out the provisions of this section.

b. A new or expanding emerging technology or biotechnology company that has surrendered an unused net operating loss carryover pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), shall not be allowed a net operating loss carryover deduction based upon the right to such a deduction as evidenced by the corporation business tax benefit certificate and shall attach a copy of the certificate to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.).

(cf: P.L.1997, c.334, s.2)

3. This act shall take effect immediately and apply to tax years beginning on and after January 1, 1999.

STATEMENT

This bill makes several changes clarifying the corporation business tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies in this State. The value of the surrendered tax benefit under this program for surrendered net operating losses will be based upon the seller's corporation business tax (CBT) allocation factor to determine the amount of the net operating loss that the purchaser is able to deduct on its CBT return. This clarification is necessary to ensure that the buyer will not receive more than a 25% discount on the amount paid the seller for the net operating losses and that there will be no discrimination against sellers of net operating losses with a high New Jersey CBT allocation factor.

The bill also clarifies that the seller of a surrendered tax benefit must be a new or expanding company engaged in emerging technology or biotechnology. These selling companies will be limited to those in existence not more than ten years. The benefits of this program will thus be restricted to new and emerging companies as intended, and will not be available to long-established and thriving emerging technology and biotechnology companies, such as Fortune 500 companies, that should not be eligible as sellers of net operating losses and research development credits under the program.

The bill also clarifies that there will be no sales of surrendered tax benefits between affiliated corporations. The buyer of a surrendered tax benefit will not be permitted to be affiliated with the seller under the attribution rules of section 318 of the federal Internal Revenue Code. Prohibiting the cross-ownership of 49% of corporate interests between seller and buyer is intended to prevent financial windfalls to corporations that are part of a corporate group active in acquiring and selling tax benefits to each other. Corporations that invest in small technology subsidiaries in which they own less than 80% controlling interest already may receive a CBT investment tax credit of up to $500,000 per year pursuant to the "Small New Jersey-based High-Technology Business Investment Tax Credit Act," P.L.1997, c.349, which was part of the package of four bills enacted to provide tax incentives to high technology businesses.

The bill also imposes a $10,000,000 limit on the total value of tax benefits that the New Jersey Economic Development Authority can approve as part of any annual application process. This will enable the State to anticipate the cost of the program and adequately budget for its annual cost.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1709

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 21, 1999

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1709.

This bill, as amended, makes several changes to clarify and target the corporation business tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies in this State.

The tax benefit certificate transfer program is a State financial assistance program for small businesses supported by corporation business tax expenditures and operated through a system of tax benefit sales. This bill provides standards for the valuation and application of transferred tax benefits under the program, targets the program to new and emerging companies, provides criteria for the approval of benefit transfers that target the "quality " of the emerging technology, and sets annual caps to maximize program benefits while working within State fiscal constraints.

The program allows corporations to purchase the research and development credits and net operating loss deductions of new or expanding emerging technology and biotechnology companies in this State that are not able to use these tax benefits because they are not yet profitable. The bill sets a standard for the purchase price of the tax benefits based on the usefulness of the benefit to the selling company and a standard for the application of the benefit by the purchasing corporation based on the value paid by the purchaser.

The bill also clarifies that the seller of a surrendered tax benefit must be a new or expanding company engaged in emerging technology or biotechnology, and sets criteria for approval of the sale of a benefit based on the seller's actual or potential scientific and technological viability, innovation leading to a competitive advantage, State growth impact potential, lack of alternative financial resources, and whether the financing will help the seller become profitable. Approval will not be given to seller applicants with a record of profitability or a profitable affiliate. The bill also clarifies that there will be no sales of surrendered tax benefits between affiliated corporations.

The bill sets an annual cap on the program of $50,000,000 in State fiscal year 2000 and $40,000,000 for each year thereafter. To provide the maximum financial assistance under the capped amount, the bill sets up priority and cap apportionment procedures that emphasize the availability of a preliminary (but not final) allocation of $250,000 of annual cap amount to each willing seller before any other allocations are made. The bill also sets a lifetime limit on any seller's sales of tax benefits of $10,000,000.

COMMITTEE AMENDMENTS:

Committee amendments to this bill (1) increase the maximum annual amount of surrendered tax benefits that may be approved from $10,000,000 under the bill as introduced to $50,000,000 in FY2000 and $40,000,000 in subsequent fiscal years, (2) establish a method by which, in a fiscal year in which the total amount of tax benefits for which eligible transfer applications have been made exceeds the ceiling on the total amount of transfers allowable for that fiscal year, allowable tranfers may be allotted among qualified taxpayers, (3) clarify the universe of corporate business taxpayers eligible to transfer tax benefits under the program, and (4) provide for the establishment of criteria for the approval of applications for such transfers. As amended, the bill is identical to Assembly Bill 3115 (1R).

FISCAL IMPACT:

The bill sets an annual cap on the program of $50,000,000 in State fiscal year 2000 and $40,000,000 for each year thereafter.

LEGISLATIVE FISCAL ESTIMATE

SENATE, No. 1709

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: JUNE 29, 1999

Senate Bill No. 1709 of 1999 makes several changes clarifying the corporation business tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies in this State. The corporation business tax benefit certificate transfer program program enacted by P.L.1997, c.334 (C.34:1B-7.42a et al.), allows new or expanding emerging technology and biotechnology companies in this State with unused carryforward of research and development tax credits and unused net operating loss deduction carryforward under the State Corporation Business Tax to transfer those tax benefits to other corporation business taxpayers in exchange for certain financial assistance equal to at least 75% of the value of the transferred tax benefit. The New Jersey Economic Development Authority is responsible for reviewing and approving applications for the tax benefit certificate transfers in cooperation with the Division of Taxation in the Department of the Treasury. The surrender of unused tax credits and net operating loss carryforward to corporation business taxpayers that can use these tax benefits on their annual corporation business tax returns are to be administered pursuant to written agreements reached between the corporation surrendering the unused tax benefit and the corporation intending to use the tax benefit. The New Jersey Economic Development Authority is responsible for reviewing and approving applications for the tax benefit certificate transfers in cooperation with the Division of Taxation in the Department of the Treasury. A corporation business tax benefit certificate is required to be attached to the corporation business tax return of a taxpayer using an acquired tax benefit under this program. The program will first apply to tax year 1999.

Two of the changes to the program proposed by the bill may limit the type of corporations that may be able to sell or acquire tax benefits. The emerging technology or biotechnology corporations selling tax benefits would be limited to those in existence for ten years or less. Also, corporations buying tax benefits would not be permitted to be affiliated with the seller under certain cross-ownership prohibitions established under federal income tax provisions. These limits on the participating corporations may restrict the number of corporations qualifying for the program. However, there are no data available from which to estimate the amount of tax benefit transfers that would be eliminated by these limitations. There is no information currently available from the Economic Development Authority or the Division of Taxation on the status of pending applications or the longevity or affiliation status of the pending corporate applicants.

The bill also imposes a $10,000,000 limit on the total value of tax benefits that the New Jersey Economic Development Authority can approve as part of any annual application process. Assuming that an acquiring corporation will apply an acquired tax benefit in the tax year in which the transfer takes place, this provision would limit the annual maximum potential revenue loss under the program to $10 million under the corporation business tax. The program currently has no annual limit on the value of tax benefits that may be approved. The absence of any such limit has reportedly raised concerns over the potential for an unknown revenue loss under the program. A recent press report on the status of the program stated that application approval process has been placed on hold by the State Treasurer because of the unknown potential for revenue loss. This bill effectively places an annual limit of $10 million on the potential revenue loss. The bill would first apply to the 1999 tax year which is the first tax year for the program. The initial revenue loss from tax year 1999 corporation business tax returns would occur in fiscal year 2000.

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.

ASSEMBLY, No. 3115

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED MAY 10, 1999

Sponsored by:
Assemblywoman CAROL J. MURPHY
District 26 (Essex, Morris and Passaic)
Assemblyman NICHOLAS R. FELICE
District 40 (Bergen and Passaic)

SYNOPSIS

Clarifies the corporation business tax surrendered tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies in this State.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 5/21/1999)

AN ACT clarifying the corporation business tax surrendered tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies in this State, amending P.L.1997, c.334.

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

1. Section 1 of P.L.1997, c.334 (C.34:1B-7.42a) is amended to read as follows:

1. a. The New Jersey Economic Development Authority shall establish within the New Jersey Emerging Technology and Biotechnology Financial Assistance Program established pursuant to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business tax benefit certificate transfer program to allow new or expanding emerging technology and biotechnology companies in this State<u>, in existence for not more than ten years,</u> with unused amounts of research and development tax credits otherwise allowable which cannot be applied for the credit's tax year due to the limitations of subsection b. of section 1 of P.L.1993, c.175 (C.54:10A-5.24) and unused net operating loss carryover pursuant to subparagraph (B) of paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for use by other corporation business taxpayers in this State<u>, provided that the taxpayer receiving the surrendered tax benefits is not affiliated, pursuant to the attribution rules of section 318 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, with a corporation that is surrendering its tax benefits under the program established under P.L.1997, c.334. The tax benefits may be used</u> on the corporation business tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate to assist in the funding of costs incurred by the new or expanding emerging technology and biotechnology company.

b. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by new or expanding emerging technology and biotechnology companies in this State with unused but otherwise allowable carryover of research and development tax credits pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable net operating loss carryover pursuant to paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits in exchange for private financial assistance to be made by

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

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

the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate in an amount equal to at least 75% of the amount of the surrendered tax benefit. <u>The authority shall not be authorized to approve applications which in total represent more than $10,000,000 annually in surrendered tax benefits.</u> The private financial assistance shall be used to fund expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

c. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax benefits approved pursuant to subsection b. of this section which shall be issued in the form of corporation business tax benefit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least 75% of the amount of the surrendered tax benefit of an emerging technology or biotechnology company in the State. The private financial assistance shall assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program. <u>For the purposes of this section, "surrendered tax benefit" as applied to net operating losses means the amount of unused net operating loss carryover transferred, segregated by the taxable periods in which such losses were accrued by the surrendering corporation, multiplied by the anticipated allocation factor of the surrendering corporation and divided by the buyer's allocation factor reported in the taxable period in which the purchased net operating loss carryover or a portion of the net operating loss carryover is first used to reduce entire net income.</u>

d. The authority shall coordinate the applications for surrender and acquisition of unused but otherwise allowable tax benefits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to new and expanding emerging technology and biotechnology companies in this State. The

applications shall be submitted and the authority shall approve or disapprove the applications pursuant to the process and criteria established under section 6 of the "New Jersey Emerging Technology and Biotechnology Financial Assistance Act," P.L.1995, c.137 (C.34:1B-7.42). The authority shall require a corporation business taxpayer that acquires a corporation business tax benefit certificate to enter into a written agreement with the new or expanding emerging technology or biotechnology company concerning the terms and conditions of the private financial assistance made in exchange for the certificate. The written agreement may contain terms concerning the maintenance by the new or expanding emerging technology or biotechnology company of a headquarters or a base of operation in this State.
(cf: P.L.1997, c.334, s.1)

2. Section 2 of P.L.1997, c.334 (C.54:10A-4.2) is amended to read as follows:

2. a. Notwithstanding the provisions of paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) to the contrary, a taxpayer that has acquired a corporation business tax benefit certificate pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a net operating loss carryover deduction shall attach that certificate to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.), and shall otherwise apply the ⟦net operating loss carryover deduction⟧ <u>acquired surrendered tax benefit in accordance with its terms</u> as evidenced by the certificate according to the provisions of subsection (k) of section 4 of P.L.1945, c.162 and any rules or regulations the director may adopt to carry out the provisions of this section.

b. A new or expanding emerging technology or biotechnology company that has surrendered an unused net operating loss carryover pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), shall not be allowed a net operating loss carryover deduction based upon the right to such a deduction as evidenced by the corporation business tax benefit certificate and shall attach a copy of the certificate to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.).
(cf: P.L.1997, c.334, s.2)

3. This act shall take effect immediately and apply to tax years beginning on and after January 1, 1999.

STATEMENT

This bill makes several changes clarifying the corporation business tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies in this State. The value of the surrendered tax benefit under this program for surrendered net operating losses will be based upon the seller's corporation business tax (CBT) allocation factor to determine the amount of the net operating loss that the purchaser is able to deduct on its CBT return. This clarification is necessary to ensure that the buyer will not receive more than a 25% discount on the amount paid the seller for the net operating losses and that there will be no discrimination against sellers of net operating losses with a high New Jersey CBT allocation factor.

The bill also clarifies that the seller of a surrendered tax benefit must be a new or expanding company engaged in emerging technology or biotechnology. These selling companies will be limited to those in existence not more than ten years. The benefits of this program will thus be restricted to new and emerging companies as intended, and will not be available to long-established and thriving emerging technology and biotechnology companies, such as Fortune 500 companies, that should not be eligible as sellers of net operating losses and research development credits under the program.

The bill also clarifies that there will be no sales of surrendered tax benefits between affiliated corporations. The buyer of a surrendered tax benefit will not be permitted to be affiliated with the seller under the attribution rules of section 318 of the federal Internal Revenue Code. Prohibiting the cross-ownership of 49% of corporate interests between seller and buyer is intended to prevent financial windfalls to corporations that are part of a corporate group active in acquiring and selling tax benefits to each other. Corporations that invest in small technology subsidiaries in which they own less than 80% controlling interest already may receive a CBT investment tax credit of up to $500,000 per year pursuant to the "Small New Jersey-based High-Technology Business Investment Tax Credit Act," P.L.1997, c.349, which was part of the package of four bills enacted to provide tax incentives to high technology businesses.

The bill also imposes a $10,000,000 limit on the total value of tax benefits that the New Jersey Economic Development Authority can approve as part of any annual application process. This will enable the State to anticipate the cost of the program and adequately budget for its annual cost.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3115

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 21, 1999

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3115 with committee amendments.

Assembly Bill No. 3115, as amended, makes several changes to clarify and target the corporation business tax benefit certificate transfer program for new or expanding emerging technology and biotechnology companies in this State. This is a State financial assistance program for small businesses supported by corporation business tax expenditures and operated through a system of tax benefit sales. The bill provides standards for the valuation and application of the transferred tax benefits, targets the program to new and emerging companies, provides criteria for the approval of benefit transfers that target the "quality " of the emerging technology and sets annual caps to maximize program benefits while working within State fiscal constraints.

The program allows corporations to purchase the research and development credits and net operating loss deductions of new or expanding emerging technology and biotechnology companies in this State that are not able to use these tax benefits because they are not yet profitable. The bill sets a standard for the purchase price of the tax benefits based on the usefulness of the benefit to the selling company and a standard for the application of the benefit by the purchasing corporation based on the value paid by the purchaser.

The bill also clarifies that the seller of a surrendered tax benefit must be a new or expanding company engaged in emerging technology or biotechnology, and sets criteria for approval of the sale of a benefit based on the seller's actual or potential scientific and technological viability, innovation leading to a competitive advantage, State growth impact potential, lack of alternative financial resources, and whether the financing will help the seller become profitable. Approval will not be given to seller applicants with a record of profitability or a profitable affiliate. The bill also clarifies that there will be no sales of surrendered tax benefits between affiliated corporations.

The bill sets an annual cap on the program of $50,000,000 in State fiscal year 2000 and $40,000,000 for each year thereafter. To provide the maximum financial assistance under the capped amount, the bill sets up priority and cap apportionment procedures that emphasize the availability of a preliminary (but not final) allocation of $250,000 of annual cap amount to each willing seller before any other allocations are made. The bill also sets a lifetime limit on any seller's sales of tax benefits of $10,000,000.

FISCAL IMPACT:

The bill sets an annual cap on the program of $50,000,000 in State fiscal year 2000 and $40,000,000 for each year thereafter.

COMMITTEE AMENDEMENTS:

Committee amendments to this bill (1) increase the maximum annual amount of surrendered tax benefits that may be approved from $10,000,000 under the bill as introduced to $50,000,000 in FY2000 and $40,000,000 in subsequent fiscal years, (2) establish a method by which, in a fiscal year in which the total amount of tax benefits for which eligible transfer applications have been made exceeds the ceiling on the total amount of transfers allowable for that fiscal year, allowable tranfers may be allocated among qualified taxpayers (3) clarify the universe of corporate business taxpayers eligible to transfer tax benefits under the program, and (4) provide for the establishment of criteria for the approval of applications for such transfers.

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Office of the Governor
NEWS RELEASE

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RELEASE: June 28, 1999

Governor Whitman Signs Bills into Law

Gov. Christie Whitman today signed 12 bills into law, including legislation to increase parental involvement in a minor's decision to have an abortion, to allow towns to regulate or prohibit nudity on state-owned land within their borders, and to fund the state's contribution toward a memorial to recognize World War II veterans.

On the parental notification bill, Gov. Whitman said, "This legislation strikes a common-sense balance that recognizes the rights of parents to know when a medical procedure will be performed on their minor children, while preserving a young woman's legal right to choose whether or not to have an abortion."

A-44, sponsored by Assembly Members Paul DiGaetano (R-Bergen/Essex/Passaic) and Joseph Doria (D-Hudson) and Senators Ronald Rice (D-Essex) and Joseph Palaia (R-Monmouth), appropriates $14.8 million to the Department of Community Affairs to demolish and dispose of unsafe buildings. The money would be used as loans to 17 municipalities to demolish buildings in urban and rural areas. The loans were awarded pursuant to the "Urban and Rural Centers Unsafe Buildings Demolition Bond Act." Loans will be granted to Camden, Passaic, Elizabeth, Bridgeton, Jersey City, Asbury Park, Bayonne, East Orange, Hampton, Long Branch, Orange, Paterson, Penns Grove, Perth Amboy, Pleasantville, Union City, and Vineland.

ACS for A-527/S-813, sponsored by Assembly Members John E. Rooney (R-Bergen) and Marion Crecco (R-Essex/Passaic), seeks to increase parental involvement in a minor's decision to have an abortion. Specifically, the bill requires a physician, prior to performing an abortion upon a female under the age of 18, to notify a parent at least 48 hours prior to the procedure, subject to certain exemptions. If the parent has no custodial rights or if there is no parent with care and control, the bill provides for notification of a foster parent, guardian or person standing in loco parentis.

The bill establishes an exception to the notification requirement if, in the attending physician's good faith clinical judgment, a medical emergency exists. The bill also allows a pregnant minor to petition a judge of the Superior Court for a judicial order waiving the notification requirement. A judge must waive the notification requirement if he finds, by clear and convincing evidence, that either the pregnant minor is mature enough to decide whether to have an abortion; the notification of the parent is not in the best interests of the minor; or there is evidence of physical, sexual or emotional abuse by the parent, guardian or legal custodian.

A-631, sponsored by Assembly Members Joseph Roberts (D-Camden/Gloucester) and Arline Friscia (D-Middlesex), designates a portion of the revenue collected from vending machine sales under contract with the Commission for the Blind and Visually Impaired to be used for vision screening and prevention services. Since 1994, the vending machine revenue has been redirected through the appropriations act, which resulted in a disincentive to increase sales. The revenue sharing program grants the Commissioner of the Department of Human Services the authority to share a portion of the sales with department institutions only when enough funds have been collected to support Project Prevention.

S-1698, sponsored by Senators William L. Gormley (R-Atlantic) and Wayne R. Bryant (D-Camden/Gloucester) and Assembly Member James W. Holzapfel (R-Monmouth/ Ocean), enhances the flexibility of the State Parole Board. The legislation increases the membership of the board from nine members to eleven and adds a third adult panel on prison sentences which will enable the board to conduct an estimated 288 additional panel hearings each month.

The legislation also expands the ability of an alternate board member to assume the duties of an associate member. Currently, the board has an alternate member who can assume the duties of an associate member only when the associate is removed, incapacitated or assumes the duties of the chairman. The legislation will allow an alternate member to step in for an associate member when the member is absent or otherwise unable to perform his or her duties, or assumes the duties of the chairman. Finally, the bill expands the powers of the chairman to temporarily reassign an associate member appointed to a panel on juvenile commitments to a panel on adult sentences. Currently, the chairman can only reassign members appointed to a panel on adult sentences.

S-1709/A-3115, sponsored by Senator Robert Singer (R-Burlington/Monmouth/Ocean) and Assembly Members Carol J. Murphy (R-Essex/Morris/Passaic) and Nicholas Felice (R-Bergen/Passaic), clarifies that the corporation business tax benefit transfer program applies only to emerging technology and biotechnology companies in this state. As currently written, the bill could allow large "Fortune 500" companies to obtain CBT tax credits.

S-1744/A-2886, sponsored by Senators Norman M. Robertson (R-Essex/Passaic) and Louis Bassano (R-Essex/Union) and Assembly Members Kenneth LeFevre (R-Atlantic) and Joseph Azzolina (R-Middlesex and Monmouth), makes a supplemental appropriation of $580,000 from the General Fund to the Department of Military and Veterans' Affairs for a grant to the World War II Memorial Fund. The fund is to be used to construct and maintain the first national memorial dedicated to all who served in the armed forces and the merchant marines during World War II.

Former Senator Bob Dole is leading efforts to raise $100 million toward the memorial, which is to be built on the Mall in Washington, D.C. States have been asked to make donations to the fund, suggested at $1 for each resident who served in WWII. The $580,000 supplemental appropriation represents New Jersey's contribution for its approximately 580,000 veterans who served in the war. Of those 580,000 veterans, it is estimated that approximately 200,000 World War II veterans are still living in the state.

S-1912, sponsored by Senator James S. Cafiero and Assembly Members John C. Gibson and Nicholas Asselta (all R-Cape May/Atlantic/Cumberland), authorizes municipalities to regulate or prohibit nudity on any state-owned land.

S-1985, sponsored by Senators William E. Schluter (R-Warren/Hunterdon/Mercer) and Shirley K. Turner (D-Mercer) and Assembly Members Bonnie Watson Coleman (D-Mercer) and Reed Gusciora (D-Mercer), authorizes the Department of the Treasury to sell as surplus real property all of the state's interest in the Lafayette Yard property in Trenton to the City of Trenton. The terms and conditions of the sale must be approved by the State House Commission. The purpose of the bill is to allow the City of Trenton to build a hotel on the site. The sale of the Lafayette Yard and the City of Trenton Hotel and Conference Center will be financed by a $5 million loan from the state.

S-1986, sponsored by Senators William E. Schluter (R-Warren/Hunterdon/Mercer) and Shirley K. Turner (D-Mercer) and Assembly Members Bonnie Watson Coleman (D-Mercer) and Reed Gusciora (D-Mercer), makes a supplemental appropriation of $5 million from the Fiscal Year 1999 Appropriations Act to the Department of the Treasury to make a loan to the City of Trenton to construct a hotel/conference center and parking garage on the Lafayette Yard site next to the War Memorial in Trenton.

S-2009, sponsored by Senator Gerald Cardinale (R-Bergen) and Assembly Member Claire M. Farragher (R-Monmouth), revises the manner in which the Department of Banking and Insurance (DBI) may assess the insurance industry for the cost of operations of the Division of Insurance and the Office of Insurance Fraud Prosecutor (OIP). The present amount of assessment is approximately $41 million per year. The assessment is calculated by adding the previous year's spending by the DBI and OIP to the percentage increases (if any) in net written premiums by the insurance industry. Thus, the division must calculate the premium increase for the insurance industry from the previous calendar year and then set its budget for the following year. The assessment growth is limited to the percentage growth in net written premiums from the prior calendar year. Annual statements containing net written premium information are not due from the companies until March following the close of the calendar year and this information is not compiled until May. Consequently, the maximum assessment for the preceding fiscal year is not known until May of the current year, which leaves inadequate time to adjust spending.

To rectify these problems, the bill revises the fiscal cap by removing the present limitation that the assessment may not increase, as a percentage, by more than the percentage increase in net written premiums received by all companies for the prior calendar year. Instead, it sets the cap at 0.20 percent of the combined net written premiums received during the prior calendar year. The bill applies the revised cap to the 1999 fiscal year and every succeeding fiscal year. The cap will now have a fixed ceiling, instead of a variable ceiling.

ACS for A-2738 and A-2343, sponsored by Assembly Members Alex DeCroce (R-Essex/Morris /Passaic), Anthony Impreveduto (D-Bergen/Hudson), Francis Bodine (R-Atlantic/Burlington/ Camden) and Joseph Charles (D-Hudson) and Senators Andrew Ciesla (R-Monmouth/Ocean) and Walter Kavanaugh (R-Morris/Somerset), increases from $700 million to $900 million the amount of debt that the State Transportation Trust Fund Authority may incur. The bill also increases the same amount that may be appropriated for transportation projects. Any savings realized by refinancing debt must be used for funding transportation projects.

ACS for A-3269, sponsored by Assembly Members Rose Marie Heck (R-Bergen), Joel M. Weingarten (D-Bergen) and Loretta Weinberg (D-Bergen), authorizes the Division of Motor Vehicles

(DMV) to process motor vehicle transactions submitted through any electronic or digital means, including by the Internet or telephone. Individuals will continue to have the option of conducting business with DMV in person or through the mail.