



**FOLLOWING WERE PRINTED:**

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

**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

Yes

“N.J. tax break signed, with a lure for Cigna,” 11-23-2003 Philadelphia Inquirer, p.B5

“Governor signs law touting tax break,” 11-23-2003 Asbury park Press, p.A3

P.L. 2003, CHAPTER 194, *approved November 21, 2003*  
Senate, No. 2336 (*First Reprint*)

1 **AN ACT** expanding the economic development incentives for municipal  
2 rehabilitation and economic recovery in certain fiscally distressed  
3 municipalities, amending P.L.2002, c.43.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 54 of P.L.2002, c.43 (C.52:27BBB-53) is amended to  
9 read as follows:

10 54. As used in this section and section 55 of P.L.2002, c.43  
11 (C.52:27BBB-54):

12 a. "Business facility" means any factory, mill, plant, refinery,  
13 warehouse, building, complex of buildings or structural components  
14 of buildings, and all machinery, equipment and personal property  
15 located within a qualified municipality, used in connection with the  
16 operation of the business of a corporation that is subject to the tax  
17 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or the  
18 tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132  
19 (C.54:18A-2 and 54:18A-3)<sup>1</sup>, section 1 of P.L.1950, c.231 (C.17:32-  
20 15) and N.J.S.17B:23-5<sup>1</sup>, and all facility preparation and start-up costs  
21 of the taxpayer for the business facility which it capitalizes for federal  
22 income tax purposes.

23 b. "Business relocation or business expansion property" means  
24 improvements to real property and tangible personal property, but only  
25 if that improvement or personal property is constructed or purchased  
26 and placed in service or use by the taxpayer, for use as a component  
27 part of a new business facility or expanded business facility located in  
28 a qualified municipality.

29 (1) Business relocation or business expansion property shall  
30 include only:

31 (a) improvements to real property placed in service or use as a  
32 business facility by the taxpayer on or after the notification of the  
33 Governor by the commissioner pursuant to section 4 of P.L.2002, c.43  
34 (C.52:27BBB-4) that the municipality in which the property is situated  
35 fulfills the definition of a qualified municipality;

36 (b) tangible personal property placed in service or use by the  
37 taxpayer on or after the notification of the Governor by the  
38 commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4)  
39 that the municipality in which the property is situated fulfills the  
40 definition of a qualified municipality, with respect to which

**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:**

<sup>1</sup> Senate SBA committee amendments adopted May 15, 2003.

1 depreciation, or amortization in lieu of depreciation, is allowable [in  
2 determining the corporation business tax liability of the taxpayer under  
3 P.L.1945, c.162,] for <sup>1</sup>federal<sup>1</sup> income tax purposes and which has a  
4 remaining recovery period of three or more years at the time the  
5 property is placed in service or use in a qualified municipality; or

6 (c) tangible personal property owned and used by the taxpayer at  
7 a business location outside a qualified municipality which is moved  
8 into a qualified municipality on or after the notification of the  
9 Governor by the commissioner pursuant to section 4 of P.L.2002, c.43  
10 (C.52:27BBB-4) that the municipality in which the property is situated  
11 fulfills the definition of a qualified municipality, for use as a  
12 component part of a new or expanded business facility located in the  
13 qualified municipality; provided that the property is depreciable or  
14 amortizable personal property for income tax purposes, and has a  
15 remaining recovery period of three or more years at the time the  
16 property is placed in service or use in a qualified municipality.

17 (2) Property purchased for business relocation or expansion shall  
18 not include:

19 (a) repair costs, including materials used in the repair, unless for  
20 federal income tax purposes, the cost of the repair must be capitalized  
21 and not expensed;

22 (b) airplanes;

23 (c) property which is primarily used outside a qualified municipality  
24 with that use being determined based upon the amount of time the  
25 property is actually used both within and without the qualified  
26 municipality;

27 (d) property which is acquired incident to the purchase of the stock  
28 or assets of the seller.

29 (3) Property shall be deemed to have been purchased prior to a  
30 specified date only if:

31 (a) the physical construction, reconstruction or erection of the  
32 property was begun prior to the specified date, or such property was  
33 constructed, reconstructed, erected or acquired pursuant to a written  
34 contract as existing and binding on the purchase prior to the specified  
35 date; or

36 (b) the machinery or equipment was owned by the taxpayer prior  
37 to the specified date, or was acquired by the taxpayer pursuant to a  
38 binding purchase contract which was in effect prior to the specified  
39 date.

40 c. "Business relocation or business expansion" means capital  
41 investment in a new or expanded business facility in a qualified  
42 municipality.

43 d. "Controlled group" means one or more chains of corporations  
44 connected through stock ownership with a common parent corporation  
45 if stock possessing at least 50% of the voting power of all classes of  
46 stock of each of the corporations is owned directly or indirectly by one

1 or more of the corporations; and the common parent owns directly  
2 stock possessing at least 50% of the voting power of all classes of  
3 stock of at least one of the other corporations.

4 e. "Director" means the Director of the Division of Taxation in the  
5 Department of the Treasury.

6 f. "Expanded business facility" means any business facility, other  
7 than a new business facility, resulting from acquisition, construction,  
8 reconstruction, installation or erection of improvements or additions  
9 to existing property if such improvements or additions are purchased  
10 on or after the effective date of rehabilitation and economic recovery.

11 g. "Incentive payment" means: the amount of tax owed by a  
12 taxpayer for a privilege period or reporting period, as computed  
13 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or section 7 of  
14 P.L.2002, <sup>1</sup>[c.43] c.40 <sup>1</sup> (C.54:10A-5a), or sections 2 and 3 of  
15 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), <sup>1</sup>or section 1 of  
16 P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, <sup>1</sup> multiplied for  
17 each privilege period or reporting period by a fraction, the numerator  
18 of which is the average value of the taxpayer's business relocation or  
19 business expansion property within a qualified municipality during the  
20 period covered by its report, and the denominator of which is the  
21 average value of all the taxpayer's real and tangible personal property<sup>1</sup>,  
22 excluding improvements made after the date of a taxpayer's first  
23 acquisition of business relocation or business expansion property in the  
24 qualified municipality to business facilities in existence on that date  
25 outside of the qualified municipality, <sup>1</sup> in New Jersey during such  
26 period which result is multiplied by 96 percent; provided, however,  
27 that for the purpose of determining average value, the provisions with  
28 respect to depreciation as set forth in subparagraph (F) of paragraph  
29 (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4)  
30 shall be taken into account for arriving at such value whether the  
31 corporation is subject to the tax imposed pursuant to section 5 of  
32 P.L.1945, c.162 (C.54:10A-5) <sup>1</sup>[or], <sup>1</sup> the tax imposed pursuant to  
33 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3) <sup>1</sup>, the  
34 tax imposed pursuant to section 1 of P.L.1950, c.231 (C.17:32-15) or  
35 the tax imposed pursuant to N.J.S.17B:23-5<sup>1</sup>; and provided further  
36 that the value of a leasehold interest in realty located within a qualified  
37 municipality shall be based on no less than the fair market value of its  
38 rent; and provided further that incentive payments shall be made for  
39 a period not to exceed 10 years, commencing on the date of a  
40 taxpayer's first acquisition of business relocation or business expansion  
41 property in the qualified municipality following the notification of the  
42 Governor by the commissioner pursuant to section 4 of P.L.2002, c.43  
43 (C.52:27BBB-4) that the municipality in which the property is situated  
44 fulfills the definition of a qualified municipality.

45 h. "New business facility" means a business facility which:

46 (1) is employed by a taxpayer in the conduct of a business which

1 is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.) or  
2 pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and  
3 54:18A-3) <sup>1</sup>, section 1 of P.L.1950, c.231 (C.17:32-15) or  
4 N.J.S.17B:23-5<sup>1</sup>. A business facility shall not be considered a new  
5 business facility in the hands of a taxpayer if the taxpayer's only  
6 activity with respect to the facility is to lease it to another person;  
7 (2) is purchased by a taxpayer and is placed in service or use on or  
8 after the effective date of rehabilitation and economic recovery;  
9 (3) was not purchased by a taxpayer from a related person; and  
10 (4) was not in service or use during the 90-day period immediately  
11 prior to transfer of the title to the facility.

12 i. "Partnership" means a syndicate, group, pool, joint venture or  
13 other unincorporated organization through or by means of which any  
14 business, financial operation or venture is carried on, and which is not  
15 a trust or estate, a corporation or a sole proprietorship. The term  
16 "partner" includes a member in such a syndicate, group, pool, joint  
17 venture or organization.

18 j. "Purchase" means, with respect to the determination of whether  
19 business relocation or business expansion property was purchased, any  
20 acquisition of property, including an acquisition pursuant to a lease,  
21 and an acquisition pursuant to a lease under which the lessee or  
22 affiliates of the lessee are the primary occupants under a lease of ten  
23 years or more, but only if:  
24 (1) the property is not acquired from a person whose relationship  
25 to the person acquiring it would result in the disallowance of  
26 deductions under section 267 or subsection (b) of section 707 of the  
27 federal Internal Revenue Code of 1986, 26 U.S.C.s.267 or s.707;  
28 (2) the property is not acquired by one member of a controlled  
29 group from another member of the same controlled group; and  
30 (3) the basis of the property for federal income tax purposes, in the  
31 hands of the person acquiring it, is not determined:  
32 (a) in whole or in part by reference to the federal adjusted basis of  
33 such property in the hands of the person from whom it was acquired;  
34 or  
35 (b) under subsection (e) of section 1014 of the federal Internal  
36 Revenue Code of 1986, 26 U.S.C. s.1014.

37 k. "Related person" means:  
38 (1) a corporation, partnership, association or trust controlled by  
39 the taxpayer;  
40 (2) an individual, corporation, partnership, association or trust that  
41 is in control of the taxpayer;  
42 (3) a corporation, partnership, association or trust controlled by an  
43 individual, corporation, partnership, association or trust that is in  
44 control of the taxpayer; or

1 (4) a member of the same controlled group as the taxpayer.  
2 (cf: P.L.2002, c.108, s.10)

3  
4 2. Section 55 of P.L.2002, c.43 (C.52:27BBB-54) is amended to  
5 read as follows:

6 55. a. There is established in the authority the "Qualified  
7 Municipality Open for Business Incentive Program," the purpose of  
8 which is to foster business investment in qualified municipalities.  
9 Businesses that locate or expand in a qualified municipality during the  
10 period that the municipality is under rehabilitation and economic  
11 recovery shall be eligible to receive a rebate from the "Corporation  
12 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or  
13 the tax imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1  
14 et seq.), <sup>1</sup>section 1 of P.L.1950, c.231 (C.17:32-15) and  
15 N.J.S.17B:23-5<sup>1</sup> as provided herein.

16 b. For each year in which a taxpayer is eligible for a rebate of a  
17 portion of the incentive payment, the Director of the Division of  
18 Taxation shall certify to the State Treasurer (1) that the taxpayer's  
19 corporation business tax return or insurance premiums tax return has  
20 been filed; (2) that the taxpayer's entire corporation business tax  
21 obligation or insurance premiums tax obligation has been satisfied; and  
22 (3) the amount of the taxpayer's incentive payment entitlement. Upon  
23 such certification, the treasurer shall certify to the executive director  
24 of the authority the amount of the taxpayer's incentive payment and,  
25 subject to the approval of the Director of the Division of Budget and  
26 Accounting, transfer that incentive payment to the fund established  
27 with the proceeds of those funds appropriated pursuant to subsection  
28 b. of section 73 of P.L.2002, c.43.

29 c. The executive director of the authority shall rebate to the  
30 taxpayer up to 75% of the incentive payment paid by the taxpayer and  
31 placed by the treasurer into a fund established using those funds  
32 appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43  
33 if the taxpayer applies for a rebate within two years of deposit of the  
34 incentive payment into the fund and establishes to the satisfaction of  
35 the executive director of the authority that the taxpayer will utilize  
36 those monies for business relocation or business expansion property  
37 that will be placed in service or use by the taxpayer after the date of  
38 the rebate application. The authority may rebate to the taxpayer up to  
39 100% of the incentive payment paid by the taxpayer and placed by the  
40 treasurer into a fund established using those funds appropriated  
41 pursuant to subsection b. of section 73 of P.L.2002, c.43 if the  
42 taxpayer applies for a rebate and the authority determines that a  
43 particular business relocation or business expansion will more  
44 effectively contribute to the municipal rehabilitation and economic  
45 recovery in a <sup>1</sup>[distressed] qualified<sup>1</sup> municipality as sought by the  
46 Legislature through the enactment of P.L.2002, c.43. In making this

1 determination the authority shall consider: 1) the amount of private  
2 investment, 2) the number of jobs concerned, 3) the projected average  
3 salary of the employees, 4) whether the investment has the potential  
4 to attract additional investment, 5) the impact to the State Treasury,  
5 and 6) any other factors that uniquely contribute to the municipal  
6 rehabilitation and economic recovery of the <sup>1</sup>[distressed] qualified<sup>1</sup>  
7 municipality. The taxpayer may apply for this incentive prior to its  
8 undertaking of the business relocation or business expansion and upon  
9 approval the authority may establish a rebate schedule for the incentive  
10 payment for a period not to exceed ten years, subject to the taxpayer's  
11 continued satisfaction of the criteria of this act and to annual  
12 appropriation. The cumulative amount of monies distributed to the  
13 taxpayer pursuant to this section shall not exceed the amount paid or  
14 to be paid by the taxpayer for the business relocation or business  
15 expansion property. In the event that the taxpayer does not establish  
16 its eligibility for a rebate of a portion of the incentive payment within  
17 two years of its deposit into the fund, the fund shall retain any  
18 remaining amount of the incentive payment.

19 (cf: P.L.2002, c.43, s.55)

20

21 3. Section 56 of P.L.2002, c.43 (C.52:27BBB-55) is amended to  
22 read as follows:

23 56. a. A taxpayer engaged in the conduct of business within a  
24 qualified municipality and who is not receiving a benefit under the  
25 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303  
26 (C.52:27H-60 et seq.), may apply to receive a tax credit against the  
27 amount of tax otherwise imposed under the "Corporation Business  
28 Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the tax  
29 imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.),  
30 <sup>1</sup>section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, <sup>1</sup>  
31 equal to: \$2,500 for each new full-time position at that location in  
32 credit year one and \$1,250 for each new full-time position at that  
33 location in credit year two.

34 b. (1) The credit pursuant to subsection a. of this section for credit  
35 year one shall be allowed for the privilege period or reporting period  
36 in which or with which credit year one ends; the credit pursuant to  
37 subsection a. of this section for credit year two shall be allowed for the  
38 privilege period or reporting period in which or with which credit year  
39 two ends.

40 (2) An unused credit may be carried forward, if necessary, for use  
41 in the **[five]** privilege periods or reporting periods following the  
42 privilege period or reporting period for which the credit is allowed.

43 (3) The order of priority of the application of the credit allowed  
44 under this section and any other credits allowed by law shall be as  
45 prescribed by the Director of the Division of Taxation. The amount  
46 of the credit applied under this section against the tax imposed



1 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege  
2 period, together with any other credits allowed by law, shall not  
3 exceed 50% of the tax liability otherwise due and shall not reduce the  
4 tax liability to an amount less than the statutory minimum provided in  
5 subsection (e) of section 5 of P.L.1945, c.162.

6 c. (1) Notwithstanding the provisions of subsection b. of this  
7 section to the contrary, the credit allowed for credit year one may be  
8 refundable at the close of the privilege period or reporting period in  
9 which or with which credit year two ends, pursuant to the  
10 requirements and limitations of this subsection.

11 (2) That amount of the credit received for credit year one  
12 remaining, if any, after the liabilities for the privilege period or  
13 reporting period in which or with which credit year two ends and for  
14 any prior [privilege] period have been satisfied, multiplied by the  
15 sustained effort ratio, shall be an overpayment for the purposes of  
16 section R.S.54:49-15 for the [privilege] period in which or with which  
17 credit year two ends; that amount of the credit received for credit year  
18 one remaining, if any, that is not an overpayment pursuant to this  
19 paragraph may be carried forward pursuant to subsection b. of this  
20 section.

21 d. The burden of proof shall be on the taxpayer to establish by  
22 clear and convincing evidence that the taxpayer is entitled to the  
23 credits or refund allowed pursuant to this section. The director shall  
24 by regulation establish criteria for the determination of when new or  
25 expanded operations have begun at a location. No taxpayer shall be  
26 allowed more than a single 24-month continuous period in which  
27 credits shall be allowed for activity at a location within a qualified  
28 municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.).

29 e. For the purposes of this section:

30 "Credit year one" means the first twelve calendar months following  
31 initial or expanded operations at a location within a qualified  
32 municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.).

33 "Credit year two" means the twelve calendar months following  
34 credit year one.

35 "Employee of the taxpayer" does not include an individual with an  
36 ownership interest in the business, that individual's spouse or  
37 dependants, or that individual's ancestors or descendants.

38 "Full time position" means a position filled by an employee of the  
39 taxpayer for at least 140 hours per month on a permanent basis, which  
40 does not include employment that is temporary or seasonal.

41 "New full time position" means a position that did not exist prior to  
42 credit year one. New full time positions shall be measured by the  
43 increase, from the twelve-month period preceding credit year one to  
44 the measured credit year, in the average number of full-time positions  
45 and full-time position equivalents employed by the taxpayer at the  
46 location within a qualified municipality pursuant to P.L.2002, c.43

1 (C.52:27BBB-1 et al.). The hours of employees filling part-time  
2 positions shall be aggregated to determine the number of full-time  
3 position equivalents.

4 "Part-time position" means a position filled by an employee of the  
5 taxpayer for at least 20 hours per week for at least three months  
6 during the credit year.

7 "Sustained effort ratio" means the proportion that the credit year  
8 two new full-time positions bears to the credit year one new full-time  
9 positions, not to exceed one.

10 (cf: P.L.2002, c.43, s.56)

11

12 4. This act shall take effect immediately, and apply to privilege  
13 periods and reporting periods beginning on or after June 30, 2002.

14

15

16

17

18 Expands the economic development incentives for municipal  
19 rehabilitation and economic recovery in certain fiscally distressed  
20 municipalities.

**SENATE, No. 2336**

---

**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

---

INTRODUCED FEBRUARY 27, 2003

**Sponsored by:**

**Senator WAYNE R. BRYANT**

**District 5 (Camden and Gloucester)**

**Senator MARTHA W. BARK**

**District 8 (Burlington)**

**SYNOPSIS**

Expands the economic development incentives for municipal rehabilitation and economic recovery in certain fiscally distressed municipalities.

**CURRENT VERSION OF TEXT**

As introduced.



S2336 BRYANT, BARK

2

1 AN ACT expanding the economic development incentives for municipal  
2 rehabilitation and economic recovery in certain fiscally distressed  
3 municipalities, amending P.L.2002, c.43.

4

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

7

8 1. Sections 54 of P.L.2002, c.43 (C.52:27BBB-53) is amended to  
9 read as follows:

10 54. As used in this section and section 55 of P.L.2002, c.43  
11 (C.52:27BBB-54):

12 a. "Business facility" means any factory, mill, plant, refinery,  
13 warehouse, building, complex of buildings or structural components  
14 of buildings, and all machinery, equipment and personal property  
15 located within a qualified municipality, used in connection with the  
16 operation of the business of a corporation that is subject to the tax  
17 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or the  
18 tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132  
19 (C.54:18A-2 and 54:18A-3), and all facility preparation and start-up  
20 costs of the taxpayer for the business facility which it capitalizes for  
21 federal income tax purposes.

22 b. "Business relocation or business expansion property" means  
23 improvements to real property and tangible personal property, but only  
24 if that improvement or personal property is constructed or purchased  
25 and placed in service or use by the taxpayer, for use as a component  
26 part of a new business facility or expanded business facility located in  
27 a qualified municipality.

28 (1) Business relocation or business expansion property shall  
29 include only:

30 (a) improvements to real property placed in service or use as a  
31 business facility by the taxpayer on or after the notification of the  
32 Governor by the commissioner pursuant to section 4 of P.L.2002, c.43  
33 (C.52:27BBB-4) that the municipality in which the property is situated  
34 fulfills the definition of a qualified municipality;

35 (b) tangible personal property placed in service or use by the  
36 taxpayer on or after the notification of the Governor by the  
37 commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4)  
38 that the municipality in which the property is situated fulfills the  
39 definition of a qualified municipality, with respect to which  
40 depreciation, or amortization in lieu of depreciation, is allowable [in  
41 determining the corporation business tax liability of the taxpayer under  
42 P.L.1945, c.162,] for income tax purposes and which has a remaining  
43 recovery period of three or more years at the time the property is

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

**Matter underlined thus is new matter.**

- 1 placed in service or use in a qualified municipality; or
- 2 (c) tangible personal property owned and used by the taxpayer at  
3 a business location outside a qualified municipality which is moved  
4 into a qualified municipality on or after the notification of the  
5 Governor by the commissioner pursuant to section 4 of P.L.2002, c.43  
6 (C.52:27BBB-4) that the municipality in which the property is situated  
7 fulfills the definition of a qualified municipality, for use as a  
8 component part of a new or expanded business facility located in the  
9 qualified municipality; provided that the property is depreciable or  
10 amortizable personal property for income tax purposes, and has a  
11 remaining recovery period of three or more years at the time the  
12 property is placed in service or use in a qualified municipality.
- 13 (2) Property purchased for business relocation or expansion shall  
14 not include:
- 15 (a) repair costs, including materials used in the repair, unless for  
16 federal income tax purposes, the cost of the repair must be capitalized  
17 and not expensed;
- 18 (b) airplanes;
- 19 (c) property which is primarily used outside a qualified municipality  
20 with that use being determined based upon the amount of time the  
21 property is actually used both within and without the qualified  
22 municipality;
- 23 (d) property which is acquired incident to the purchase of the stock  
24 or assets of the seller.
- 25 (3) Property shall be deemed to have been purchased prior to a  
26 specified date only if:
- 27 (a) the physical construction, reconstruction or erection of the  
28 property was begun prior to the specified date, or such property was  
29 constructed, reconstructed, erected or acquired pursuant to a written  
30 contract as existing and binding on the purchase prior to the specified  
31 date; or
- 32 (b) the machinery or equipment was owned by the taxpayer prior  
33 to the specified date, or was acquired by the taxpayer pursuant to a  
34 binding purchase contract which was in effect prior to the specified  
35 date.
- 36 c. "Business relocation or business expansion" means capital  
37 investment in a new or expanded business facility in a qualified  
38 municipality.
- 39 d. "Controlled group" means one or more chains of corporations  
40 connected through stock ownership with a common parent corporation  
41 if stock possessing at least 50% of the voting power of all classes of  
42 stock of each of the corporations is owned directly or indirectly by one  
43 or more of the corporations; and the common parent owns directly  
44 stock possessing at least 50% of the voting power of all classes of  
45 stock of at least one of the other corporations.
- 46 e. "Director" means the Director of the Division of Taxation in the

1 Department of the Treasury.

2 f. "Expanded business facility" means any business facility, other  
3 than a new business facility, resulting from acquisition, construction,  
4 reconstruction, installation or erection of improvements or additions  
5 to existing property if such improvements or additions are purchased  
6 on or after the effective date of rehabilitation and economic recovery.

7 g. "Incentive payment" means: the amount of tax owed by a  
8 taxpayer for a privilege period or reporting period, as computed  
9 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or section 7 of  
10 P.L.2002, c.43 (C.54:10A-5a), or sections 2 and 3 of P.L.1945, c.132  
11 (C.54:18A-2 and 54:18A-3), multiplied for each privilege period or  
12 reporting period by a fraction, the numerator of which is the average  
13 value of the taxpayer's business relocation or business expansion  
14 property within a qualified municipality during the period covered by  
15 its report, and the denominator of which is the average value of all the  
16 taxpayer's real and tangible personal property in New Jersey during  
17 such period which result is multiplied by 96 percent; provided,  
18 however, that for the purpose of determining average value, the  
19 provisions with respect to depreciation as set forth in subparagraph (F)  
20 of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162  
21 (C.54:10A-4) shall be taken into account for arriving at such value  
22 whether the corporation is subject to the tax imposed pursuant to  
23 section 5 of P.L.1945, c.162 (C.54:10A-5) or the tax imposed  
24 pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and  
25 54:18A-3); and provided further that the value of a leasehold interest  
26 in realty located within a qualified municipality shall be based on no  
27 less than the fair market value of its rent; and provided further that  
28 incentive payments shall be made for a period not to exceed 10 years,  
29 commencing on the date of a taxpayer's first acquisition of business  
30 relocation or business expansion property in the qualified municipality  
31 following the notification of the Governor by the commissioner  
32 pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) that the  
33 municipality in which the property is situated fulfills the definition of  
34 a qualified municipality.

35 h. "New business facility" means a business facility which:

36 (1) is employed by a taxpayer in the conduct of a business which  
37 is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.) or the  
38 tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132  
39 (C.54:18A-2 and 54:18A-3). A business facility shall not be  
40 considered a new business facility in the hands of a taxpayer if the  
41 taxpayer's only activity with respect to the facility is to lease it to  
42 another person;

43 (2) is purchased by a taxpayer and is placed in service or use on or  
44 after the effective date of rehabilitation and economic recovery;

45 (3) was not purchased by a taxpayer from a related person; and

46 (4) was not in service or use during the 90-day period immediately

1 prior to transfer of the title to the facility.

2 i. "Partnership" means a syndicate, group, pool, joint venture or  
3 other unincorporated organization through or by means of which any  
4 business, financial operation or venture is carried on, and which is not  
5 a trust or estate, a corporation or a sole proprietorship. The term  
6 "partner" includes a member in such a syndicate, group, pool, joint  
7 venture or organization.

8 j. "Purchase" means, with respect to the determination of whether  
9 business relocation or business expansion property was purchased, any  
10 acquisition of property, including an acquisition pursuant to a lease,  
11 and an acquisition pursuant to a lease under which the lessee or  
12 affiliates of the lessee are the primary occupants under a lease of ten  
13 years or more, but only if:

14 (1) the property is not acquired from a person whose relationship  
15 to the person acquiring it would result in the disallowance of  
16 deductions under section 267 or subsection (b) of section 707 of the  
17 federal Internal Revenue Code of 1986, 26 U.S.C.s.267 or s.707;

18 (2) the property is not acquired by one member of a controlled  
19 group from another member of the same controlled group; and

20 (3) the basis of the property for federal income tax purposes, in the  
21 hands of the person acquiring it, is not determined:

22 (a) in whole or in part by reference to the federal adjusted basis of  
23 such property in the hands of the person from whom it was acquired;  
24 or

25 (b) under subsection (e) of section 1014 of the federal Internal  
26 Revenue Code of 1986, 26 U.S.C. s.1014.

27 k. "Related person" means:

28 (1) a corporation, partnership, association or trust controlled by  
29 the taxpayer;

30 (2) an individual, corporation, partnership, association or trust that  
31 is in control of the taxpayer;

32 (3) a corporation, partnership, association or trust controlled by an  
33 individual, corporation, partnership, association or trust that is in  
34 control of the taxpayer; or

35 (4) a member of the same controlled group as the taxpayer.

36 (cf: P.L.2002, c.108, s.10)

37

38 2. Sections 55 of P.L.2002, c.43 (C.52:27BBB-54) is amended to  
39 read as follows:

40 55. a. There is established in the authority the "Qualified  
41 Municipality Open for Business Incentive Program," the purpose of  
42 which is to foster business investment in qualified municipalities.  
43 Businesses that locate or expand in a qualified municipality during the  
44 period that the municipality is under rehabilitation and economic  
45 recovery shall be eligible to receive a rebate from the "Corporation  
46 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or

1 the tax imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1  
2 et seq.), as provided herein.

3 b. For each year in which a taxpayer is eligible for a rebate of a  
4 portion of the incentive payment, the Director of the Division of  
5 Taxation shall certify to the State Treasurer (1) that the taxpayer's  
6 corporation business tax return or insurance premiums tax return has  
7 been filed; (2) that the taxpayer's entire corporation business tax  
8 obligation or insurance premiums tax obligation has been satisfied; and  
9 (3) the amount of the taxpayer's incentive payment entitlement. Upon  
10 such certification, the treasurer shall certify to the executive director  
11 of the authority the amount of the taxpayer's incentive payment and,  
12 subject to the approval of the Director of the Division of Budget and  
13 Accounting, transfer that incentive payment to the fund established  
14 with the proceeds of those funds appropriated pursuant to subsection  
15 b. of section 73 of P.L.2002, c.43.

16 c. The executive director of the authority shall rebate to the  
17 taxpayer up to 75% of the incentive payment paid by the taxpayer and  
18 placed by the treasurer into a fund established using those funds  
19 appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43  
20 if the taxpayer applies for a rebate within two years of deposit of the  
21 incentive payment into the fund and establishes to the satisfaction of  
22 the executive director of the authority that the taxpayer will utilize  
23 those monies for business relocation or business expansion property  
24 that will be placed in service or use by the taxpayer after the date of  
25 the rebate application. The authority may rebate to the taxpayer up to  
26 100% of the incentive payment paid by the taxpayer and placed by the  
27 treasurer into a fund established using those funds appropriated  
28 pursuant to subsection b. of section 73 of P.L.2002, c.43 if the  
29 taxpayer applies for a rebate and the authority determines that a  
30 particular business relocation or business expansion will more  
31 effectively contribute to the municipal rehabilitation and economic  
32 recovery in a distressed municipality as sought by the Legislature  
33 through the enactment of P.L.2002, c.43. In making this  
34 determination the authority shall consider: 1) the amount of private  
35 investment, 2) the number of jobs concerned, 3) the projected average  
36 salary of the employees, 4) whether the investment has the potential  
37 to attract additional investment, 5) the impact to the State Treasury,  
38 and 6) any other factors that uniquely contribute to the municipal  
39 rehabilitation and economic recovery of the distressed municipality.  
40 The taxpayer may apply for this incentive prior to its undertaking of  
41 the business relocation or business expansion and upon approval the  
42 authority may establish a rebate schedule for the incentive payment for  
43 a period not to exceed ten years, subject to the taxpayer's continued  
44 satisfaction of the criteria of this act and to annual appropriation. The  
45 cumulative amount of monies distributed to the taxpayer pursuant to  
46 this section shall not exceed the amount paid or to be paid by the



1 taxpayer for the business relocation or business expansion property. In  
2 the event that the taxpayer does not establish its eligibility for a rebate  
3 of a portion of the incentive payment within two years of its deposit  
4 into the fund, the fund shall retain any remaining amount of the  
5 incentive payment.

6 (cf: P.L.2002, c.43, s.55)

7

8 3. Section 56 of P.L.2002, c.43 (C.52:27BBB-55) is amended to  
9 read as follows:

10 56. a. A taxpayer engaged in the conduct of business within a  
11 qualified municipality and who is not receiving a benefit under the  
12 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303  
13 (C.52:27H-60 et seq.), may apply to receive a tax credit against the  
14 amount of tax otherwise imposed under the "Corporation Business  
15 Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) , or the tax  
16 imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et  
17 seq.), equal to: \$2,500 for each new full-time position at that location  
18 in credit year one and \$1,250 for each new full-time position at that  
19 location in credit year two.

20 b. (1) The credit pursuant to subsection a. of this section for credit  
21 year one shall be allowed for the privilege period or reporting period  
22 in which or with which credit year one ends; the credit pursuant to  
23 subsection a. of this section for credit year two shall be allowed for the  
24 privilege period or reporting period in which or with which credit year  
25 two ends.

26 (2) An unused credit may be carried forward, if necessary, for use  
27 in the [five] privilege periods or reporting periods following the  
28 privilege period or reporting period for which the credit is allowed.

29 (3) The order of priority of the application of the credit allowed  
30 under this section and any other credits allowed by law shall be as  
31 prescribed by the Director of the Division of Taxation. The amount  
32 of the credit applied under this section against the tax imposed  
33 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege  
34 period, together with any other credits allowed by law, shall not  
35 exceed 50% of the tax liability otherwise due and shall not reduce the  
36 tax liability to an amount less than the statutory minimum provided in  
37 subsection (e) of section 5 of P.L.1945, c.162.

38 c. (1) Notwithstanding the provisions of subsection b. of this  
39 section to the contrary, the credit allowed for credit year one may be  
40 refundable at the close of the privilege period or reporting period in  
41 which or with which credit year two ends, pursuant to the  
42 requirements and limitations of this subsection.

43 (2) That amount of the credit received for credit year one  
44 remaining, if any, after the liabilities for the privilege period or  
45 reporting period in which or with which credit year two ends and for  
46 any prior [privilege] period have been satisfied, multiplied by the

1 sustained effort ratio, shall be an overpayment for the purposes of  
2 section R.S.54:49-15 for the [privilege] period in which or with which  
3 credit year two ends; that amount of the credit received for credit year  
4 one remaining, if any, that is not an overpayment pursuant to this  
5 paragraph may be carried forward pursuant to subsection b. of this  
6 section.

7 d. The burden of proof shall be on the taxpayer to establish by  
8 clear and convincing evidence that the taxpayer is entitled to the  
9 credits or refund allowed pursuant to this section. The director shall  
10 by regulation establish criteria for the determination of when new or  
11 expanded operations have begun at a location. No taxpayer shall be  
12 allowed more than a single 24-month continuous period in which  
13 credits shall be allowed for activity at a location within a qualified  
14 municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.).

15 e. For the purposes of this section:

16 "Credit year one" means the first twelve calendar months following  
17 initial or expanded operations at a location within a qualified  
18 municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.).

19 "Credit year two" means the twelve calendar months following  
20 credit year one.

21 "Employee of the taxpayer" does not include an individual with an  
22 ownership interest in the business, that individual's spouse or  
23 dependants, or that individual's ancestors or descendants.

24 "Full time position" means a position filled by an employee of the  
25 taxpayer for at least 140 hours per month on a permanent basis, which  
26 does not include employment that is temporary or seasonal.

27 "New full time position" means a position that did not exist prior to  
28 credit year one. New full time positions shall be measured by the  
29 increase, from the twelve-month period preceding credit year one to  
30 the measured credit year, in the average number of full-time positions  
31 and full-time position equivalents employed by the taxpayer at the  
32 location within a qualified municipality pursuant to P.L.2002, c.43  
33 (C.52:27BBB-1 et al.). The hours of employees filling part-time  
34 positions shall be aggregated to determine the number of full-time  
35 position equivalents.

36 "Part-time position" means a position filled by an employee of the  
37 taxpayer for at least 20 hours per week for at least three months  
38 during the credit year.

39 "Sustained effort ratio" means the proportion that the credit year  
40 two new full-time positions bears to the credit year one new full-time  
41 positions, not to exceed one.

42 (cf: P.L.2002, c.43, s.56)

43

44 4. This act shall take effect immediately, and apply to privilege  
45 periods and reporting periods beginning on or after June 30, 2002.

STATEMENT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

This bill expands the economic development incentives provided by the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43, to encourage more business organizations or a wider variety to locate in municipalities qualified under that act.

The bill expands the "Qualified Municipality Open For Business Incentive Program" and the sustained effort credit programs to include location incentives for businesses that pay insurance premiums taxes in addition to the incentives already provided to businesses that pay corporation business tax.

The bill increases the potential maximum amount of the incentive to a business under the "Qualified Municipality Open For Business Incentive Program" from 75% of the incentive payment to 100% of the incentive payment if the New Jersey Economic Development Authority determines that a particular business relocation or business expansion will more effectively contribute to the municipal rehabilitation and economic recovery in a distressed municipality as sought by the Legislature through the enactment of P.L.2002, c.43.

In making this determination the authority will consider: the amount of private investment; the number of jobs concerned, the projected average salary of the employees, whether the investment has the potential to attract additional investment, the impact to the State Treasury, and any other factors that uniquely contribute to the municipal rehabilitation and economic recovery of the distressed municipality.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 2336**

# STATE OF NEW JERSEY

DATED: JUNE 16, 2003

The Assembly Budget Committee reports favorably Senate Bill No. 2336 (1R).

Senate Bill No. 2336 (1R) expands the economic development incentives under the "Municipal Rehabilitation and Economic Recovery Act" to encourage more businesses to locate in Camden City and other municipalities qualified under the act.

*Current law.* The "Municipal Rehabilitation and Economic Recovery Act" established two programs offering incentives for business investment in a qualified municipality:

- < The "Qualified Municipal Open for Business Incentive Program" ("business incentive program") offers a business that locates or expands operations in a qualified municipality, during the municipality's period of rehabilitation and economic recovery, a partial rebate of its payment of corporation business tax (CBT). The base upon which a rebate is allowed for a particular tax year is computed by multiplying 96 percent times the product of (i) the business's CBT liability for that year, and (ii) the fraction of the business's total New Jersey-sited capital investment property that year that consists of new or expanded business property in the municipality. Under present law, the actual amount of the rebate can be up to 75% of the rebate base for that year.
- < A jobs creation credit is allowed to a business, not eligible for a benefit under the Urban Enterprise Zone program, against the business's CBT liability for the two years following its commencement or expansion of operations within a qualified municipality. The amount of the credit is \$2,500 for each new full-time position at the location in the first year and \$1,250 for each such position in the second year.

*Bill provisions.* The bill enhances these economic development programs in several ways:

- (1) It expands both the business incentive program and the jobs creation credit program to extend eligibility for the credits allowed under each beyond CBT payers to include insurance companies subject to insurance premiums taxes and foreign insurance companies subject to "retaliatory" taxes.

(2) It increases the maximum percentage of the rebate base allowable against either CBT or the premiums or retaliatory taxes under the business incentive program from 75% to 100% in cases as to which the New Jersey Economic Development Authority finds that a particular business relocation or expansion will more effectively effectuate the purposes of the "Municipal Rehabilitation and Economic Recovery Act." In making this finding, the authority is to consider the amount of private investment, the number of jobs concerned, the projected average salary of the employees, whether the investment has the potential to attract additional investment, the impact on the State Treasury, and any other factors that uniquely contribute to the rehabilitation and economic recovery of the qualified municipality.

(3) It provides that, in setting the amount of capital investment that a business has made in a qualified municipality for purposes of determining its rebate base under the business incentive program, a leasehold interest shall be based on the fair market value of its rent.

As reported, this bill is identical to A-3334 as amended and reported by the committee.

#### FISCAL IMPACT

There is no information available from which to project an estimate of the cost to the State of authorizing the allowance of additional business incentive credits under this bill. The Department of the Treasury has indicated that no incentive credits have been allowed to date under the current provisions of the "Municipal Rehabilitation and Economic Recovery Act."

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 2336**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MAY 15, 2003

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2336.

This bill expands the economic development incentives under the "Municipal Rehabilitation and Economic Recovery Act" to encourage more businesses to locate in Camden City and other municipalities qualified under the act.

*Current law.* The "Municipal Rehabilitation and Economic Recovery Act" established two programs offering incentives for business investment in a qualified municipality:

- < The "Qualified Municipal Open for Business Incentive Program" ("business incentive program") offers a business that locates or expands operations in a qualified municipality, during the municipality's period of rehabilitation and economic recovery, a partial rebate of its payment of corporation business tax (CBT). The base upon which a rebate is allowed for a particular tax year is computed by multiplying 96 percent times the product of (i) the business's CBT liability for that year, and (ii) the fraction of the business's total New Jersey-sited capital investment property that year that consists of new or expanded business property in the municipality. Under present law, the actual amount of the rebate can be up to 75% of the rebate base for that year.
- < A jobs creation credit is allowed to a business, not eligible for a benefit under the Urban Enterprise Zone program, against the business's CBT liability for the two years following its commencement or expansion of operations within a qualified municipality. The amount of the credit is \$2,500 for each new full-time position at the location in the first year and \$1,250 for each such position in the second year.

*Bill provisions.* The bill enhances these economic development programs in several ways:

- (1) It expands both the business incentive program and the jobs creation credit program to extend eligibility for the credits allowed under each beyond CBT payers to include insurance companies subject to insurance premiums taxes and foreign insurance companies subject to "retaliatory" taxes.

(2) It increases the maximum percentage of the rebate base allowable against either CBT or the premiums or retaliatory taxes under the business incentive program from 75% to 100% in cases as to which the New Jersey Economic Development Authority finds that a particular business relocation or expansion will more effectively effectuate the purposes of the "Municipal Rehabilitation and Economic Recovery Act." In making this finding, the authority is to consider the amount of private investment, the number of jobs concerned, the projected average salary of the employees, whether the investment has the potential to attract additional investment, the impact on the State Treasury, and any other factors that uniquely contribute to the rehabilitation and economic recovery of the qualified municipality.

(3) It provides that, in setting the amount of capital investment that a business has made in a qualified municipality for purposes of determining its rebate base under the business incentive program, a leasehold interest shall be based on the fair market value of its rent.

#### COMMITTEE AMENDMENTS

Committee amendments to this bill (1) include foreign insurance companies liable for retaliatory insurance taxes with other insurance companies made eligible under the legislation for the credits allowed by the "Municipal Rehabilitation and Economic Recovery Act," and (2) incorporate minor technical changes.

#### FISCAL IMPACT

There is no information available from which to project an estimate of the cost to the State of authorizing the allowance of additional business incentive credits under this bill. The Department of the Treasury has indicated that no incentive credits have been allowed to date under the current provisions of the "Municipal Rehabilitation and Economic Recovery Act."

# ASSEMBLY, No. 3334

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 13, 2003

**Sponsored by:**

**Assemblyman JOSEPH J. ROBERTS, JR.**

**District 5 (Camden and Gloucester)**

**Assemblywoman NILSA CRUZ-PEREZ**

**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Expands the economic development incentives for municipal rehabilitation and economic recovery in certain fiscally distressed municipalities.

**CURRENT VERSION OF TEXT**

As introduced.





1 AN ACT expanding the economic development incentives for municipal  
2 rehabilitation and economic recovery in certain fiscally distressed  
3 municipalities, amending P.L.2002, c.43.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Sections 54 of P.L.2002, c.43 (C.52:27BBB-53) is amended to  
9 read as follows:

10 54. As used in this section and section 55 of P.L.2002, c.43  
11 (C.52:27BBB-54):

12 a. "Business facility" means any factory, mill, plant, refinery,  
13 warehouse, building, complex of buildings or structural components  
14 of buildings, and all machinery, equipment and personal property  
15 located within a qualified municipality, used in connection with the  
16 operation of the business of a corporation that is subject to the tax  
17 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or the  
18 tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132  
19 (C.54:18A-2 and 54:18A-3), and all facility preparation and start-up  
20 costs of the taxpayer for the business facility which it capitalizes for  
21 federal income tax purposes.

22 b. "Business relocation or business expansion property" means  
23 improvements to real property and tangible personal property, but only  
24 if that improvement or personal property is constructed or purchased  
25 and placed in service or use by the taxpayer, for use as a component  
26 part of a new business facility or expanded business facility located in  
27 a qualified municipality.

28 (1) Business relocation or business expansion property shall  
29 include only:

30 (a) improvements to real property placed in service or use as a  
31 business facility by the taxpayer on or after the notification of the  
32 Governor by the commissioner pursuant to section 4 of P.L.2002, c.43  
33 (C.52:27BBB-4) that the municipality in which the property is situated  
34 fulfills the definition of a qualified municipality;

35 (b) tangible personal property placed in service or use by the  
36 taxpayer on or after the notification of the Governor by the  
37 commissioner pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4)  
38 that the municipality in which the property is situated fulfills the  
39 definition of a qualified municipality, with respect to which  
40 depreciation, or amortization in lieu of depreciation, is allowable [in  
41 determining the corporation business tax liability of the taxpayer under  
42 P.L.1945, c.162,] for income tax purposes and which has a remaining  
43 recovery period of three or more years at the time the property is

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

**Matter underlined thus is new matter.**

- 1 placed in service or use in a qualified municipality; or
- 2 (c) tangible personal property owned and used by the taxpayer at  
3 a business location outside a qualified municipality which is moved  
4 into a qualified municipality on or after the notification of the  
5 Governor by the commissioner pursuant to section 4 of P.L.2002, c.43  
6 (C.52:27BBB-4) that the municipality in which the property is situated  
7 fulfills the definition of a qualified municipality, for use as a  
8 component part of a new or expanded business facility located in the  
9 qualified municipality; provided that the property is depreciable or  
10 amortizable personal property for income tax purposes, and has a  
11 remaining recovery period of three or more years at the time the  
12 property is placed in service or use in a qualified municipality.
- 13 (2) Property purchased for business relocation or expansion shall  
14 not include:
- 15 (a) repair costs, including materials used in the repair, unless for  
16 federal income tax purposes, the cost of the repair must be capitalized  
17 and not expensed;
- 18 (b) airplanes;
- 19 (c) property which is primarily used outside a qualified municipality  
20 with that use being determined based upon the amount of time the  
21 property is actually used both within and without the qualified  
22 municipality;
- 23 (d) property which is acquired incident to the purchase of the stock  
24 or assets of the seller.
- 25 (3) Property shall be deemed to have been purchased prior to a  
26 specified date only if:
- 27 (a) the physical construction, reconstruction or erection of the  
28 property was begun prior to the specified date, or such property was  
29 constructed, reconstructed, erected or acquired pursuant to a written  
30 contract as existing and binding on the purchase prior to the specified  
31 date; or
- 32 (b) the machinery or equipment was owned by the taxpayer prior  
33 to the specified date, or was acquired by the taxpayer pursuant to a  
34 binding purchase contract which was in effect prior to the specified  
35 date.
- 36 c. "Business relocation or business expansion" means capital  
37 investment in a new or expanded business facility in a qualified  
38 municipality.
- 39 d. "Controlled group" means one or more chains of corporations  
40 connected through stock ownership with a common parent corporation  
41 if stock possessing at least 50% of the voting power of all classes of  
42 stock of each of the corporations is owned directly or indirectly by one  
43 or more of the corporations; and the common parent owns directly  
44 stock possessing at least 50% of the voting power of all classes of  
45 stock of at least one of the other corporations.

- 1 e. "Director" means the Director of the Division of Taxation in the  
2 Department of the Treasury.
- 3 f. "Expanded business facility" means any business facility, other  
4 than a new business facility, resulting from acquisition, construction,  
5 reconstruction, installation or erection of improvements or additions  
6 to existing property if such improvements or additions are purchased  
7 on or after the effective date of rehabilitation and economic recovery.
- 8 g. "Incentive payment" means: the amount of tax owed by a  
9 taxpayer for a privilege period or reporting period, as computed  
10 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or section 7 of  
11 P.L.2002, c.43 (C.54:10A-5a), or sections 2 and 3 of P.L.1945, c.132  
12 (C.54:18A-2 and 54:18A-3), multiplied for each privilege period or  
13 reporting period by a fraction, the numerator of which is the average  
14 value of the taxpayer's business relocation or business expansion  
15 property within a qualified municipality during the period covered by  
16 its report, and the denominator of which is the average value of all the  
17 taxpayer's real and tangible personal property in New Jersey during  
18 such period which result is multiplied by 96 percent; provided,  
19 however, that for the purpose of determining average value, the  
20 provisions with respect to depreciation as set forth in subparagraph (F)  
21 of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162  
22 (C.54:10A-4) shall be taken into account for arriving at such value  
23 whether the corporation is subject to the tax imposed pursuant to  
24 section 5 of P.L.1945, c.162 (C.54:10A-5) or the tax imposed  
25 pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and  
26 54:18A-3); and provided further that the value of a leasehold interest  
27 in realty located within a qualified municipality shall be based on no  
28 less than the fair market value of its rent; and provided further that  
29 incentive payments shall be made for a period not to exceed 10 years,  
30 commencing on the date of a taxpayer's first acquisition of business  
31 relocation or business expansion property in the qualified municipality  
32 following the notification of the Governor by the commissioner  
33 pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) that the  
34 municipality in which the property is situated fulfills the definition of  
35 a qualified municipality.
- 36 h. "New business facility" means a business facility which:
- 37 (1) is employed by a taxpayer in the conduct of a business which  
38 is or will be taxable under P.L.1945, c.162 (C.54:10A-1 et seq.) or the  
39 tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132  
40 (C.54:18A-2 and 54:18A-3). A business facility shall not be  
41 considered a new business facility in the hands of a taxpayer if the  
42 taxpayer's only activity with respect to the facility is to lease it to  
43 another person;
- 44 (2) is purchased by a taxpayer and is placed in service or use on or  
45 after the effective date of rehabilitation and economic recovery;

1 (3) was not purchased by a taxpayer from a related person; and  
2 (4) was not in service or use during the 90-day period immediately  
3 prior to transfer of the title to the facility.

4 i. "Partnership" means a syndicate, group, pool, joint venture or  
5 other unincorporated organization through or by means of which any  
6 business, financial operation or venture is carried on, and which is not  
7 a trust or estate, a corporation or a sole proprietorship. The term  
8 "partner" includes a member in such a syndicate, group, pool, joint  
9 venture or organization.

10 j. "Purchase" means, with respect to the determination of whether  
11 business relocation or business expansion property was purchased, any  
12 acquisition of property, including an acquisition pursuant to a lease,  
13 and an acquisition pursuant to a lease under which the lessee or  
14 affiliates of the lessee are the primary occupants under a lease of ten  
15 years or more, but only if:

16 (1) the property is not acquired from a person whose relationship  
17 to the person acquiring it would result in the disallowance of  
18 deductions under section 267 or subsection (b) of section 707 of the  
19 federal Internal Revenue Code of 1986, 26 U.S.C.s.267 or s.707;

20 (2) the property is not acquired by one member of a controlled  
21 group from another member of the same controlled group; and

22 (3) the basis of the property for federal income tax purposes, in the  
23 hands of the person acquiring it, is not determined:

24 (a) in whole or in part by reference to the federal adjusted basis of  
25 such property in the hands of the person from whom it was acquired;  
26 or

27 (b) under subsection (e) of section 1014 of the federal Internal  
28 Revenue Code of 1986, 26 U.S.C. s.1014.

29 k. "Related person" means:

30 (1) a corporation, partnership, association or trust controlled by  
31 the taxpayer;

32 (2) an individual, corporation, partnership, association or trust that  
33 is in control of the taxpayer;

34 (3) a corporation, partnership, association or trust controlled by an  
35 individual, corporation, partnership, association or trust that is in  
36 control of the taxpayer; or

37 (4) a member of the same controlled group as the taxpayer.

38 (cf: P.L.2002, c.108, s.10)

39

40 2. Sections 55 of P.L.2002, c.43 (C.52:27BBB-54) is amended to  
41 read as follows:

42 55. a. There is established in the authority the "Qualified  
43 Municipality Open for Business Incentive Program," the purpose of  
44 which is to foster business investment in qualified municipalities.  
45 Businesses that locate or expand in a qualified municipality during the  
46 period that the municipality is under rehabilitation and economic

1 recovery shall be eligible to receive a rebate from the "Corporation  
2 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or  
3 the tax imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1  
4 et seq.), as provided herein.

5 b. For each year in which a taxpayer is eligible for a rebate of a  
6 portion of the incentive payment, the Director of the Division of  
7 Taxation shall certify to the State Treasurer (1) that the taxpayer's  
8 corporation business tax return or insurance premiums tax return has  
9 been filed; (2) that the taxpayer's entire corporation business tax  
10 obligation or insurance premiums tax obligation has been satisfied; and  
11 (3) the amount of the taxpayer's incentive payment entitlement. Upon  
12 such certification, the treasurer shall certify to the executive director  
13 of the authority the amount of the taxpayer's incentive payment and,  
14 subject to the approval of the Director of the Division of Budget and  
15 Accounting, transfer that incentive payment to the fund established  
16 with the proceeds of those funds appropriated pursuant to subsection  
17 b. of section 73 of P.L.2002, c.43.

18 c. The executive director of the authority shall rebate to the  
19 taxpayer up to 75% of the incentive payment paid by the taxpayer and  
20 placed by the treasurer into a fund established using those funds  
21 appropriated pursuant to subsection b. of section 73 of P.L.2002, c.43  
22 if the taxpayer applies for a rebate within two years of deposit of the  
23 incentive payment into the fund and establishes to the satisfaction of  
24 the executive director of the authority that the taxpayer will utilize  
25 those monies for business relocation or business expansion property  
26 that will be placed in service or use by the taxpayer after the date of  
27 the rebate application. The authority may rebate to the taxpayer up to  
28 100% of the incentive payment paid by the taxpayer and placed by the  
29 treasurer into a fund established using those funds appropriated  
30 pursuant to subsection b. of section 73 of P.L.2002, c.43 if the  
31 taxpayer applies for a rebate and the authority determines that a  
32 particular business relocation or business expansion will more  
33 effectively contribute to the municipal rehabilitation and economic  
34 recovery in a distressed municipality as sought by the Legislature  
35 through the enactment of P.L.2002, c.43. In making this  
36 determination the authority shall consider: 1) the amount of private  
37 investment, 2) the number of jobs concerned, 3) the projected average  
38 salary of the employees, 4) whether the investment has the potential  
39 to attract additional investment, 5) the impact to the State Treasury,  
40 and 6) any other factors that uniquely contribute to the municipal  
41 rehabilitation and economic recovery of the distressed municipality.  
42 The taxpayer may apply for this incentive prior to its undertaking of  
43 the business relocation or business expansion and upon approval the  
44 authority may establish a rebate schedule for the incentive payment for  
45 a period not to exceed ten years, subject to the taxpayer's continued  
46 satisfaction of the criteria of this act and to annual appropriation. The

1 cumulative amount of monies distributed to the taxpayer pursuant to  
2 this section shall not exceed the amount paid or to be paid by the  
3 taxpayer for the business relocation or business expansion property. In  
4 the event that the taxpayer does not establish its eligibility for a rebate  
5 of a portion of the incentive payment within two years of its deposit  
6 into the fund, the fund shall retain any remaining amount of the  
7 incentive payment.

8 (cf: P.L.2002, c.43, s.55)

9

10 3. Section 56 of P.L.2002, c.43 (C.52:27BBB-55) is amended to  
11 read as follows:

12 56. a. A taxpayer engaged in the conduct of business within a  
13 qualified municipality and who is not receiving a benefit under the  
14 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303  
15 (C.52:27H-60 et seq.), may apply to receive a tax credit against the  
16 amount of tax otherwise imposed under the "Corporation Business  
17 Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) , or the tax  
18 imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et  
19 seq.), equal to: \$2,500 for each new full-time position at that location  
20 in credit year one and \$1,250 for each new full-time position at that  
21 location in credit year two.

22 b. (1) The credit pursuant to subsection a. of this section for credit  
23 year one shall be allowed for the privilege period or reporting period  
24 in which or with which credit year one ends; the credit pursuant to  
25 subsection a. of this section for credit year two shall be allowed for the  
26 privilege period or reporting period in which or with which credit year  
27 two ends.

28 (2) An unused credit may be carried forward, if necessary, for use  
29 in the **[five]** privilege periods or reporting periods following the  
30 privilege period or reporting period for which the credit is allowed.

31 (3) The order of priority of the application of the credit allowed  
32 under this section and any other credits allowed by law shall be as  
33 prescribed by the Director of the Division of Taxation. The amount  
34 of the credit applied under this section against the tax imposed  
35 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege  
36 period, together with any other credits allowed by law, shall not  
37 exceed 50% of the tax liability otherwise due and shall not reduce the  
38 tax liability to an amount less than the statutory minimum provided in  
39 subsection (e) of section 5 of P.L.1945, c.162.

40 c. (1) Notwithstanding the provisions of subsection b. of this  
41 section to the contrary, the credit allowed for credit year one may be  
42 refundable at the close of the privilege period or reporting period in  
43 which or with which credit year two ends, pursuant to the  
44 requirements and limitations of this subsection.

45 (2) That amount of the credit received for credit year one  
46 remaining, if any, after the liabilities for the privilege period or

1 reporting period in which or with which credit year two ends and for  
2 any prior [privilege] period have been satisfied, multiplied by the  
3 sustained effort ratio, shall be an overpayment for the purposes of  
4 section R.S.54:49-15 for the [privilege] period in which or with which  
5 credit year two ends; that amount of the credit received for credit year  
6 one remaining, if any, that is not an overpayment pursuant to this  
7 paragraph may be carried forward pursuant to subsection b. of this  
8 section.

9 d. The burden of proof shall be on the taxpayer to establish by  
10 clear and convincing evidence that the taxpayer is entitled to the  
11 credits or refund allowed pursuant to this section. The director shall  
12 by regulation establish criteria for the determination of when new or  
13 expanded operations have begun at a location. No taxpayer shall be  
14 allowed more than a single 24-month continuous period in which  
15 credits shall be allowed for activity at a location within a qualified  
16 municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.).

17 e. For the purposes of this section:

18 "Credit year one" means the first twelve calendar months following  
19 initial or expanded operations at a location within a qualified  
20 municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.).

21 "Credit year two" means the twelve calendar months following  
22 credit year one.

23 "Employee of the taxpayer" does not include an individual with an  
24 ownership interest in the business, that individual's spouse or  
25 dependants, or that individual's ancestors or descendants.

26 "Full time position" means a position filled by an employee of the  
27 taxpayer for at least 140 hours per month on a permanent basis, which  
28 does not include employment that is temporary or seasonal.

29 "New full time position" means a position that did not exist prior to  
30 credit year one. New full time positions shall be measured by the  
31 increase, from the twelve-month period preceding credit year one to  
32 the measured credit year, in the average number of full-time positions  
33 and full-time position equivalents employed by the taxpayer at the  
34 location within a qualified municipality pursuant to P.L.2002, c.43  
35 (C.52:27BBB-1 et al.). The hours of employees filling part-time  
36 positions shall be aggregated to determine the number of full-time  
37 position equivalents.

38 "Part-time position" means a position filled by an employee of the  
39 taxpayer for at least 20 hours per week for at least three months  
40 during the credit year.

41 "Sustained effort ratio" means the proportion that the credit year  
42 two new full-time positions bears to the credit year one new full-time  
43 positions, not to exceed one.

44 (cf: P.L.2002, c.43, s.56)

1       4. This act shall take effect immediately, and apply to privilege  
2 periods and reporting periods beginning on or after June 30, 2002.

3

4

5

STATEMENT

6

7       This bill expands the economic development incentives provided by  
8 the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002,  
9 c.43, to encourage more business organizations or a wider variety to  
10 locate in municipalities qualified under that act.

11       The bill expands the "Qualified Municipality Open For Business  
12 Incentive Program" and the sustained effort credit programs to include  
13 location incentives for businesses that pay insurance premiums taxes  
14 in addition to the incentives already provided to businesses that pay  
15 corporation business tax.

16       The bill increases the potential maximum amount of the incentive  
17 to a business under the "Qualified Municipality Open For Business  
18 Incentive Program" from 75% of the incentive payment to 100% of the  
19 incentive payment if the New Jersey Economic Development Authority  
20 determines that a particular business relocation or business expansion  
21 will more effectively contribute to the municipal rehabilitation and  
22 economic recovery in a distressed municipality as sought by the  
23 Legislature through the enactment of P.L.2002, c.43.

24       In making this determination the authority will consider: the amount  
25 of private investment; the number of jobs concerned, the projected  
26 average salary of the employees, whether the investment has the  
27 potential to attract additional investment, the impact to the State  
28 Treasury, and any other factors that uniquely contribute to the  
29 municipal rehabilitation and economic recovery of the distressed  
30 municipality.



# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3334

with Assembly committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 16, 2003

The Assembly Budget Committee reports favorably Assembly Bill No. 3334, with committee amendments.

Assembly Bill No. 3334, as amended, expands the economic development incentives under the "Municipal Rehabilitation and Economic Recovery Act" to encourage more businesses to locate in Camden City and other municipalities qualified under the act.

*Current law.* The "Municipal Rehabilitation and Economic Recovery Act" established two programs offering incentives for business investment in a qualified municipality:

- < The "Qualified Municipal Open for Business Incentive Program" ("business incentive program") offers a business that locates or expands operations in a qualified municipality, during the municipality's period of rehabilitation and economic recovery, a partial rebate of its payment of corporation business tax (CBT). The base upon which a rebate is allowed for a particular tax year is computed by multiplying 96 percent times the product of (i) the business's CBT liability for that year, and (ii) the fraction of the business's total New Jersey-sited capital investment property that year that consists of new or expanded business property in the municipality. Under present law, the actual amount of the rebate can be up to 75% of the rebate base for that year.
- < A jobs creation credit is allowed to a business, not eligible for a benefit under the Urban Enterprise Zone program, against the business's CBT liability for the two years following its commencement or expansion of operations within a qualified municipality. The amount of the credit is \$2,500 for each new full-time position at the location in the first year and \$1,250 for each such position in the second year.

*Bill provisions.* The bill enhances these economic development programs in several ways:

- (1) It expands both the business incentive program and the jobs creation credit program to extend eligibility for the credits allowed under each beyond CBT payers to include insurance companies subject to insurance premiums taxes and foreign insurance companies subject

to "retaliatory" taxes.

(2) It increases the maximum percentage of the rebate base allowable against either CBT or the premiums or retaliatory taxes under the business incentive program from 75% to 100% in cases as to which the New Jersey Economic Development Authority finds that a particular business relocation or expansion will more effectively effectuate the purposes of the "Municipal Rehabilitation and Economic Recovery Act." In making this finding, the authority is to consider the amount of private investment, the number of jobs concerned, the projected average salary of the employees, whether the investment has the potential to attract additional investment, the impact on the State Treasury, and any other factors that uniquely contribute to the rehabilitation and economic recovery of the qualified municipality.

(3) It provides that, in setting the amount of capital investment that a business has made in a qualified municipality for purposes of determining its rebate base under the business incentive program, a leasehold interest shall be based on the fair market value of its rent.

As amended and reported, this bill is identical to S-2336 (1R) as also reported by the committee.

#### FISCAL IMPACT

There is no information available from which to project an estimate of the cost to the State of authorizing the allowance of additional business incentive credits under this bill. The Department of the Treasury has indicated that no incentive credits have been allowed to date under the current provisions of the "Municipal Rehabilitation and Economic Recovery Act."

#### COMMITTEE AMENDMENTS

Committee amendments to this bill (1) include foreign insurance companies liable for retaliatory insurance taxes with other insurance companies made eligible under the legislation for the credits allowed by the "Municipal Rehabilitation and Economic Recovery Act," and (2) incorporate minor technical changes.