54:10A-5.33

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2003 **CHAPTER:** 296

NJSA: 54:10A-5.33 (Corporation business credit—remediation costs)

BILL NO: A2628 (Substituted for S1723)

SPONSOR(S) Watson Coleman and others

DATE INTRODUCED: June 28, 2002

COMMITTEE: **ASSEMBLY:** Environment and Solid Waste; Appropriations

SENATE Environment; Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** March 3, 2003; Re-enacted 1-12-2004

SENATE: December 15, 2003; Re-enacted 1-12-2004

DATE OF APPROVAL: January 14, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL 3rd reprint enacted (Amendments during passage denoted by asterisks)

A2628

SPONSOR'S STATEMENT: (Begins on page 4 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes 11-25-2002 (Envron.) 2-3-2003 (Approp.)

SENATE: Yes 12-4-2003 (Environ.) 12-11-2003 (Budget)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes

LEGISLATIVE FISCAL ESTIMATE: Yes 2-19-2003 9-24-2003

S1723

SPONSOR'S STATEMENT: (Begins on page 4 of original bill) Yes

Bill and Sponsors Statement identical to A2628

COMMITTEE STATEMENT: **ASSEMBLY**: No

SENATE: Yes 12-4-2003 (Environ.) 12-11-2003 (Budget)

Identical to Senate Budget Statement for A2628

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

§§1-5 -
C.54:10A-5.33
to 54:10A-5.37

P.L. 2003, CHAPTER 296, ***approved January 14, 2004***
Assembly, No. 2628 ***(Third Reprint)***

AN ACT providing a credit against the corporation business tax for certain remediation costs, and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.)

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

1. a. A taxpayer shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to [1]**[**50%**]** 100%[1] of the eligible costs of the remediation of a contaminated site as certified by the Department of Environmental Protection pursuant to section 2 of P.L. , c. (C.) (now pending in the Legislature as this bill) [1]and the Director of the Division of Taxation in the Department of Treasury pursuant to section 3 of P.L. , c. (C.) (now pending in the Legislature as this bill)[1] performed during privilege periods beginning on or after January 1 [2]**[**next following enactment of P.L. , c. (C.) (now pending in the Legislature as this bill)**]** 2004 and before January 1, 2007 [2].

b. The priority for the application of credit allowed pursuant to this section against the tax imposed for a privilege period pursuant to section 5 of P.L.1945, c.162, in relation to the application of any other credit allowed against the tax shall be prescribed by the Director of the Division of Taxation in the Department of the Treasury. Credits allowable pursuant to this section shall be applied in the order of the credits' privilege periods. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

c. Except as provided in subsection d. of this section, the amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year due to the limitations of subsection b. of this section may be carried over, if necessary, to the five privilege periods following a credit's privilege period.

d. A taxpayer may not carry over any amount of credit or credits

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 thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Assembly AEN committee amendments adopted November 25, 2002.
[2] Assembly AAP committee amendments adopted February 3, 2003.
[3] Assembly amendments adopted in accordance with Governor's recommendations January 12, 2004.

allowed under subsection a. of this section to a privilege period during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred [3][or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent privilege period, if the credit was allowed for a privilege period prior to the year of acquisition, merger or consolidation, except that if in the case of acorporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation][3].

e. In no event shall the amount of the tax credit, when taken together with the property tax exemption received pursuant to the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made pursuant to that act, or any other State, local, or federal tax incentive or grant to remediate a site, exceed 100% of the total cost of the remediation.

2. To be eligible for a tax credit for the costs of remediation pursuant to section 1 of P.L. , c. (C.)(now in the Legislature as this bill), a taxpayer shall submit an application, in writing, to the Department of Environmental Protection for review and certification of the eligible costs of the remediation for the remediation tax credit. The department shall review the request for certification upon receipt of an application therefor, and shall approve or deny the application for certification on a timely basis. The department shall certify the eligible costs of the remediation if the department finds that:

(1) the taxpayer had entered into a memorandum of agreement with the Commissioner of Environmental Protection for the remediation of a contaminated site and the taxpayer is in compliance with the memorandum of agreement;

(2) the taxpayer is not liable, pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) for the contamination at the site; and

(3) the costs of the remediation were actually and reasonably incurred.

When filing an application for certification of the eligible costs of a remediation pursuant to this section, the taxpayer shall submit to the department a certification of the total remediation costs incurred by the taxpayer for the remediation of the subject property, and such other information as the department deems necessary in order to make the certifications and findings pursuant to this section.

[1]3. In addition to the requirements of section 2 of P.L. , c. (C.)(now pending in the Legislature as this bill), to be eligible for a tax credit for the costs of remediation pursuant to section 1 of P.L. , c. (C.)(now pending in the Legislature as this bill), the Director of the Division of Taxation in the Department of Treasury shall certify that the remediation of the contaminated site has also satisfied the following:

a. the remediated site is located within an area designated as a Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban) as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.);

b. the subsequent business activity at the remediated site represents new corporation business tax, or sales and use tax or gross income tax receipts;

c. there is a high probability that the estimated new tax receipts deriving from the business activity at the remediated site, within a three year period from the inception of the business activity, will equal or exceed the value of tax credits issued; and

d. if the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit authorized pursuant to section 1 of P.L. , c. (C.) (now pending in the Legislature as this bill), shall be equal to the difference in aggregate value of tax receipts from the corporation business tax pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), the sales and use tax pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) and the gross income tax pursuant to P.L.1976, c.47 (C.54A:1-1 et seq.) generated by the business activity in the privilege period immediately following the business relocation less the aggregate value of tax receipts generated in the privilege period immediately prior to relocation, up to 100% of the eligible costs, pursuant to section 1 of P.L. , c. (C.) (now pending in the Legislature as this bill). If the difference in aggregate value is zero or less, no tax credit shall be awarded.[1]

[1]**[**3.**]** 4.[1] a. The Director of the Division of Taxation in the Department of Treasury shall establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, 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 with a corporation that is surrendering its tax benefits. 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. The tax benefits may be used on the corporation business tax returns to be filed by those

taxpayers.

b. The director shall be authorized to approve the transfer of no more than [1][$50,000,000] $12,000,000[1] of tax benefits [1][over State fiscal year 2003 and $40,000,000 of tax benefits over each State fiscal year thereafter] in each of the following State fiscal years: [2][2003, 2004 and][2] 2005[1] [2], 2006, and 2007 [2] . The maximum [1][lifetime][1] value of surrendered tax benefits that a corporation shall be permitted to surrender [1]over the three year period[1] pursuant to the program is [1][$10,000,000] $4,000,000[1] . Applications must be received on or before [3][June 30 for each State fiscal year] February 1, 2005 and each February 1 thereafter[3].

c. The Director of 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. No taxpayer who is liable pursuant to paragraph (1) of subsection c. of P.L.1976, c.141 (C.58:10-23.11) for contamination at any site in the State may acquire a surrendered tax benefit pursuant to this section. The applications shall be submitted and the division shall approve or disapprove the applications.

[1]5. [2][Within 60 days of the expiration of this act pursuant to section 6] On or before August 1, 2006 [2] , the State Treasurer shall form a performance evaluation review committee which shall consist of representatives of the Division of Taxation, the Commerce and Economic Growth Commission, and the New Jersey Economic Development Authority, and five members from the private sector, at least two of whom shall represent the real estate development industry. This performance evaluation review committee shall be charged with thoroughly analyzing and documenting in a report:

a. the fiscal and economic impact to the State of the tax credit for the costs of remediation granted pursuant to section 1 of P.L. , c. (C.)(now in the Legislature as this bill);

b. the total number of properties redeveloped and their local economic and fiscal impact;

c. any recommendations for legislative or regulatory amendments that would enhance the effectiveness of the program; and

d. a recommendation whether the program should be continued.

The report required pursuant to this section shall be delivered to the Governor and [2][the Legislature within five months of the conclusion of the State Fiscal Year 2005] the chairs of the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee, or the chairs of the successor committees, on or before November 30, 2006 [2] .[1]

[1][4.] 6.[1] This act shall take effect immediately [2][[1]and shall expire on the last day of State Fiscal Year 2005[1]][2] .

Establishes corporation business tax credit for certain remediation costs.

ASSEMBLY, No. 2628

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED JUNE 28, 2002

Sponsored by:
Assemblywoman BONNIE WATSON COLEMAN
District 15 (Mercer)

Co-Sponsored by:
Assemblymen Cryan and Kean

SYNOPSIS

Establishes corporation business tax credit for certain remediation costs.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 9/24/2002)

AN ACT providing a credit against the corporation business tax for certain remediation costs, and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.)

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

1. a. A taxpayer shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 50% of the eligible costs of the remediation of a contaminated site as certified by the Department of Environmental Protection pursuant to section 2 of P.L. , c. (C.) (now pending in the Legislature as this bill) performed during privilege periods beginning on or after January 1 next following enactment of P.L. , c. (C.) (now pending in the Legislature as this bill).

b. The priority for the application of credit allowed pursuant to this section against the tax imposed for a privilege period pursuant to section 5 of P.L.1945, c.162, in relation to the application of any other credit allowed against the tax shall be prescribed by the Director of the Division of Taxation in the Department of the Treasury. Credits allowable pursuant to this section shall be applied in the order of the credits' privilege periods. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

c. Except as provided in subsection d. of this section, the amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year due to the limitations of subsection b. of this section may be carried over, if necessary, to the five privilege periods following a credit's privilege period.

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

e. In no event shall the amount of the tax credit, when taken together with the property tax exemption received pursuant to the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made pursuant to that act, or any other State, local, or federal tax incentive or grant to remediate a site, exceed 100% of the total cost of the remediation.

2. To be eligible for a tax credit for the costs of remediation pursuant to section 1 of P.L. , c. (C.)(now in the Legislature as this bill), a taxpayer shall submit an application, in writing, to the Department of Environmental Protection for review and certification of the eligible costs of the remediation for the remediation tax credit. The department shall review the request for certification upon receipt of an application therefor, and shall approve or deny the application for certification on a timely basis. The department shall certify the eligible costs of the remediation if the department finds that:

(1) the taxpayer had entered into a memorandum of agreement with the Commissioner of Environmental Protection for the remediation of a contaminated site and the taxpayer is in compliance with the memorandum of agreement;

(2) the taxpayer is not liable, pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) for the contamination at the site; and

(3) the costs of the remediation were actually and reasonably incurred.

When filing an application for certification of the eligible costs of a remediation pursuant to this section, the taxpayer shall submit to the department a certification of the total remediation costs incurred by the taxpayer for the remediation of the subject property, and such other information as the department deems necessary in order to make the certifications and findings pursuant to this section.

3. a. The Director of the Division of Taxation in the Department of Treasury shall establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, 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 with a corporation that is surrendering its tax benefits. 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. The tax benefits may be used on the

corporation business tax returns to be filed by those taxpayers.

b. The director shall be authorized to approve the transfer of no more than $50,000,000 of tax benefits over State fiscal year 2003 and $40,000,000 of tax benefits over each State fiscal year thereafter. 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 on or before June 30 for each State fiscal year.

c. The Director of 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. No taxpayer who is liable pursuant to paragraph (1) of subsection c. of P.L.1976, c.141 (C.58:10-23.11) for contamination at any site in the State may acquire a surrendered tax benefit pursuant to this section. The applications shall be submitted and the division shall approve or disapprove the applications.

4. This act shall take effect immediately.

STATEMENT

This bill provides a corporate business tax credit for 50% of the costs of the remediation of a contaminated site in the State, for privilege periods beginning on or after January 1 next following enactment of this act. Only those persons who are not responsible parties under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) would be eligible for the tax credit. The bill would also require the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, to surrender those tax benefits for use by other corporation business taxpayers in this State.

ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2628

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 25, 2002

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 2628.

As amended by the committee, this bill provides a corporate business tax credit for 100% of the costs of the remediation of a contaminated site in the State, for privilege periods beginning on or after January 1 next following enactment of this act. Only those persons who are not responsible parties under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) would be eligible for the tax credit. The bill would also require the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, to surrender those tax benefits for use by other corporation business taxpayers in this State.

As amended by the committee, to be eligible for the tax credit, the Director of the Division of Taxation in the Department of Treasury shall certify that the environmental remediation project has also satisfied the following:

(1) the remediated site is located within an area designated as a Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban);

(2) the subsequent business activity at the remediated site represents new corporation business tax, or sales and use tax or gross income tax receipts;

(3) there is a high probability that the estimated new tax receipts deriving from the business activity at the remediated site, within a three year period from the inception of the business activity, will equal or exceed the value of qualified tax credits issued; and

(4) if the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit shall be equal to the difference in aggregate value of tax receipts from the corporation business tax, the sales and use tax and the gross income tax generated by the business activity in the privilege period immediately following the business

relocation less the aggregate value of tax receipts generated in the privilege period immediately prior to relocation. The bill further provides that if the difference in aggregate value is zero or less, then no tax credit will be awarded.

As amended by the committee, the State Treasurer is required to establish a performance evaluation review committee charged with preparing and submitting a report to the Governor and the Legislature, within five months of the conclusion of the State Fiscal Year 2005, concerning the fiscal and economic impact to the State of this tax credit; the total number of properties redeveloped and their local economic and fiscal impact; any recommendations for legislative or regulatory amendments that would enhance the effectiveness of the program; and a recommendation whether the program should be continued.

COMMITTEE AMENDMENTS

Committee amendments to the bill:

(1) provide that the tax credit would be for 100% of the eligible costs of the remediation of a contaminated site in the State subject to certain conditions, including that the site being remediated is located within Planning 1 or 2;

(2) change the annual caps on the transfer program, and the change the amount of tax benefits that a corporation may surrender over the program;

(3) provide that the program will expire at the conclusion of State Fiscal Year 2005;

(4) require the State Treasurer to establish a performance evaluation review committee to analyze the program's impact; and

(5) make technical and clarifying changes to the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]
ASSEMBLY, No. 2628

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 3, 2003

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2628 (1R), with committee amendments.

Assembly Bill No. 2628 (1R), as amended, provides a corporation business tax credit for 100% of the costs of the remediation of a contaminated site in the State, for the three year period beginning on or after the January 1 following its enactment. Only persons who are not responsible parties under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) are eligible for the credit.

An environmental remediation project shall be eligible for the tax credit if the Director of the Division of Taxation certifies that the project meets these criteria:

(1) the remediated site is located within an area designated as a Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban);

(2) the subsequent business activity at the remediated site represents new corporation business tax, or sales and use tax or gross income tax receipts;

(3) there is a high probability that the estimated new tax receipts deriving from the business activity at the remediated site, within a three year period from the inception of the business activity, will equal or exceed the value of qualified tax credits issued; and

(4) if the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit shall be equal to the difference in aggregate value of tax receipts from the corporation business tax, the sales and use tax and the gross income tax generated by the business activity in the privilege period immediately following the business relocation less the aggregate value of tax receipts generated in the privilege period immediately prior to relocation. If the difference in aggregate value is zero or less, then no tax credit will be awarded.

The bill requires the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program for three fiscal years which will allow a person who performs a remediation in this State that earns remediation tax credits to surrender those tax benefits for use by other corporation business taxpayers in this State.

The bill requires the State Treasurer to establish a performance evaluation review committee that will consider the fiscal and economic impact to the State of this tax credit; the total number of properties redeveloped and their local economic and fiscal impact; any recommendations for legislative or regulatory amendments that would enhance the effectiveness of the program; and a recommendation on whether the program should be continued. The committee shall prepare and submit a report to the Governor and the Legislature on or before November 30, 2007.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that an unknown loss of revenue to the General Fund in Fiscal Years 2005 through 2012 is possible to the extent that the Director of the Division of Taxation certifies any project as satisfying the stringent requirements for the tax credit.

Fiscal Year 2003 would not be affected, as only certain site remediations performed during privilege periods beginning on or after January 1 next following enactment (i.e., January 1, 2004) are eligible for possible tax credits. No credits will be granted for taxable periods beginning after January 1, 2007. Revenue losses from the corporation tax credits could vary significantly in each year, based on the vagaries of future site remediation activity in Planning Areas 1 and 2, the extent to which the tax liability limits in the bill are reached, the extent to which the Director of the Division of Taxation is able to certify new State revenues from new business activity, and the extent to which any credit transfer activity between corporations occurs. No data exists for estimating the potential revenue loss.

The OLS also estimates that a potential increase in tax revenue for the General Fund (GF) and the Property Tax Relief Fund (PTRF) is possible in Fiscal Years 2004 and thereafter. The bill requires that the Director of the Division of Taxation certify that estimated new tax receipts from the corporation tax (GF), the sales tax (GF), and the gross income tax (PTRF) over a three year period from the inception of the business activity at the remediation site, equal or exceed the value of the tax credits issued for the remediation. To the extent that a particular project increases tax revenues, those new revenues will be deposited into the GF and the PTRF. If the increased business activity continues beyond the three year period, the GF and the PTRF would see an ongoing future increase in revenues.

The OLS also notes that the stringent revenue enhancement certification requirements in the bill may prevent the Director of the Division of Taxation from granting any credits under the bill.

Lastly, the OLS notes that public and private site remediation costs can range into the tens of millions and hundreds of millions annually. The bill excludes certain taxpayers who are "responsible parties" under current law, but no data are available on the value of remediation done by corporate taxpayers who are *not* responsible parties. By comparison, the New Jersey Department of Environmental Protection annually monitors over 5,000 thousand responsible party site remediations, and over 1,500 sites are completed each year.

COMMITTEE AMENDMENTS:

The amendments clarify that the bill establishes an initial three year period, starting with privilege periods beginning January 1, 2004 and ending with privilege periods beginning before January 1 2007, in which credits will be granted and a similar three year fiscal program (State Fiscal Years 2005, 2006 and 2007) for the tax benefit certificate transfer program (the credits, once granted, may be applied to up to five succeeding year's liability, hence the long duration of the bill's fiscal impact).

The amendments clarify that the State Treasurer's performance evaluation review committee will report to the Governor and the Legislature on or before November 30, 2007, allowing the use of two years of program performance data for the report.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 2628

STATE OF NEW JERSEY

DATED: DECEMBER 4, 2003

The Senate Environment Committee reports favorably Assembly Bill No. 2628 (2R).

This bill would provide a corporation business tax credit for 100% of the costs of the remediation of a contaminated site in the State, for the three year period beginning on or after the January 1, 2004. Only persons who are not responsible parties under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) are eligible for the credit.

An environmental remediation project shall be eligible for the tax credit if the Director of the Division of Taxation certifies that the project meets these criteria:

(1) the remediated site is located within an area designated as a Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban);

(2) the subsequent business activity at the remediated site represents new corporation business tax, or sales and use tax or gross income tax receipts;

(3) there is a high probability that the estimated new tax receipts deriving from the business activity at the remediated site, within a three year period from the inception of the business activity, will equal or exceed the value of qualified tax credits issued; and

(4) if the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit shall be equal to the difference in aggregate value of tax receipts from the corporation business tax, the sales and use tax and the gross income tax generated by the business activity in the privilege period immediately following the business relocation less the aggregate value of tax receipts generated in the privilege period immediately prior to relocation. If the difference in aggregate value is zero or less, then no tax credit will be awarded.

The bill requires the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program for three fiscal years, 2005, 2006, and 2007, which will allow a person who performs a remediation in this State that earns remediation tax credits to surrender those tax benefits for use by other corporation business taxpayers in this State. The credits, once granted, may be applied to up to five succeeding year's liability.

The bill requires the State Treasurer to establish a performance evaluation review committee that will consider the fiscal and economic impact to the State of this tax credit; the total number of properties redeveloped and their local economic and fiscal impact; any recommendations for legislative or regulatory amendments that would enhance the effectiveness of the program; and a recommendation on whether the program should be continued. The committee shall prepare and submit a report to the Governor and the Legislature on or before November 30, 2007.

This bill is identical to Senate Bill No. 1723, as amended, which was also released by the committee.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 2628

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2003

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2628 (2R).

Tax credit for site remediation. This bill provides a corporation business tax credit for 100% of the costs of the remediation of a contaminated site in the State, for the three year period beginning on or after the January 1 following its enactment. Only persons who are not "responsible parties" under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) would be eligible for the credit.

An environmental remediation project would be eligible for the tax credit if the Director of the Division of Taxation certifies that the project meets these criteria:

(1) The remediated site is located within an area designated as a Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban);

(2) The subsequent business activity at the remediated site represents new corporation business tax, sales and use tax, or gross income tax receipts;

(3) There is a high probability that the estimated new tax receipts deriving from the business activity at the remediated site, within a three-year period from the inception of the business activity will equal or exceed the value of qualified tax credits issued; and

(4) If the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit would be equal to the difference in aggregate value of tax receipts from the corporation business tax, the sales and use tax and the gross income tax generated by the business activity in the privilege period immediately following the business relocation less the aggregate value of tax receipts generated in the privilege period immediately prior to relocation. If the difference in aggregate value is zero or less, then no tax credit would be awarded.

Tax benefit transfer program. The bill requires the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program for the three State fiscal years 2005-2007 that will allow a company that performs a remediation in this State that earns remediation tax credits to surrender those tax benefits for use by other corporation business taxpayers in this State.

Impact review. The bill requires the State Treasurer to establish a performance evaluation review committee that would consider (i) the fiscal and economic impact to the State of this tax credit, (ii) the total number of properties redeveloped and their local economic and fiscal impact, (iii) any recommendations for legislative or regulatory amendments that would enhance the effectiveness of the program, and (iv) a recommendation on whether the program should be continued. The committee is to prepare and submit a report to the Governor and the Legislature on or before November 30, 2007.

The provisions of this bill are identical to those of Senate Bill No. 1723 (1R), which the committee also reports this day.

FISCAL IMPACT

The Office of Legislative Services (OLS) estimates that an unknown loss of revenue to the General Fund in Fiscal Years 2005 through 2012 is possible to the extent that the Director of the Division of Taxation certifies any project as satisfying the stringent requirements for the tax credit.

The credits allowed under the bill would only be allowable for eligible site remediations performed during privilege periods that begin between January 1, 2004 and December 31, 2006. Revenue losses from the corporation tax credits could vary significantly in each year, based on the vagaries of future site remediation activity in Planning Areas 1 and 2, the extent to which the tax receipt requirements under the bill are met, the extent to which the Director of the Division of Taxation is able to certify new State revenues from new business activity, and the extent to which any credit transfer activity between corporations occurs. No data exists to serve as a basis for an estimate of the potential revenue loss.

The OLS also estimates that a potential increase in tax revenue for the General Fund (GF) and the Property Tax Relief Fund (PTRF) is possible in Fiscal Years 2004 and thereafter. The bill requires that the Director of the Division of Taxation certify that estimated new tax receipts from the corporation tax (GF), the sales tax (GF), and the gross income tax (PTRF) over a three year period from the inception of the business activity at the remediation site, equal or exceed the value of the tax credits issued for the remediation. To the extent that a particular project increases tax revenues, those new revenues will be deposited into the GF and the PTRF. If the increased business activity continues beyond the three year period, the GF and the PTRF would see an ongoing future increase in revenues.

The OLS also notes that the stringent revenue enhancement certification requirements in the bill may prevent the Director of the Division of Taxation from granting any credits under the bill.

Finally, the OLS notes that public and private site remediation costs can range into the tens of millions and hundreds of millions annually. The bill excludes certain taxpayers who are "responsible parties" under current law, but no data are available on the value of remediation done by corporate taxpayers who are *not* responsible parties. (It is noted that the New Jersey Department of Environmental Protection annually monitors more than 5,000 site remediations by persons who *are* responsible parties, and that over 1,500 such sites are completed each year.)

FISCAL NOTE
ASSEMBLY, No. 2628
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: JANUARY 9, 2003

SUMMARY

Synopsis:	Establishes corporation business tax credit for certain remediation costs.
Type of Impact:	Loss of revenue from the General Fund.
Agencies Affected:	Department of the Treasury.

Executive Estimate

Fiscal Impact	**FY 2003**	**FY 2004**	**FY 2005**
State Revenue	Unknown Annual Loss		

! The Office of Legislative Services (OLS) ***concurs*** with the Executive estimate.

! The Office of Management and Budget and the Division of Taxation anticipate an annual loss of revenue to the State, but the actual amounts cannot be estimated. Information to estimate the potential cost of future remediation of contaminated sites is not available.

BILL DESCRIPTION

Assembly Bill No. 2628 of 2002 provides a corporate business tax credit for 50 percent of the costs of the remediation of a contaminated site in the State, for privilege periods beginning on or after January 1 next following enactment of this act. Only those persons who are not responsible parties under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) would be eligible for the tax credit. The bill would also require the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, to surrender those tax benefits for use by other corporation business taxpayers in this State.

Office of Legislative Services
State House Annex
P.O. Box 068
Trenton, New Jersey 08625

– OLS –

Legislative Budget and Finance Office
Phone (609) 292-8030
Fax (609) 777-2442
www.njleg.state.nj.us

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Office of Management and Budget and the Division of Taxation anticipate an annual loss of revenue to the State, but the actual amounts cannot be estimated. Information to estimate the potential cost of future remediation of contaminated sites is not available. While the credit cannot exceed 50 percent of a corporate taxpayer's liability in any year in which the credit is claimed, and while the taxpayer's liability may not fall below the statutory minimum, the possible number of claimants and the potential amount of remediation costs claimed cannot be determined. The number of participants in the credit transfer portion of this bill is also unknown.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concurs with the Executive that an unknown annual loss of revenue is likely. Amounts could vary significantly from year to year, based on the vagaries of future site remediation activity, the extent to which the tax liability limits in the bill are reached, and the extent to which any credit transfer activity between corporations occurs.

The OLS notes that public and private site remediation costs can range into the tens of millions and hundreds of millions annually. The bill excludes certain taxpayers who are "responsible parties" under current law, but no data are available on the value of remediation done by corporate taxpayers who are *not* responsible parties. By comparison, the New Jersey Department of Environmental Protection annually monitors over 5,000 responsible party site remediations, and over 1,500 sites are completed each year.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Martin Poethke* *Senior Fiscal Analyst*
Approved:	*Alan R. Kooney* *Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2628

STATE OF NEW JERSEY

210th LEGISLATURE

DATED: FEBRUARY 19, 2003

SUMMARY

Synopsis: Establishes corporation business tax credit for certain remediation costs.

Type of Impact: Loss of revenue from the General Fund; potential gain of revenue in the Property Tax Relief Fund.

Agencies Affected: Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	FY 2003	FY 2004 and FY 2005	After FY 2005
State Revenue	$0	Unknown Annual Loss	Unknown Annual Potential Gain

- The Office of Legislative Services (OLS) estimates that an unknown loss of revenue to the General Fund in Fiscal Years 2004 and 2005 is possible to the extent that the Director of the Division of Taxation certifies any project as satisfying the stringent requirements for the tax credit. No data exists for estimating the potential revenue loss.

- The OLS also estimates that a potential increase in tax revenue for the General Fund (GF) and the Property Tax Relief Fund (PTRF) is possible in Fiscal Years 2004, 2005 and thereafter. To whatever extent new business activity at the remediation site continues to generate new tax revenues in the future, the GF and the PTRF would see an ongoing future increase in revenues.

- The OLS also notes that the stringent revenue enhancement certification requirements in the bill may prevent the Director of the Division of Taxation from granting any credits under the bill, thus eliminating the bill's fiscal impact.

BILL DESCRIPTION

Assembly Bill No. 2628 (1R) of 2002 provides a corporate business tax credit for 100 percent of the costs of the remediation of a contaminated site in the State, for privilege periods beginning on or after January 1 next following enactment of this act and ending on the last day of Fiscal Year 2005. Only those persons who are not responsible parties under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) would be eligible for the tax credit. As amended, the bill requires the Director of the Division of Taxation to certify that the remediation project is located with a State Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban); that the subsequent business activity at the remediation site represents new corporation business tax, sales tax, or gross income tax receipts; and that there is a high probability that the estimated new tax receipts will equal or exceed the value of the qualified tax credit. If the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit shall equal the difference in the aggregate value of tax receipts from the corporation business tax, the sales tax, and the gross income tax generated by the business activity in the privilege period immediately following the activity less the aggregate value of tax receipts immediately prior to the activity.

The bill would also require the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, to surrender those tax benefits for use by other corporation business taxpayers in this State.

Lastly, the bill as amended requires the State Treasurer to establish a performance evaluation review committee to analyze the programs impact.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received. However, on the original bill, prior to amendment by the Assembly Environment and Solid Waste Committee, the Office of Management and Budget and the Division of Taxation anticipated an annual loss of revenue to the State, but the actual amounts could not be estimated. Information to estimate the potential cost of future remediation of contaminated sites was not available. The possible number of claimants and the potential amount of remediation costs claimed could not be determined. The number of participants in the credit transfer portion of this bill was also unknown.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) estimates that an unknown loss of revenue to the General Fund in Fiscal Years 2004 and 2005 is possible to the extent that the Director of the Division of Taxation certifies any project as satisfying the stringent requirements for the tax credit. Fiscal Year 2003 would not be affected, as only certain site remediations performed during privilege periods beginning on or after January 1 next following enactment (i.e., January 1, 2004) are eligible for possible tax credits. The program expires at the end of Fiscal year 2005.

Revenue losses from the corporation tax credits could vary significantly in each year, based on the vagaries of future site remediation activity in Planning Areas 1 and 2, the extent to which the tax liability limits in the bill are reached, the extent to which the Director of the Division of Taxation is able to certify new State revenues from new business activity, and the extent to which any credit transfer activity between corporations occurs. No data exists for estimating the potential revenue loss.

The OLS also estimates that a potential increase in tax revenue for the General Fund (GF) and the Property Tax Relief Fund (PTRF) is possible in Fiscal Years 2004, 2005 and thereafter. The bill requires that the Director of the Division of Taxation certify that estimated new tax receipts from the corporation tax (GF), the sales tax (GF), and the gross income tax (PTRF) over a three year period from the inception of the business activity at the remediation site, equal or exceed the value of the tax credits issued for the remediation. To the extent that a particular project increases tax revenues, those new revenues will be deposited into the GF and the PTRF. If the increased business activity continues beyond the three year period, the GF and the PTRF would see an ongoing future increase in revenues.

The OLS also notes that the stringent revenue enhancement certification requirements in the bill may prevent the Director of the Division of Taxation from granting any credits under the bill, thus eliminating the bill's fiscal impact.

Lastly, the OLS notes that public and private site remediation costs can range into the tens of millions and hundreds of millions annually. The bill excludes certain taxpayers who are "responsible parties" under current law, but no data are available on the value of remediation done by corporate taxpayers who are *not* responsible parties. By comparison, the New Jersey Department of Environmental Protection annually monitors over 5,000 thousand responsible party site remediations, and over 1,500 sites are completed each year.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Martin Poethke* *Lead Fiscal Analyst*
Approved:	*Alan R. Kooney* *Legislative Budget and Finance Officer*

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

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 1723

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED JUNE 30, 2002

Sponsored by:
Senator JOSEPH SULIGA
District 22 (Middlesex, Somerset and Union)
Senator ANDREW R. CIESLA
District 10 (Monmouth and Ocean)

SYNOPSIS

Establishes corporation business tax credit for certain remediation costs.

CURRENT VERSION OF TEXT

As introduced.

AN ACT providing a credit against the corporation business tax for certain remediation costs, and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.)

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

1. a. A taxpayer shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 50% of the eligible costs of the remediation of a contaminated site as certified by the Department of Environmental Protection pursuant to section 2 of P.L. , c. (C.) (now pending in the Legislature as this bill) performed during privilege periods beginning on or after January 1 next following enactment of P.L. , c. (C.) (now pending in the Legislature as this bill).

b. The priority for the application of credit allowed pursuant to this section against the tax imposed for a privilege period pursuant to section 5 of P.L.1945, c.162, in relation to the application of any other credit allowed against the tax shall be prescribed by the Director of the Division of Taxation in the Department of the Treasury. Credits allowable pursuant to this section shall be applied in the order of the credits' privilege periods. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

c. Except as provided in subsection d. of this section, the amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year due to the limitations of subsection b. of this section may be carried over, if necessary, to the five privilege periods following a credit's privilege period.

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

e. In no event shall the amount of the tax credit, when taken together with the property tax exemption received pursuant to the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made pursuant to that act, or any other State, local, or federal tax incentive or grant to remediate a site, exceed 100% of the total cost of the remediation.

2. To be eligible for a tax credit for the costs of remediation pursuant to section 1 of P.L. , c. (C.)(now in the Legislature as this bill), a taxpayer shall submit an application, in writing, to the Department of Environmental Protection for review and certification of the eligible costs of the remediation for the remediation tax credit. The department shall review the request for certification upon receipt of an application therefor, and shall approve or deny the application for certification on a timely basis. The department shall certify the eligible costs of the remediation if the department finds that:

(1) the taxpayer had entered into a memorandum of agreement with the Commissioner of Environmental Protection for the remediation of a contaminated site and the taxpayer is in compliance with the memorandum of agreement;

(2) the taxpayer is not liable, pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) for the contamination at the site; and

(3) the costs of the remediation were actually and reasonably incurred.

When filing an application for certification of the eligible costs of a remediation pursuant to this section, the taxpayer shall submit to the department a certification of the total remediation costs incurred by the taxpayer for the remediation of the subject property, and such other information as the department deems necessary in order to make the certifications and findings pursuant to this section.

3. a. The Director of the Division of Taxation in the Department of Treasury shall establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, 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 with a corporation that is surrendering its tax benefits. 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. The tax benefits may be used on the

corporation business tax returns to be filed by those taxpayers.

b. The director shall be authorized to approve the transfer of no more than $50,000,000 of tax benefits over State fiscal year 2003 and $40,000,000 of tax benefits over each State fiscal year thereafter. 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 on or before June 30 for each State fiscal year.

c. The Director of 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. No taxpayer who is liable pursuant to paragraph (1) of subsection c. of P.L.1976, c.141 (C.58:10-23.11) for contamination at any site in the State may acquire a surrendered tax benefit pursuant to this section. The applications shall be submitted and the division shall approve or disapprove the applications.

4. This act shall take effect immediately.

STATEMENT

This bill provides a corporate business tax credit for 50% of the costs of the remediation of a contaminated site in the State, for privilege periods beginning on or after January 1 next following enactment of this act. Only those persons who are not responsible parties under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) would be eligible for the tax credit. The bill would also require the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, to surrender those tax benefits for use by other corporation business taxpayers in this State.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 2628

STATE OF NEW JERSEY

210th LEGISLATURE

DATED: SEPTEMBER 24, 2003

SUMMARY

Synopsis:	Establishes corporation business tax credit for certain remediation costs.
Type of Impact:	Loss of revenue from the General Fund; potential gain of revenue in the Property Tax Relief Fund.
Agencies Affected:	Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	**FY 2004 through FY 2007**	**After FY 2007**
State Revenue	Unknown Annual Loss	Unknown Annual Potential Gain

! The Office of Legislative Services (OLS) estimates that an unknown loss of revenue to the General Fund in Fiscal Years 2004 through 2007 is possible to the extent that the Director of the Division of Taxation certifies any project as satisfying the stringent requirements for the tax credit. No data exists for estimating the potential revenue loss.

! The OLS also estimates that a potential increase in tax revenue for the General Fund (GF) and the Property Tax Relief Fund (PTRF) is possible in Fiscal Years 2004 and thereafter. To whatever extent new business activity at the remediation site continues to generate new tax revenues in the future, the GF and the PTRF would see an ongoing future increase in revenues.

! The OLS also notes that the stringent revenue enhancement certification requirements in the bill may prevent the Director of the Division of Taxation from granting any credits under the bill, thus eliminating the bill's fiscal impact.

BILL DESCRIPTION

Assembly Bill No. 2628 (2R) of 2002 provides a corporate business tax credit for 100 percent of the costs of the remediation of a contaminated site in the State, for privilege periods beginning on or after January 1, 2004 and before January 1, 2007. Only those persons who are not responsible parties under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) would be eligible for the tax credit. As amended, the bill requires the Director of the Division of Taxation to certify that the remediation project is located with a State Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban); that the subsequent business activity at the remediation site represents new corporation business tax, sales tax, or gross income tax receipts; and that there is a high probability that the estimated new tax receipts will equal or exceed the value of the qualified tax credit. If the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit shall equal the difference in the aggregate value of tax receipts from the corporation business tax, the sales tax, and the gross income tax generated by the business activity in the privilege period immediately following the activity less the aggregate value of tax receipts immediately prior to the activity. The bill would also require the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, to surrender those tax benefits for use by other corporation business taxpayers in this State.

Lastly, the bill as amended requires the State Treasurer to establish a performance evaluation review committee on or before August 1, 2006 to analyze the programs impact. The committee shall deliver a report by November 30, 2006.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received. However, on the original bill, prior to committee amendments, the Office of Management and Budget and the Division of Taxation anticipated an annual loss of revenue to the State, but the actual amounts could not be estimated. Information to estimate the potential cost of future remediation of contaminated sites was not available. The possible number of claimants and the potential amount of remediation costs claimed could not be determined. The number of participants in the credit transfer portion of this bill was also unknown.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) estimates that an unknown loss of revenue to the General Fund in Fiscal Years 2004 through 2007 is possible to the extent that the Director of the Division of Taxation certifies any project as satisfying the stringent requirements for the tax credit. Revenue losses from the corporation tax credits could vary significantly in each year, based on the vagaries of future site remediation activity in Planning Areas 1 and 2, the extent to which the tax liability limits in the bill are reached, the extent to which the Director of the Division of Taxation is able to certify new State revenues from new business activity, and the extent to which any credit transfer activity between corporations occurs. No data exists for estimating the potential revenue loss.

The OLS also estimates that a potential increase in tax revenue for the General Fund (GF) and the Property Tax Relief Fund (PTRF) is possible in Fiscal Years 2004 and thereafter. The bill requires that the Director of the Division of Taxation certify that estimated new tax receipts from the corporation tax (GF), the sales tax (GF), and the gross income tax (PTRF) over a three year period from the inception of the business activity at the remediation site, equal or exceed the value of the tax credits issued for the remediation. To the extent that a particular project increases tax revenues, those new revenues will be deposited into the GF and the PTRF. If the increased business activity continues beyond the three year period, the GF and the PTRF would see an ongoing future increase in revenues.

The OLS also notes that the stringent revenue enhancement certification requirements in the bill may prevent the Director of the Division of Taxation from granting any credits under the bill, thus eliminating the bill's fiscal impact.

Lastly, the OLS notes that public and private site remediation costs can range into the tens of millions and hundreds of millions annually. The bill excludes certain taxpayers who are "responsible parties" under current law, but no data are available on the value of remediation done by corporate taxpayers who are *not* responsible parties. By comparison, the New Jersey Department of Environmental Protection annually monitors over 5,000 responsible party site remediations, and over 1,500 sites are completed each year.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Martin Poethke* *Lead Fiscal Analyst*
Approved:	*Alan R. Kooney* *Legislative Budget and Finance Officer*

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

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 1723

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 4, 2003

The Senate Environment Committee favorably reports Senate Bill No. 1723 with committee amendments.

This bill, as amended, provides a corporate business tax credit for 100% of the costs of the remediation of a contaminated site in the State, for privilege periods beginning on or after January 1, 2004 and before January 1, 2007. Only those persons who are not responsible parties under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) would be eligible for the tax credit.

As amended, the bill provides that an environmental remediation project shall be eligible for the tax credit if the Director of the Division of Taxation certifies that the project meets these criteria:

(1) the remediated site is located within an area designated as a Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban);

(2) the subsequent business activity at the remediated site represents new corporation business tax, or sales and use tax or gross income tax receipts;

(3) there is a high probability that the estimated new tax receipts deriving from the business activity at the remediated site, within a three year period from the inception of the business activity, will equal or exceed the value of qualified tax credits issued; and

(4) if the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit shall be equal to the difference in aggregate value of tax receipts from the corporation business tax, the sales and use tax and the gross income tax generated by the business activity in the privilege period immediately following the business relocation less the aggregate value of tax receipts generated in the privilege period immediately prior to relocation. If the difference in aggregate value is zero or less, then no tax credit will be awarded.

The bill requires the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program for three fiscal years which will allow a person who performs a remediation in this State that earns remediation tax credits to surrender those tax benefits for use by other corporation business taxpayers in this State.

The bill, as amended, requires the State Treasurer to establish a performance evaluation review committee that will consider the fiscal and economic impact to the State of this tax credit; the total number of properties redeveloped and their local economic and fiscal impact; any recommendations for legislative or regulatory amendments that would enhance the effectiveness of the program; and a recommendation on whether the program should be continued. The committee shall prepare and submit a report to the Governor and the Legislature on or before November 30, 2007.

This bill, as amended, is identical to Assembly Bill No. 2628 (2R), which was also released by the committee.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1723

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2003

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1723 (1R).

Tax credit for site remediation. This bill provides a corporation business tax credit for 100% of the costs of the remediation of a contaminated site in the State, for the three year period beginning on or after the January 1 following its enactment. Only persons who are not "responsible parties" under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) would be eligible for the credit.

An environmental remediation project would be eligible for the tax credit if the Director of the Division of Taxation certifies that the project meets these criteria:

(1) The remediated site is located within an area designated as a Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban);

(2) The subsequent business activity at the remediated site represents new corporation business tax, sales and use tax, or gross income tax receipts;

(3) There is a high probability that the estimated new tax receipts deriving from the business activity at the remediated site, within a three-year period from the inception of the business activity will equal or exceed the value of qualified tax credits issued; and

(4) If the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit would be equal to the difference in aggregate value of tax receipts from the corporation business tax, the sales and use tax and the gross income tax generated by the business activity in the privilege period immediately following the business relocation less the aggregate value of tax receipts generated in the privilege period immediately prior to relocation. If the difference in aggregate value is zero or less, then no tax credit would be awarded.

Tax benefit transfer program. The bill requires the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program for the three State fiscal years 2005-2007 that will allow a company that performs a remediation in this State that earns remediation tax credits to surrender those tax benefits for use by other corporation business taxpayers in this State.

Impact review. The bill requires the State Treasurer to establish a performance evaluation review committee that would consider (i) the fiscal and economic impact to the State of this tax credit, (ii) the total number of properties redeveloped and their local economic and fiscal impact, (iii) any recommendations for legislative or regulatory amendments that would enhance the effectiveness of the program, and (iv) a recommendation on whether the program should be continued. The committee is to prepare and submit a report to the Governor and the Legislature on or before November 30, 2007.

The provisions of this bill are identical to those of Assembly Bill No. 2628 (2R), which the committee also reports this day.

FISCAL IMPACT

The Office of Legislative Services (OLS) estimates that an unknown loss of revenue to the General Fund in Fiscal Years 2005 through 2012 is possible to the extent that the Director of the Division of Taxation certifies any project as satisfying the stringent requirements for the tax credit.

The credits allowed under the bill would only be allowable for eligible site remediations performed during privilege periods that begin between January 1, 2004 and December 31, 2006. Revenue losses from the corporation tax credits could vary significantly in each year, based on the vagaries of future site remediation activity in Planning Areas 1 and 2, the extent to which the tax receipt requirements under the bill are met, the extent to which the Director of the Division of Taxation is able to certify new State revenues from new business activity, and the extent to which any credit transfer activity between corporations occurs. No data exists to serve as a basis for an estimate of the potential revenue loss.

The OLS also estimates that a potential increase in tax revenue for the General Fund (GF) and the Property Tax Relief Fund (PTRF) is possible in Fiscal Years 2004 and thereafter. The bill requires that the Director of the Division of Taxation certify that estimated new tax receipts from the corporation tax (GF), the sales tax (GF), and the gross income tax (PTRF) over a three year period from the inception of the business activity at the remediation site, equal or exceed the value of the tax credits issued for the remediation. To the extent that a particular project increases tax revenues, those new revenues will be deposited into the GF and the PTRF. If the increased business activity continues beyond the three year period, the GF and the PTRF would see an ongoing future increase in revenues.

The OLS also notes that the stringent revenue enhancement certification requirements in the bill may prevent the Director of the Division of Taxation from granting any credits under the bill.

Finally, the OLS notes that public and private site remediation costs can range into the tens of millions and hundreds of millions annually. The bill excludes certain taxpayers who are "responsible parties" under current law, but no data are available on the value of remediation done by corporate taxpayers who are *not* responsible parties. (It is noted that the New Jersey Department of Environmental Protection annually monitors more than 5,000 site remediations by persons who *are* responsible parties, and that over 1,500 such sites are completed each year.)

FISCAL NOTE
SENATE, No. 1723
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: DECEMBER 11, 2002

SUMMARY

Synopsis:	Establishes corporation business tax credit for certain remediation costs.
Type of Impact:	Loss of revenue from the General Fund.
Agencies Affected:	Department of the Treasury.

Executive Estimate

Fiscal Impact	**FY 2003**	**FY 2004**	**FY 2005**
State Revenue		Unknown Annual Loss	

! The Office of Legislative Services ***concurs*** with the Executive estimate.

! The Office of Management and Budget and the Division of Taxation anticipate an annual loss of revenue to the State, but the actual amounts cannot be estimated. Information to estimate the potential cost of future remediation of contaminated sites is not available.

BILL DESCRIPTION

Senate Bill No.1723 of 2002 provides a corporate business tax credit for 50 percent of the costs of the remediation of a contaminated site in the State, for privilege periods beginning on or after January 1 next following enactment of this act. Only those persons who are not responsible parties under the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.) would be eligible for the tax credit. The bill would also require the Director of the Division of Taxation in the Department of Treasury to establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, to surrender those tax benefits for use by other corporation business taxpayers in this State.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Office of Management and Budget and the Division of Taxation anticipate an annual loss of revenue to the State, but the actual amounts cannot be estimated. Information to estimate the potential cost of future remediation of contaminated sites is not available. While the credit cannot exceed 50 percent of a corporate taxpayer's liability in any year in which the credit is claimed, and while the taxpayer's liability may not fall below the statutory minimum, the possible number of claimants and the potential amount of remediation costs claimed cannot be determined. The number of participants in the credit transfer portion of this bill is also unknown.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concurs with the Executive that an unknown annual loss of revenue is likely. Amounts could vary significantly from year to year, based on the vagaries of future site remediation activity, the extent to which the tax liability limits in the bill are reached, and the extent to which any credit transfer activity between corporations occurs.

The OLS notes that public and private site remediation costs can range into the tens of millions and hundreds of millions annually. The bill excludes certain taxpayers who are "responsible parties" under current law, but no data are available on the value of remediation done by corporate taxpayers who are *not* responsible parties. By comparison, the New Jersey Department of Environmental Protection annually monitors over 5,000 responsible party site remediations, and over 1,500 sites are completed each year.

Section:	*Revenue, Finance and Appropriations*
Analyst:	*Martin Poethke* *Senior Fiscal Analyst*
Approved:	*Alan R. Kooney* *Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY BILL NO. 2628
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2628 (Second Reprint) with my recommendations for reconsideration.

A. <u>Summary of Bill</u>

This bill encourages brownfields development in smart growth areas by creating a new corporate business tax credit transfer program of up to $36 million, making it easier to finance brownfields development.

The bill applies to remediation work done during privilege periods beginning on January 1, 2004 and ending before January 1, 2007. For those periods, it creates a corporate business tax credit equal to 100 percent of the eligible costs of remediation of a contaminated site as certified by the Department of Environmental Protection and the Division of Taxation within the Department of Treasury. The credit is limited to 50 percent of a corporation's business tax liability, but cannot be less than the statutory minimum. The credit is only available for sites located within Planning Areas One and Two as designated pursuant to the State Planning Act. The maximum credit per developer is $4 million over the three-year period, the maximum per year for all projects is $12 million, and the total credits available for work in the three-year period are $36 million.

The Director of Taxation would be required to establish a tax benefit certificate transfer program, which would allow a brownfield developer who had been allocated a credit to sell the credit to another corporation, which could then use it to offset its own corporate business tax liability. The credits, as applied either by the brownfield developer or the corporate purchaser, could be carried forward for up to five years. Applications are due on June 30 of each year. Therefore, the first applications would be due no later than June 30, 2005 for work done in 2004, and the credit, once established, would be available for use against tax liabilities for privilege periods ending in December 2005 through December 2009. Similarly, the credits established for remediation occurring in 2006 would be available for use against tax liabilities for 2007 through 2011. An affiliated company, one which owns more than 5 percent of the voting rights or stock of the brownfield developer, would not be eligible to use transferred credits.

The credits can only be awarded where the Director of Taxation has determined that there is a high probability that business activity at the site will within three years generate new tax revenues sufficient to equal or exceed the amount of the tax credit.

On or before August 21, 2006, the State Treasurer is required to form a performance evaluation committee consisting of representatives from Taxation, the Commerce and Economic Growth Commission, and the New Jersey Economic Development, as well as five members from the private sector, at least two of whom represent the real estate development industry. The committee is charged with analyzing the number of properties redeveloped and the fiscal and economic impacts to the State and the areas where the redevelopment occurred, and making recommendations on whether the program should be continued. The committee's report is due to the Governor, the chairs of the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee, or the chairs of successor committees, on November 30, 2006.

B. Recommended Action

The bill creates an important new means of speeding the redevelopment of brownfields areas, which will bring needed economic growth and jobs to areas now hampered by the presence of contaminated sites. I commend the sponsors for their work on this innovative economic development initiative.

I am returning the bill with recommendations because I have been advised that a minor change to the bill is essential to avoid the risk that the bill will be misinterpreted and inadvertently weaken one of the important elements of the Business Tax Reform Act of 2002. Specifically, I am advised by the Attorney General that language in the bill could be construed to weaken the fundamental rule that operating losses or credits belonging to a company that is merged into or acquired by another company cease to exist. In addition, I am advised that the June 30 application date will most likely result in an unintended, one-year lag between the tax year in which the remediation occurred and the tax year in which the credit first becomes available, which would weaken the effectiveness of the credit transfer mechanism as a tool for financing redevelopment. Therefore, I herewith return Assembly Bill No. 2628 (Second Reprint) and recommend that it be amended as follows:

Page 2, Section 1, Line 39-42:	After "a target corporation occurred" delete "or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent privilege period, if the credit was allowed for a privilege period prior to the year of acquisition, merger or consolidation, except that if in the case of a"

<u>Page 3 Section 1, Line 1-9:</u>	Delete "corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation"
<u>Page 5 Section 4, Line 6:</u>	Delete "June 30 for each State fiscal year" and replace with "February 1, 2005 and each February 1 thereafter"

Respectfully,

James E. McGreevey
Governor

Attest:

Michael R. DeCotiis
Chief Counsel to the Governor