

34:1B-7.37

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**NJSA:** 34:1B-7.37 (Biotechnology--business)

**LAWS OF:** 1997 **CHAPTER:** 334

**BILL NO:** S446

**SPONSOR(S):** Singer and McGreevey

**DATE INTRODUCED:** January 18, 1996

**COMMITTEE:** **ASSEMBLY:** Appropriations  
**SENATE:** Natural Resources

**AMENDED DURING PASSAGE:** Yes Amendments during passage denoted by superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** December 4, 1997  
**SENATE:** April 27, 1997

**DATE OF APPROVAL:** January 12, 1998

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes  
**SENATE:** Yes

**FISCAL NOTE:** Yes

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** Yes

974.90 New Jersey. Biotechnology Development Task Force.  
I42 Meetings held 11-16-93 & 10-8-93. Trenton, 1993.  
1993

974.90 New Jersey. Legislature. Joint Legislative Task Force on  
I42 Biotechnology.  
1994a Meetings held 4-11-94, 11-4-94. Trenton & Cranbury, NJ 1994.  
v.1  
v.4  
KBP:pp

[Passed Both Houses]

[First Reprint]

SENATE, No. 446

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# STATE OF NEW JERSEY

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INTRODUCED JANUARY 18, 1996

By Senators SINGER, McGREEVEY, Kyrillos, Palaia, Inverso,  
Assemblymen Felice, Impreveduto, Cohen, Bucco, LeFevre,  
Augustine and Suliga

1 AN ACT establishing a corporation business tax benefit certificate  
2 transfer program to assist new or expanding emerging technology  
3 and biotechnology companies in this State, and supplementing  
4 P.L.1995, c.137 (C.34:1B-7.37 et seq.).  
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:  
8

9 1. a. The New Jersey Economic Development Authority shall  
10 establish within the New Jersey Emerging Technology and  
11 Biotechnology Financial Assistance Program established pursuant to  
12 P.L.1995, c.137 (C.34:1B-7.37 et seq.) , a corporation business tax  
13 benefit certificate transfer program to allow new or expanding  
14 emerging technology and biotechnology companies in this State with  
15 unused amounts of research and development tax credits otherwise  
16 allowable which cannot be applied for the credit's tax year due to the  
17 limitations of subsection b. of section 1 of P.L.1993, c.175  
18 (C.54:10A-5.24) and unused net operating loss carryover pursuant to  
19 subparagraph (B) of paragraph (6) of subsection <sup>1</sup>**[k.]** (k)<sup>1</sup> of section  
20 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for  
21 use by other corporation business taxpayers in this State on the  
22 corporation business tax returns to be filed by those taxpayers in  
23 exchange for private financial assistance to be provided by the  
24 corporation business taxpayer that is the recipient of the corporation  
25 business tax benefit certificate to assist in the funding of costs incurred  
26 by the new or expanding emerging technology and biotechnology

**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:

<sup>1</sup> Senate SNR committee amendments adopted May 9, 1996.

1 company.

2 b. The authority, in cooperation with the Division of Taxation in  
3 the Department of the Treasury, shall review and approve applications  
4 by new or expanding emerging technology and biotechnology  
5 companies in this State with unused but otherwise allowable carryover  
6 of research and development tax credits pursuant to section 1 of  
7 P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable  
8 net operating loss carryover pursuant to paragraph (6) of subsection  
9 ~~'[k.]~~ (k)<sup>1</sup> of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender  
10 those tax benefits in exchange for private financial assistance to be  
11 made by the corporation business taxpayer that is the recipient of the  
12 corporation business tax benefit certificate in an amount equal to at  
13 least 75% of the amount of the surrendered tax benefit. The private  
14 financial assistance shall be used to fund expenses incurred in  
15 connection with the operation of the new or expanding emerging  
16 technology or biotechnology company in the State, including but not  
17 limited to the expenses of fixed assets, such as the construction and  
18 acquisition and development of real estate, materials, start-up, tenant  
19 fit-out, working capital, salaries, research and development  
20 expenditures and any other expenses determined by the authority to be  
21 necessary to carry out the purposes of the New Jersey Emerging  
22 Technology and Biotechnology Financial Assistance Program.

23 c. The authority, in cooperation with the Division of Taxation in  
24 the Department of the Treasury, shall review and approve applications  
25 by taxpayers under the Corporation Business Tax Act (1945),  
26 P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax  
27 benefits approved pursuant to subsection b. of this section which shall  
28 be issued in the form of corporation business tax benefit transfer  
29 certificates, in exchange for private financial assistance to be made by  
30 the taxpayer in an amount equal to at least 75% of the amount of the  
31 surrendered tax benefit of an emerging technology or biotechnology  
32 company in the State. The private financial assistance shall assist in  
33 funding expenses incurred in connection with the operation of the new  
34 or expanding emerging technology or biotechnology company in the  
35 State, including but not limited to the expenses of fixed assets, such as  
36 the construction and acquisition and development of real estate,  
37 materials, start-up, tenant fit-out, working capital, salaries, research  
38 and development expenditures and any other expenses determined by  
39 the authority to be necessary to carry out the purposes of the New  
40 Jersey Emerging Technology and Biotechnology Financial Assistance  
41 Program.

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

1 applications shall be submitted and the authority shall approve or  
2 disapprove the applications pursuant to the process and criteria  
3 established under section 6 of the "New Jersey Emerging Technology  
4 and Biotechnology Financial Assistance <sup>1</sup>**[Act,] Act."<sup>1</sup> P.L.1995,  
5 c.137 (C.34:1B-7.42). The authority shall require a corporation  
6 business taxpayer that acquires a corporation business tax benefit  
7 certificate to enter into a written agreement with the new or expanding  
8 emerging technology or biotechnology company concerning the terms  
9 and conditions of the private financial assistance made in exchange for  
10 the certificate. The written agreement may contain terms concerning  
11 the maintenance by the new or expanding emerging technology or  
12 biotechnology company of a headquarters or a base of operation in this  
13 State.**

14  
15 2. a. Notwithstanding the provisions of paragraph (6) of  
16 subsection <sup>1</sup>**[k.] (k)**<sup>1</sup> of section 4 of P.L.1945, c.162 (C.54:10A-4) to  
17 the contrary, a taxpayer that has acquired a corporation business tax  
18 benefit certificate pursuant to the provisions of section 1 of P.L.  
19 <sup>1</sup>**[1996]**<sup>1</sup>, c. (C. ) ( <sup>1</sup>**[Now] now**<sup>1</sup> pending before the Legislature  
20 as this bill), that includes the right to a net operating loss carryover  
21 deduction shall attach that certificate to any return the taxpayer is  
22 required to file under P.L.1945, c.162 (C.54:10A-1 et seq.), and shall  
23 otherwise apply the net operating loss carryover deduction as  
24 evidenced by the certificate according to the provisions of subsection  
25 <sup>1</sup>**[k.] (k)**<sup>1</sup> of section 4 of P.L.1945, c.162 and any rules or regulations  
26 the director may adopt to carry out the provisions of this section.

27 b. A new or expanding emerging technology or biotechnology  
28 company that has surrendered an unused net operating loss carryover  
29 pursuant to the provisions of section 1 of P.L. <sup>1</sup>**[1996]**<sup>1</sup>, c. (C. )  
30 ( <sup>1</sup>**[Now] now**<sup>1</sup> pending before the Legislature as this bill), shall not  
31 be allowed a net operating loss carryover deduction based upon the  
32 right to such a deduction as evidenced by the corporation business tax  
33 benefit certificate and shall attach a copy of the certificate to any  
34 return the taxpayer is required to file under P.L.1945, c.162  
35 (C.54:10A-1 et seq.).

36  
37 3. a. Notwithstanding the provisions of section 1 of P.L.1993,  
38 c.175 (C.54:10A-5.24) to the contrary, a taxpayer that has acquired  
39 a corporation business tax benefit certificate pursuant to the provisions  
40 of section 1 of P.L. <sup>1</sup>**[1996]**<sup>1</sup>, c. (C. ) ( <sup>1</sup>**[Now] now**<sup>1</sup> pending  
41 before the Legislature as this bill), that includes the right to a research  
42 and development tax credit carryover shall attach that certificate to  
43 any return the taxpayer is required to file under P.L.1945, c.162  
44 (C.54:10A-1 et seq.), and shall otherwise apply the credit carryover as  
45 evidenced by the certificate according to the provisions of section 1 of  
46 P.L.1993, c.175 (C.54:10A-5.24) and any rules or regulations the

1 director may adopt to carry out the provisions of this section.

2 b. A new or expanding emerging technology or biotechnology  
3 company that has surrendered an unused research and development tax  
4 credit carryover pursuant to the provisions of section 1 of P.L.  
5 <sup>1</sup>[1996]<sup>1</sup>, c. (C. )(<sup>1</sup>[Now] now<sup>1</sup> pending before the Legislature  
6 as this bill), shall not be allowed a research and development tax credit  
7 carryover based upon the right to such a credit carryover as evidenced  
8 by the corporation business tax benefit certificate and shall attach a  
9 copy of the certificate to any return the taxpayer is required to file  
10 under P.L.1945, c.162 (C.54:10A-1 et seq.)

11

12 4. This act shall take effect immediately and sections 1 through 3  
13 shall apply to tax years beginning on or after January 1 next following  
14 enactment.

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19 Provides for establishment of a corporation business tax benefit  
20 certificate transfer program to assist new or expanding emerging  
21 technology and biotechnology companies in this State.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 446**

# **STATE OF NEW JERSEY**

DATED: NOVEMBER 6, 1997

The Assembly Appropriations Committee reports favorably Senate Bill No. 446 (1R).

Senate Bill No. 446 (1R) requires the New Jersey Economic Development Authority (EDA) to administer, as part of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program (established pursuant to P.L.1995, c.137; C.34:1B-7.37 et seq.), a corporation business tax benefit certificate transfer program. This new program would allow new or expanding emerging technology and biotechnology companies in this State with unused carryforward of research and development tax credits or unused net operating loss deduction carryforwards to transfer those tax benefits to other corporation business taxpayers.

The transfer of these unused tax benefits will be based upon the tax benefit recipient-corporation providing private financial assistance to the new or expanding emerging technology and biotechnology company under written financial assistance agreements negotiated under the auspices of the EDA. The financial assistance to be provided must be at least 75% of the value of the transferred tax benefit and must assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in this State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the EDA to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

This bill is identical to Assembly Bill No. 1509 (1R).

### FISCAL IMPACT:

In a fiscal note prepared by the Office of Legislative Services, the Division of Taxation in the Department of Treasury observed that while there are currently significant carryforwards of net operating loss

deductions and of research and development credits, it is not possible to estimate the fiscal impact because the total annual value of the tax benefit certificates will depend upon the EDAs policies in issuing the certificates. The division also noted that the EDA's policies will affect the number of corporations that are likely to qualify for the certificates.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 446**

# **STATE OF NEW JERSEY**

DATED: JANUARY 14, 1997

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 446 (1R) of 1996.

Senate Bill No. 446 (1R) requires the New Jersey Economic Development Authority (EDA) to administer, as part of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program (established pursuant to P.L.1995, c.137; C.34:1B-7.37 et seq.), a corporation business tax benefit certificate transfer program. This new program would allow new or expanding emerging technology and biotechnology companies in this State with unused carryforward of research and development tax credits and unused net operating loss deduction carryforward to transfer those tax benefits to other corporation business taxpayers.

The transfer of these unused tax benefits will be based upon the tax benefit recipient-corporation providing private financial assistance to the new or expanding emerging technology and biotechnology company under written financial assistance agreements negotiated under the auspices of the authority. The financial assistance to be provided shall be equal to at least 75% of the value of the transferred tax benefit and shall assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in this State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

As reported, this bill is identical to Assembly Bill No. 1509 (1R) of 1996 (Felice).

### FISCAL IMPACT

In a fiscal note prepared by the Office of Legislative Services, the Division of Taxation in the Department of Treasury observes that



while there are currently significant carryforwards of net operating loss deductions and of research and development credits, it is not possible to estimate the fiscal impact because the total annual value of the tax benefit certificates will depend upon the EDAs policies in issuing the certificates. The division also notes that the EDA's policies will affect the number of corporations that are likely to qualify for the certificates.

# FISCAL NOTE TO

[First Reprint]

**SENATE, No. 446**

# **STATE OF NEW JERSEY**

DATED: AUGUST 28, 1996

Senate Bill No. 446 (1R) of 1996 requires the New Jersey Economic Development Authority to administer within the New Jersey Emerging Technology and Biotechnology Financial Assistance Program established pursuant to P.L.1995, c.137 (C.34:1B-7.37 et seq.) a corporation business tax benefit certificate transfer program to allow new or expanding emerging technology and biotechnology companies in this State with unused carryforward of research and development tax credits and unused net operating loss deduction carryforward to transfer those tax benefits to other corporation business taxpayers. The transfer of these unused tax benefits will be based upon the tax benefit recipient-corporation providing private financial assistance to the new or expanding emerging technology and biotechnology company under written financial assistance agreements negotiated under the auspices of the authority. The financial assistance to be provided shall be equal to at least 75% of the value of the transferred tax benefit and shall assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in this State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

A fiscal note prepared by the Division of Taxation in the Department of Treasury observes that while there are significant carryforwards of net operating loss deductions and of research and development credits, it is not possible to estimate the fiscal impact because the total annual value of the tax benefit certificates will depend upon the Economic Development Authority's (EDA) policies in issuing the certificates. The division also notes that the EDA's policies will affect the number of corporations that are likely to qualify for the certificates. The Office of Legislative Services (OLS) has no independent method by which to ascertain the annual costs of the business tax certificate program and agrees with the division that it is not possible to estimate the fiscal impact.

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

SENATE NATURAL RESOURCES AND ECONOMIC  
DEVELOPMENT COMMITTEE

STATEMENT TO

**SENATE, No. 446**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 9, 1996

The Senate Natural Resources and Economic Development Committee favorably reports Senate Bill No. 446 with committee amendments.

The bill requires the New Jersey Economic Development Authority (EDA) to administer, within the New Jersey Emerging Technology and Biotechnology Financial Assistance Program (P.L.1995, c.137; C.34:1B-7.37 et seq.), a corporation business tax benefit certificate transfer program to allow new or expanding emerging technology and biotechnology companies in this State with unused carryover of research and development tax credits and/or unused net operating loss carryover to transfer those tax benefits to other corporation business taxpayers.

The transfer of these unused tax benefits will be based upon the tax benefit recipient-corporation providing private financial assistance to the new or expanding emerging technology and biotechnology company under written financial assistance agreements negotiated under the auspices of the authority. The financial assistance to be provided must be equal to at least 75% of the value of the transferred tax benefit. The financial assistance may be used for construction, acquisition and development of real estate, purchase of materials, start-up costs, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the EDA to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

The bill requires a corporation business taxpayer that acquires a corporation business tax benefit certificate to enter into a written agreement with the new or expanding emerging technology or biotechnology company concerning the terms and conditions of the private financial assistance made in exchange for the certificate.

The committee amendments are technical in nature.

1       4. This act shall take effect immediately and sections 1 through 3  
2 shall apply to tax years beginning on or after January 1 next following  
3 enactment.

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#### STATEMENT

8       The bill requires the New Jersey Economic Development Authority  
9 (EDA) to administer, within the New Jersey Emerging Technology and  
10 Biotechnology Financial Assistance Program (P.L.1995, c.137;  
11 C.34:1B-7.37 et seq.), a corporation business tax benefit certificate  
12 transfer program to allow new or expanding emerging technology and  
13 biotechnology companies in this State with unused carryover of  
14 research and development tax credits and/or unused net operating loss  
15 carryover to transfer those tax benefits to other corporation business  
16 taxpayers.

17       The transfer of these unused tax benefits will be based upon the tax  
18 benefit recipient-corporation providing private financial assistance to  
19 the new or expanding emerging technology and biotechnology  
20 company under written financial assistance agreements negotiated  
21 under the auspices of the authority. The financial assistance to be  
22 provided must be equal to at least 75% of the value of the transferred  
23 tax benefit. The financial assistance may be used for construction,  
24 acquisition and development of real estate, purchase of materials,  
25 start-up costs, tenant fit-out, working capital, salaries, research and  
26 development expenditures and any other expenses determined by the  
27 EDA to be necessary to carry out the purposes of the New Jersey  
28 Emerging Technology and Biotechnology Financial Assistance  
29 Program.

30       The bill requires a corporation business taxpayer that acquires a  
31 corporation business tax benefit certificate to enter into a written  
32 agreement with the new or expanding emerging technology or  
33 biotechnology company concerning the terms and conditions of the  
34 private financial assistance made in exchange for the certificate.

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39 Provides for establishment of a corporation business tax benefit  
40 certificate transfer program to assist new or expanding emerging  
41 technology and biotechnology companies in this State.