

# 34:1B-139.1

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2003                    **CHAPTER:** 166  
**NJSA:** 34:1B-139.1    (Business Employment Incentive Program)  
**BILL NO:** A3705            (Substituted for S2669)

**SPONSOR(S):** Sires and others

**DATE INTRODUCED:** June 16, 2003

**COMMITTEE:**            **ASSEMBLY:** Budget

**SENATE:**                ---

**AMENDED DURING PASSAGE:**        Yes

**DATE OF PASSAGE:**            **ASSEMBLY:** June 30, 2003

**SENATE:**                June 30, 2003

**DATE OF APPROVAL:**         September 2, 2003

### FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Assembly Committee Substitute (1R) enacted)  
(Amendments during passage denoted by superscript numbers)

#### A3705

[SPONSORS STATEMENT:](#) (Begins on page 14 of original bill)        [Yes](#)

**COMMITTEE STATEMENT:**                    [ASSEMBLY:](#)        [Yes](#)

**SENATE:**                                    No

[FLOOR AMENDMENT STATEMENT:](#)    [Yes](#)

**LEGISLATIVE FISCAL ESTIMATE:**    No

#### S2669

[SPONSORS STATEMENT:](#) (Begins on page 14 of original bill)        [Yes](#)

**COMMITTEE STATEMENT:**                    **ASSEMBLY:**        No

[SENATE:](#)                                    [Yes](#)

**FLOOR AMENDMENT STATEMENTS:**    No

**LEGISLATIVE FISCAL ESTIMATE:**    No

**VETO MESSAGE:**    No

**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:**

Yes

"Job plan gets it funding assured," 9-3-2003 The Record, pA3

"Jobs-push funding is signed into law," 9-3-2003 Home News Tribune, pA3

"Tax incentive law adds motive for companies to create jobs," Star Ledger, p44.

P.L. 2003, CHAPTER 166, *approved September 2, 2003*  
Assembly Committee Substitute (*First Reprint*) for  
Assembly, No. 3705

1 AN ACT concerning the Business Employment Incentive Program and  
2 amending and supplementing P.L.1996, c.26.

3

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

6

7 1. Section 2 of P.L.1996, c.26 (C.34:1B-125) is amended to read  
8 as follows:

9 2. As used in sections 1 through 17 of [this act] P.L.1996, c.26  
10 (C.34:1B-124 et seq.) and in sections 9 through 11 of P.L. , c. \_\_\_\_\_  
11 (C. \_\_\_\_\_ ) (now pending before the Legislature as this bill), unless a  
12 different meaning clearly appears from the context:

13 "Advanced computing" means a technology used in the designing  
14 and developing of computing hardware and software, including  
15 innovations in designing the full spectrum of hardware from hand-held  
16 calculators to super computers, and peripheral equipment;

17 "Advanced computing company" means a person, whose  
18 headquarters or base of operations is located in New Jersey, engaged  
19 in the research, development, production, or provision of advanced  
20 computing for the purpose of developing or providing products or  
21 processes for specific commercial or public purposes;

22 "Advanced materials" means materials with engineered properties  
23 created through the development of specialized processing and  
24 synthesis technology, including ceramics, high value-added metals,  
25 electronic materials, composites, polymers, and biomaterials;

26 "Advanced materials company" means a person, whose  
27 headquarters or base of operations is located in New Jersey, engaged  
28 in the research, development, production, or provision of advanced  
29 materials for the purpose of developing or providing products or  
30 processes for specific commercial or public purposes;

31 "Application year" means the grant year for which an eligible  
32 partnership submits the information required under section 8 of  
33 P.L.1996, c.26 (C.34:1B-131);

34 "Authority" means the New Jersey Economic Development  
35 Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

36 "Base years" means the first two complete calendar years following  
37 the effective date of an agreement;

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly floor amendments adopted June 23, 2003.

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

7       "Biotechnology company" means a person, whose headquarters or  
8 base of operations is located in New Jersey, engaged in the research,  
9 development, production, or provision of biotechnology for the  
10 purpose of developing or providing products or processes for specific  
11 commercial or public purposes, including but not limited to, medical  
12 pharmaceutical, nutritional, and other health-related purposes,  
13 agricultural purposes, and environmental purposes, or a person, whose  
14 headquarters or base of operations is located in New Jersey, engaged  
15 in providing services or products necessary for such research,  
16 development, production, or provision;

17       "Bonds means bonds, notes or other obligations issued by the  
18 authority pursuant to this act;

19       "Business" means a corporation; sole proprietorship; partnership;  
20 corporation that has made an election under Subchapter S of Chapter  
21 One of Subtitle A of the Internal Revenue Code of 1986, or any other  
22 business entity through which income flows as a distributive share to  
23 its owners; limited liability company; nonprofit corporation; or any  
24 other form of business organization located either within or outside  
25 this State, [including a cooperative association]. A grant received  
26 under this act by a partnership, Subchapter S-Corporation, or other  
27 such business entity shall be apportioned among the persons to whom  
28 the income or profit of the partnership, Subchapter S-Corporation, or  
29 other entity is distributed, in the same proportions as those in which  
30 the income or profit is distributed. ["Cooperative association" shall  
31 include financial, stock or commodities exchanges];

32       "Business employment incentive agreement" or "agreement" means  
33 the written agreement between the authority and a business proposing  
34 a project in this State in accordance with the provisions of this act  
35 which establishes the terms and conditions of a grant to be awarded  
36 pursuant to this act;

37       "Department" means the [Department of] New Jersey Commerce  
38 and Economic[Development]Growth Commission;

39       "Designated industry" means a business engaged in the field of  
40 biotechnology, pharmaceuticals, financial services or transportation  
41 and logistics<sup>1</sup>, advanced computing, advanced materials, electronic  
42 device technology, environmental technology or medical device  
43 technology<sup>1</sup>;

44       "Director" means the Director of the Division of Taxation;

45       "Division" means the Division of Taxation in the Department of the  
46 Treasury;

1       "Electronic device technology" means a technology involving  
2 microelectronics, semiconductors, electronic equipment, and  
3 instrumentation, radio frequency, microwave, and millimeter  
4 electronics, and optical and optic-electrical devices, or data and digital  
5 communications and imaging devices;

6       "Electronic device technology company" means a person, whose  
7 headquarters or base of operations is located in New Jersey, engaged  
8 in the research, development, production, or provision of electronic  
9 device technology for the purpose of developing or providing products  
10 or processes for specific commercial or public purposes;

11       "Eligible partnership" means a partnership or limited liability  
12 company that is qualified to receive a grant as established in this act;

13       "Eligible position" is a new full-time position created by a business  
14 in New Jersey or transferred from another state by the business under  
15 the terms and conditions set forth in this act during the base years or  
16 in subsequent years of a grant. In determining if positions are eligible  
17 positions, the authority shall give greater consideration to positions  
18 that average at least 1.5 times the minimum hourly wage during the  
19 term of an agreement authorized pursuant to this act. For grants  
20 awarded on or after July 1, 2003, eligible position includes only a  
21 position for which a business provides employee health benefits under  
22 a group health plan as defined under section 14 of P.L.1997, c.146  
23 (C.17B:27-54), a health benefits plan as defined under section 1 of  
24 P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health  
25 insurance covering more than one person issued pursuant to Article 2  
26 of Title 17B of the New Jersey Statutes. "Eligible position" also  
27 includes all current and future partners or members of a partnership or  
28 limited liability company created by a business in New Jersey or  
29 transferred from another state by the business pursuant to the  
30 conditions set forth in this act during the base years or in subsequent  
31 years of a grant. An "eligible position" shall also include a position  
32 occupied by a resident of this State whose position is relocated to this  
33 State from another state but who does not qualify as a "new employee"  
34 because prior to relocation his wages or his distributive share of  
35 income from a gain, from a loss or deduction, or his guaranteed  
36 payments or any combination thereof, prior to the relocation, were not  
37 subject to income taxes imposed by the state or municipality in which  
38 the position was previously located. An "eligible position" shall also  
39 include a position occupied by a resident of another State whose  
40 position is relocated to this State but whose income is not subject to  
41 the New Jersey gross income tax pursuant to N.J.S.54A:1-1 et seq.  
42 An "eligible position" shall not include any position located within  
43 New Jersey, which, within a period either three months prior to the  
44 business' application for a grant under this act or six months after the  
45 date of application, ceases to exist or be located within New Jersey.;  
46       "Employment incentive" means the amount of a grant determined

1 pursuant to subsection a. of section 6 of this act;

2 "Environmental technology" means assessment and prevention of  
3 threats or damage to human health or the environment, environmental  
4 cleanup, or the development of alternative energy sources;

5 "Environmental technology company" means a person, whose  
6 headquarters or base of operations is located in New Jersey, engaged  
7 in the research, development, production, or provision of  
8 environmental technology for the purpose of developing or providing  
9 products or processes for specific commercial or public purposes;

10 "Estimated tax" means an amount calculated for a partner in an  
11 eligible position equal to 6.37% of the lesser of (i) the amount of the  
12 partner's net income from the eligible partnership that is sourced to  
13 New Jersey as reflected in Column B of the partner's Schedule NJK-1  
14 of the application year less the amount of the partner's net income  
15 from the eligible partnership that is sourced to New Jersey as reflected  
16 in column B of the partner's Schedule NJK-1 in the foundation year,  
17 or (ii) the net of all items of partnership income upon which tax has  
18 been paid as reflected on the partner's New Jersey Gross Income Tax  
19 return in the application year;

20 "Foundation year" means the year immediately prior to the creation  
21 of the eligible position;

22 "Full-time employee" means a person who is employed for  
23 consideration for at least 35 hours a week, or who renders any other  
24 standard of service generally accepted by custom or practice as  
25 full-time employment, whose wages are subject to withholding as  
26 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
27 et seq., and who is determined by the authority to be employed in a  
28 permanent position according to criteria it develops, or who is a  
29 partner of an eligible partnership, who works for the partnership for  
30 at least 35 hours a week, or who renders any other standard of service  
31 generally accepted by custom or practice as full-time employment, and  
32 whose distributive share of income, gain, loss or deduction, or whose  
33 guaranteed payments, or any combination thereof, is subject to the  
34 payment of estimated taxes, as provided in the "New Jersey Gross  
35 Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall  
36 not include any person who works as an independent contractor or on  
37 a consulting basis for the business;

38 "Grant" means a business employment incentive grant as  
39 established in this act;

40 "Medical device technology" means a technology involving any  
41 medical equipment or product (other than a pharmaceutical product)  
42 that has therapeutic value, diagnostic value, or both, and is regulated  
43 by the federal Food and Drug Administration;

44 "Medical device technology company" means a person, whose  
45 headquarters or base of operations is located in New Jersey, engaged  
46 in the research, development, production, or provision of medical

1 device technology for the purpose of developing or providing products  
2 or processes for specific commercial or public purposes;

3 "Net income from the eligible partnership" means the net  
4 combination of a partner's distributive share of the eligible  
5 partnership's income, gain, loss, deduction, or guaranteed payments;

6 "New employee" means a full-time employee first employed in an  
7 eligible position on the project which is the subject of an agreement or  
8 who is a partner of an eligible partnership, who works for the  
9 partnership for at least 35 hours a week, or who renders any other  
10 standard of service generally accepted by custom or practice as  
11 full-time employment, and whose distributive share of income, gain,  
12 loss or deduction, or whose guaranteed payments, or any combination  
13 thereof, is subject to the payment of estimated taxes, as provided in  
14 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.;

15 except that such a New Jersey resident whose position is relocated to  
16 this State shall not be classified as a "new employee" unless his wages,  
17 or his distributive share of income from a gain, from a loss or  
18 deduction, or his guaranteed payments or any combination thereof,  
19 prior to the relocation, were subject to income taxes imposed by the  
20 state or municipality in which the position was previously located.

21 "New employee" may also include an employee rehired or called back  
22 from a layoff during or following the base years to a vacant position  
23 previously held by that employee or to a new position established  
24 during or following the base years. "New employee" shall not include  
25 any employee who was previously employed in New Jersey by the  
26 business or by a related person as defined in section 2 of P.L.1993,  
27 c.170 (C.54:10A-5.5) if the employee is transferred to the business  
28 which is the subject of an agreement unless the employee's position at  
29 his previous employer is filled by a new employee. "New employee"  
30 also shall not include a child, grandchild, parent or spouse of an  
31 individual associated with the business who has direct or indirect  
32 ownership of at least 15% of the profits, capital, or value of the  
33 business. New employee shall also include an employee whose  
34 position is relocated to this State but whose income is not subject to  
35 the New Jersey gross income tax pursuant to N.J.S.54A:1-1 et seq.;

36 "Partner" means a person who is entitled to either a distributive  
37 share of a partnership's income, gain, loss or deduction, or guaranteed  
38 payments, or any combination thereof, by virtue of holding an interest  
39 in the partnership. "Partner" also includes a person who is a member  
40 of a limited liability company which is treated as a partnership, as  
41 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
42 et seq.;

43 "Refunding Bonds" means bonds, notes or other obligations issued  
44 to refinance bonds, notes or other obligations previously issued by the  
45 authority pursuant to the provision of this act;

46 "Residual withholdings" means for any period of time, the excess

1 of the estimated cumulative withholdings for all executed agreements  
2 eligible for payments under this act over the cumulative anticipated  
3 grant amounts:

4 "Schedule NJK-1" means Schedule NJK-1 as the form existed for  
5 taxable year 1997;

6 ["Targeted area" means a qualifying municipality as defined in  
7 P.L.1978, c.14 (C.52:27D-178); and]

8 "Withholdings" means the amount withheld by a business from the  
9 wages of new employees or estimated taxes paid by, or on behalf of,  
10 partners that are new employees, or any combination thereof, pursuant  
11 to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.,  
12 and, if the new employee is an employee whose position has moved to  
13 New Jersey but whose income is not subject to the New Jersey gross  
14 income tax pursuant to N.J.S.54A:1-1 et seq., the amount of  
15 withholding that would occur if the employee were to move to New  
16 Jersey.

17 (cf: P.L.1998, c.33, s.1)

18

19 2. Section 4 of P.L.1996, c.26 (C.34:1B-127) is amended to read  
20 as follows:

21 4. a. A business may apply to the authority for a grant for any  
22 project which:

23 (1) Will create at least [75] 25 eligible positions in the base years;

24 or

25 (2) Will create at least [25] 10 eligible positions in [a targeted  
26 area] in the base years if the business is an advanced computing  
27 company, an advanced materials company, a biotechnology company,  
28 an electronic device technology company, an environmental  
29 technology company, or a medical device technology company.

30 b. In the case of a business which is a landlord, the business may  
31 apply to the authority for a grant for any project in which[:

32 (1) (a) At] at least [75] 25 eligible positions are created in the  
33 base years [;or

34 (b) At least 25 eligible positions are created in a targeted area in  
35 the base years; and

36 (2) The tenants or proposed tenants have agreed to assign to the  
37 landlord any claim of right that they may have to a grant provided by  
38 this act; and

39 (3) The tenant or proposed tenants have agreed to cooperate with  
40 the landlord in annually providing to the authority the number of new  
41 employees in eligible positions, the withholdings and any other  
42 information which may be required by the authority].

43 c. A project which consists solely of point-of-final-purchase retail  
44 facilities shall not be eligible for a grant under this act. If a project  
45 consists of both point-of-final-purchase retail facilities and non-retail



1 facilities, only the portion of the project consisting of non-retail  
2 facilities shall be eligible for a grant, and only the withholdings from  
3 new employees which are employed in the portion of the project which  
4 represents non-retail facilities shall be used to determine the amount  
5 of the grant. If a warehouse facility is part of a point-of-final-purchase  
6 retail facility and supplies only that facility, the warehouse facility shall  
7 not be eligible for a grant. For the purposes of this act, catalog  
8 distribution centers shall not be considered point-of-final-purchase  
9 retail facilities.

10 (cf: P.L.1996, c.26, s.4)

11

12 3. Section 5 of P.L.1996, c.26 (C.34:1B-128) is amended to read  
13 as follows:

14 5. A business shall apply to the authority for a grant on a form  
15 prescribed by the authority which shall include:

16 a. The name of the business, the proposed location of the project,  
17 and the type of activity which will be engaged in at the project site;

18 b. The names and addresses of the principals or management of  
19 the business, and the nature of the form of business organization under  
20 which it is operated;

21 c. The most recent financial statement of the business;

22 d. The number of eligible positions proposed to be created during  
23 the base years and thereafter; and

24 e. An estimate of the total withholdings.

25 [A cooperative association may apply, in one consolidated  
26 application in a form and manner determined by the authority, for a  
27 grant on its own behalf as a business and for grants on behalf of the  
28 members of the association who may qualify under this act.

29 If a cooperative association is applying for grants on behalf of its  
30 members, the members for whom the application is submitted shall  
31 assign to the association any claim of right the members may have  
32 under this act to apply for grants individually during the term of the  
33 business employment incentive agreement, and agree to cooperate with  
34 the association in providing to the authority all the information  
35 required for the initial application, the business employment incentive  
36 agreement, and any other information the authority may require for the  
37 purposes of this act. The cooperative association shall be responsible  
38 for providing to the authority all the information required under this  
39 act.

40 If a cooperative association applies for a grant on behalf of its  
41 members, the members included in the application may be permitted to  
42 meet the qualifications for a grant collectively by participating in a  
43 project that will meet the requirements of sections 3 and 4 of this act,  
44 the amount of a grant shall be calculated under the terms of this act as  
45 if the members are all collectively one business entity, and any  
46 restrictions on the qualification for a grant shall apply to each member

1 who is listed in the application as participating in the project. The  
2 grants awarded shall be paid to the cooperative association. A grant  
3 received under this act by a cooperative association may be  
4 apportioned to the members of the association in a manner determined  
5 by the association. Each member included in the application shall be  
6 required to sign the business employment incentive agreement and  
7 shall abide by its terms.]

8 (cf: P.L.1996, c.26, s.5)

9

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

12 6. a. The amount of the employment incentive awarded as a grant  
13 in each case shall be not less than 10% and not more than ~~[80%]~~ 50%  
14 of the withholdings of the business, or not less than 10% and not more  
15 than ~~[50%]~~ 30% of the estimated tax of partners of an eligible  
16 partnership whether paid directly by the partner or by the eligible  
17 partnership on behalf of such partner's account, or any combination  
18 thereof, and shall be subject to the provisions of sections 10 and 11 of  
19 this act. In no case shall the aggregate amount of the employment  
20 incentive grant awarded pursuant to a business employment incentive  
21 agreement entered into on or after July 1, 2003 exceed <sup>1</sup>an average of<sup>1</sup>  
22 \$50,000 <sup>1</sup>[per] for all<sup>1</sup> new <sup>1</sup>[employee] employees<sup>1</sup> over the term  
23 of the grant. The employment incentive shall be based on criteria  
24 developed by the authority after considering the following:

- 25 (1) The number of eligible positions to be created;  
26 (2) The expected duration of those positions;  
27 (3) The type of contribution the business can make to the  
28 long-term growth of the State's economy;  
29 (4) The amount of other financial assistance the business will  
30 receive from the State for the project; ~~[and]~~  
31 (5) The total dollar investment the business is making in the  
32 project;  
33 (6) Whether the business is a designated industry;  
34 (7) Impact of the business on State tax revenues; and  
35 (8) Such other related factors determined by the authority.

36 b. A business may be eligible to be awarded a grant of up to 80%  
37 of the withholdings of the business or up to 50% of the estimated tax  
38 of the partners of an eligible partnership if the grant promotes smart  
39 growth and the goals, strategies and policies of the State Development  
40 and Redevelopment Plan established pursuant to section 5 of  
41 P.L.1985, c.398 (C.52:18A-200) as determined by and based upon  
42 criteria promulgated by the authority following consultation with the  
43 Department of Community Affairs, Office of Smart Growth.

44 [b.] c. The term of the grant shall not exceed 10 years.

45 [c.] d. At the discretion of the authority, the grant may apply  
46 [only] to new employees or partners in eligible positions created  
47 during the base years, and [or to additional new employees or partners

1 in eligible positions created] during the remainder of the term of the  
2 grant.

3 (cf: P.L.1998, c.33, s.2)

4

5 5. Section 8 of P.L.1996, c.26 (C.34:1B-131) is amended to read  
6 as follows:

7 8. a. No later than [February] March 1 of each year, for the  
8 preceding grant year, every business which is awarded a grant under  
9 this act shall submit to the authority a copy of its applicable New  
10 Jersey tax return within 30 days of filing showing business income and  
11 withholdings as a condition of its continuation in the grant program,  
12 together with an annual payroll report showing (1) the eligible  
13 positions which [are] were created during the base years and (2) the  
14 new eligible positions created during each subsequent year of the  
15 grant. Should any business which is awarded a grant under this act fail  
16 to submit to the authority a copy of its annual payroll report or submit  
17 its annual payroll report without the information required by (1) and  
18 (2) above, any grant payment to be received by any such business shall  
19 be forfeited for the applicable reporting year <sup>1</sup>unless the Executive  
20 Director of the authority determines that there are extenuating  
21 circumstances excusing the timely filing required herein.<sup>1</sup>

22 b. The division may require by regulation any information which  
23 it deems necessary to effectuate the provisions of this act.

24 c. The authority may cause an audit of any business receiving a  
25 grant to be conducted at any time.

26 (cf: P.L.1996, c.26, s.8)

27

28 6. Section 11 of P.L.1996, c.26 (C.34:1B-134) is amended to read  
29 as follows:

30 11. a. A business that is receiving a business relocation grant  
31 pursuant to the provisions of P.L.1996, c. 25 (C.34:1B-112 et seq.)  
32 shall not be eligible to receive a grant under this act except upon the  
33 approval of the State Treasurer.

34 b. A business that is receiving any other grant by operation of  
35 State law shall not receive an amount as a grant pursuant to this act  
36 which, when combined with such other grants, exceeds the total of  
37 [~~80%~~] 50% of its withholdings or [~~50%~~] 30% of [the] its estimated  
38 tax, or any combination thereof paid, except upon the approval of the  
39 State Treasurer. Amounts received as grants from the Office of  
40 Customized Training pursuant to the "1992 New Jersey Employment  
41 and Workforce Development Act," P.L.1992, c.43 (C.34:15D-1 et  
42 seq.) shall be excluded from the calculation of the total amount  
43 permitted under this subsection.

44 c. A business that qualifies under subsection b. of section 6 of  
45 P.L.1996 c.26 (C.34:1B-129) for a grant of up to 80% of its  
46 withholdings or up to 50% of its estimated tax and is receiving any

1 other grant by operation of State law shall not receive an amount as a  
2 grant pursuant to this act which, when combined with such other  
3 grants, exceeds the total of up to 80% of its withholdings or 50% of  
4 the estimated tax, or any combination thereof paid except upon  
5 approval of the State Treasurer. Amounts received as grants from the  
6 Office of Customized Training pursuant to the "1992 New Jersey  
7 Employment and Workforce Development Act," P.L.1992, c.43  
8 (C.34:15D-1 et seq.) shall be excluded from the calculation of the total  
9 amount permitted under this subsection.

10 (cf: P.L.1998, c.33, s.4)

11

12 7. Section 14 of P.L.1996, c.26 (C.34:1B-137) is amended to read  
13 as follows:

14 14. The New Jersey Economic Development Authority, after  
15 consultation with the Department [of Commerce and Economic  
16 Development] and the Division of Taxation, shall in accordance with  
17 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
18 seq.), adopt rules necessary to implement the provisions of the  
19 Business Employment Incentive Program not related to the collection  
20 or determination of taxes and tax withholding. The rules shall provide  
21 for the recipients of business employment incentive grants to be  
22 charged an initial application fee, and ongoing service fees, to cover  
23 the administrative costs related to the program. [The rules also shall  
24 include the procedures to clarify the application of the various  
25 provisions of this act to cooperative associations that submit  
26 applications on behalf of their members.] The Director of the Division  
27 of Taxation is authorized to promulgate those rules necessary to  
28 effectuate the tax related provisions of the Business Employment  
29 Incentive Program.

30 (cf: P.L.1996, c.26, s.14)

31

32 8. Section 15 of P.L.1996, c.26 (C.34:1B-138) is amended to read  
33 as follows:

34 15. The [Department of] New Jersey Commerce and Economic  
35 [Development] Growth Commission shall submit a report on the  
36 Business Employment Incentive Program to the Governor, President  
37 of the Senate, and Speaker of the General Assembly on or before  
38 October 31 of each year. The report shall include information on the  
39 number of agreements entered into during the preceding fiscal year, a  
40 description of the project under each agreement, the number of jobs  
41 created, new income tax revenue received from withholdings, amounts  
42 awarded as grants and an update on the status of projects under  
43 agreement before the preceding fiscal year. [After the program's fifth  
44 year, the department, in conjunction with the State Treasurer, shall  
45 assess the effectiveness of the program in creating new jobs in New  
46 Jersey and the impact on State revenues. The department shall submit

1 a final report to the Governor, Senate President, and Speaker of the  
2 General Assembly on or before January 1, 2000.]

3 (cf: PL.1996, c.26, s.15)

4  
5 9. (New section) Notwithstanding the provisions of any law, rule,  
6 regulation or order to the contrary:

7 a. The authority shall have the power, pursuant to the provisions  
8 of this act and P.L.1974, c.80 (C.34:1B-1 et seq.), to issue bonds and  
9 refunding bonds, incur indebtedness and borrow money secured, in  
10 whole or in part, by money received pursuant to this act for the  
11 purpose of (1) providing funds for the payment, in full or in part, of  
12 the grants provided to businesses under sections 1 through 14 of  
13 P.L.1996, c.26 (C.34:1B-124 through 34:1B-137); (2) providing  
14 funds to be used by the authority only for the purposes enumerated in  
15 subsections a. and b. of section 4 of P.L.1992, c.16 (C.34:1B-7.13) for  
16 payments to, or for the benefit of, designated industries that have the  
17 greatest potential to create eligible positions and promote State  
18 development strategies; and (3) and any costs related to the issuance  
19 of such bonds. The authority may establish reserve or other funds to  
20 further secure bonds and refunding bonds. The bonds shall be in the  
21 amount to yield proceeds to fund, all or in part, the payment of grants  
22 provided to business under this act, plus additional bonds to pay for  
23 the costs of issuance. Notwithstanding anything to the contrary, bonds  
24 issued for the purposes of paragraph (2) of this subsection, excluding  
25 refunding bonds, may only be issued upon certification by the authority  
26 at the time of issuance to the effect that payments for principal and  
27 interest on such bonds and any additional costs authorized by that  
28 paragraph (2) may not exceed an amount equivalent to the residual  
29 withholdings anticipated at the time of issuance of such bonds for the  
30 applicable fiscal years.

31 b. The authority may, in any resolution authorizing the issuance of  
32 bonds or refunding bonds, pledge the contract with the State  
33 Treasurer, provided for in section 10 of P.L. , c. (C. )  
34 (now pending before the Legislature as this bill), or any part thereof,  
35 for the payment or redemption of the bonds or refunding bonds, and  
36 covenant as to the use and disposition of money available to the  
37 authority for payments of bonds and refunding bonds. All costs  
38 associated with the issuance of bonds and refunding bonds by the  
39 authority for the purposes set forth in this act may be paid by the  
40 authority from amounts it receives from the proceeds of the bonds or  
41 refunding bonds and from amounts it receives pursuant to sections 10  
42 and 11 of P.L. , c. (C. ) (now pending before the Legislature as  
43 this bill), which costs may include, but are not limited to, any costs and  
44 fees relating to the issuance of the bonds or refunding bonds, annual  
45 administrative costs and fees of the authority attributable to the  
46 payment of grants issued to businesses under this act, the fees and

1 costs of bond counsel and any other professional fees and costs  
2 attributable to the agreements described in subsection c. of this  
3 section. The bonds or refunding bonds shall be authorized by  
4 resolution, which shall stipulate the manner of execution and form of  
5 the bonds, whether the bonds are in one or more series, the date or  
6 dates of issue, time or times of maturity, which shall not exceed 20  
7 years, the rate or rates of interest payable on the bonds, which may be  
8 at fixed rates or variable rates, and which interest may be current  
9 interest or may accrue, the denomination or denominations in which  
10 the bonds are issued, conversion or registration privileges, the sources  
11 and medium of payment and place or places of payment, terms of  
12 redemption, privileges of exchangeability or interchangeability, and  
13 entitlement to priorities of payment or security in the amounts to be  
14 received by the authority pursuant to sections 10 and 11 of P.L. ,  
15 c. (C. ) (now pending before the Legislature as this bill). The  
16 bonds may be sold at a public or private sale at a price or prices  
17 determined by the authority. The authority is authorized to enter into  
18 any agreements necessary or desirable to effectuate the purposes of  
19 this section, including agreements to sell bonds or refunding bonds to  
20 any person and to comply with the laws of any jurisdiction relating  
21 thereto.

22 c. In connection with any bonds or refunding bonds issued  
23 pursuant to this act, the authority may also enter into any revolving  
24 credit agreement, agreement establishing a line of credit or letter of  
25 credit, reimbursement agreement, interest rate exchange agreement,  
26 currency exchange agreement, interest rate floor or cap, options, puts  
27 or calls to hedge payment, currency, rate, spread or similar exposure,  
28 or similar agreements, float agreements, forward agreements,  
29 insurance contract, surety bond, commitment to purchase or sell  
30 bonds, purchase or sale agreement, or commitments or other contracts  
31 or agreements and other security agreements approved by the  
32 authority.

33 d. No resolution adopted by the authority authorizing the issuance  
34 of bonds or refunding bonds pursuant to this act shall be adopted or  
35 otherwise made effective without the approval in writing of the State  
36 Treasurer and the Joint Budget Oversight Committee. Except as  
37 provided by subsection i. of section 4 of P.L.1974, c.80 (C.34:1B-4),  
38 bonds or refunding bonds may be issued without obtaining the consent  
39 of any department, division, commission, board, bureau or agency of  
40 the State, other than the approval as required by this subsection, and  
41 without any other proceedings or the occurrence of any other  
42 conditions or other things other than those proceedings, conditions or  
43 things which are specifically required by this act.

44 e. Bonds and refunding bonds issued by the authority pursuant to  
45 this act shall be special and limited obligations of the authority payable  
46 from, and secured by, such funds and moneys determined by the

1 authority in accordance with this section. Neither the members of the  
2 authority nor any other person executing the bonds or refunding bonds  
3 shall be personally liable with respect to payment of interest and  
4 principal on these bonds or refunding bonds. Bonds or refunding  
5 bonds issued pursuant to the provisions of this act shall not be a debt  
6 or liability of the State or any agency or instrumentality thereof, except  
7 as otherwise provided by this subsection, either legal, moral or  
8 otherwise, and nothing contained in this act shall be construed to  
9 authorize the authority to incur any indebtedness on behalf of or in any  
10 way to obligate the State or any political subdivision thereof, and all  
11 bonds and refunding bonds issued by the authority shall contain a  
12 statement to that effect on their face.

13 f. The authority is authorized to engage, subject to the approval  
14 of the State Treasurer and in such manner as the State Treasurer shall  
15 determine, the services of bond counsel, financial advisors and experts,  
16 placement agents, underwriters, appraisers, and such other advisors,  
17 consultants and agents as may be necessary to effectuate the purposes  
18 of this act.

19 g. The proceeds from the sale of the bonds, other than refunding  
20 bonds, issued pursuant to this act, after payment of any costs related  
21 to the issuance of such bonds, shall be paid by the authority to be  
22 applied to the payment, in full or in part, for the purposes set forth in  
23 subsection a. of this section as directed by the State Treasurer.

24 h. All bonds or refunding bonds issued by the authority are  
25 deemed to be issued by a body corporate and politic of the State for  
26 an essential governmental purpose, and the interest thereon and the  
27 income derived from all funds, revenues, incomes and other moneys  
28 received for or to be received by the authority and pledged and  
29 available to pay or secure the payment on bonds or refunding bonds  
30 and the interest thereon, shall be exempt from all taxes levied pursuant  
31 to the provisions of Title 54 of the Revised Statutes or Title 54A of  
32 the New Jersey Statutes, except for transfer inheritance and estate  
33 taxes levied pursuant to Subtitle 5 of Title 54 of the Revised Statutes.

34 i. The State hereby pledges and covenants with the holders of any  
35 bonds or refunding bonds issued pursuant to the provisions of this act,  
36 that it will not limit or alter the rights or powers vested in the  
37 authority by this act, nor limit or alter the rights or powers of the State  
38 Treasurer in any manner which would jeopardize the interest of the  
39 holders or any trustee of such holders, or inhibit or prevent  
40 performance or fulfillment by the authority or the State Treasurer with  
41 respect to the terms of any agreement made with the holders of these  
42 bonds or refunding bonds or agreements made pursuant to subsection  
43 c. of this section except that the failure of the Legislature to  
44 appropriate moneys for any purpose of this act shall not be deemed a  
45 violation of this section.

46 j. Notwithstanding any restriction contained in any other law, rule,

1 regulation or order to the contrary, the State and all political  
2 subdivisions of this State, their officers, boards, commissioners,  
3 departments or other agencies, all banks, bankers, trust companies,  
4 savings banks and institutions, building and loan associations, saving  
5 and loan associations, investment companies and other persons  
6 carrying on a banking or investment business, and all executors,  
7 administrators, guardians, trustees and other fiduciaries, and all other  
8 persons whatsoever who now are or may hereafter be authorized to  
9 invest in bonds or other obligations of the State, may properly and  
10 legally invest any sinking funds, moneys or other funds, including  
11 capital, belonging to them or within their control, in any bonds or  
12 refunding bonds issued by the authority under the provisions of this  
13 act; and said bonds and refunding bonds are hereby made securities  
14 which may properly and legally be deposited with, and received by any  
15 State or municipal officers or agency of the State, for any purpose for  
16 which the deposit of bonds or other obligations of the State is now, or  
17 may hereafter be, authorized by law.

18

19 10. (New section) The State Treasurer shall, in each State fiscal  
20 year, pay from the General Fund to the authority, in accordance with  
21 a contract or contracts between the State Treasurer and the authority,  
22 authorized pursuant to section 11 of P.L. , c. (C. )  
23 (now pending before the Legislature as this bill), an amount equivalent  
24 to the amount due to be paid in such State fiscal year to pay the debt  
25 service incurred for such State fiscal year on the bonds or refunding  
26 bonds of the authority issued pursuant to this act and any additional  
27 costs authorized by section 9 of P.L. , c. (C. ) (now  
28 pending before the Legislature as this bill). Notwithstanding any other  
29 provision of any law, rule, regulation or order to the contrary, the  
30 authority shall be paid only such funds as shall be determined by the  
31 contract or contracts and further provided that the incurrence of any  
32 obligation of the State under the contract or contracts, including any  
33 payments to be made thereunder from the General Fund, shall be  
34 subject to and dependent upon appropriations being made from time  
35 to time by the Legislature for the purposes of this act.

36

37 11. (New section) The State Treasurer and the authority are  
38 authorized to enter into one or more contracts to implement the  
39 payment arrangement that is provided for in section 10 of P.L. ,  
40 c. (C. ) (now pending before the Legislature as this bill).  
41 The contract or contracts shall provide for payment by the State  
42 Treasurer of the amounts required to be paid pursuant to section 10 of  
43 P.L. , c. (C. ) (now pending before the Legislature as  
44 this bill) and shall set forth the procedure for the transfer of moneys  
45 for the purpose of paying such moneys. The contract or contracts  
46 shall contain such terms and conditions as are determined by the



1 parties, and shall include, but not be limited to, terms and conditions  
2 necessary and desirable to secure any bonds or refunding bonds of the  
3 authority issued pursuant to this act; provided however, that  
4 notwithstanding any other provision of any law, rule, regulation or  
5 order to the contrary, the authority shall be paid only such funds as  
6 shall be determined by the contract or contracts and further provided  
7 that the incurrence of any obligation of the State under the contract or  
8 contracts, including any payments to be made thereunder from the  
9 General Fund, shall be subject to and dependent upon appropriations  
10 being made from time to time by the Legislature for the purposes of  
11 this act.

12

13 12. This act shall take effect immediately.

14

15

16

17

18 Enhances the New Jersey Business Employment Incentive Program  
19 for targeted economic development and provides funding for  
20 incentives through New Jersey Economic Development Authority  
21 bonds.

# ASSEMBLY, No. 3705

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 16, 2003

**Sponsored by:**

**Assemblyman ALBIO SIRES**

**District 33 (Hudson)**

**Assemblyman GARY L. GUEAR, SR.**

**District 14 (Mercer and Middlesex)**

**Assemblyman DOUGLAS H. FISHER**

**District 3 (Salem, Cumberland and Gloucester)**

**SYNOPSIS**

Enhances the New Jersey Business Employment Incentive Program for targeted economic development and provides funding for incentives through New Jersey Economic Development Authority bonds.

**CURRENT VERSION OF TEXT**

As introduced.



A3705 SIRES, GUEAR

2

1 AN ACT concerning the Business Employment Incentive Program and  
2 amending and supplementing P.L.1996, c.26.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 2 of P.L.1996, c.26 (C.34:1B-125) is amended to read  
8 as follows:

9 2. As used in sections 1 through 17 of **[this act]** P.L.1996, c.26  
10 (C.34:1B-124 et seq.) and in sections 9 through 11 of P.L. \_\_\_\_\_,  
11 c. \_\_\_\_\_ (C. \_\_\_\_\_) (now pending before the Legislature as this bill),  
12 unless a different meaning clearly appears from the context:

13 "Application year" means the grant year for which an eligible  
14 partnership submits the information required under section 8 of  
15 P.L.1996, c.26 (C.34:1B-131);

16 "Authority" means the New Jersey Economic Development  
17 Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

18 "Base years" means the first two complete calendar years following  
19 the effective date of an agreement;

20 "Biotechnology Company" means a person, whose headquarters or  
21 base of operations is located in New Jersey, engaged in the research,  
22 development, production, or provision of biotechnology for the  
23 purpose of developing or providing products or processes for specific  
24 commercial or public purposes, including but not limited to, medical  
25 pharmaceutical, nutritional, and other health-related purposes,  
26 agricultural purposes, and environmental purposes, or a person, whose  
27 headquarters or base of operations is located in New Jersey, engaged  
28 in providing services or products necessary for such research,  
29 development, production, or provision;

30 "Bonds means bonds, notes or other obligations issued by the  
31 authority pursuant to this act;

32 "Business" means a corporation; sole proprietorship; partnership;  
33 corporation that has made an election under Subchapter S of Chapter  
34 One of Subtitle A of the Internal Revenue Code of 1986, or any other  
35 business entity through which income flows as a distributive share to  
36 its owners; limited liability company; nonprofit corporation; or any  
37 other form of business organization located either within or outside  
38 this State, **[including a cooperative association]**. A grant received  
39 under this act by a partnership, Subchapter S-Corporation, or other  
40 such business entity shall be apportioned among the persons to whom  
41 the income or profit of the partnership, Subchapter S-Corporation, or  
42 other entity is distributed, in the same proportions as those in which  
43 the income or profit is distributed. **["Cooperative association" shall**

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

**Matter underlined thus is new matter.**

1 include financial, stock or commodities exchanges];

2 "Business employment incentive agreement" or "agreement" means  
3 the written agreement between the authority and a business proposing  
4 a project in this State in accordance with the provisions of this act  
5 which establishes the terms and conditions of a grant to be awarded  
6 pursuant to this act;

7 "Department" means the [Department of] New Jersey Commerce  
8 and Economic[Development]Growth Commission ;

9 "Designated industry" means a business engaged in the field of  
10 biotechnology, pharmaceuticals, financial services or transportation  
11 and logistics;

12 "Director" means the Director of the Division of Taxation;

13 "Division" means the Division of Taxation in the Department of the  
14 Treasury;

15 "Eligible partnership" means a partnership or limited liability  
16 company that is qualified to receive a grant as established in this act;

17 "Eligible position" is a new full-time position created by a business  
18 in New Jersey or transferred from another state by the business under  
19 the terms and conditions set forth in this act during the base years or  
20 in subsequent years of a grant. In determining if positions are eligible  
21 positions, the authority shall give greater consideration to positions  
22 that average at least 1.5 times the minimum hourly wage during the  
23 term of an agreement authorized pursuant to this act. For grants  
24 awarded on or after July 1, 2003, eligible position includes only a  
25 position for which a business provides employee health benefits under  
26 a group health plan as defined under section 14 of P.L.1997, c.146  
27 (C.17B:27-54), a health benefits plan as defined under section 1 of  
28 P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health  
29 insurance covering more than one person issued pursuant to Article 2  
30 of Title 17B of the New Jersey Statutes. "Eligible position" also  
31 includes all current and future partners or members of a partnership or  
32 limited liability company created by a business in New Jersey or  
33 transferred from another state by the business pursuant to the  
34 conditions set forth in this act during the base years or in subsequent  
35 years of a grant. An "eligible position" shall also include a position  
36 occupied by a resident of this State whose position is relocated to this  
37 State from another state but who does not qualify as a "new employee"  
38 because prior to relocation his wages or his distributive share of  
39 income from a gain, from a loss or deduction, or his guaranteed  
40 payments or any combination thereof, prior to the relocation, were not  
41 subject to income taxes imposed by the state or municipality in which  
42 the position was previously located. An "eligible position" shall also  
43 include a position occupied by a resident of another State whose  
44 position is relocated to this State but whose income is not subject to  
45 the New Jersey gross income tax pursuant to N.J.S.54A:1-1 et seq.  
46 An "eligible position" shall not include any position located within

A3705 SIRES, GUEAR

1 New Jersey, which, within a period either three months prior to the  
2 business' application for a grant under this act or six months after the  
3 date of application, ceases to exist or be located within New Jersey.;

4 "Employment incentive" means the amount of a grant determined  
5 pursuant to subsection a. of section 6 of this act;

6 "Estimated tax" means an amount calculated for a partner in an  
7 eligible position equal to 6.37% of the lesser of (i) the amount of the  
8 partner's net income from the eligible partnership that is sourced to  
9 New Jersey as reflected in Column B of the partner's Schedule NJK-1  
10 of the application year less the amount of the partner's net income  
11 from the eligible partnership that is sourced to New Jersey as reflected  
12 in column B of the partner's Schedule NJK-1 in the foundation year,  
13 or (ii) the net of all items of partnership income upon which tax has  
14 been paid as reflected on the partner's New Jersey Gross Income Tax  
15 return in the application year;

16 "Foundation year" means the year immediately prior to the creation  
17 of the eligible position;

18 "Full-time employee" means a person who is employed for  
19 consideration for at least 35 hours a week, or who renders any other  
20 standard of service generally accepted by custom or practice as  
21 full-time employment, whose wages are subject to withholding as  
22 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
23 et seq., and who is determined by the authority to be employed in a  
24 permanent position according to criteria it develops, or who is a  
25 partner of an eligible partnership, who works for the partnership for  
26 at least 35 hours a week, or who renders any other standard of service  
27 generally accepted by custom or practice as full-time employment, and  
28 whose distributive share of income, gain, loss or deduction, or whose  
29 guaranteed payments, or any combination thereof, is subject to the  
30 payment of estimated taxes, as provided in the "New Jersey Gross  
31 Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall  
32 not include any person who works as an independent contractor or on  
33 a consulting basis for the business;

34 "Grant" means a business employment incentive grant as established  
35 in this act;

36 "Net income from the eligible partnership" means the net  
37 combination of a partner's distributive share of the eligible  
38 partnership's income, gain, loss, deduction, or guaranteed payments;

39 "New employee" means a full-time employee first employed in an  
40 eligible position on the project which is the subject of an agreement or  
41 who is a partner of an eligible partnership, who works for the  
42 partnership for at least 35 hours a week, or who renders any other  
43 standard of service generally accepted by custom or practice as  
44 full-time employment, and whose distributive share of income, gain,  
45 loss or deduction, or whose guaranteed payments, or any combination  
46 thereof, is subject to the payment of estimated taxes, as provided in

1 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.;  
2 except that such a New Jersey resident whose position is relocated to  
3 this State shall not be classified as a "new employee" unless his wages,  
4 or his distributive share of income from a gain, from a loss or  
5 deduction, or his guaranteed payments or any combination thereof,  
6 prior to the relocation, were subject to income taxes imposed by the  
7 state or municipality in which the position was previously located.

8 "New employee" may also include an employee rehired or called back  
9 from a layoff during or following the base years to a vacant position  
10 previously held by that employee or to a new position established  
11 during or following the base years. "New employee" shall not include  
12 any employee who was previously employed in New Jersey by the  
13 business or by a related person as defined in section 2 of P.L.1993,  
14 c.170 (C.54:10A-5.5) if the employee is transferred to the business  
15 which is the subject of an agreement unless the employee's position at  
16 his previous employer is filled by a new employee. "New employee"  
17 also shall not include a child, grandchild, parent or spouse of an  
18 individual associated with the business who has direct or indirect  
19 ownership of at least 15% of the profits, capital, or value of the  
20 business. New employee shall also include an employee whose  
21 position is relocated to this State but whose income is not subject to  
22 the New Jersey gross income tax pursuant to N.J.S.54A:1-1 et seq.;

23 "Partner" means a person who is entitled to either a distributive  
24 share of a partnership's income, gain, loss or deduction, or guaranteed  
25 payments, or any combination thereof, by virtue of holding an interest  
26 in the partnership. "Partner" also includes a person who is a member  
27 of a limited liability company which is treated as a partnership, as  
28 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
29 et seq.;

30 "Refunding Bonds" means bonds, notes or other obligations issued  
31 to refinance bonds, notes or other obligations previously issued by the  
32 authority pursuant to the provision of this act;

33 "Residual withholdings" means for any period of time, the excess  
34 of the estimated cumulative withholdings for all executed agreements  
35 eligible for payments under this act over the cumulative anticipated  
36 grant amounts;

37 "Schedule NJK-1" means Schedule NJK-1 as the form existed for  
38 taxable year 1997;

39 ["Targeted area" means a qualifying municipality as defined in  
40 P.L.1978, c.14 (C.52:27D-178); and]

41 "Withholdings" means the amount withheld by a business from the  
42 wages of new employees or estimated taxes paid by, or on behalf of,  
43 partners that are new employees, or any combination thereof, pursuant  
44 to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and,  
45 if the new employee is an employee whose position has moved to  
46 New Jersey but whose income is not subject to the New Jersey gross

1 income tax pursuant to N.J.S.54A:1-1 et seq., the amount of  
2 withholding that would occur if the employee were to move to New  
3 Jersey.

4 (cf: P.L.1998, c.33, s.1)

5

6 2. Section 4 of P.L.1996, c.26 (C.34:1B-127) is amended to read  
7 as follows:

8 4. a. A business may apply to the authority for a grant for any  
9 project which:

10 (1) Will create at least [75] 25 eligible positions in the base years;

11 or

12 (2) Will create at least [25] 10 eligible positions in [a targeted  
13 area] in the base years if the business is a biotechnology company.

14 b. In the case of a business which is a landlord, the business may  
15 apply to the authority for a grant for any project in which[:

16 (1) (a) At] at least [75] 25 eligible positions are created in the  
17 base years [;or

18 (b) At least 25 eligible positions are created in a targeted area in  
19 the base years; and

20 (2) The tenants or proposed tenants have agreed to assign to the  
21 landlord any claim of right that they may have to a grant provided by  
22 this act; and

23 (3) The tenant or proposed tenants have agreed to cooperate with  
24 the landlord in annually providing to the authority the number of new  
25 employees in eligible positions, the withholdings and any other  
26 information which may be required by the authority].

27 c. A project which consists solely of point-of-final-purchase retail  
28 facilities shall not be eligible for a grant under this act. If a project  
29 consists of both point-of-final-purchase retail facilities and non-retail  
30 facilities, only the portion of the project consisting of non-retail  
31 facilities shall be eligible for a grant, and only the withholdings from  
32 new employees which are employed in the portion of the project which  
33 represents non-retail facilities shall be used to determine the amount  
34 of the grant. If a warehouse facility is part of a point-of-final-purchase  
35 retail facility and supplies only that facility, the warehouse facility shall  
36 not be eligible for a grant. For the purposes of this act, catalog  
37 distribution centers shall not be considered point-of-final-purchase  
38 retail facilities.

39 (cf: P.L.1996, c.26, s.4)

40

41 3. Section 5 of P.L. 1996, c.26 (C.34:1B-128) is amended to read  
42 as follows:

43 5. A business shall apply to the authority for a grant on a form  
44 prescribed by the authority which shall include:

45 a. The name of the business, the proposed location of the project,  
46 and the type of activity which will be engaged in at the project site;

A3705 SIRES, GUEAR

7

1 b. The names and addresses of the principals or management of the  
2 business, and the nature of the form of business organization under  
3 which it is operated;

4 c. The most recent financial statement of the business;

5 d. The number of eligible positions proposed to be created during  
6 the base years and thereafter; and

7 e. An estimate of the total withholdings.

8 [A cooperative association may apply, in one consolidated  
9 application in a form and manner determined by the authority, for a  
10 grant on its own behalf as a business and for grants on behalf of the  
11 members of the association who may qualify under this act.

12 If a cooperative association is applying for grants on behalf of its  
13 members, the members for whom the application is submitted shall  
14 assign to the association any claim of right the members may have  
15 under this act to apply for grants individually during the term of the  
16 business employment incentive agreement, and agree to cooperate with  
17 the association in providing to the authority all the information  
18 required for the initial application, the business employment incentive  
19 agreement, and any other information the authority may require for  
20 the purposes of this act. The cooperative association shall be  
21 responsible for providing to the authority all the information required  
22 under this act.

23 If a cooperative association applies for a grant on behalf of its  
24 members, the members included in the application may be permitted  
25 to meet the qualifications for a grant collectively by participating in a  
26 project that will meet the requirements of sections 3 and 4 of this act,  
27 the amount of a grant shall be calculated under the terms of this act as  
28 if the members are all collectively one business entity, and any  
29 restrictions on the qualification for a grant shall apply to each member  
30 who is listed in the application as participating in the project. The  
31 grants awarded shall be paid to the cooperative association. A grant  
32 received under this act by a cooperative association may be  
33 apportioned to the members of the association in a manner determined  
34 by the association. Each member included in the application shall be  
35 required to sign the business employment incentive agreement and  
36 shall abide by its terms.]

37 (cf: P.L.1996, c.26, s.5)

38  
39 4. Section 6 of P.L.1996, c.26 (C.34:1B-129) is amended to read  
40 as follows:

41 6. a. The amount of the employment incentive awarded as a grant  
42 in each case shall be not less than 10% and not more than ~~[80%]~~ 50%  
43 of the withholdings of the business, or not less than 10% and not  
44 more than ~~[50%]~~ 30% of the estimated tax of partners of an eligible  
45 partnership whether paid directly by the partner or by the eligible  
46 partnership on behalf of such partner's account, or any combination



1 thereof, and shall be subject to the provisions of sections 10 and 11 of  
2 this act. The employment incentive shall be based on criteria  
3 developed by the authority after considering the following:

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

5 (2) The expected duration of those positions;

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

8 (4) The amount of other financial assistance the business will  
9 receive from the State for the project; [and]

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

12 (6) Whether the business is a designated industry;

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

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

15 b. A business may be eligible to be awarded a grant of up to 80%  
16 of the withholdings of the business or up to 50% of the estimated tax  
17 of the partners of an eligible partnership if the grant promotes smart  
18 growth and the goals, strategies and policies of the State Development  
19 and Redevelopment Plan established pursuant to section 5 of  
20 P.L.1985, c.398 (C.52:18A-200) as determined by and based upon  
21 criteria promulgated by the authority following consultation with the  
22 Department of Community Affairs, Office of Smart Growth.

23 [b.] c. The term of the grant shall not exceed 10 years.

24 [c.] d. At the discretion of the authority, the grant may apply  
25 [only] to new employees or partners in eligible positions created  
26 during the base years, and [or to additional new employees or partners  
27 in eligible positions created] during the remainder of the term of the  
28 grant.

29 (cf: P.L.1998, c.33, s.2)

30  
31 5. Section 8 of P.L.1996, c.26 (C.34:1B-131) is amended to read  
32 as follows:

33 8. a. No later than [February] March 1 of each year, for the  
34 preceding grant year, every business which is awarded a grant under  
35 this act shall submit to the authority a copy of its applicable New  
36 Jersey tax return within 30 days of filing showing business income and  
37 withholdings as a condition of its continuation in the grant program,  
38 together with an annual payroll report showing (1) the eligible  
39 positions which [are] were created during the base years and (2) the  
40 new eligible positions created during each subsequent year of the  
41 grant. Should any business which is awarded a grant under this act fail  
42 to submit to the authority a copy of its annual payroll report or submit  
43 its annual payroll report without the information required by (1) and  
44 (2) above, any grant payment to be received by any such business shall  
45 be forfeited for the applicable reporting year.

46 b. The division may require by regulation any information which it

A3705 SIRES, GUEAR

1 deems necessary to effectuate the provisions of this act.

2 c. The authority may cause an audit of any business receiving a  
3 grant to be conducted at any time.

4 (cf: P.L.1996, c.26, s.8)

5

6 6. Section 11 of P.L.1996, c.26 (C.34:1B-134) is amended to read  
7 as follows:

8 11. a. A business that is receiving a business relocation grant  
9 pursuant to the provisions of P.L.1996, c. 25 (C.34:1B-112 et seq.)  
10 shall not be eligible to receive a grant under this act except upon the  
11 approval of the State Treasurer.

12 b. A business that is receiving any other grant by operation of State  
13 law shall not receive an amount as a grant pursuant to this act which,  
14 when combined with such other grants, exceeds the total of [80%]  
15 50% of its withholdings or [50%] 30% of [the] its estimated tax, or  
16 any combination thereof paid, except upon the approval of the State  
17 Treasurer. Amounts received as grants from the Office of Customized  
18 Training pursuant to the "1992 New Jersey Employment and  
19 Workforce Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.)  
20 shall be excluded from the calculation of the total amount permitted  
21 under this subsection.

22 c. A business that qualifies under subsection b. of section 6 of  
23 P.L.1996 c.26 (C.34:1B-129) for a grant of up to 80% of its  
24 withholdings or up to 50% of its estimated tax and is receiving any  
25 other grant by operation of State law shall not receive an amount as a  
26 grant pursuant to this act which, when combined with such other  
27 grants, exceeds the total of up to 80% of its withholdings or 50% of  
28 the estimated tax, or any combination thereof paid except upon  
29 approval of the State Treasurer. Amounts received as grants from the  
30 Office of Customized Training pursuant to the "1992 New Jersey  
31 Employment and Workforce Development Act," P.L.1992, c.43  
32 (C.34:15D-1 et seq.) shall be excluded from the calculation of the total  
33 amount permitted under this subsection.

34 (cf: P.L.1998, c.33, s.4)

35

36 7. Section 14 of P.L.1996, c.26 (C.34:1B-137) is amended to read  
37 as follows:

38 14. The New Jersey Economic Development Authority, after  
39 consultation with the Department [of Commerce and Economic  
40 Development] and the Division of Taxation, shall in accordance with  
41 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
42 seq.), adopt rules necessary to implement the provisions of the  
43 Business Employment Incentive Program not related to the collection  
44 or determination of taxes and tax withholding. The rules shall provide  
45 for the recipients of business employment incentive grants to be  
46 charged an initial application fee, and ongoing service fees, to cover

1 the administrative costs related to the program. [The rules also shall  
2 include the procedures to clarify the application of the various  
3 provisions of this act to cooperative associations that submit  
4 applications on behalf of their members.] The Director of the Division  
5 of Taxation is authorized to promulgate those rules necessary to  
6 effectuate the tax related provisions of the Business Employment  
7 Incentive Program.

8 (cf: P.L.1996, c.26, s.14)

9

10 8. Section 15 of P.L.1996, c.26 (C.34:1B-138) is amended to read  
11 as follows:

12 15. The [Department of] New Jersey Commerce and Economic  
13 [Development] Growth Commission shall submit a report on the  
14 Business Employment Incentive Program to the Governor, President  
15 of the Senate, and Speaker of the General Assembly on or before  
16 October 31 of each year. The report shall include information on the  
17 number of agreements entered into during the preceding fiscal year, a  
18 description of the project under each agreement, the number of jobs  
19 created, new income tax revenue received from withholdings, amounts  
20 awarded as grants and an update on the status of projects under  
21 agreement before the preceding fiscal year. [After the program's fifth  
22 year, the department, in conjunction with the State Treasurer, shall  
23 assess the effectiveness of the program in creating new jobs in New  
24 Jersey and the impact on State revenues. The department shall submit  
25 a final report to the Governor, Senate President, and Speaker of the  
26 General Assembly on or before January 1, 2000.]

27 (cf: PL.1996, c.26, s.15)

28

29 9. (New section) Notwithstanding the provisions of any law, rule,  
30 regulation or order to the contrary:

31 a. The authority shall have the power, pursuant to the provisions  
32 of this act and P.L.1974, c. 80 (C.34:1B-1 et seq.), to issue bonds and  
33 refunding bonds, incur indebtedness and borrow money secured, in  
34 whole or in part, by money received pursuant to this act for the  
35 purpose of (1) providing funds for the payment, in full or in part, of  
36 the grants provided to businesses under sections 1 through 14 of  
37 P.L.1996, c.26 (C.34:1B-124 through 34:1B-137); (2) providing funds  
38 for the payment of loans, guarantees, grants and other forms of  
39 financial assistance to be made by the authority to designated  
40 industries that have the greatest potential to create eligible positions  
41 and promote State development strategies; and (3) and any costs  
42 related to the issuance of such bonds. The authority may establish  
43 reserve or other funds to further secure bonds and refunding bonds.  
44 The bonds shall be in the amount to yield proceeds to fund, all or in  
45 part, the payment of grants provided to business under this act, plus  
46 additional bonds to pay for the costs of issuance. Notwithstanding

1 anything to the contrary, bonds issued for the purposes of paragraph  
2 (2) of this subsection, excluding refunding bonds, may only be issued  
3 upon certification by the authority at the time of issuance to the effect  
4 that payments for principal and interest on such bonds and any  
5 additional costs authorized by that paragraph (2) may not exceed an  
6 amount equivalent to the residual withholdings anticipated at the time  
7 of issuance of such bonds for the applicable fiscal years.

8 b. The authority may, in any resolution authorizing the issuance of  
9 bonds or refunding bonds, pledge the contract with the State  
10 Treasurer, provided for in section 10 of P.L. , c. (C. )  
11 (now pending before the Legislature as this bill), or any part thereof,  
12 for the payment or redemption of the bonds or refunding bonds, and  
13 covenant as to the use and disposition of money available to the  
14 authority for payments of bonds and refunding bonds. All costs  
15 associated with the issuance of bonds and refunding bonds by the  
16 authority for the purposes set forth in this act may be paid by the  
17 authority from amounts it receives from the proceeds of the bonds or  
18 refunding bonds and from amounts it receives pursuant to sections 10  
19 and 11 of P.L. , c. (C. ) (now pending before the  
20 Legislature as this bill), which costs may include, but are not limited  
21 to, any costs and fees relating to the issuance of the bonds or  
22 refunding bonds, annual administrative costs and fees of the authority  
23 attributable to the payment of grants issued to businesses under this  
24 act, the fees and costs of bond counsel and any other professional fees  
25 and costs attributable to the agreements described in subsection c. of  
26 this section. The bonds or refunding bonds shall be authorized by  
27 resolution, which shall stipulate the manner of execution and form of  
28 the bonds, whether the bonds are in one or more series, the date or  
29 dates of issue, time or times of maturity, which shall not exceed 20  
30 years, the rate or rates of interest payable on the bonds, which may be  
31 at fixed rates or variable rates, and which interest may be current  
32 interest or may accrue, the denomination or denominations in which  
33 the bonds are issued, conversion or registration privileges, the sources  
34 and medium of payment and place or places of payment, terms of  
35 redemption, privileges of exchangeability or interchangeability, and  
36 entitlement to priorities of payment or security in the amounts to be  
37 received by the authority pursuant to sections 10 and 11 of P.L. ,  
38 c. (C. ) (now pending before the Legislature as this bill).  
39 The bonds may be sold at a public or private sale at a price or prices  
40 determined by the authority. The authority is authorized to enter into  
41 any agreements necessary or desirable to effectuate the purposes of  
42 this section, including agreements to sell bonds or refunding bonds to  
43 any person and to comply with the laws of any jurisdiction relating  
44 thereto.

45 c. In connection with any bonds or refunding bonds issued  
46 pursuant to this act, the authority may also enter into any revolving

1 credit agreement, agreement establishing a line of credit or letter of  
2 credit, reimbursement agreement, interest rate exchange agreement,  
3 currency exchange agreement, interest rate floor or cap, options, puts  
4 or calls to hedge payment, currency, rate, spread or similar exposure,  
5 or similar agreements, float agreements, forward agreements,  
6 insurance contract, surety bond, commitment to purchase or sell  
7 bonds, purchase or sale agreement, or commitments or other contracts  
8 or agreements and other security agreements approved by the  
9 authority.

10 d. No resolution adopted by the authority authorizing the issuance  
11 of bonds or refunding bonds pursuant to this act shall be adopted or  
12 otherwise made effective without the approval in writing of the State  
13 Treasurer and the Joint Budget Oversight Committee. Except as  
14 provided by subsection i. of section 4 of P.L.1974, c.80 (C.34:1B-4),  
15 bonds or refunding bonds may be issued without obtaining the consent  
16 of any department, division, commission, board, bureau or agency of  
17 the State, other than the approval as required by this subsection, and  
18 without any other proceedings or the occurrence of any other  
19 conditions or other things other than those proceedings, conditions or  
20 things which are specifically required by this act.

21 e. Bonds and refunding bonds issued by the authority pursuant to  
22 this act shall be special and limited obligations of the authority payable  
23 from, and secured by, such funds and moneys determined by the  
24 authority in accordance with this section. Neither the members of the  
25 authority nor any other person executing the bonds or refunding bonds  
26 shall be personally liable with respect to payment of interest and  
27 principal on these bonds or refunding bonds. Bonds or refunding  
28 bonds issued pursuant to the provisions of this act shall not be a debt  
29 or liability of the State or any agency or instrumentality thereof, except  
30 as otherwise provided by this subsection, either legal, moral or  
31 otherwise, and nothing contained in this act shall be construed to  
32 authorize the authority to incur any indebtedness on behalf of or in any  
33 way to obligate the State or any political subdivision thereof, and all  
34 bonds and refunding bonds issued by the authority shall contain a  
35 statement to that effect on their face.

36 f. The authority is authorized to engage, subject to the approval of  
37 the State Treasurer and in such manner as the State Treasurer shall  
38 determine, the services of bond counsel, financial advisors and experts,  
39 placement agents, underwriters, appraisers, and such other advisors,  
40 consultants and agents as may be necessary to effectuate the purposes  
41 of this act.

42 g. The proceeds from the sale of the bonds, other than refunding  
43 bonds, issued pursuant to this act, after payment of any costs related  
44 to the issuance of such bonds, shall be paid by the authority to be  
45 applied to the payment, in full or in part, for the purposes set forth in  
46 subsection a. of this section as directed by the State Treasurer.

1 h. All bonds or refunding bonds issued by the authority are deemed  
2 to be issued by a body corporate and politic of the State for an  
3 essential governmental purpose, and the interest thereon and the  
4 income derived from all funds, revenues, incomes and other moneys  
5 received for or to be received by the authority and pledged and  
6 available to pay or secure the payment on bonds or refunding bonds  
7 and the interest thereon, shall be exempt from all taxes levied pursuant  
8 to the provisions of Title 54 of the Revised Statutes or Title 54A of  
9 the New Jersey Statutes, except for transfer inheritance and estate  
10 taxes levied pursuant to Subtitle 5 of Title 54 of the Revised Statutes.

11 i. The State hereby pledges and covenants with the holders of any  
12 bonds or refunding bonds issued pursuant to the provisions of this act,  
13 that it will not limit or alter the rights or powers vested in the  
14 authority by this act, nor limit or alter the rights or powers of the State  
15 Treasurer in any manner which would jeopardize the interest of the  
16 holders or any trustee of such holders, or inhibit or prevent  
17 performance or fulfillment by the authority or the State Treasurer with  
18 respect to the terms of any agreement made with the holders of these  
19 bonds or refunding bonds or agreements made pursuant to subsection  
20 c. of this section except that the failure of the Legislature to  
21 appropriate moneys for any purpose of this act shall not be deemed a  
22 violation of this section.

23 j. Notwithstanding any restriction contained in any other law, rule,  
24 regulation or order to the contrary, the State and all political  
25 subdivisions of this State, their officers, boards, commissioners,  
26 departments or other agencies, all banks, bankers, trust companies,  
27 savings banks and institutions, building and loan associations, saving  
28 and loan associations, investment companies and other persons  
29 carrying on a banking or investment business, and all executors,  
30 administrators, guardians, trustees and other fiduciaries, and all other  
31 persons whatsoever who now are or may hereafter be authorized to  
32 invest in bonds or other obligations of the State, may properly and  
33 legally invest any sinking funds, moneys or other funds, including  
34 capital, belonging to them or within their control, in any bonds or  
35 refunding bonds issued by the authority under the provisions of this  
36 act; and said bonds and refunding bonds are hereby made securities  
37 which may properly and legally be deposited with, and received by any  
38 State or municipal officers or agency of the State, for any purpose for  
39 which the deposit of bonds or other obligations of the State is now, or  
40 may hereafter be, authorized by law.

41  
42 10. (New section) The State Treasurer shall, in each State fiscal  
43 year, pay from the General Fund to the authority, in accordance with  
44 a contract or contracts between the State Treasurer and the authority,  
45 authorized pursuant to section 11 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)  
46 (now pending before the Legislature as this bill), an amount equivalent

1 to the amount due to be paid in such State fiscal year to pay the debt  
2 service incurred for such State fiscal year on the bonds or refunding  
3 bonds of the authority issued pursuant to this act and any additional  
4 costs authorized by section 9 of P.L. , c. (C. ) (now  
5 pending before the Legislature as this bill). Notwithstanding any other  
6 provision of any law, rule, regulation or order to the contrary, the  
7 authority shall be paid only such funds as shall be determined by the  
8 contract or contracts and further provided that the incurrence of any  
9 obligation of the State under the contract or contracts, including any  
10 payments to be made thereunder from the General Fund, shall be  
11 subject to and dependent upon appropriations being made from time  
12 to time by the Legislature for the purposes of this act.

13

14 11. (New section) The State Treasurer and the authority are  
15 authorized to enter into one or more contracts to implement the  
16 payment arrangement that is provided for in section 10 of P.L. ,  
17 c. (C. ) (now pending before the Legislature as this bill).  
18 The contract or contracts shall provide for payment by the State  
19 Treasurer of the amounts required to be paid pursuant to section 10 of  
20 P.L. , c. (C. ) (now pending before the Legislature as  
21 this bill) and shall set forth the procedure for the transfer of moneys  
22 for the purpose of paying such moneys. The contract or contracts  
23 shall contain such terms and conditions as are determined by the  
24 parties, and shall include, but not be limited to, terms and conditions  
25 necessary and desirable to secure any bonds or refunding bonds of the  
26 authority issued pursuant to this act; provided however, that  
27 notwithstanding any other provision of any law, rule, regulation or  
28 order to the contrary, the authority shall be paid only such funds as  
29 shall be determined by the contract or contracts and further provided  
30 that the incurrence of any obligation of the State under the contract or  
31 contracts, including any payments to be made thereunder from the  
32 General Fund, shall be subject to and dependent upon appropriations  
33 being made from time to time by the Legislature for the purposes of  
34 this act.

35

36 12. This act shall take effect immediately.

37

38

39

#### STATEMENT

40

41 This bill enhances New Jersey's Business Employment Incentive  
42 Program (BEIP) for targeted economic development, including smart  
43 growth ideals, and restore funding for the program which was  
44 eliminated for State fiscal year 2004 in the Governor's budget  
45 recommendation due to forecasted budget constraints.

46 The enhanced BEIP program proposed in this bill continues the

1 State government's commitment to working with the business  
2 community to maximize State resources and capitalize on the growing  
3 trends in the nation's economy. The enhancements encourage the  
4 growth of biotechnology industries, improve grants to targeted  
5 economic clusters like financial services, promote smart growth  
6 strategies, support economic growth along the Pennsylvania border,  
7 and provide a stable funding source so the BEIP program is not  
8 vulnerable to State fiscal crisis.

9 The bill will encourage growth in industries which previously were  
10 often too small to qualify for BEIP grants, and focuses the program on  
11 targeted growth, in particular industry clusters with significant growth  
12 potential in New Jersey, including financial services, technology, and  
13 logistics (including distribution, ports, and transportation). In each of  
14 these clusters, the goal is to analyze barriers to success, identify the  
15 targeted public and private sector financial resources needed to  
16 support their growth, and create partnerships among government,  
17 business, and universities to promote each industry cluster's growth.

18 The bill will promote the growth of specific industry sectors by  
19 retooling the State's existing BEIP program, to amend existing  
20 limitations on job creation standards. Currently BEIP requires a  
21 company to create 25 new jobs in an urban area and 75 jobs in a  
22 non-urban area to be eligible for a BEIP grant. The bill establishes a  
23 new threshold of 25 jobs at any site in New Jersey, and sets a lower  
24 threshold of 10 jobs for companies in the biotechnology sector. The  
25 bill further requires employers receiving BEIP grants to provide  
26 employee health benefits to eligible new employees.

27 The bill further encourages the growth of certain targeted industries  
28 by including criteria to provide higher BEIP awards for businesses  
29 within the biotechnology, pharmaceutical, financial services and  
30 logistics industries.

31 Funding for the program will be supplied, in addition to any  
32 amounts appropriated, through the New Jersey Economic  
33 Development Authority (EDA) which oversees the program. The  
34 EDA will be given the power to issue bonds, backed by a State  
35 contract, and subject to approval by the Joint Budget Oversight  
36 Committee, to fund the payment of BEIP grants, the payment of  
37 loans, guarantees, grants and other forms of financial assistance. The  
38 bill authorizes the EDA to seek reimbursement from businesses  
39 receiving grants for any grant year in which a business fails to maintain  
40 a net gain in total employment at all places of business in this State,  
41 and requires the EDA to submit an annual report on the BEIP  
42 program.

43 The enhancement to the program made by this bill will promote  
44 greater reliability and predictability in the BEIP grant process. The  
45 State stands to gain significant residual revenues from incentive-driven  
46 job creation, and it is anticipated that those revenues will be reinvested



**A3705 SIRES, GUEAR**

16

1 in economic development.

2 The bill conforms the program to the Administration's smart growth  
3 agenda. The bill will set the standard BEIP award at 50% of the  
4 business' new employees withholdings taxes and allow a company to  
5 obtain the maximum 80% if it makes exceptional contributions to New  
6 Jersey's economy or promotes certain smart growth strategies.

7 Under New Jersey's reciprocal agreement with Pennsylvania, New  
8 Jersey employers pay no withholding taxes on employees who reside  
9 in Pennsylvania. The bill, however, proposes BEIP awards be made  
10 to companies that meet all the criteria, but would otherwise be  
11 hindered by the reciprocity agreement. This feature of the bill will  
12 allow all new jobs brought by a company to the State with the BEIP  
13 incentive, including New Jersey jobs filled by residents of  
14 Pennsylvania, to be factored into the BEIP new job creation threshold.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3705

# STATE OF NEW JERSEY

DATED: JUNE 19, 2003

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3705.

This Assembly Committee Substitute for Assembly Bill No. 3705 enhances New Jersey's Business Employment Incentive Program (BEIP) for targeted economic development, including smart growth ideals, and restore funding for the program which was eliminated for State fiscal year 2004 in the Governor's budget recommendation due to forecasted budget constraints.

The enhanced BEIP program proposed in this substitute continues the State government's commitment to working with the business community to maximize State resources and capitalize on the growing trends in the nation's economy. The enhancements encourage the growth of certain high-technology and biotechnology industries, improve grants to targeted economic clusters like financial services, promote smart growth strategies, support economic growth along the Pennsylvania border, and provide a stable funding source so the BEIP program is not vulnerable to State fiscal crisis.

The substitute will encourage growth in industries which previously were often too small to qualify for BEIP grants, and focuses the program on targeted growth, in particular industry clusters with significant growth potential in New Jersey, including financial services, technology, and logistics (including distribution, ports, and transportation). In each of these clusters, the goal is to analyze barriers to success, identify the targeted public and private sector financial resources needed to support their growth, and create partnerships among government, business, and universities to promote each industry cluster's growth.

The substitute will promote the growth of specific industry sectors by retooling the State's existing BEIP program, to amend existing limitations on job creation standards. Currently BEIP requires a company to create 25 new jobs in an urban area and 75 jobs in a non-urban area to be eligible for a BEIP grant. The substitute establishes a new threshold of 25 jobs at any site in New Jersey, and sets a lower threshold of 10 jobs for advanced computing companies, advanced materials companies, biotechnology companies, electronic

device technology companies, environmental technology companies, and medical device technology companies.

The substitute provides that an eligible position does not include a position located in New Jersey that, within a period either three months prior to the business' application for a grant or six months after application for a grant, ceases to exist or be located within New Jersey. This clarifies that a business should not reduce jobs in one part of the State and create jobs in another part of the State and qualify for a full grant.

The substitute caps the aggregate amount of the employment incentive grant awarded at \$50,000 per new employee over the term of the grant. The substitute further requires employers receiving BEIP grants to provide employee health benefits to eligible new employees.

The substitute further encourages the growth of certain targeted industries by including criteria to provide higher BEIP awards for businesses within the biotechnology, pharmaceutical, financial services and logistics industries.

Funding for the program will be supplied, in addition to any amounts appropriated, through the New Jersey Economic Development Authority (EDA) which oversees the program. The EDA will be given the power to issue bonds, backed by a State contract, and subject to approval by the Joint Budget Oversight Committee, to fund the payment of BEIP grants and other forms of financial assistance.

The substitute defines the key concept of "residual withholdings," which is the excess of the estimated cumulative withholdings for all executed agreements eligible for payments under the program over the cumulative anticipated grant amounts. In rough terms, this is the incremental revenue from new jobs that is not rebated to businesses in the form of program grants. The substitute allows EDA to issue bonds for purposes other than funding program grants, but only to the extent that the EDA certifies that, at the time of issuance, that payments for principal and interest on those bonds and any additional costs authorized do not exceed an amount equivalent to the residual withholdings anticipated at the time of issuance of the bonds.

The additional purposes to be funded through the residual withholdings will be investment in small and medium-size businesses that have the greatest potential for creating jobs and stimulating economic growth and the financing and development of infrastructure and transportation projects integral to economic growth.

The enhancement to the program made by this substitute will promote greater reliability and predictability in the BEIP grant process. The substitute conforms the program to the Administration's smart growth agenda. The substitute sets the standard BEIP award at 50% of the business' new employees withholdings taxes and allow a company to obtain the maximum 80% if it makes exceptional contributions to New Jersey's economy or promotes certain smart growth strategies.

Under New Jersey's reciprocal agreement with Pennsylvania, New Jersey employers pay no withholding taxes on employees who reside in Pennsylvania. The substitute, however, proposes BEIP awards be made to companies that meet all the criteria, but would otherwise be hindered by the reciprocity agreement. This feature of the substitute will allow all new jobs brought by a company to the State with the BEIP incentive, including New Jersey jobs filled by residents of Pennsylvania, to be factored into the BEIP new job creation threshold.

The substitute requires the EDA to submit an annual report on the BEIP program.

FISCAL IMPACT:

This substitute provides the mechanism for funding BEIP grants in State Fiscal Year 2004 and thereafter in the absence of a specific appropriation in annual appropriations act. The impact of the changes to program criteria and incentives, expanded EDA authority in determining economic incentives other than program grants, and EDA bonding authority all depend on future actions that cannot be determined, and the effects of which cannot be estimated, at this time.

STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 3705**

with Assembly Floor Amendments  
(Proposed By Assemblyman GUEAR)

ADOPTED: JUNE 23, 2003

Assembly Bill No. 3705 (SCS) lowered the threshold of job creation for grant recipients for companies which create jobs in certain targeted industries. These industries, which previously were often too small to qualify for Business Employment Incentive Program (BEIP) grants, include companies engaged in the fields of advanced computing, advance materials, biotechnology, electronic device, environmental technology or medical device technology. The proposed amendment would expand the definition of "designated industries" under the act to reflect these targeted industries. "Designated industry" is a criteria for determining grant awards under BEIP.

The amendment also clarifies that the aggregate amount of the employment incentive grant awarded is capped at an average of \$50,000 per new employee over the term of the grant.

Additionally, the amendment clarifies that the forfeiture of a grant award due to the failure of a business to provide certain specified documentation is subject to the override of the Executive Director of the NJEDA.

**SENATE, No. 2669**

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

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INTRODUCED JUNE 12, 2003

**Sponsored by:**

**Senator BERNARD F. KENNY, JR.**

**District 33 (Hudson)**

**SYNOPSIS**

Enhances the New Jersey Business Employment Incentive Program for targeted economic development and provides funding for grants through New Jersey Economic Development Authority bonds.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the Business Employment Incentive Program and  
2 amending and supplementing P.L.1996, c.26.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 2 of P.L.1996, c.26 (C.34:1B-125) is amended to read  
8 as follows:

9 2. As used in sections 1 through 17 of **[this act]** P.L.1996, c.26  
10 (C.34:1B-124 et seq.) and in sections 10 through 12 of P.L. , c.   
11 (C. ) (now pending before the Legislature as this bill), unless a  
12 different meaning clearly appears from the context:

13 "Application year" means the grant year for which an eligible  
14 partnership submits the information required under section 8 of  
15 P.L.1996, c.26 (C.34:1B-131);

16 "Authority" means the New Jersey Economic Development  
17 Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

18 "Base years" means the first two complete calendar years following  
19 the effective date of an agreement;

20 "Biotechnology Company" means a person, whose headquarters or  
21 base of operations is located in New Jersey, engaged in the research,  
22 development, production, or provision of biotechnology for the  
23 purpose of developing or providing products or processes for specific  
24 commercial or public purposes, including but not limited to, medical  
25 pharmaceutical, nutritional, and other health-related purposes,  
26 agricultural purposes, and environmental purposes, or a person, whose  
27 headquarters or base of operations is located in New Jersey, engaged  
28 in providing services or products necessary for such research,  
29 development, production, or provision;

30 "Bonds means bonds, notes or other obligations issued by the  
31 authority pursuant to this act;

32 "Business" means a corporation; sole proprietorship; partnership;  
33 corporation that has made an election under Subchapter S of Chapter  
34 One of Subtitle A of the Internal Revenue Code of 1986, or any other  
35 business entity through which income flows as a distributive share to  
36 its owners; limited liability company; nonprofit corporation; or any  
37 other form of business organization located either within or outside  
38 this State, **[including a cooperative association]**. A grant received  
39 under this act by a partnership, Subchapter S-Corporation, or other  
40 such business entity shall be apportioned among the persons to whom  
41 the income or profit of the partnership, Subchapter S-Corporation, or  
42 other entity is distributed, in the same proportions as those in which

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

**Matter underlined thus is new matter.**

1 the income or profit is distributed. ["Cooperative association" shall  
2 include financial, stock or commodities exchanges];

3 "Business employment incentive agreement" or "agreement" means  
4 the written agreement between the authority and a business proposing  
5 a project in this State in accordance with the provisions of this act  
6 which establishes the terms and conditions of a grant to be awarded  
7 pursuant to this act;

8 "Department" means the [Department of] New Jersey Commerce  
9 and Economic[Development]Growth Commission ;

10 "Designated industry" means a business engaged in the field of  
11 biotechnology, pharmaceuticals, financial services or transportation  
12 and logistics;

13 "Director" means the Director of the Division of Taxation;

14 "Division" means the Division of Taxation in the Department of the  
15 Treasury;

16 "Eligible partnership" means a partnership or limited liability  
17 company that is qualified to receive a grant as established in this act;

18 "Eligible position" is a new full-time position created by a business  
19 in New Jersey or transferred from another state by the business under  
20 the terms and conditions set forth in this act during the base years or  
21 in subsequent years of a grant. In determining if positions are eligible  
22 positions, the authority shall give greater consideration to positions  
23 that average at least 1.5 times the minimum hourly wage during the  
24 term of an agreement authorized pursuant to this act. For grants  
25 awarded on or after July 1, 2003, eligible position includes only a  
26 position for which a business provides employee health benefits under  
27 a group health plan as defined under section 14 of P.L.1997, c.146  
28 (C.17B:27-54), a health benefits plan as defined under section 1 of  
29 P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health  
30 insurance covering more than one person issued pursuant to Article 2  
31 of Title 17B of the New Jersey Statutes. "Eligible position" also  
32 includes all current and future partners or members of a partnership or  
33 limited liability company created by a business in New Jersey or  
34 transferred from another state by the business pursuant to the  
35 conditions set forth in this act during the base years or in subsequent  
36 years of a grant. An "eligible position" shall also include a position  
37 occupied by a resident of this State whose position is relocated to this  
38 State from another state but who does not qualify as a "new employee"  
39 because prior to relocation his wages or his distributive share of  
40 income from a gain, from a loss or deduction, or his guaranteed  
41 payments or any combination thereof, prior to the relocation, were not  
42 subject to income taxes imposed by the state or municipality in which  
43 the position was previously located. An "eligible position" shall also  
44 include a position occupied by a resident of another State whose  
45 position is relocated to this State but whose income is not subject to  
46 the New Jersey gross income tax pursuant to N.J.S.54A:1-1 et seq.;



1 "Employment incentive" means the amount of a grant determined  
2 pursuant to subsection a. of section 6 of this act;

3 "Estimated tax" means an amount calculated for a partner in an  
4 eligible position equal to 6.37% of the lesser of (i) the amount of the  
5 partner's net income from the eligible partnership that is sourced to  
6 New Jersey as reflected in Column B of the partner's Schedule NJK-1  
7 of the application year less the amount of the partner's net income  
8 from the eligible partnership that is sourced to New Jersey as reflected  
9 in column B of the partner's Schedule NJK-1 in the foundation year,  
10 or (ii) the net of all items of partnership income upon which tax has  
11 been paid as reflected on the partner's New Jersey Gross Income Tax  
12 return in the application year;

13 "Foundation year" means the year immediately prior to the creation  
14 of the eligible position;

15 "Full-time employee" means a person who is employed for  
16 consideration for at least 35 hours a week, or who renders any other  
17 standard of service generally accepted by custom or practice as  
18 full-time employment, whose wages are subject to withholding as  
19 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
20 et seq., and who is determined by the authority to be employed in a  
21 permanent position according to criteria it develops, or who is a  
22 partner of an eligible partnership, who works for the partnership for  
23 at least 35 hours a week, or who renders any other standard of service  
24 generally accepted by custom or practice as full-time employment, and  
25 whose distributive share of income, gain, loss or deduction, or whose  
26 guaranteed payments, or any combination thereof, is subject to the  
27 payment of estimated taxes, as provided in the "New Jersey Gross  
28 Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall  
29 not include any person who works as an independent contractor or on  
30 a consulting basis for the business;

31 "Grant" means a business employment incentive grant as established  
32 in this act;

33 "Net income from the eligible partnership" means the net  
34 combination of a partner's distributive share of the eligible  
35 partnership's income, gain, loss, deduction, or guaranteed payments;

36 "New employee" means a full-time employee first employed in an  
37 eligible position on the project which is the subject of an agreement or  
38 who is a partner of an eligible partnership, who works for the  
39 partnership for at least 35 hours a week, or who renders any other  
40 standard of service generally accepted by custom or practice as  
41 full-time employment, and whose distributive share of income, gain,  
42 loss or deduction, or whose guaranteed payments, or any combination  
43 thereof, is subject to the payment of estimated taxes, as provided in  
44 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.;  
45 except that such a New Jersey resident whose position is relocated to  
46 this State shall not be classified as a "new employee" unless his wages,

1 or his distributive share of income from a gain, from a loss or  
2 deduction, or his guaranteed payments or any combination thereof,  
3 prior to the relocation, were subject to income taxes imposed by the  
4 state or municipality in which the position was previously located.

5 "New employee" may also include an employee rehired or called back  
6 from a layoff during or following the base years to a vacant position  
7 previously held by that employee or to a new position established  
8 during or following the base years. "New employee" shall not include  
9 any employee who was previously employed in New Jersey by the  
10 business or by a related person as defined in section 2 of P.L.1993,  
11 c.170 (C.54:10A-5.5) if the employee is transferred to the business  
12 which is the subject of an agreement unless the employee's position at  
13 his previous employer is filled by a new employee. "New employee"  
14 also shall not include a child, grandchild, parent or spouse of an  
15 individual associated with the business who has direct or indirect  
16 ownership of at least 15% of the profits, capital, or value of the  
17 business;

18 "Partner" means a person who is entitled to either a distributive  
19 share of a partnership's income, gain, loss or deduction, or guaranteed  
20 payments, or any combination thereof, by virtue of holding an interest  
21 in the partnership. "Partner" also includes a person who is a member  
22 of a limited liability company which is treated as a partnership, as  
23 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
24 et seq.;

25 "Refunding Bonds" means bonds, notes or other obligations issued  
26 to refinance bonds, notes or other obligations previously issued by the  
27 authority pursuant to the provision of this act;

28 "Schedule NJK-1" means Schedule NJK-1 as the form existed for  
29 taxable year 1997;

30 ["Targeted area" means a qualifying municipality as defined in  
31 P.L.1978, c.14 (C.52:27D-178); and]

32 "Withholdings" means the amount withheld by a business from the  
33 wages of new employees or estimated taxes paid by, or on behalf of,  
34 partners that are new employees, or any combination thereof, pursuant  
35 to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.  
36 (cf: P.L.1998, c.33, s.1)

37

38 2. Section 4 of P.L.1996, c.26 (C.34:1B-127) is amended to read  
39 as follows:

40 4. a. A business may apply to the authority for a grant for any  
41 project which:

42 (1) Will create at least [75] 25 eligible positions in the base years;  
43 or

44 (2) Will create at least [25] 10 eligible positions in [a targeted  
45 area] in the base years if the business is a biotechnology company.

1       b. In the case of a business which is a landlord, the business may  
2 apply to the authority for a grant for any project in which[:

3       (1) (a) At] at least [75] 25 eligible positions are created in the  
4 base years [;or

5       (b) At least 25 eligible positions are created in a targeted area in  
6 the base years; and

7       (2) The tenants or proposed tenants have agreed to assign to the  
8 landlord any claim of right that they may have to a grant provided by  
9 this act; and

10       (3) The tenant or proposed tenants have agreed to cooperate with  
11 the landlord in annually providing to the authority the number of new  
12 employees in eligible positions, the withholdings and any other  
13 information which may be required by the authority].

14       c. A project which consists solely of point-of-final-purchase retail  
15 facilities shall not be eligible for a grant under this act. If a project  
16 consists of both point-of-final-purchase retail facilities and non-retail  
17 facilities, only the portion of the project consisting of non-retail  
18 facilities shall be eligible for a grant, and only the withholdings from  
19 new employees which are employed in the portion of the project which  
20 represents non-retail facilities shall be used to determine the amount  
21 of the grant. If a warehouse facility is part of a point-of-final-purchase  
22 retail facility and supplies only that facility, the warehouse facility shall  
23 not be eligible for a grant. For the purposes of this act, catalog  
24 distribution centers shall not be considered point-of-final-purchase  
25 retail facilities.

26 (cf: P.L.1996, c.26, s.4)

27

28       3. Section 5 of P.L. 1996, c.26 (C.34:1B-128) is amended to read  
29 as follows:

30       5. A business shall apply to the authority for a grant on a form  
31 prescribed by the authority which shall include:

32       a. The name of the business, the proposed location of the project,  
33 and the type of activity which will be engaged in at the project site;

34       b. The names and addresses of the principals or management of the  
35 business, and the nature of the form of business organization under  
36 which it is operated;

37       c. The most recent financial statement of the business;

38       d. The number of eligible positions proposed to be created during  
39 the base years and thereafter; and

40       e. An estimate of the total withholdings.

41       [A cooperative association may apply, in one consolidated  
42 application in a form and manner determined by the authority, for a  
43 grant on its own behalf as a business and for grants on behalf of the  
44 members of the association who may qualify under this act.

45       If a cooperative association is applying for grants on behalf of its  
46 members, the members for whom the application is submitted shall

1 assign to the association any claim of right the members may have  
2 under this act to apply for grants individually during the term of the  
3 business employment incentive agreement, and agree to cooperate with  
4 the association in providing to the authority all the information  
5 required for the initial application, the business employment incentive  
6 agreement, and any other information the authority may require for  
7 the purposes of this act. The cooperative association shall be  
8 responsible for providing to the authority all the information required  
9 under this act.

10 If a cooperative association applies for a grant on behalf of its  
11 members, the members included in the application may be permitted  
12 to meet the qualifications for a grant collectively by participating in a  
13 project that will meet the requirements of sections 3 and 4 of this act,  
14 the amount of a grant shall be calculated under the terms of this act as  
15 if the members are all collectively one business entity, and any  
16 restrictions on the qualification for a grant shall apply to each member  
17 who is listed in the application as participating in the project. The  
18 grants awarded shall be paid to the cooperative association. A grant  
19 received under this act by a cooperative association may be  
20 apportioned to the members of the association in a manner determined  
21 by the association. Each member included in the application shall be  
22 required to sign the business employment incentive agreement and  
23 shall abide by its terms.]

24 (cf: P.L.1996, c.26, s.5)

25

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

28 6. a. The amount of the employment incentive awarded as a grant  
29 in each case shall be not less than 10% and not more than ~~[80%]~~ 50%  
30 of the withholdings of the business, or not less than 10% and not  
31 more than ~~[50%]~~ 30% of the estimated tax of partners of an eligible  
32 partnership whether paid directly by the partner or by the eligible  
33 partnership on behalf of such partner's account, or any combination  
34 thereof, and shall be subject to the provisions of sections 10 and 11 of  
35 this act. In no case shall the aggregate amount of the employment  
36 incentive grant awarded exceed \$15,000 per new employee over the  
37 term of the grant. The employment incentive shall be based on criteria  
38 developed by the authority after considering the following:

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

40 (2) The expected duration of those positions;

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

43 (4) The amount of other financial assistance the business will  
44 receive from the State for the project; **[and]**

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

- 1     (6) Whether the business is a designated industry;  
2     (7) Impact of the business on State tax revenues; and  
3     (8) Such other related factors determined by the authority.

4     b. A business may be eligible to be awarded a grant of up to 80%  
5 of the withholdings of the business or up to 50% of the estimated tax  
6 of the partners of an eligible partnership if the grant promotes smart  
7 growth and the goals, strategies and policies of the State Development  
8 and Redevelopment Plan established pursuant to section 5 of  
9 P.L.1985, c.398 (C.52:18A-200) as determined by and based upon  
10 criteria promulgated by the authority following consultation with the  
11 Department of Community Affairs, Office of Smart Growth.

12     **[b.] c.** The term of the grant shall not exceed 10 years.

13     **[c.] d.** At the discretion of the authority, the grant may apply  
14 **[only]** to new employees or partners in eligible positions created  
15 during the base years, **and** **[or to additional new employees or partners**  
16 **in eligible positions created]** during the remainder of the term of the  
17 grant.

18 (cf: P.L.1998, c.33, s.2)

19  
20     5. Section 8 of P.L.1996, c.26 (C.34:1B-131) is amended to read  
21 as follows:

22     8. a. No later than **[February]** March 1 of each year, for the  
23 preceding grant year, every business which is awarded a grant under  
24 this act shall submit to the authority a copy of its applicable New  
25 Jersey tax return within 30 days of filing showing business income and  
26 withholdings as a condition of its continuation in the grant program,  
27 together with an annual payroll report showing (1) the eligible  
28 positions which **[are]** were created during the base years and (2) the  
29 new eligible positions created during each subsequent year of the  
30 grant. Should any business which is awarded a grant under this act fail  
31 to submit to the authority a copy of its annual payroll report or submit  
32 its annual payroll report without the information required by (1) and  
33 (2) above, any grant payment to be received by any such business shall  
34 be forfeited for the applicable reporting year.

35     b. The division may require by regulation any information which it  
36 deems necessary to effectuate the provisions of this act.

37     c. The authority may cause an audit of any business receiving a  
38 grant to be conducted at any time.

39 (cf: P.L.1996, c.26, s.8)

40  
41     6. Section 9 of P.L.1996, c.26 (C.34:1B-132) is amended to read  
42 as follows:

43     9. a. If the business receiving a grant fails to meet or comply with  
44 any condition or requirement set forth in a grant agreement or in rules  
45 and regulations of the authority or the division, the authority may  
46 amend the agreement to reduce the amount of the employment

1 incentive or the term of the grant agreement. The reduction of the  
2 employment incentive shall be applicable to the grant year immediately  
3 following the grant year in which the authority amends the agreement.

4 b. If a business fails to maintain employment at the levels stipulated  
5 in the agreement or otherwise fails to comply with any condition of the  
6 grant agreement for any two consecutive years, the authority may  
7 terminate the agreement.

8 c. If during any grant year a business receiving a grant fails to  
9 maintain a net gain in total employment at all places of business within  
10 the State, including employment at affiliated companies within the  
11 State, the authority shall require reimbursement from the business in  
12 an amount equal to the grant disbursed in that grant year. The amount  
13 recovered by the authority shall be deposited into the State General  
14 Fund.

15 (cf: P.L.1996, c.26, s.9)

16

17 7. Section 11 of P.L.1996, c.26 (C.34:1B-134) is amended to read  
18 as follows:

19 11. a. A business that is receiving a business relocation grant  
20 pursuant to the provisions of P.L.1996, c. 25 (C.34:1B-112 et seq.)  
21 shall not be eligible to receive a grant under this act except upon the  
22 approval of the State Treasurer.

23 b. A business that is receiving any other grant by operation of State  
24 law shall not receive an amount as a grant pursuant to this act which,  
25 when combined with such other grants, exceeds the total of [80%]  
26 50% of its withholdings or [50%] 30% of [the] its estimated tax, or  
27 any combination thereof paid, except upon the approval of the State  
28 Treasurer. Amounts received as grants from the Office of Customized  
29 Training pursuant to the "1992 New Jersey Employment and  
30 Workforce Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.)  
31 shall be excluded from the calculation of the total amount permitted  
32 under this subsection.

33 c. A business that qualifies under subsection b. of section 6 of  
34 P.L.1996 c.26 (C.34:1B-129) for a grant of up to 80% of its  
35 withholdings or up to 50% of its estimated tax and is receiving any  
36 other grant by operation of State law shall not receive an amount as a  
37 grant pursuant to this act which, when combined with such other  
38 grants, exceeds the total of up to 80% of its withholdings or 50% of  
39 the estimated tax, or any combination thereof paid. Amounts received  
40 as grants from the Office of Customized Training pursuant to the  
41 "1992 New Jersey Employment and Workforce Development Act,"  
42 P.L.1992, c.43 (C.34:15D-1 et seq.) shall be excluded from the  
43 calculation of the total amount permitted under this subsection.

44 (cf: P.L.1998, c.33, s.4)

1 8. Section 14 of P.L.1996, c.26 (C.34:1B-137) is amended to read  
2 as follows:

3 14. The New Jersey Economic Development Authority, after  
4 consultation with the Department [of Commerce and Economic  
5 Development] and the Division of Taxation, shall in accordance with  
6 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
7 seq.), adopt rules necessary to implement the provisions of the  
8 Business Employment Incentive Program not related to the collection  
9 or determination of taxes and tax withholding. The rules shall provide  
10 for the recipients of business employment incentive grants to be  
11 charged an initial application fee, and ongoing service fees, to cover  
12 the administrative costs related to the program. [The rules also shall  
13 include the procedures to clarify the application of the various  
14 provisions of this act to cooperative associations that submit  
15 applications on behalf of their members.] The Director of the Division  
16 of Taxation is authorized to promulgate those rules necessary to  
17 effectuate the tax related provisions of the Business Employment  
18 Incentive Program.

19 (cf: P.L.1996, c.26, s.14)

20

21 9. Section 15 of P.L.1996, c.26 (C.34:1B-138) is amended to read  
22 as follows:

23 15. The [Department of] New Jersey Commerce and Economic  
24 [Development] Growth Commission shall submit a report on the  
25 Business Employment Incentive Program to the Governor, President  
26 of the Senate, and Speaker of the General Assembly on or before  
27 October 31 of each year. The report shall include information on the  
28 number of agreements entered into during the preceding fiscal year, a  
29 description of the project under each agreement, the number of jobs  
30 created, new income tax revenue received from withholdings, amounts  
31 awarded as grants and an update on the status of projects under  
32 agreement before the preceding fiscal year. [After the program's fifth  
33 year, the department, in conjunction with the State Treasurer, shall  
34 assess the effectiveness of the program in creating new jobs in New  
35 Jersey and the impact on State revenues. The department shall submit  
36 a final report to the Governor, Senate President, and Speaker of the  
37 General Assembly on or before January 1, 2000.]

38 (cf: PL.1996, c.26, s.15)

39

40 10. (New section) Notwithstanding the provisions of any law, rule,  
41 regulation or order to the contrary:

42 a. The authority shall have the power, pursuant to the provisions  
43 of this act and P.L.1974, c. 80 (C.34:1B-1 et seq.), to issue bonds and  
44 refunding bonds, incur indebtedness and borrow money secured, in  
45 whole or in part, by money received pursuant to this act for the  
46 purpose of providing funds for the payment, in full or in part, of the

1 grants provided to businesses under sections 1 through 14 of  
2 P.L.1996, c.26 (C.34:1B-124 through 34:1B-137) and any costs  
3 related to the issuance of such bonds. The total outstanding principal  
4 amount of the bonds shall not exceed \$250,000,000. In computing the  
5 foregoing limitation as to amount, there shall be excluded all bonds  
6 which shall be issued for (1) costs incurred in connection with the  
7 issuance of the bonds and (2) refunding purposes, provided that the  
8 refunding shall be determined by the commission to result in a debt  
9 service savings. The authority may establish reserve or other funds to  
10 further secure bonds and refunding bonds. The bonds shall be in the  
11 amount to yield proceeds to fund, all or in part, the payment of grants  
12 provided to business under this act, plus additional bonds to pay for  
13 the costs of issuance.

14 b. The authority may, in any resolution authorizing the issuance of  
15 bonds or refunding bonds, pledge the contract with the State  
16 Treasurer, provided for in section 11 of this act, or any part thereof,  
17 for the payment or redemption of the bonds or refunding bonds, and  
18 covenant as to the use and disposition of money available to the  
19 authority for payments of bonds and refunding bonds. All costs  
20 associated with the issuance of bonds and refunding bonds by the  
21 authority for the purposes set forth in this act may be paid by the  
22 authority from amounts it receives from the proceeds of the bonds or  
23 refunding bonds and from amounts it receives pursuant to sections 10  
24 and 11 of this act, which costs may include, but are not limited to, any  
25 costs and fees relating to the issuance of the bonds or refunding bonds,  
26 annual administrative costs and fees of the authority attributable to the  
27 payment of grants issued to businesses under this act, the fees and  
28 costs of bond counsel and any other professional fees and costs  
29 attributable to the agreements described in subsection c. of this  
30 section. The bonds or refunding bonds shall be authorized by  
31 resolution, which shall stipulate the manner of execution and form of  
32 the bonds, whether the bonds are in one or more series, the date or  
33 dates of issue, time or times of maturity, which shall not exceed 20  
34 years, the rate or rates of interest payable on the bonds, which may be  
35 at fixed rates or variable rates, and which interest may be current  
36 interest or may accrue, the denomination or denominations in which  
37 the bonds are issued, conversion or registration privileges, the sources  
38 and medium of payment and place or places of payment, terms of  
39 redemption, privileges of exchangeability or interchangeability, and  
40 entitlement to priorities of payment or security in the amounts to be  
41 received by the authority pursuant to sections 10 and 11 of this act.  
42 The bonds may be sold at a public or private sale at a price or prices  
43 determined by the authority. The authority is authorized to enter into  
44 any agreements necessary or desirable to effectuate the purposes of  
45 this section, including agreements to sell bonds or refunding bonds to



1 any person and to comply with the laws of any jurisdiction relating  
2 thereto.

3 c. In connection with any bonds or refunding bonds issued  
4 pursuant to this act, the authority may also enter into any revolving  
5 credit agreement, agreement establishing a line of credit or letter of  
6 credit, reimbursement agreement, interest rate exchange agreement,  
7 currency exchange agreement, interest rate floor or cap, options, puts  
8 or calls to hedge payment, currency, rate, spread or similar exposure,  
9 or similar agreements, float agreements, forward agreements,  
10 insurance contract, surety bond, commitment to purchase or sell  
11 bonds, purchase or sale agreement, or commitments or other contracts  
12 or agreements and other security agreements approved by the  
13 authority.

14 d. No resolution adopted by the authority authorizing the issuance  
15 of bonds or refunding bonds pursuant to this act shall be adopted or  
16 otherwise made effective without the approval in writing of the State  
17 Treasurer and the Joint Budget Oversight Committee. Except as  
18 provided by subsection i. of section 4 of P.L.1974, c.80 (C.34:1B-4),  
19 bonds or refunding bonds may be issued without obtaining the consent  
20 of any department, division, commission, board, bureau or agency of  
21 the State, other than the approval as required by this subsection, and  
22 without any other proceedings or the occurrence of any other  
23 conditions or other things other than those proceedings, conditions or  
24 things which are specifically required by this act.

25 e. Bonds and refunding bonds issued by the authority pursuant to  
26 this act shall be special and limited obligations of the authority payable  
27 from, and secured by, such funds and moneys determined by the  
28 authority in accordance with this section. Neither the members of the  
29 authority nor any other person executing the bonds or refunding bonds  
30 shall be personally liable with respect to payment of interest and  
31 principal on these bonds or refunding bonds. Bonds or refunding  
32 bonds issued pursuant to the provisions of this act shall not be a debt  
33 or liability of the State or any agency or instrumentality thereof, except  
34 as otherwise provided by this subsection, either legal, moral or  
35 otherwise, and nothing contained in this act shall be construed to  
36 authorize the authority to incur any indebtedness on behalf of or in any  
37 way to obligate the State or any political subdivision thereof, and all  
38 bonds and refunding bonds issued by the authority shall contain a  
39 statement to that effect on their face.

40 f. The authority is authorized to engage, subject to the approval of  
41 the State Treasurer and in such manner as the State Treasurer shall  
42 determine, the services of bond counsel, financial advisors and experts,  
43 placement agents, underwriters, appraisers, and such other advisors,  
44 consultants and agents as may be necessary to effectuate the purposes  
45 of this act.

- 1 g. The proceeds from the sale of the bonds, other than refunding  
2 bonds, issued pursuant to this act, after payment of any costs related  
3 to the issuance of such bonds, shall be paid by the authority to be  
4 applied to the payment, in full or in part, for the purposes set forth in  
5 subsection a. of this section as directed by the State Treasurer.
- 6 h. All bonds or refunding bonds issued by the authority are deemed  
7 to be issued by a body corporate and politic of the State for an  
8 essential governmental purpose, and the interest thereon and the  
9 income derived from all funds, revenues, incomes and other moneys  
10 received for or to be received by the authority and pledged and  
11 available to pay or secure the payment on bonds or refunding bonds  
12 and the interest thereon, shall be exempt from all taxes levied pursuant  
13 to the provisions of Title 54 of the Revised Statutes or Title 54A of  
14 the New Jersey Statutes, except for transfer inheritance and estate  
15 taxes levied pursuant to Subtitle 5 of Title 54 of the Revised Statutes.
- 16 i. The State hereby pledges and covenants with the holders of any  
17 bonds or refunding bonds issued pursuant to the provisions of this act,  
18 that it will not limit or alter the rights or powers vested in the  
19 authority by this act, nor limit or alter the rights or powers of the State  
20 Treasurer in any manner which would jeopardize the interest of the  
21 holders or any trustee of such holders, or inhibit or prevent  
22 performance or fulfillment by the authority or the State Treasurer with  
23 respect to the terms of any agreement made with the holders of these  
24 bonds or refunding bonds or agreements made pursuant to subsection  
25 c. of this section except that the failure of the Legislature to  
26 appropriate moneys for any purpose of this act shall not be deemed a  
27 violation of this section.
- 28 j. Notwithstanding any restriction contained in any other law, rule,  
29 regulation or order to the contrary, the State and all political  
30 subdivisions of this State, their officers, boards, commissioners,  
31 departments or other agencies, all banks, bankers, trust companies,  
32 savings banks and institutions, building and loan associations, saving  
33 and loan associations, investment companies and other persons  
34 carrying on a banking or investment business, and all executors,  
35 administrators, guardians, trustees and other fiduciaries, and all other  
36 persons whatsoever who now are or may hereafter be authorized to  
37 invest in bonds or other obligations of the State, may properly and  
38 legally invest any sinking funds, moneys or other funds, including  
39 capital, belonging to them or within their control, in any bonds or  
40 refunding bonds issued by the authority under the provisions of this  
41 act; and said bonds and refunding bonds are hereby made securities  
42 which may properly and legally be deposited with, and received by any  
43 State or municipal officers or agency of the State, for any purpose for  
44 which the deposit of bonds or other obligations of the State is now, or  
45 may hereafter be, authorized by law.

1       11. (New section) The State Treasurer shall, in each State fiscal  
2 year, pay from the General Fund to the authority, in accordance with  
3 a contract or contracts between the State Treasurer and the authority,  
4 authorized pursuant to section 12 of this act, an amount equivalent to  
5 the amount due to be paid in such State fiscal year to pay the debt  
6 service incurred for such State fiscal year on the bonds or refunding  
7 bonds of the authority issued pursuant to this act and any additional  
8 costs authorized by section 10 of this act. Notwithstanding any other  
9 provision of any law, rule, regulation or order to the contrary, the  
10 authority shall be paid only such funds as shall be determined by the  
11 contract or contracts and further provided that the incurrence of any  
12 obligation of the State under the contract or contracts, including any  
13 payments to be made thereunder from the General Fund, shall be  
14 subject to and dependent upon appropriations being made from time  
15 to time by the Legislature for the purposes of this act.

16

17       12. (New section) The State Treasurer and the authority are  
18 authorized to enter into one or more contracts to implement the  
19 payment arrangement that is provided for in section 11 of this act.  
20 The contract or contracts shall provide for payment by the State  
21 Treasurer of the amounts required to be paid pursuant to section 11 of  
22 this act and shall set forth the procedure for the transfer of moneys for  
23 the purpose of paying such moneys. The contract or contracts shall  
24 contain such terms and conditions as are determined by the parties,  
25 and shall include, but not be limited to, terms and conditions necessary  
26 and desirable to secure any bonds or refunding bonds of the authority  
27 issued pursuant to this act; provided, however, that notwithstanding  
28 any other provision of any law, rule, regulation or order to the  
29 contrary, the authority shall be paid only such funds as shall be  
30 determined by the contract or contracts and further provided that the  
31 incurrence of any obligation of the State under the contract or  
32 contracts, including any payments to be made thereunder from the  
33 General Fund, shall be subject to and dependent upon appropriations  
34 being made from time to time by the Legislature for the purposes of  
35 this act.

36

37       13. This act shall take effect immediately.

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#### STATEMENT

41

42       This bill enhances New Jersey's Business Employment Incentive  
43 Program (BEIP) for targeted economic development, including smart  
44 growth ideals, and restore funding for the program which was  
45 eliminated for State fiscal year 2004 in the Governor's budget  
46 recommendation due to forecasted budget constraints.

1 The enhanced BEIP program proposed in this bill continues the  
2 State government's commitment to working with the business  
3 community to maximize State resources and capitalize on the growing  
4 trends in the nation's economy. The enhancements encourage the  
5 growth of biotechnology industries, improve grants to targeted  
6 economic clusters like financial services, promote smart growth  
7 strategies, support economic growth along the Pennsylvania border,  
8 and provide a stable funding source so the BEIP program is not  
9 vulnerable to State fiscal crisis.

10 The bill will encourage growth in industries which previously were  
11 often too small to qualify for BEIP grants, and focuses the program on  
12 targeted growth, in particular industry clusters with significant growth  
13 potential in New Jersey, including financial services, technology, and  
14 logistics (including distribution, ports, and transportation). In each of  
15 these clusters, the goal is to analyze barriers to success, identify the  
16 targeted public and private sector financial resources needed to  
17 support their growth, and create partnerships among government,  
18 business, and universities to promote each industry cluster's growth.

19 The bill will promote the growth of specific industry sectors by  
20 retooling the State's existing BEIP program, to amend existing  
21 limitations on job creation standards. Currently BEIP requires a  
22 company to create 25 new jobs in an urban area and 75 jobs in a  
23 non-urban area to be eligible for a BEIP grant. The bill establishes a  
24 new threshold of 25 jobs at any site in New Jersey, and sets a lower  
25 threshold of 10 jobs for companies in the biotechnology sector. In  
26 addition, the bill caps the aggregate amount of the employment  
27 incentive grant awarded at \$15,000 per new employee over the term  
28 of the grant. The bill further requires employers receiving BEIP grants  
29 to provide employee health benefits to eligible new employees.

30 The bill further encourages the growth of certain targeted industries  
31 by including criteria to provide higher BEIP awards for businesses  
32 within the biotechnology, pharmaceutical, financial services and  
33 logistics industries.

34 Funding for the program will be restored through the New Jersey  
35 Economic Development Authority (EDA) which oversees the program.  
36 The EDA will be given the power to issue up to \$250,000,000 in  
37 bonds, backed by a State contract, and subject to approval by the Joint  
38 Budget Oversight Committee, to fund the payment of BEIP grants in  
39 any year in which an appropriation is not available for the BEIP  
40 payments. The bill authorizes the EDA to seek reimbursement from  
41 businesses receiving grants for any grant year in which a business fails  
42 to maintain a net gain in total employment at all places of business in  
43 this State, and requires the EDA to submit an annual report on the  
44 BEIP program.

45 The enhancement to the program made by this bill will promote  
46 greater reliability and predictability in the BEIP grant process. The

1 State stands to gain significant residual revenues from incentive-driven  
2 job creation, and it is anticipated that those revenues will be reinvested  
3 in economic development.

4 The bill conforms the program to the Administration's smart growth  
5 agenda. The bill will set the standard BEIP award at 50% of the  
6 business' new employees withholdings taxes and allow a company to  
7 obtain the maximum 80% if it makes exceptional contributions to New  
8 Jersey's economy or promotes certain smart growth strategies.

9 Under New Jersey's reciprocal agreement with Pennsylvania, New  
10 Jersey employers pay no withholding taxes on employees who reside  
11 in Pennsylvania. The bill, however, proposes BEIP awards be made  
12 to companies that meet all the criteria, but would otherwise be  
13 hindered by the reciprocity agreement. This feature of the bill will  
14 allow all new jobs brought by a company to the State with the BEIP  
15 incentive, including New Jersey jobs filled by residents of  
16 Pennsylvania, to be factored into the BEIP new job creation threshold.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2669**

# **STATE OF NEW JERSEY**

DATED: JUNE 24, 2003

The Senate Budget and Appropriations Committee reports favorably a committee substitute for Senate Bill No. 2669.

This substitute bill enhances New Jersey's Business Employment Incentive Program (BEIP) for targeted economic development, including smart growth ideals, and restore funding for the program which was eliminated for State fiscal year 2004 in the Governor's budget recommendation due to forecasted budget constraints.

The enhanced BEIP program proposed in this substitute continues the State government's commitment to working with the business community to maximize State resources and capitalize on the growing trends in the nation's economy. The enhancements encourage the growth of certain high-technology and biotechnology industries, improve grants to targeted economic clusters like financial services, promote smart growth strategies, support economic growth along the Pennsylvania border, and provide a stable funding source so the BEIP program is not vulnerable to State fiscal crisis.

The substitute will encourage growth in industries which previously were often too small to qualify for BEIP grants, and focuses the program on targeted growth, in particular industry clusters with significant growth potential in New Jersey, including financial services, technology, logistics (including distribution, ports, and transportation) and advanced computing companies, advanced materials companies, biotechnology companies, electronic device technology companies, environmental technology companies, and medical device technology companies. In each of these clusters, the goal is to analyze barriers to success, identify the targeted public and private sector financial resources needed to support their growth, and create partnerships among government, business, and universities to promote each industry cluster's growth.

The substitute will promote the growth of specific industry sectors by retooling the State's existing BEIP program, to amend existing limitations on job creation standards. Currently BEIP requires a company to create 25 new jobs in an urban area and 75 jobs in a non-urban area to be eligible for a BEIP grant. The substitute establishes a new threshold of 25 jobs at any site in New Jersey, and

sets a lower threshold of 10 jobs for advanced computing companies, advanced materials companies, biotechnology companies, electronic device technology companies, environmental technology companies, and medical device technology companies.

The substitute provides that an eligible position does not include a position located in New Jersey that, within a period either three months prior to the business' application for a grant or six months after application for a grant, ceases to exist or be located within New Jersey. This clarifies that a business should not reduce jobs in one part of the State and create jobs in another part of the State and qualify for a full grant.

The substitute caps the aggregate amount of the employment incentive grant awarded at an average of \$50,000 per new employee over the term of the grant. The substitute further requires employers receiving BEIP grants to provide employee health benefits to eligible new employees. The substitute further encourages the growth of certain targeted industries by including criteria to provide higher BEIP awards for businesses within fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, medical device technology, and pharmaceutical, financial services and logistics industries.

Funding for the program will be supplied, in addition to any amounts appropriated, through the New Jersey Economic Development Authority (EDA) which oversees the program. The EDA will be given the power to issue bonds, backed by a State contract, and subject to approval by the Joint Budget Oversight Committee, to fund the payment of BEIP grants and other forms of financial assistance.

The substitute defines the key concept of "residual withholdings," which is the excess of the estimated cumulative withholdings for all executed agreements eligible for payments under the program over the cumulative anticipated grant amounts. In rough terms, this is the incremental revenue from new jobs that is not rebated to businesses in the form of program grants. The substitute allows EDA to issue bonds for purposes other than funding program grants, but only to the extent that the EDA certifies that, at the time of issuance, that payments for principal and interest on those bonds and any additional costs authorized do not exceed an amount equivalent to the residual withholdings anticipated at the time of issuance of the bonds.

The additional purposes to be funded through the residual withholdings will be investment in small and medium-size businesses that have the greatest potential for creating jobs and stimulating economic growth and the financing and development of infrastructure and transportation projects integral to economic growth.

The enhancement to the program made by this substitute will promote greater reliability and predictability in the BEIP grant process. The substitute conforms the program to the Administration's smart growth agenda. The substitute sets the standard BEIP award at

50% of the business' new employees withholdings taxes and allow a company to obtain the maximum 80% if it promotes certain smart growth strategies.

Under New Jersey's reciprocal agreement with Pennsylvania, New Jersey employers pay no withholding taxes on employees who reside in Pennsylvania. The substitute, however, proposes BEIP awards be made to companies that meet all the criteria, but would otherwise be hindered by the reciprocity agreement. This feature of the substitute will allow all new jobs brought by a company to the State with the BEIP incentive, including New Jersey jobs filled by residents of Pennsylvania, to be factored into the BEIP new job creation threshold.

The substitute requires the EDA to submit an annual report on the BEIP program. Additionally, the substitute provides that companies that receive grants submit annual payroll reports showing (1) the eligible positions which were created during the base years and (2) the new eligible positions created during each subsequent year of the grant. The substitute provides for the forfeiture of grant awards due to the failure of businesses to provide this documentation subject to the override of the Executive Director of the NJEDA.

The provisions of this substitute bill are identical to those of Assembly Bill No. 3705 SCS (Aa).

#### FISCAL IMPACT

This substitute provides the mechanism for funding BEIP grants in State Fiscal Year 2004 and thereafter in the absence of a specific appropriation in annual appropriations act. The impact of the changes to program criteria and incentives, expanded EDA authority in determining economic incentives other than program grants, and EDA bonding authority all depend on future actions that cannot be determined, and the effects of which cannot be estimated, at this time.