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"Gov. Chrisite signs bipartisan legislation to boost job creation through expanded tax incentives," NewJerseyNewsroom.com, 7-27-11

"Christie expands tax credit for transit hubs," The Star ledger, 7-27-11

"Law to spur projects," Home News Tribune, 7-27-11

"New law aims to spur urban redevelopment," Asbury Park Press, 7-27-11

"New law designed to help spur urban development in New Jersey," Daily Record, 7-27-11

"Law designed to aid development," Courier News, 7-27-11

"New tax credits likely to spur Camden projects," Courier-Post, 7-27-11

LAW/KR

P.L.2011, CHAPTER 89, *approved July 26, 2011*
Senate, No. 2972 (*Second Reprint*)

1 AN ACT concerning ²economic development and redevelopment
2 under² the urban transit hub tax credit ²**[program]**² and ²the
3 economic redevelopment and growth grant programs.² amending
4 P.L.2007, c.346 ¹, P.L.2008, c.46,¹ and P.L.2009, c.90.
5

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

9 1. Section 2 of P.L.2007, c.346 (C.34:1B-208) is amended to
10 read as follows:

11 2. As used in this act:

12 "Affiliate" means an entity that directly or indirectly controls, is
13 under common control with, or is controlled by the business.
14 Control exists in all cases in which the entity is a member of a
15 controlled group of corporations as defined pursuant to section 1563
16 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the
17 entity is an organization in a group of organizations under common
18 control as defined pursuant to subsection (b) or (c) of section 414 of
19 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
20 may establish by clear and convincing evidence, as determined by
21 the Director of the Division of Taxation in the Department of the
22 Treasury, that control exists in situations involving lesser
23 percentages of ownership than required by those statutes. An
24 affiliate of a business may contribute to meeting either the qualified
25 investment or full-time employee requirements of a business that
26 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
27 209).

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

30 "Business" means a corporation that is subject to the tax imposed
31 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a
32 corporation that is subject to the tax imposed pursuant to sections 2
33 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of
34 P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership,
35 an S corporation, or a limited liability corporation. A business shall
36 include an affiliate of the business if that business applies for a
37 credit based upon any capital investment made by or full-time
38 employees of an affiliate.

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:

¹Senate SEG committee amendments adopted June 23, 2011.

²Senate floor amendments adopted June 27, 2011.

1 "Capital investment" in a qualified business facility means
2 expenses incurred after, but before the end of the eighth year after,
3 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a.
4 the site preparation and construction, repair, renovation,
5 improvement, equipping, or furnishing of a building, structure,
6 facility or improvement to real property; and b. obtaining and
7 installing furnishings and machinery, apparatus or equipment for
8 the operation of a business in a building, structure, facility or
9 improvement to real property.

10 "Eligible municipality" means a municipality: (1) which qualifies
11 for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or
12 which was continued to be a qualified municipality thereunder
13 pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of
14 the value of real property was exempt from local property taxation
15 during tax year 2006. The percentage of exempt property shall be
16 calculated by dividing the total exempt value by the sum of the net
17 valuation which is taxable and that which is tax exempt.

18 "Full-time employee" means a person employed by the business
19 for consideration for at least 35 hours a week, or who renders any
20 other standard of service generally accepted by custom or practice
21 as full-time employment, or a person who is employed by a
22 professional employer organization pursuant to an employee leasing
23 agreement between the business and the professional employer
24 organization, in accordance with P.L.2001, c.260 (C.34:8-67 et
25 seq.) for at least 35 hours a week, or who renders any other standard
26 of service generally accepted by custom or practice as full-time
27 employment, and whose wages are subject to withholding as
28 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
29 et seq. or an employee who is a resident of another State but whose
30 income is not subject to the "New Jersey Gross Income Tax Act,"
31 N.J.S.54A:1-1 et seq. or who is a partner of a business who works
32 for the partnership for at least 35 hours a week, or who renders any
33 other standard of service generally accepted by custom or practice
34 as full-time employment, and whose distributive share of income,
35 gain, loss, or deduction, or whose guaranteed payments, or any
36 combination thereof, is subject to the payment of estimated taxes, as
37 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
38 et seq. "Full-time employee" shall not include any person who
39 works as an independent contractor or on a consulting basis for the
40 business.

41 ¹"Mixed use project" means a project comprising both a
42 qualified business facility and a qualified residential project.¹

43 "Partnership" means an entity classified as a partnership for
44 federal income tax purposes.

45 "Professional employer organization" means an employee leasing
46 company registered with the Department of Labor and Workforce
47 Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

1 "Qualified business facility" means any building, complex of
2 buildings or structural components of buildings, and all machinery
3 and equipment located within a designated urban transit hub in an
4 eligible municipality, used in connection with the operation of a
5 business.

6 "Qualified residential project" shall have the meaning ascribed
7 to that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).¹

8 "Residential unit" means a residential dwelling unit such as a
9 rental apartment, a condominium or cooperative unit, a hotel room,
10 or a dormitory room.

11 "Urban transit hub" means:

12 a. property located within a 1/2 mile radius surrounding the
13 mid point of a New Jersey Transit Corporation, Port Authority
14 Transit Corporation or Port Authority Trans-Hudson Corporation
15 rail station platform area, including all light rail stations, and
16 property located within a one mile radius of the mid point of the
17 platform area of such a rail station if the property is in a qualified
18 municipality under the "Municipal Rehabilitation and Economic
19 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et seq.);

20 b. property located within a 1/2 mile radius surrounding the
21 mid point of one of up to two underground light rail stations'
22 platform areas that are most proximate to an interstate rail station;

23 c. property adjacent to, or connected by rail spur to, a freight
24 rail line if the business utilizes that freight line at any rail spur
25 located adjacent to or within a one mile radius surrounding the
26 entrance to the property for loading and unloading freight cars on
27 trains;

28 which property shall have been specifically delineated by the
29 authority pursuant to subsection e. of section 3 of P.L.2007, c.346
30 (C.34:1B-209).

31 A property which is partially included within the radius shall
32 only be considered part of the urban transit hub if over 50 percent
33 of its land area falls within the radius.

34 "Rail station" shall not include any rail station located at an
35 international airport.

36 (cf: P.L.2009, c.90, s.31)

37

38 2. Section 3 of P.L.2007, c.346 (C.34:1B-209) is amended to
39 read as follows:

40 3. a. (1) A business, upon application to and approval from the
41 authority, shall be allowed a credit of 100 percent of its capital
42 investment, made after the effective date of P.L.2007, c.346
43 (C.34:1B-207 et seq.) but prior to its submission of documentation
44 pursuant to subsection c. of this section, in a qualified business
45 facility within an eligible municipality, pursuant to the restrictions
46 and requirements of this section. To be eligible for any tax credits
47 authorized under this section, a business shall demonstrate to the
48 authority, at the time of application, that the State's financial

1 support of the proposed capital investment in a qualified business
2 facility will yield a net positive benefit to both the State and the
3 eligible municipality. ² ['In determining whether a proposed capital
4 investment will yield a net positive benefit, the authority shall not
5 consider the transfer of an existing job from one location in the
6 State to another location as the creation of a new job, unless the
7 business proposes to transfer existing jobs to a municipality as part
8 of a consolidation of business operations from two or more other
9 municipalities; provided, however, that the foregoing provisions of
10 this sentence shall not apply to any proposed capital investment
11 included in an application submitted to the authority, pursuant to
12 this paragraph, on or before June 22, 2011. ']² The value of all
13 credits approved by the authority pursuant to P.L.2007, c.346
14 (C.34:1B-207 et seq.) shall not exceed \$1,500,000,000.

15 (2) A business, other than a tenant eligible pursuant to
16 paragraph (3) of this subsection, shall make or acquire capital
17 investments totaling not less than \$50,000,000 in a qualified
18 business facility, at which the business shall employ not fewer than
19 250 full-time employees to be eligible for a credit under this
20 section. A business that acquires a qualified business facility shall
21 also be deemed to have acquired the capital investment made or
22 acquired by the seller.

23 (3) A business that is a tenant in a qualified business facility, the
24 owner of which has made or acquired capital investments in the
25 facility totaling not less than \$50,000,000, shall occupy a leased
26 area of the qualified business facility that represents at least
27 \$17,500,000 of the capital investment in the facility at which the
28 tenant business and up to two other tenants in the qualified business
29 facility shall employ not fewer than 250 full-time employees in the
30 aggregate to be eligible for a credit under this section. The amount
31 of capital investment in a facility that a leased area represents shall
32 be equal to that percentage of the owner's total capital investment in
33 the facility that the percentage of net leasable area leased by the
34 tenant is of the total net leasable area of the qualified business
35 facility. Capital investments made by a tenant shall be deemed to
36 be included in the calculation of the capital investment made or
37 acquired by the owner, but only to the extent necessary to meet the
38 owner's minimum capital investment of \$50,000,000. Capital
39 investments made by a tenant and not allocated to meet the owner's
40 minimum capital investment threshold of \$50,000,000 shall be
41 added to the amount of capital investment represented by the
42 tenant's leased area in the qualified business facility.

43 (4) A business shall not be allowed tax credits under this section
44 if the business participates in a business employment incentive
45 grant relating to the same capital and employees that qualify the
46 business for this credit, or if the business receives assistance
47 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is
48 allowed a tax credit under this section shall not be eligible for

1 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et
2 al.). A business shall not qualify for a tax credit under this section,
3 based upon capital investment and employment of full-time
4 employees, if that capital investment or employment was the basis
5 for which a grant was provided to the business pursuant to the
6 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-
7 237 et seq.).

8 (5) Full-time employment for an accounting or privilege period
9 shall be determined as the average of the monthly full-time
10 employment for the period.

11 (6) The capital investment of the owner of a qualified business
12 facility is that percentage of the capital investment made or
13 acquired by the owner of the building that the percentage of net
14 leasable area of the qualified business facility not leased to tenants
15 is of the total net leasable area of the qualified business facility.

16 ¹(7) A business shall be allowed a tax credit of 100 percent of its
17 capital investment, made after the effective date of P.L. , c. (C.)
18 (pending before the Legislature as this bill) but prior to its
19 submission of documentation pursuant to subsection c. of this
20 section, in a qualified business facility that is part of a mixed use
21 project, provided that (a) the qualified business facility represents at
22 least \$17,500,000 of the total capital investment in the mixed use
23 project, (b) the business employs not fewer than 250 full-time
24 employees in the qualified business facility, and (c) the total capital
25 investment in the mixed use project of which the qualified business
26 facility is a part is not less than \$50,000,000. The allowance of
27 credits under this paragraph shall be subject to the restrictions and
28 requirements, to the extent that those are not inconsistent with the
29 provisions of this paragraph, set forth in paragraphs (1) through (6)
30 of this subsection, including but not limited to the requirement that
31 the business shall demonstrate to the authority, at the time of
32 application, that the State's financial support of the proposed capital
33 investment in a qualified business facility will yield a net positive
34 benefit to both the State and the eligible municipality.¹

35 ²(8) In determining whether a proposed capital investment will
36 yield a net positive benefit, the authority shall not consider the
37 transfer of an existing job from one location in the State to another
38 location in the State as the creation of a new job, unless (a) the
39 business proposes to transfer existing jobs to a municipality in the
40 State as part of a consolidation of business operations from two or
41 more other locations that are not in the same municipality whether
42 in-State or out-of-State, or (b) the business's chief executive officer,
43 or equivalent officer, submits a certification to the authority
44 indicating that the existing jobs are at risk of leaving the State and
45 that the business's chief executive officer, or equivalent officer, has
46 reviewed the information submitted to the authority and that the
47 representations contained therein are accurate, and the business
48 intends to employ not fewer than 500 full-time employees in the

1 qualified business facility. In the event that this certification by the
2 business's chief executive officer, or equivalent officer, is found to
3 be willfully false, the authority may revoke any award of tax credits
4 in their entirety, which revocation shall be in addition to any other
5 criminal or civil penalties that the business and the officer may be
6 subject to. When considering an application involving intra-State
7 job transfers, the authority shall require the company to submit the
8 following information as part of its application: a full economic
9 analysis of all locations under consideration by the company; all
10 lease agreements, ownership documents, or substantially similar
11 documentation for the business's current in-State locations; and all
12 lease agreements, ownership documents, or substantially similar
13 documentation for the potential out-of-State location alternatives, to
14 the extent they exist. Based on this information, and any other
15 information deemed relevant by the authority, the authority shall
16 independently verify and confirm, by way of making a factual
17 finding by separate vote of the authority's board, the business's
18 assertion that the jobs are actually at risk of leaving the State,
19 before a business may be awarded any tax credits under this
20 section.²

21 b. A business shall apply for the credit within five years after
22 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and ¹[a
23 business]¹ shall submit its documentation for approval of its credit
24 amount within eight years after the effective date of P.L.2007, c.346
25 (C.34:1B-207 et seq.).

26 c. (1) The amount of credit allowed shall, except as otherwise
27 provided, be equal to the capital investment made by the business,
28 or the capital investment represented by the business' leased area, or
29 area owned by the business as a condominium, and shall be taken
30 over a 10-year period, at the rate of one-tenth of the total amount of
31 the business' credit for each tax accounting or privilege period of
32 the business, beginning with the tax period in which the business is
33 first approved by the authority as having met the investment capital
34 and employment qualifications, subject to any reduction or
35 disqualification as provided by subsection d. of this section as
36 determined by annual review by the authority. In conducting its
37 annual review, the authority may require a business to submit any
38 information determined by the authority to be necessary and
39 relevant to its review.

40 The credit amount for any tax period ending after the date eight
41 years after the effective date of P.L.2007, c.346 (C.34:1B-207 et
42 seq.) during which the documentation of a business' credit amount
43 remains unapproved shall be forfeited, although credit amounts for
44 the remainder of the years of the 10-year credit period shall remain
45 available to it.

46 The credit amount that may be taken for a tax period of the
47 business that exceeds the final liabilities of the business for the tax
48 period may be carried forward for use by the business in the next 20

1 successive tax periods, and shall expire thereafter, provided that the
2 value of all credits ¹**[applied]** approved by the authority¹ against
3 tax liabilities pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in
4 any fiscal year shall not exceed \$150,000,000.

5 The amount of credit allowed for a tax period to a business that
6 is a tenant in a qualified business facility shall not exceed the
7 business' total lease payments for occupancy of the qualified
8 business facility for the tax period.

9 (2) A business that is a partnership shall not be allowed a credit
10 under this section directly, but the amount of credit of an owner of a
11 business shall be determined by allocating to each owner of the
12 partnership that proportion of the credit of the business that is equal
13 to the owner of the partnership's share, whether or not distributed,
14 of the total distributive income or gain of the partnership for its tax
15 period ending within or with the owner's tax period, or that
16 proportion that is allocated by an agreement, if any, among the
17 owners of the partnership that has been provided to the Director of
18 the Division of Taxation in the Department of the Treasury by such
19 time and accompanied by such additional information as the
20 director may require.

21 (3) The amount of credit allowed may be applied against the tax
22 liability otherwise due pursuant to section 5 of P.L.1945, c.162
23 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132
24 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950,
25 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

26 d. (1) If, in any tax period, fewer than 200 full-time employees
27 of the business at the qualified business facility are employed in
28 new full-time positions, the amount of the credit otherwise
29 determined pursuant to final calculation of the award of tax credits
30 pursuant to subsection c. of this section shall be reduced by 20
31 percent for that tax period and each subsequent tax period until the
32 first period for which documentation demonstrating the restoration
33 of the 200 full-time employees employed in new full-time positions
34 at the qualified business facility has been reviewed and approved by
35 the authority, for which tax period and each subsequent tax period
36 the full amount of the credit shall be allowed; provided, however,
37 that for businesses applying before January 1, 2010, there shall be
38 no reduction if a business relocates to an urban transit hub from
39 another location or other locations in the same municipality. For
40 the purposes of this paragraph, a "new full-time position" means a
41 position created by the business at the qualified business facility
42 that did not previously exist in this State.

43 (2) If, in any tax period, the business reduces the total number
44 of full-time employees in its Statewide workforce by more than 20
45 percent from the number of full-time employees in its Statewide
46 workforce in the last tax accounting or privilege period prior to the
47 credit amount approval under this section, then the business shall
48 forfeit its credit amount for that tax period and each subsequent tax

1 period, until the first tax period for which documentation
2 demonstrating the restoration of the business' Statewide workforce
3 to the threshold levels required by this paragraph has been reviewed
4 and approved by the authority, for which tax period and each
5 subsequent tax period the full amount of the credit shall be allowed.

6 (3) If, in any tax period, ²(a)² the number of full-time employees
7 employed by the business at the qualified business facility located
8 in an urban transit hub within an eligible municipality drops below
9 250 ², or (b) the number of full-time employees, who are not the
10 subject of intra-State job transfers, pursuant to paragraph (8) of
11 subsection a. of this section, employed by the business at any other
12 business facility in the State, whether or not located in an urban
13 transit hub within an eligible municipality, drops by more than 20
14 percent from the number of full-time employees in its workforce in
15 the last tax accounting or privilege period prior to the credit amount
16 approval under this section,² then the business shall forfeit its credit
17 amount for that tax period and each subsequent tax period, until the
18 first tax period for which documentation demonstrating the
19 restoration of the number of full-time employees employed by the
20 business at the qualified business facility to 250 ²or an increase
21 above the 20 percent reduction² has been reviewed and approved by
22 the authority, for which tax period and each subsequent tax period
23 the full amount of the credit shall be allowed.

24 (4) (i) If the qualified business facility is sold in whole or in part
25 during the 10-year eligibility period the new owner shall not acquire
26 the capital investment of the seller and the seller shall forfeit all
27 credits for the tax period in which the sale occurs and all subsequent
28 tax periods, provided however that any credits of tenants shall
29 remain unaffected.

30 (ii) If a tenant subleases its tenancy in whole or in part during
31 the 10-year eligibility period the new tenant shall not acquire the
32 credit of the sublessor, and the sublessor tenant shall forfeit all
33 credits for the tax period of its sublease and all subsequent tax
34 periods.

35 e. (1) The Executive Director of the New Jersey Economic
36 Development Authority, in consultation with the Director of the
37 Division of Taxation in the Department of the Treasury, shall adopt
38 rules in accordance with the "Administrative Procedure Act,"
39 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
40 this act, including but not limited to: examples of and the
41 determination of capital investment; the enumeration of eligible
42 municipalities; specific delineation of urban transit hubs; the
43 determination of the limits, if any, on the expense or type of
44 furnishings that may constitute capital improvements; the
45 promulgation of procedures and forms necessary to apply for a
46 credit ¹, including the enumeration of the certification procedures
47 and allocation of tax credits for different phases of a qualified

1 business facility or mixed use project¹ ; and provisions for credit
2 applicants to be charged an initial application fee, and ongoing
3 service fees, to cover the administrative costs related to the credit.

4 (2) Through regulation, the Economic Development Authority
5 shall establish standards based on the green building manual
6 prepared by the Commissioner of Community Affairs pursuant to
7 section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of
8 renewable energy, energy-efficient technology, and non-renewable
9 resources in order to reduce environmental degradation and
10 encourage long-term cost reduction.

11 (cf: P.L.2009, c.90, s.32)

12

13 ¹3. Section 34 of P.L.2009, c.90 (C.34:1B-209.2) is amended to
14 read as follows:

15 34. As used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-
16 209.2 and C.34:1B-209.3), the terms "affiliate," "authority,"
17 "capital investment," "eligible municipality," "partnership,"
18 "residential unit," and "urban transit hub" shall have the same
19 meanings as ascribed thereto in the "Urban Transit Hub Tax Credit
20 Act," P.L.2007, c.346 (C.34:1B-207 et seq.), as amended by
21 P.L.2009, c.90 (C.52:27D-489a et al.), **[except]** provided that all
22 references therein to "business" and "qualified business facility"
23 shall be deemed to refer respectively to "developer" and "qualified
24 residential project," as such terms are defined in this section.
25 Provided however, for purposes of a "mixed use project" as that
26 term is defined and used pursuant to subparagraph b. of paragraph 4
27 of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3),
28 "qualified business facility" means that term as defined pursuant to
29 section 2 of P.L.2007, c.346 (C.34:1B-208). In addition, as used in
30 sections 34 and 35 of P.L.2009, c.90 (C.34:1B-209.2 and C.34:1B-
31 209.3):

32 "Developer" shall have the same meaning as "business," as such
33 term is defined in the "Urban Transit Hub Tax Credit Act,"
34 P.L.2007, c.346 (C.34:1B-207 et seq.), as amended by P.L.2009,
35 c.90 (C.52:27D-489a et al.).

36 "Qualified residential project" means any building, complex of
37 buildings or structural components of buildings **[, including a**
38 **mixed use project,]** consisting predominantly of residential units,
39 located in an urban transit hub within an eligible municipality.¹

40 (cf: P.L.2009, c.90, s.34)

41

42 ¹**[3.] 4.**¹ Section 35 of P.L.2009, c.90 (C.34:1B-209.3) is
43 amended to read as follows:

44 35. a. (1) A developer, upon application to and approval from
45 the authority, shall be allowed a credit of up to **[20]** 35 percent of
46 its capital investment, made after the effective date of P.L.2009,
47 c.90 (C.52:27D-489a et al.) but prior to its submission of

1 documentation pursuant to subsection c. of this section, in a
2 qualified residential project, pursuant to the restrictions and
3 requirements of this section. To be eligible for any tax credits
4 authorized under this section, a developer shall demonstrate to the
5 authority, through a project pro forma analysis at the time of
6 application, that the qualified residential project is likely to be
7 realized with the provision of tax credits at the level requested but
8 is not likely to be accomplished by private enterprise without the
9 tax credits. The value of all credits approved by the authority
10 pursuant to P.L.2009, c.90 (C.52:27D-489a et al.) for qualified
11 residential projects may be up to \$150,000,000, except as may be
12 increased by the authority as set forth below; provided, however,
13 that the combined value of all credits approved by the authority
14 pursuant to both P.L.2007, c.346 (C.34:1B-207 et seq.) and
15 P.L.2009, c.90 (C.52:27D-489a et al.) shall not exceed
16 \$1,500,000,000. The authority shall monitor application and
17 allocation activity under P.L.2007, c.346 (C.34:1B-207 et seq.), and
18 if sufficient credits are available after taking into account allocation
19 under P.L.2007, c.346 (C.34:1B-207 et seq.) to those qualified
20 business facilities for which applications have been filed or for
21 which applications are reasonably anticipated, and if the executive
22 director judges certain qualified residential projects to be
23 meritorious, the aforementioned \$150,000,000 cap may, in the
24 discretion of the executive director, be exceeded for allocation to
25 qualified residential projects in such amounts as the executive
26 director deems reasonable, justified, and appropriate. In allocating
27 all credits to qualified residential projects under this section, the
28 executive director shall take into account, together with other
29 factors deemed relevant by the executive director: input from the
30 municipality in which the project is to be located, whether the
31 project furthers specific State or municipal planning and
32 development objectives, or both, and whether the project furthers a
33 public purpose, such as catalyzing urban development or
34 maximizing the value of vacant, dilapidated, outmoded,
35 government-owned, or underutilized property, or both.

36 (2) A developer shall make or acquire capital investments
37 totaling not less than \$50,000,000 in a qualified residential project
38 to be eligible for a credit under this section. A developer that
39 acquires a qualified residential project shall also be deemed to have
40 acquired the capital investment made or acquired by the seller.

41 (3) The capital investment requirement may be met by the
42 developer or by one or more of its affiliates.

43 ¹(4) A developer of a mixed use project shall be allowed a credit
44 pursuant to subparagraphs (a) or (b) of this paragraph, but not both.

45 (a) A developer shall be allowed a credit in accordance with this
46 section for a qualified residential project that includes a mixed use
47 project.

1 (b) A developer shall be allowed a credit of up to 35 percent of
2 its capital investment, made after the effective date of P.L. _____,
3 c. (pending before the Legislature as this bill) but prior to its
4 submission of documentation pursuant to subsection c. of this
5 section, in a qualified residential project that is part of a mixed use
6 project, provided that: (a) the capital investment in the qualified
7 residential project represents at least \$17,500,000 of the total capital
8 investment in the mixed use project; and (b) the total capital
9 investment in the mixed use project of which the qualified
10 residential project is a part is not less than \$50,000,000. The
11 allowance of credits under this paragraph shall be subject to the
12 restrictions and requirements, to the extent that those are not
13 inconsistent with the provisions of this paragraph, set forth in
14 paragraphs (1) through (3) of this subsection, including but not
15 limited to the requirement prescribed in paragraph (1) of this
16 subsection that the developer shall demonstrate to the authority,
17 through a project pro forma analysis at the time of application, that
18 the qualified residential project is likely to be realized with the
19 provision of tax credits at the level requested but is not likely to be
20 accomplished by private enterprise without the tax credits.

21 As used in this subparagraph:

22 “Mixed use project” means a project comprising both a qualified
23 residential project and a qualified business facility.¹

24 b. A developer shall apply for the credit within five years after
25 the effective date of P.L.2009, c.90 (C.52:27D-489a et al.), and a
26 developer shall submit its documentation for approval of its credit
27 amount within eight years after the effective date of P.L.2009, c.90
28 (C.52:27D-489a et al.).

29 c. The credit shall be administered in accordance with the
30 provisions of subsections c. and e. of section 3 of P.L.2007, c.346
31 (C.34:1B-209), as amended by section 32 of P.L.2009, c.90, and
32 section 33 of P.L.2009, c.90 (C.34:1B-209.1), except that (1) all
33 references therein to "business" and "qualified business facility"
34 shall be deemed to refer respectively to "developer" and "qualified
35 residential project," as such terms are defined in section 34 of
36 P.L.2009, c.90 (C.34:1B-209.2) and (2) all references therein to
37 credits claimed by tenants and to reductions or disqualifications in
38 credits as determined by annual review of the authority shall be
39 disregarded. ¹Provided however, for purposes of a “mixed use
40 project” as that term is used and defined pursuant to subparagraph
41 b. of paragraph 4 of subsection a. of this section, “qualified business
42 facility” means that term as defined pursuant to section 2 of
43 P.L.2007, c.346 (C.34:1B-208).¹

44 (cf: P.L.2009, c.90, s.35)

45

46 ¹5. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended
47 to read as follows:

1 18. a. Notwithstanding any rules of the council to the contrary,
2 for developments consisting of newly-constructed residential units
3 located, or to be located, within the jurisdiction of any regional
4 planning entity required to adopt a master plan or comprehensive
5 management plan pursuant to statutory law, including the New
6 Jersey Meadowlands Commission pursuant to subsection (i) of
7 section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission
8 pursuant to section 7 of the "Pinelands Protection Act," P.L.1979,
9 c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization
10 Planning Authority pursuant to section 5 of P.L.2006, c.16
11 (C.52:27I-5), or its successor, and the Highlands Water Protection
12 and Planning Council pursuant to section 11 of P.L.2004, c.120
13 (C.13:20-11), but excluding joint planning boards formed pursuant
14 to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be
15 required to be reserved for occupancy by low or moderate income
16 households at least 20 percent of the residential units constructed, to
17 the extent this is economically feasible.

18 b. ²[A] Subject to the provisions of subsection d. of this
19 section, a² developer of a project consisting of newly-constructed
20 residential units being financed in whole or in part with State funds,
21 including, but not limited to, transit villages designated by the
22 Department of Transportation ²[,] and² units constructed on State-
23 owned property, [and urban transit hubs as defined pursuant to
24 section 2 of P.L.2007, c.346 (C.34:1B-208),] shall be required to
25 reserve at least 20 percent of the residential units constructed for
26 occupancy by low or moderate income households, as those terms
27 are defined in section 4 of P.L.1985, c.222 (C.52:27D-304), with
28 affordability controls as required under the rules of the council,
29 unless the municipality in which the property is located has
30 received substantive certification from the council and such a
31 reservation is not required under the approved affordable housing
32 plan, or the municipality has been given a judgment of repose or a
33 judgment of compliance by the court, and such a reservation is not
34 required under the approved affordable housing plan.

35 c. (1) The Legislature recognizes that regional planning entities
36 are appropriately positioned to take a broader role in the planning
37 and provision of affordable housing based on regional planning
38 considerations. In recognition of the value of sound regional
39 planning, including the desire to foster economic growth, create a
40 variety and choice of housing near public transportation, protect
41 critical environmental resources, including farmland and open space
42 preservation, and maximize the use of existing infrastructure, there
43 is created a new program to foster regional planning entities.

44 (2) The regional planning entities identified in subsection a. of
45 this section shall identify and coordinate regional affordable
46 housing opportunities in cooperation with municipalities in areas
47 with convenient access to infrastructure, employment opportunities,

1 and public transportation. Coordination of affordable housing
2 opportunities may include methods to regionally provide housing in
3 line with regional concerns, such as transit needs or opportunities,
4 environmental concerns, or such other factors as the council may
5 permit; provided, however, that such provision by such a regional
6 entity may not result in more than a 50 percent change in the fair
7 share obligation of any municipality; provided that this limitation
8 shall not apply to affordable housing units directly attributable to
9 development by the New Jersey Sports and Exposition Authority
10 within the New Jersey Meadowlands District.

11 (3) In addition to the entities identified in subsection a. of this
12 section, the Casino Reinvestment Development Authority, in
13 conjunction with the Atlantic County Planning Board, shall identify
14 and coordinate regional affordable housing opportunities directly
15 attributable to Atlantic City casino development, which may be
16 provided anywhere within Atlantic County, subject to the
17 restrictions of paragraph (4) of this subsection.

18 (4) The coordination of affordable housing opportunities by
19 regional entities as identified in this section shall not include
20 activities which would provide housing units to be located in those
21 municipalities that are eligible to receive aid under the "Special
22 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or
23 are coextensive with a school district which qualified for
24 designation as a "special needs district" pursuant to the "Quality
25 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at
26 any time in the last 10 years has been qualified to receive assistance
27 under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the
28 jurisdiction of any of the regional entities specified in subsection a.
29 of this section.

30 d. Notwithstanding the provisions of subsection b. of this
31 section, or any other law or regulation to the contrary, for ²[the]²
32 purposes of mixed use projects or qualified residential projects
33 ²[where] in which² a business receives ²[an urban transit hub] a²
34 tax credit pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) ²or a
35 tax credit pursuant to section 35 of P.L.2009, c.90 (C.34:1B-209.3),
36 or both², an "eligible municipality," as defined in section 2 of
37 P.L.2007, c.346 (C.34:1B-208), shall have the option of deciding
38 the percentage of newly-constructed residential units within the
39 project, up to 20 percent of the total, required to be reserved for
40 occupancy by low or moderate income households ²[within an
41 "urban transit hub" established pursuant to P.L.2007, c.346]. For a
42 mixed use project or a qualified residential project that has received
43 preliminary or final site plan approval prior to the effective date of
44 P.L. , c. (C.) (pending before the Legislature as this bill), the
45 percentage shall be deemed to be the percentage, if any, of units
46 required to be reserved for low or moderate income households in

1 accordance with the terms and conditions of such approval² .¹
2 (cf: P.L.2008, c.46, s.18)

3

4 ²6. Section 3 of P.L.2009, c.90 (C.52:27D-489c) is amended to
5 read as follows:

6 3. As used in sections 3 through 18 of P.L.2009, c.90
7 (C.52:27D-489c et al.):

8 "Applicant" means a developer proposing to enter into a
9 redevelopment incentive grant agreement.

10 "Ancillary infrastructure project" means public structures or
11 improvements that are located in the public right-of-way outside the
12 project area of a redevelopment project, provided a developer or
13 municipal redeveloper has demonstrated that the redevelopment
14 project would not be economically viable without such
15 improvements.

16 "Authority" means the New Jersey Economic Development
17 Authority established under section 4 of P.L.1974, c.80 (C.34:1B-
18 4).

19 "Developer" means any person who enters or proposes to enter
20 into a redevelopment incentive grant agreement pursuant to the
21 provisions of section 9 of P.L.2009, c.90 (C.52:27D-489i). A
22 developer also may be a municipal government or a redevelopment
23 agency as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3).

24 "Director" means the Director of the Division of Taxation in the
25 Department of the Treasury.

26 "Eligible revenue" means the property tax increment and any
27 other incremental revenues set forth in section 11 of P.L.2009, c.90
28 (C.52:27D-489k).

29 "Incentive grant" means reimbursement of all or a portion of the
30 project financing gap of a redevelopment project through the State
31 or a local Economic Redevelopment and Growth Grant program
32 pursuant to section 4 or section 5 of P.L.2009, c.90 (C.52:27D-489d
33 or C.52:27D-489e).

34 "Infrastructure improvements in the public right-of-way" mean
35 public structures or improvements located in the public right of way
36 that are located within a project area or that constitute an ancillary
37 infrastructure project.

38 "Municipal redeveloper" means a municipal government or a
39 redevelopment agency acting on behalf of a municipal government
40 as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3) that is an
41 applicant for a redevelopment incentive grant agreement.

42 "Project area" means land or lands under common ownership or
43 control including through a redevelopment agreement with a
44 municipality or as otherwise established by a municipality.

45 "Project financing gap" means the part of the total
46 redevelopment project cost, including return on investment, that
47 remains to be financed after all other sources of capital have been
48 accounted for, including, but not limited to, developer contributed

1 capital, which shall not be less than 20 percent of the total project
2 cost, and investor or financial entity capital or loans for which the
3 developer, after making all good faith efforts to raise additional
4 capital, certifies that additional capital cannot be raised from other
5 sources.

6 "Project revenue" means all rents, fees, sales, and payments
7 generated by a project, less taxes or other government payments.

8 "Property tax increment" means the amount obtained by:

9 (1) multiplying the general tax rate levied each year by the
10 taxable value of all the property assessed within a project area in
11 the same year, excluding any special assessments; and

12 (2) multiplying that product by a fraction having a numerator
13 equal to the taxable value of all the property assessed within the
14 project area, minus the property tax increment base, and having a
15 denominator equal to the taxable value of all property assessed
16 within the project area.

17 For the purpose of this definition, "property tax increment base"
18 means the aggregate taxable value of all property assessed which is
19 located within the redevelopment project area as of October 1st of
20 the year preceding the year in which the redevelopment incentive
21 grant agreement is authorized.

22 "Qualifying economic redevelopment and growth grant incentive
23 area" means Planning Area 1 (Metropolitan), Planning Area 2
24 (Suburban), or a center as designated by the State Planning
25 Commission; an area zoned for development pursuant to a master
26 plan adopted by the New Jersey Meadowlands Commission
27 pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-
28 6) or subject to a redevelopment plan adopted by the New Jersey
29 Meadowlands Commission pursuant to section 20 of P.L.1968,
30 c.404 (C.13:17-21); any land owned by the New Jersey Sports and
31 Exposition Authority, established pursuant to P.L.1971, c.137
32 (C.5:10-1 et seq.), within the boundaries of the Hackensack
33 Meadowlands District as delineated in section 4 of P.L.1968, c.404
34 (C.13:17-4); a pinelands regional growth area, a pinelands town
35 management area, a pinelands village, or a military and federal
36 installation area established pursuant to the pinelands
37 comprehensive management plan adopted pursuant to P.L.1979,
38 c.111 (C.13:18A-1 et seq.); a transit village, as determined by the
39 Commissioner of Transportation; and federally owned land
40 approved for closure under a federal Base Realignment Closing
41 Commission action.

42 "Redevelopment incentive grant agreement" means an agreement
43 between, (1) the State and the New Jersey Economic Development
44 Authority and a developer, or (2) a municipality and a developer, or
45 a municipal ordinance authorizing a project to be undertaken by a
46 municipal redeveloper, under which, in exchange for the proceeds
47 of an incentive grant, the developer agrees to perform any work or
48 undertaking necessary for a redevelopment project, including the

1 clearance, development or redevelopment, construction, or
 2 rehabilitation of any structure or improvement of commercial,
 3 industrial, residential, or public structures or improvements within a
 4 qualifying economic redevelopment and growth grant incentive area
 5 or a transit village.

6 "Redevelopment project" means a specific work or improvement,
 7 including lands, buildings, improvements, real and personal
 8 property or any interest therein, including lands under water,
 9 riparian rights, space rights and air rights, acquired, owned,
 10 developed or redeveloped, constructed, reconstructed, rehabilitated
 11 or improved, undertaken by a developer within a project area and
 12 any ancillary infrastructure project associated therewith.

13 "Redevelopment utility" means a self-liquidating fund created by
 14 a municipality pursuant to section 12 of P.L.2009, c.90 (C.52:27D-
 15 489l) to account for revenues collected and incentive grants paid
 16 pursuant to section 11 of P.L.2009, c.90 (C.52:27D-489k), or other
 17 revenues dedicated to a redevelopment project.

18 "Revenue increment base" means the amounts of all eligible
 19 revenues from sources within the redevelopment project area in the
 20 calendar year preceding the year in which the redevelopment
 21 incentive grant agreement is executed, as certified by the State
 22 Treasurer for State revenues, and the chief financial officer of the
 23 municipality for municipal revenues.

24 "Transit village" means a community with a bus, train, light rail,
 25 or ferry station that has developed a plan to achieve its economic
 26 development and revitalization goals and has been designated by
 27 the New Jersey Department of Transportation as a transit village.²
 28 (cf: P.L.2010, c.10, s.4)

29
 30 ^{27.} (New section) The provisions of P.L. , c. (C.)
 31 (pending before the Legislature as this bill) shall be severable, and
 32 if any of its provisions shall be held to be unconstitutional, the
 33 decision of the court shall not affect the validity of the remaining
 34 provisions of P.L. , c. (C.) (pending before the Legislature
 35 as this bill).²

36
 37 ¹[4.] ²[6.1] ^{8.} ² This act shall take effect immediately.

38
 39
 40
 41
 42 Makes various changes to urban transit hub tax credit program
 43 concerning mixed use projects, in-State job relocation, tax credit
 44 and investment criteria, and affordable housing; makes certain NJ
 45 Meadowlands area properties eligible for incentive grants.

SENATE, No. 2972

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED JUNE 20, 2011

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator DONALD NORCROSS

District 5 (Camden and Gloucester)

SYNOPSIS

Allows businesses under “Urban Transit Hub Tax Credit Program” to carry forward tax credits; increases proportion of cost of capital invested in certain projects that developers could receive as tax credits.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the urban transit hub tax credit program and
2 amending P.L.2007, c.346 and P.L.2009, c.90.

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.2007, c.346 (C.34:1B-208) is amended to
8 read as follows:

9 2. As used in this act:

10 "Affiliate" means an entity that directly or indirectly controls, is
11 under common control with, or is controlled by the business.
12 Control exists in all cases in which the entity is a member of a
13 controlled group of corporations as defined pursuant to section 1563
14 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the
15 entity is an organization in a group of organizations under common
16 control as defined pursuant to subsection (b) or (c) of section 414 of
17 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
18 may establish by clear and convincing evidence, as determined by
19 the Director of the Division of Taxation in the Department of the
20 Treasury, that control exists in situations involving lesser
21 percentages of ownership than required by those statutes. An
22 affiliate of a business may contribute to meeting either the qualified
23 investment or full-time employee requirements of a business that
24 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
25 209).

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

28 "Business" means a corporation that is subject to the tax imposed
29 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a
30 corporation that is subject to the tax imposed pursuant to sections 2
31 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of
32 P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership,
33 an S corporation, or a limited liability corporation. A business shall
34 include an affiliate of the business if that business applies for a
35 credit based upon any capital investment made by or full-time
36 employees of an affiliate.

37 "Capital investment" in a qualified business facility means
38 expenses incurred after, but before the end of the eighth year after,
39 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a.
40 the site preparation and construction, repair, renovation,
41 improvement, equipping, or furnishing of a building, structure,
42 facility or improvement to real property; and b. obtaining and
43 installing furnishings and machinery, apparatus or equipment for
44 the operation of a business in a building, structure, facility or
45 improvement to real property.

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 "Eligible municipality" means a municipality: (1) which qualifies
2 for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or
3 which was continued to be a qualified municipality thereunder
4 pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of
5 the value of real property was exempt from local property taxation
6 during tax year 2006. The percentage of exempt property shall be
7 calculated by dividing the total exempt value by the sum of the net
8 valuation which is taxable and that which is tax exempt.

9 "Full-time employee" means a person employed by the business
10 for consideration for at least 35 hours a week, or who renders any
11 other standard of service generally accepted by custom or practice
12 as full-time employment, or a person who is employed by a
13 professional employer organization pursuant to an employee leasing
14 agreement between the business and the professional employer
15 organization, in accordance with P.L.2001, c.260 (C.34:8-67 et
16 seq.) for at least 35 hours a week, or who renders any other standard
17 of service generally accepted by custom or practice as full-time
18 employment, and 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. or an employee who is a resident of another State but whose
21 income is not subject to the "New Jersey Gross Income Tax Act,"
22 N.J.S.54A:1-1 et seq. or who is a partner of a business who works
23 for the partnership for at least 35 hours a week, or who renders any
24 other standard of service generally accepted by custom or practice
25 as full-time employment, and whose distributive share of income,
26 gain, loss, or deduction, or whose guaranteed payments, or any
27 combination thereof, is subject to the payment of estimated taxes, as
28 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
29 et seq. "Full-time employee" shall not include any person who
30 works as an independent contractor or on a consulting basis for the
31 business.

32 "Partnership" means an entity classified as a partnership for
33 federal income tax purposes.

34 "Professional employer organization" means an employee leasing
35 company registered with the Department of Labor and Workforce
36 Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

37 "Qualified business facility" means any building, complex of
38 buildings or structural components of buildings, and all machinery
39 and equipment located within a designated urban transit hub in an
40 eligible municipality, used in connection with the operation of a
41 business.

42 "Residential unit" means a residential dwelling unit such as a
43 rental apartment, a condominium or cooperative unit, a hotel room,
44 or a dormitory room.

45 "Urban transit hub" means:

46 a. property located within a 1/2 mile radius surrounding the
47 mid point of a New Jersey Transit Corporation, Port Authority
48 Transit Corporation or Port Authority Trans-Hudson Corporation

1 rail station platform area, including all light rail stations, and
2 property located within a one mile radius of the mid point of the
3 platform area of such a rail station if the property is in a qualified
4 municipality under the "Municipal Rehabilitation and Economic
5 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et seq.);

6 b. property located within a 1/2 mile radius surrounding the
7 mid point of one of up to two underground light rail stations'
8 platform areas that are most proximate to an interstate rail station;

9 c. property adjacent to, or connected by rail spur to, a freight
10 rail line if the business utilizes that freight line at any rail spur
11 located adjacent to or within a one mile radius surrounding the
12 entrance to the property for loading and unloading freight cars on
13 trains;

14 which property shall have been specifically delineated by the
15 authority pursuant to subsection e. of section 3 of P.L.2007, c.346
16 (C.34:1B-209).

17 A property which is partially included within the radius shall
18 only be considered part of the urban transit hub if over 50 percent
19 of its land area falls within the radius.

20 "Rail station" shall not include any rail station located at an
21 international airport.

22 (cf: P.L.2009, c.90, s.31)

23

24 2. Section 3 of P.L.2007, c.346 (C.34:1B-209) is amended to
25 read as follows:

26 3. a. (1) A business, upon application to and approval from the
27 authority, shall be allowed a credit of 100 percent of its capital
28 investment, made after the effective date of P.L.2007, c.346
29 (C.34:1B-207 et seq.) but prior to its submission of documentation
30 pursuant to subsection c. of this section, in a qualified business
31 facility within an eligible municipality, pursuant to the restrictions
32 and requirements of this section. To be eligible for any tax credits
33 authorized under this section, a business shall demonstrate to the
34 authority, at the time of application, that the State's financial
35 support of the proposed capital investment in a qualified business
36 facility will yield a net positive benefit to both the State and the
37 eligible municipality. The value of all credits approved by the
38 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall
39 not exceed \$1,500,000,000.

40 (2) A business, other than a tenant eligible pursuant to
41 paragraph (3) of this subsection, shall make or acquire capital
42 investments totaling not less than \$50,000,000 in a qualified
43 business facility, at which the business shall employ not fewer than
44 250 full-time employees to be eligible for a credit under this
45 section. A business that acquires a qualified business facility shall
46 also be deemed to have acquired the capital investment made or
47 acquired by the seller.

1 (3) A business that is a tenant in a qualified business facility, the
2 owner of which has made or acquired capital investments in the
3 facility totaling not less than \$50,000,000, shall occupy a leased
4 area of the qualified business facility that represents at least
5 \$17,500,000 of the capital investment in the facility at which the
6 tenant business and up to two other tenants in the qualified business
7 facility shall employ not fewer than 250 full-time employees in the
8 aggregate to be eligible for a credit under this section. The amount
9 of capital investment in a facility that a leased area represents shall
10 be equal to that percentage of the owner's total capital investment in
11 the facility that the percentage of net leasable area leased by the
12 tenant is of the total net leasable area of the qualified business
13 facility. Capital investments made by a tenant shall be deemed to
14 be included in the calculation of the capital investment made or
15 acquired by the owner, but only to the extent necessary to meet the
16 owner's minimum capital investment of \$50,000,000. Capital
17 investments made by a tenant and not allocated to meet the owner's
18 minimum capital investment threshold of \$50,000,000 shall be
19 added to the amount of capital investment represented by the
20 tenant's leased area in the qualified business facility.

21 (4) A business shall not be allowed tax credits under this section
22 if the business participates in a business employment incentive
23 grant relating to the same capital and employees that qualify the
24 business for this credit, or if the business receives assistance
25 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is
26 allowed a tax credit under this section shall not be eligible for
27 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et
28 al.). A business shall not qualify for a tax credit under this section,
29 based upon capital investment and employment of full-time
30 employees, if that capital investment or employment was the basis
31 for which a grant was provided to the business pursuant to the
32 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-
33 237 et seq.).

34 (5) Full-time employment for an accounting or privilege period
35 shall be determined as the average of the monthly full-time
36 employment for the period.

37 (6) The capital investment of the owner of a qualified business
38 facility is that percentage of the capital investment made or
39 acquired by the owner of the building that the percentage of net
40 leasable area of the qualified business facility not leased to tenants
41 is of the total net leasable area of the qualified business facility.

42 b. A business shall apply for the credit within five years after
43 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and a
44 business shall submit its documentation for approval of its credit
45 amount within eight years after the effective date of P.L.2007, c.346
46 (C.34:1B-207 et seq.).

47 c. (1) The amount of credit allowed shall, except as otherwise
48 provided, be equal to the capital investment made by the business,

1 or the capital investment represented by the business' leased area, or
2 area owned by the business as a condominium, and shall be taken
3 over a 10-year period, at the rate of one-tenth of the total amount of
4 the business' credit for each tax accounting or privilege period of
5 the business, beginning with the tax period in which the business is
6 first approved by the authority as having met the investment capital
7 and employment qualifications, subject to any reduction or
8 disqualification as provided by subsection d. of this section as
9 determined by annual review by the authority. In conducting its
10 annual review, the authority may require a business to submit any
11 information determined by the authority to be necessary and
12 relevant to its review.

13 The credit amount for any tax period ending after the date eight
14 years after the effective date of P.L.2007, c.346 (C.34:1B-207 et
15 seq.) during which the documentation of a business' credit amount
16 remains unapproved shall be forfeited, although credit amounts for
17 the remainder of the years of the 10-year credit period shall remain
18 available to it.

19 The credit amount that may be taken for a tax period of the
20 business that exceeds the final liabilities of the business for the tax
21 period may be carried forward for use by the business in the next 20
22 successive tax periods, and shall expire thereafter, provided that the
23 value of all credits applied against tax liabilities pursuant to
24 P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year shall not
25 exceed \$150,000,000.

26 The amount of credit allowed for a tax period to a business that
27 is a tenant in a qualified business facility shall not exceed the
28 business' total lease payments for occupancy of the qualified
29 business facility for the tax period.

30 (2) A business that is a partnership shall not be allowed a credit
31 under this section directly, but the amount of credit of an owner of a
32 business shall be determined by allocating to each owner of the
33 partnership that proportion of the credit of the business that is equal
34 to the owner of the partnership's share, whether or not distributed,
35 of the total distributive income or gain of the partnership for its tax
36 period ending within or with the owner's tax period, or that
37 proportion that is allocated by an agreement, if any, among the
38 owners of the partnership that has been provided to the Director of
39 the Division of Taxation in the Department of the Treasury by such
40 time and accompanied by such additional information as the
41 director may require.

42 (3) The amount of credit allowed may be applied against the tax
43 liability otherwise due pursuant to section 5 of P.L.1945, c.162
44 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132
45 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950,
46 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

47 d. (1) If, in any tax period, fewer than 200 full-time employees
48 of the business at the qualified business facility are employed in

1 new full-time positions, the amount of the credit otherwise
2 determined pursuant to final calculation of the award of tax credits
3 pursuant to subsection c. of this section shall be reduced by 20
4 percent for that tax period and each subsequent tax period until the
5 first period for which documentation demonstrating the restoration
6 of the 200 full-time employees employed in new full-time positions
7 at the qualified business facility has been reviewed and approved by
8 the authority, for which tax period and each subsequent tax period
9 the full amount of the credit shall be allowed; provided, however,
10 that for businesses applying before January 1, 2010, there shall be
11 no reduction if a business relocates to an urban transit hub from
12 another location or other locations in the same municipality. For
13 the purposes of this paragraph, a "new full-time position" means a
14 position created by the business at the qualified business facility
15 that did not previously exist in this State.

16 (2) If, in any tax period, the business reduces the total number
17 of full-time employees in its Statewide workforce by more than 20
18 percent from the number of full-time employees in its Statewide
19 workforce in the last tax accounting or privilege period prior to the
20 credit amount approval under this section, then the business shall
21 forfeit its credit amount for that tax period and each subsequent tax
22 period, until the first tax period for which documentation
23 demonstrating the restoration of the business' Statewide workforce
24 to the threshold levels required by this paragraph has been reviewed
25 and approved by the authority, for which tax period and each
26 subsequent tax period the full amount of the credit shall be allowed.

27 (3) If, in any tax period, the number of full-time employees
28 employed by the business at the qualified business facility located
29 in an urban transit hub within an eligible municipality drops below
30 250 then the business shall forfeit its credit amount for that tax
31 period and each subsequent tax period, until the first tax period for
32 which documentation demonstrating the restoration of the number
33 of full-time employees employed by the business at the qualified
34 business facility to 250 has been reviewed and approved by the
35 authority, for which tax period and each subsequent tax period the
36 full amount of the credit shall be allowed.

37 (4) (i) If the qualified business facility is sold in whole or in part
38 during the 10-year eligibility period the new owner shall not acquire
39 the capital investment of the seller and the seller shall forfeit all
40 credits for the tax period in which the sale occurs and all subsequent
41 tax periods, provided however that any credits of tenants shall
42 remain unaffected.

43 (ii) If a tenant subleases its tenancy in whole or in part during
44 the 10-year eligibility period the new tenant shall not acquire the
45 credit of the sublessor, and the sublessor tenant shall forfeit all
46 credits for the tax period of its sublease and all subsequent tax
47 periods.

1 e. (1) The Executive Director of the New Jersey Economic
2 Development Authority, in consultation with the Director of the
3 Division of Taxation in the Department of the Treasury, shall adopt
4 rules in accordance with the "Administrative Procedure Act,"
5 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
6 this act, including but not limited to: examples of and the
7 determination of capital investment; the enumeration of eligible
8 municipalities; specific delineation of urban transit hubs; the
9 determination of the limits, if any, on the expense or type of
10 furnishings that may constitute capital improvements; the
11 promulgation of procedures and forms necessary to apply for a
12 credit; and provisions for credit applicants to be charged an initial
13 application fee, and ongoing service fees, to cover the
14 administrative costs related to the credit.

15 (2) Through regulation, the Economic Development Authority
16 shall establish standards based on the green building manual
17 prepared by the Commissioner of Community Affairs pursuant to
18 section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of
19 renewable energy, energy-efficient technology, and non-renewable
20 resources in order to reduce environmental degradation and
21 encourage long-term cost reduction.

22 (cf: P.L.2009, c.90, s.32)

23

24 3. Section 35 of P.L.2009, c.90 (C.34:1B-209.3) is amended to
25 read as follows:

26 35. a. (1) A developer, upon application to and approval from
27 the authority, shall be allowed a credit of up to ~~20~~ 35 percent of
28 its capital investment, made after the effective date of P.L.2009,
29 c.90 (C.52:27D-489a et al.) but prior to its submission of
30 documentation pursuant to subsection c. of this section, in a
31 qualified residential project, pursuant to the restrictions and
32 requirements of this section. To be eligible for any tax credits
33 authorized under this section, a developer shall demonstrate to the
34 authority, through a project pro forma analysis at the time of
35 application, that the qualified residential project is likely to be
36 realized with the provision of tax credits at the level requested but
37 is not likely to be accomplished by private enterprise without the
38 tax credits. The value of all credits approved by the authority
39 pursuant to P.L.2009, c.90 (C.52:27D-489a et al.) for qualified
40 residential projects may be up to \$150,000,000, except as may be
41 increased by the authority as set forth below; provided, however,
42 that the combined value of all credits approved by the authority
43 pursuant to both P.L.2007, c.346 (C.34:1B-207 et seq.) and
44 P.L.2009, c.90 (C.52:27D-489a et al.) shall not exceed
45 \$1,500,000,000. The authority shall monitor application and
46 allocation activity under P.L.2007, c.346 (C.34:1B-207 et seq.), and
47 if sufficient credits are available after taking into account allocation
48 under P.L.2007, c.346 (C.34:1B-207 et seq.) to those qualified

1 business facilities for which applications have been filed or for
2 which applications are reasonably anticipated, and if the executive
3 director judges certain qualified residential projects to be
4 meritorious, the aforementioned \$150,000,000 cap may, in the
5 discretion of the executive director, be exceeded for allocation to
6 qualified residential projects in such amounts as the executive
7 director deems reasonable, justified, and appropriate. In allocating
8 all credits to qualified residential projects under this section, the
9 executive director shall take into account, together with other
10 factors deemed relevant by the executive director: input from the
11 municipality in which the project is to be located, whether the
12 project furthers specific State or municipal planning and
13 development objectives, or both, and whether the project furthers a
14 public purpose, such as catalyzing urban development or
15 maximizing the value of vacant, dilapidated, outmoded,
16 government-owned, or underutilized property, or both.

17 (2) A developer shall make or acquire capital investments
18 totaling not less than \$50,000,000 in a qualified residential project
19 to be eligible for a credit under this section. A developer that
20 acquires a qualified residential project shall also be deemed to have
21 acquired the capital investment made or acquired by the seller.

22 (3) The capital investment requirement may be met by the
23 developer or by one or more of its affiliates.

24 b. A developer shall apply for the credit within five years after
25 the effective date of P.L.2009, c.90 (C.52:27D-489a et al.), and a
26 developer shall submit its documentation for approval of its credit
27 amount within eight years after the effective date of P.L.2009, c.90
28 (C.52:27D-489a et al.).

29 c. The credit shall be administered in accordance with the
30 provisions of subsections c. and e. of section 3 of P.L.2007, c.346
31 (C.34:1B-209), as amended by section 32 of P.L.2009, c.90, and
32 section 33 of P.L.2009, c.90 (C.34:1B-209.1), except that (1) all
33 references therein to "business" and "qualified business facility"
34 shall be deemed to refer respectively to "developer" and "qualified
35 residential project," as such terms are defined in section 34 of
36 P.L.2009, c.90 (C.34:1B-209.2) and (2) all references therein to
37 credits claimed by tenants and to reductions or disqualifications in
38 credits as determined by annual review of the authority shall be
39 disregarded.

40 (cf: P.L.2009, c.90, s.35)

41

42 4. This act shall take effect immediately.

43

44

45

STATEMENT

46

47 This bill makes changes to the "Urban Transit Hub Tax Credit
48 Program" ("program") to allow businesses receiving tax credits

S2972 LESNIAK, NORCROSS

10

1 under the program to: 1) carry forward the credits into no more than
2 20 subsequent tax accounting or privilege periods and limit the
3 amount allowed in any fiscal year to \$150 million; and 2) increase
4 from 20 to 35 percent the proportion of the cost of capital invested
5 in a qualified residential project located within an urban transit hub
6 that a developer could receive as a tax credit. The bill expands the
7 definition of “urban transit hub” to include property at any rail spur
8 located adjacent to or within a one mile radius surrounding the
9 entrance to property used by the business for loading and unloading
10 freight cars on trains.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 2972

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 23, 2011

The Senate Economic Growth Committee reports favorably Senate Bill No. 2972 with committee amendments.

As amended by the committee, this bill expands the “Urban Transit Hub Tax Credit Act” (“UTHTCA”) and the “New Jersey Economic Stimulus Act of 2009” (“Stimulus Act”) to include certain mixed use projects as creditable investments and to change the manner in which the tax credits under the UTHTCA are treated by eligible businesses. Under the UTHTCA, a business may receive tax credits of up to 100 percent of its qualified capital investment in a business facility that (1) is located in an urban transit hub (i.e., an “urban aid” municipality, served by a commuter rail station, in which at least 30 percent of real property value is exempt from property taxes), and (2) employs at least 250 persons at the facility. Annually for ten years, the business may apply a credit equal to 10 percent of the amount of the investment against corporation business tax, insurance premiums tax or gross income tax liability. A tenant in these qualified business facilities may also be allowed credits, if the tenant occupies space in the facility that proportionally represents at least \$17,500,000 of the capital investment in the facility and employs at least 250 persons in the facility. For a business or a tenant to be eligible for the credit, the owner of the facility has to have made or acquired capital investments in the facility of not less than \$50 million.

Under a separate but similar urban transit hub tax credit program enacted as part of the Stimulus Act, a developer may receive tax credits of up to 20 percent of its capital investment in a qualified residential project located in an urban transit hub, subject to the same \$50 million project investment requirement applicable to a qualified business facility.

This amended bill extends eligibility to participants for these credits of up to 35 percent of its capital investment in a mixed use project comprising both a qualified business facility and a qualified residential project, neither of which by itself satisfies the total investment minimum of \$50 million, so long as (1) the investment in the component of the mixed use project for which the participant seeks credit amounts to at least \$17.5 million, and (2) the total amount

invested in the mixed use project as a whole is at least \$50 million. The amended bill also provides that, for purposes of UTHTCA, a mixed use project's business component must employ 250 full-time employees to qualify.

Additionally, the amended bill makes changes to the UTHTCA to allow businesses receiving tax credits under the UTHTCA to (1) carry forward the credits into no more than 20 subsequent tax accounting or privilege periods and limit the amount allowed in any fiscal year to \$150 million, and (2) increase from 20 to 35 percent the proportion of the cost of capital invested in a qualified residential project located within an urban transit hub that a developer could receive as a tax credit. The amended bill clarifies the definition of "urban transit hub" so that businesses may utilize any rail spur located adjacent to or within a one mile radius surrounding the entrance to property for loading and unloading freight cars on trains.

The amended bill prohibits the New Jersey Economic Development Authority ("EDA") from treating the relocation of a job within the State as a factor in making its determination of whether a capital investment would yield a net positive benefit to the State, unless the business proposes to transfer existing jobs as part of a consolidation of business operations from two or more locations and municipalities. The determination of a net positive benefit by the EDA shall not apply to any applications submitted to the EDA on or before June 22, 2011. Currently, the EDA considers a job that will be relocated within the State as a new job and therefore, creating a benefit.

Finally, for the purposes of mixed use projects or qualified residential projects where a business receives an urban transit hub tax credit, the amended bill allows eligible municipalities under the UTHTCA to determine the amount of the percentage, up to 20 percent of the total, of newly-constructed residential units set aside for occupancy by low or moderate income households within an urban transit hub.

The committee amended the bill to: (1) extend eligibility for credits under the UTHTCA to developers of mixed use projects; (2) prohibit the EDA from treating the relocation of a job from one municipality to another within the State as a factor in making its determination of whether a capital investment would yield a net positive benefit to the State, unless the relocation is part of a consolidation of business operations; and (3) allow eligible municipalities under the UTHTCA to determine the percentage of newly-constructed residential units to be set aside for occupancy by low or moderate income households.

STATEMENT TO
[First Reprint]
SENATE, No. 2972

with Senate Floor Amendments
(Proposed by Senator LESNIAK)

ADOPTED: JUNE 27, 2011

These amendments clarify provisions of the “Urban Transit Hub Tax Credit Act” (“UTHTCA”) regarding the treatment of intra-State job transfers under the New Jersey Economic Development Authority’s (“authority”) net benefit analysis. It has always been the intent of the Legislature that the authority shall consider jobs that are already located in the State to the extent that those jobs are at risk of leaving the State, in addition to out-of-State jobs, in performing the net benefit analysis. The amendments also add new requirements for the consideration of intra-State job transfers that will apply on a prospective basis only. Specifically, the amendments provide that, in determining whether a proposed capital investment will yield a net positive benefit, the authority shall not consider the transfer of an existing job from one location in the State to another location in the State as the creation of a new job, unless (1) the business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality, or (2) the business’s chief executive officer, or equivalent officer, submits a certification to the authority indicating that the existing jobs are at risk of leaving the State and that the business’s chief executive officer, or equivalent officer, has reviewed the information submitted to the authority and that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility.

The amendments further provide that, for the purposes of mixed use projects or qualified residential projects where a business receives an urban transit hub tax credit, eligible municipalities under the UTHTCA are allowed to determine the amount of the percentage, up to 20 percent of the total, of newly-constructed residential units set aside for occupancy by low or moderate income households. For a mixed use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of the bill, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for low or moderate income households in accordance with the terms and conditions of such approval.

Finally, the amendments expand the definition of "qualifying economic redevelopment and growth grant incentive area" under the "New Jersey Economic Stimulus Act of 2009" (“stimulus act”) to

include (1) an area zoned for development pursuant to a master plan or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission, and (2) any land owned by the New Jersey Sports and Exposition Authority within the boundaries of the Hackensack Meadowlands District. These changes would make projects within these areas eligible for incentive grants under the Economic Redevelopment and Growth Grant program established by the stimulus act.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2972

STATE OF NEW JERSEY 214th LEGISLATURE

DATED: JULY 6, 2011

SUMMARY

- Synopsis:** Makes various changes to urban hub tax credit program concerning mixed use projects, in-State job relocation, tax credit and investment criteria, and affordable housing; makes certain NJ Meadowlands area properties eligible for incentive grants.
- Type of Impact:** Indeterminate State and local tax revenue impact from additional development offset by tax credits.
- Agencies Affected:** Department of Treasury, New Jersey Economic Development Authority (EDA), New Jersey Sports and Exposition Authority, and New Jersey Meadowlands Commission.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – see comments below		
Local Cost	Indeterminate – see comments below		

Urban Transit Hub Tax Credit Act (UTHTCA) provisions:

- The Office of Legislative Services (OLS) cannot quantify the State or local revenue impact from extending the eligibility for the UTHTCA to additional mixed use projects and raising the tax credit amount for some mixed use and residential projects. At this point it is not clear how many new projects would qualify under these provisions, the amount of increased credits, or whether the \$1.5 billion cap under the UTHTCA would have been reached without the enactment of this legislation. The tax credit is strict in its criteria, being allowable only to projects of at least \$50 million in value with a prospective employment of at least 250 persons. Mixed use development projects of this size within close proximity to transit stations are infrequent in the State and as a result it is unlikely that many mixed use projects will be newly eligible under the bill than under current law.

- The fiscal impact of the UTHTCA changes depends largely on whether the tax credits are the factor that is responsible for these projects being constructed or not. To a lesser degree it also depends upon whether these projects would have taken place anyways but the tax credit was the motivating factor in site selection, placing the facility near transit rather than elsewhere in the State. If the bill is enabling projects that would not otherwise take place then the bill will generate revenue, and if the projects would take place without the tax credits then the bill will cost revenue.

Economic Redevelopment and Growth (ERG) Program provisions:

- Potential fiscal impact depends largely upon whether a redevelopment project receiving an incentive grant under the ERG Program would have ultimately been constructed without the incentive grant funds. If the project would be completed anyways, there will be a local and State cost; if not, then the bill will generate local and State revenue.
- The American Dream Meadowlands project is the highest profile project to be impacted by this legislation and the most likely to obtain an incentive grant under the three year window of the fiscal estimate. Based upon news reports the American Dream project would be eligible for up to \$300 million in incentives over 20 years or approximately \$15 million per year under the ERG program.

BILL DESCRIPTION

Senate Bill 2972 (2R) of 2011 expands the UTHTCA to include certain mixed use projects as creditable investments and expands the qualifying area for the ERG program.

Under the UTHTCA, a business may receive tax credits of up to 100 percent of its qualified capital investment in a business facility that is located in an urban transit hub, and employees at least 250 persons at the facility. Annually for ten years, the business may apply a credit equal to 10 percent of the amount of the investment against certain business-related State tax liability. Under a separate but similar UTHTCA program, a developer may receive tax credits of up to 20 percent of its capital investment in a qualified residential project located in an urban transit hub, subject to the same \$50 million project investment requirement applicable to a qualified business facility.

The bill extends eligibility for these credits to participants in a mixed use project comprising both a qualified business facility and a qualified residential project, neither of which by itself satisfies the total investment minimum of \$50 million, so long as the investment in the component of the mixed use project for which the participant seeks credit amounts to at least \$17.5 million, and the total amount invested in the project as a whole is at least \$50 million. A project's business component must also employ 250 full-time employees to qualify.

The bill changes the way credits under the UTHTCA are treated by eligible businesses by allowing companies receiving tax credits to carry forward allowable credits for up to 20 tax accounting periods and limits the value of the credit in any given year to \$150 million. The bill increases the size of the tax credit for residential UTHTCA projects from a maximum of 20 percent to 35 percent of total capital invested in a qualifying project as a tax credit. Newly eligible mixed use projects will also be eligible for 35 percent of capital invested in a qualifying project under the bill. Additionally, for UTHTCA projects with a residential component, mixed use or otherwise, eligible municipalities are eligible to determine the percentage of residential

units that are to be set aside for occupancy by low or moderate income households, up to 20 percent of the total units.

The bill also makes certain changes to the UTHTCA regarding the treatment of intra-State job transfers under the EDA net benefit analysis. In addition to determining if a proposed capital investment will yield a net positive benefit, the authority will not consider the transfer of an existing job from one location in the State to another location in the State as the creation of a new job, unless the business proposed to transfer existing jobs as part of a consolidation of business operations from two or more other locations that are not in the same municipality, or the business's chief executive officer, or equivalent officer, submits a certification to the authority indicating that the existing jobs are at risk of leaving the State and the business intends to employ not fewer than 500 full-time employees in the qualified business facility.

The bill also amends the "New Jersey Economic Stimulus Act of 2009" to expand the definition of "qualifying economic redevelopment and growth grant incentive area" under the act to include an area zoned for development pursuant to a master plan or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission and any land owned by the New Jersey Sports and Exposition Authority within the boundaries of the Hackensack Meadowlands District, thereby making projects within these areas eligible for incentive grants under the Economic Redevelopment and Growth (ERG) Grant program established by the act.

The Economic Redevelopment and Growth Grant program is an incentive grant program that allows municipalities and/or the State to provide grant funding for redevelopment projects. The grant can be no more than 20 percent of the total cost of the redevelopment. The grant may provide up to 75 percent of the annual incremental State and/or local tax revenue for a period of up to 20 years. The State grant is to be awarded in the form of an agreement negotiated between the developer and the CEO of the New Jersey Economic Development Authority (EDA) in consultation with the State Treasurer. A local grant is to take the form of a contract negotiated between the developer and the governing body of a municipality once adopted by ordinance. The grant program also requires that the revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer for its project financing gap.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

Urban Transit Hub Tax Credit Act:

The OLS cannot quantify the State or local revenue impact from extending the eligibility for the UTHTCA to additional mixed use projects and raising the tax credit amount for some mixed use and residential projects. At this point it is not clear how many new projects would qualify under these provisions, the amount of increased credits, or whether the \$1.5 billion cap under the UTHTCA would have been reached without the enactment of this legislation.

The tax credit is strict in its criteria, being allowable only to projects of at least \$50 million in value with a prospective employment of at least 250 persons. Mixed use development projects of this size within close proximity to transit stations are infrequent in the State and as a result it is unlikely that many mixed use projects will be newly eligible under the bill than under current law. Additionally, the UHTCA has a limit of \$1.5 billion on total grants awarded with no end date. As of December, 2010, eight projects for \$234.8 million had been approved under the UHTCA. It is highly likely that at some point in the future the full \$1.5 billion would be awarded under the UHTCA. This means that in the long run, the amendments to the UHTCA will not result in any additional costs than those that would be incurred under the original UHTCA, but it will most likely result in the \$1.5 billion being drawn down more quickly than it otherwise would have been.

Another impact of the increased eligibility and increased grants for residential projects is that it is now more likely that at least some portion of the grant money awarded to a project would not be necessary for the project to occur in the first place. For instance, if a residential project could only be completed with a tax credit equal to 10% of the project cost, the UHTCA would be a causal factor in allowing this project to be created with or without the bill, however under the current UHTCA the State would only be providing 10 percent of the financing in excess of what would be necessary for the project to take place. Under the legislation, the project will obtain 25 percent of the project cost in excess of what is necessary to allow the project to take place. Any future residential project that would have taken place under the UHTCA without the legislation will now be provided with 15 percent more project funding in tax breaks than is necessary. On the other hand, any mixed use or residential project that will newly be funded as a result of the substitution will provide additional tax revenue from the project less the size of the tax credit and the original tax collections on the property before the development. There will also be economic benefits and job creation from the project itself.

The fiscal impact of the UHTCA changes depend largely on whether the tax credits are the factor that is responsible for these projects being constructed or not. To a lesser degree it also depends upon whether these projects would have taken place anyways but the tax credit was the motivating factor in site selection, placing the facility near transit rather than elsewhere in the State. In the event that the project would take place at the same site regardless of the tax credit, then the State is giving up revenue that would otherwise be available. In the event that the project would take place but impacted the site selection, the State would be giving up the tax revenue, less any second order impacts of the site selection decision such as reduced demand for road infrastructure due to transit proximity, or increased property values from new employees reinvesting in the local housing stock, rather than moving to more distant locations. In the event that the project would not have taken place without the tax incentives, any tax revenue derived from the project would represent positive revenue for the State, less whatever tax revenue the site generated prior to the development project.

The changes to the way the EDA evaluates job creation are unlikely to have a fiscal impact, however they could result in some projects not being approved under the UHTCA that otherwise would have been approved. The impact of the extension of the tax credit to 20 privilege periods from 10 for 10 percent per year is that if there were a company that would completely eliminate their tax liability over the original 10 years and have remaining tax credit that it would be unable to utilize; the increase to 20 years may allow a company to utilize tax credits that it would otherwise be unable to use. This would represent a cost to the State; however it is not in any way clear that this would have happened under the original UHTCA.

Economic Redevelopment and Growth Grant Program:

The OLS finds that it is not possible to ascertain the full impact of the bill at this point in time. There are two major sources of uncertainty that limit the ability of the OLS to identify the future fiscal impact. The first is that this legislation provides a framework for the provisions of ERG grants but the EDA is empowered to determine the ultimate terms of the grant agreement.

This means that a future redevelopment project in the Meadowlands covered by this bill may receive a grant for 20 percent of the redevelopment cost, it could be for just 10 percent of the cost, or the EDA could decide not to provide any funding at all. Similarly the grant funding could take place over anywhere from 1 to 20 years and for anywhere from 1 to 75 percent of incremental tax revenue. Until an agreement is made between the developer and the EDA there is no way to identify the size of the grants. The second source of uncertainty is that there is no way to know for sure whether a redevelopment project would have taken place without the funding provided by the ERG grant. If a project covered by this bill would have eventually taken place regardless of the ERG grant, then the State would be giving up tax revenue that it would have otherwise received, resulting in a cost to the State. In the event that the redevelopment project could not have happened without the ERG grant funding, then the bill would be responsible for all incremental revenue from the redevelopment and the State would be realizing revenue equal to the amount of the incremental tax collections not provided to the developer.

At this point in time there appears to be one project that may become a recipient of ERG funds under the proposed bill. The American Dream Meadowlands project being completed by the Triple Five Group will be eligible for grant funding to subsidize its estimated \$1.5 billion redevelopment project in the Meadowlands. Under the terms of the ERG program this project would be eligible for a grant of up to \$300 million. This grant would take place over up to 20 years and provide approximately \$15 million per year in grant funding. If the American Dream Meadowlands project might have been completed without this funding then award of the grants would entail \$300 million in cost to the State with \$45 million being incurred in the first three years. If the project could not have been completed without the funding then there will be a revenue gain to the State in the amount of total incremental tax collections, less \$15 million per year. This project is likely to dwarf any other projects that might obtain ERG grant funding over the three year analysis period for the Fiscal Estimate. As a result, the Office of Legislative Services finds that the fiscal impact of this bill will fall between a cost of up to \$15 million per year and an indeterminate amount of revenue based upon future incremental tax collection from the American Dream Meadowlands project.

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Patrick Brennan
Assistant Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

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

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4161

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 20, 2011

Sponsored by:

Assemblyman ALBERT COUTINHO
District 29 (Essex and Union)

SYNOPSIS

Makes certain NJ Meadowlands area properties eligible for incentive grants under Economic Redevelopment and Growth Grant program established by "New Jersey Economic Stimulus Act of 2009."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning economic redevelopment and amending
2 P.L.2009, c.90

3

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

6

7 1. Section 3 of P.L.2009, c.90 (C.52:27D-489c) is amended to
8 read as follows:

9 3. As used in sections 3 through 18 of P.L.2009, c.90
10 (C.52:27D-489c et al.):

11 "Applicant" means a developer proposing to enter into a
12 redevelopment incentive grant agreement.

13 "Ancillary infrastructure project" means public structures or
14 improvements that are located in the public right-of-way outside the
15 project area of a redevelopment project, provided a developer or
16 municipal redeveloper has demonstrated that the redevelopment
17 project would not be economically viable without such
18 improvements.

19 "Authority" means the New Jersey Economic Development
20 Authority established under section 4 of P.L.1974, c.80 (C.34:1B-
21 4).

22 "Developer" means any person who enters or proposes to enter
23 into a redevelopment incentive grant agreement pursuant to the
24 provisions of section 9 of P.L.2009, c.90 (C.52:27D-489i). A
25 developer also may be a municipal government or a redevelopment
26 agency as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3).

27 "Director" means the Director of the Division of Taxation in the
28 Department of the Treasury.

29 "Eligible revenue" means the property tax increment and any
30 other incremental revenues set forth in section 11 of P.L.2009, c.90
31 (C.52:27D-489k).

32 "Incentive grant" means reimbursement of all or a portion of the
33 project financing gap of a redevelopment project through the State
34 or a local Economic Redevelopment and Growth Grant program
35 pursuant to section 4 or section 5 of P.L.2009, c.90 (C.52:27D-489d
36 or C.52:27D-489e).

37 "Infrastructure improvements in the public right-of-way" mean
38 public structures or improvements located in the public right of way
39 that are located within a project area or that constitute an ancillary
40 infrastructure project.

41 "Municipal redeveloper" means a municipal government or a
42 redevelopment agency acting on behalf of a municipal government
43 as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3) that is an
44 applicant for a redevelopment incentive grant 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.

1 "Project area" means land or lands under common ownership or
2 control including through a redevelopment agreement with a
3 municipality or as otherwise established by a municipality.

4 "Project financing gap" means the part of the total
5 redevelopment project cost, including return on investment, that
6 remains to be financed after all other sources of capital have been
7 accounted for, including, but not limited to, developer contributed
8 capital, which shall not be less than 20 percent of the total project
9 cost, and investor or financial entity capital or loans for which the
10 developer, after making all good faith efforts to raise additional
11 capital, certifies that additional capital cannot be raised from other
12 sources.

13 "Project revenue" means all rents, fees, sales, and payments
14 generated by a project, less taxes or other government payments.

15 "Property tax increment" means the amount obtained by:

16 (1) multiplying the general tax rate levied each year by the
17 taxable value of all the property assessed within a project area in
18 the same year, excluding any special assessments; and

19 (2) multiplying that product by a fraction having a numerator
20 equal to the taxable value of all the property assessed within the
21 project area, minus the property tax increment base, and having a
22 denominator equal to the taxable value of all property assessed
23 within the project area.

24 For the purpose of this definition, "property tax increment base"
25 means the aggregate taxable value of all property assessed which is
26 located within the redevelopment project area as of October 1st of
27 the year preceding the year in which the redevelopment incentive
28 grant agreement is authorized.

29 "Qualifying economic redevelopment and growth grant incentive
30 area" means Planning Area 1 (Metropolitan), Planning Area 2
31 (Suburban), or a center as designated by the State Planning
32 Commission; an area zoned for development pursuant to a master
33 plan adopted by the New Jersey Meadowlands Commission
34 pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-
35 6) or subject to a redevelopment plan adopted by the New Jersey
36 Meadowlands Commission pursuant to section 20 of P.L.1968,
37 c.404 (C.13:17-21); any land owned by the New Jersey Sports and
38 Exposition Authority, established pursuant to P.L.1971, c.137
39 (C.5:10-1 et seq.), within the boundaries of the Hackensack
40 Meadowlands District as delineated in section 4 of P.L.1968, c.404
41 (C.13:17-4); a pinelands regional growth area, a pinelands town
42 management area, a pinelands village, or a military and federal
43 installation area established pursuant to the pinelands
44 comprehensive management plan adopted pursuant to P.L.1979,
45 c.111 (C.13:18A-1 et seq.); a transit village, as determined by the
46 Commissioner of Transportation; and federally owned land
47 approved for closure under a federal Base Realignment Closing
48 Commission action.

1 "Redevelopment incentive grant agreement" means an agreement
2 between, (1) the State and the New Jersey Economic Development
3 Authority and a developer, or (2) a municipality and a developer, or
4 a municipal ordinance authorizing a project to be undertaken by a
5 municipal redeveloper, under which, in exchange for the proceeds
6 of an incentive grant, the developer agrees to perform any work or
7 undertaking necessary for a redevelopment project, including the
8 clearance, development or redevelopment, construction, or
9 rehabilitation of any structure or improvement of commercial,
10 industrial, residential, or public structures or improvements within a
11 qualifying economic redevelopment and growth grant incentive area
12 or a transit village.

13 "Redevelopment project" means a specific work or improvement,
14 including lands, buildings, improvements, real and personal
15 property or any interest therein, including lands under water,
16 riparian rights, space rights and air rights, acquired, owned,
17 developed or redeveloped, constructed, reconstructed, rehabilitated
18 or improved, undertaken by a developer within a project area and
19 any ancillary infrastructure project associated therewith.

20 "Redevelopment utility" means a self-liquidating fund created by
21 a municipality pursuant to section 12 of P.L.2009, c.90 (C.52:27D-
22 489l) to account for revenues collected and incentive grants paid
23 pursuant to section 11 of P.L.2009, c.90 (C.52:27D-489k), or other
24 revenues dedicated to a redevelopment project.

25 "Revenue increment base" means the amounts of all eligible
26 revenues from sources within the redevelopment project area in the
27 calendar year preceding the year in which the redevelopment
28 incentive grant agreement is executed, as certified by the State
29 Treasurer for State revenues, and the chief financial officer of the
30 municipality for municipal revenues.

31 "Transit village" means a community with a bus, train, light rail,
32 or ferry station that has developed a plan to achieve its economic
33 development and revitalization goals and has been designated by
34 the New Jersey Department of Transportation as a transit village.
35 (cf: P.L.2010, c.10, s.4)

36

37 2. This act shall take effect immediately.

38

39

40

STATEMENT

41

42 This bill amends the "New Jersey Economic Stimulus Act of
43 2009" ("act") to expand the definition of "qualifying economic
44 redevelopment and growth grant incentive area" under the act to
45 include an area zoned for development pursuant to a master plan or
46 subject to a redevelopment plan adopted by the New Jersey
47 Meadowlands Commission and any land owned by the New Jersey
48 Sports and Exposition Authority within the boundaries of the

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5

- 1 Hackensack Meadowlands District, thereby making projects within
- 2 these areas eligible for incentive grants under the Economic
- 3 Redevelopment and Growth Grant program established by the act.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 4161

STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 4161.

This substitute makes various changes to the urban transit hub tax credit program regarding mixed use projects, in-State job relocation in determining net positive benefits, tax credit and capital investment criteria, and affordable housing, and makes certain New Jersey Meadowlands area properties eligible for incentive grants under the economic redevelopment and growth grant program.

Urban Transit Hub Tax Credit Program:

The substitute expands the “Urban Transit Hub Tax Credit Act” (“UTHTCA”) and the “New Jersey Economic Stimulus Act of 2009” (“Stimulus Act”) to include certain mixed use projects as creditable investments.

Under the UTHTCA, a business may receive tax credits of up to 100 percent of its qualified capital investment in a business facility that is located in an urban transit hub, and employs at least 250 persons at the facility. Annually for ten years, the business may apply a credit equal to 10 percent of the amount of the investment against certain business-related State tax liability. A tenant in these qualified business facilities may also be allowed credits, if the tenant occupies space in the facility that proportionally represents at least \$17,500,000 of the capital investment in the facility and employs at least 250 persons in the facility. For a business or a tenant to be eligible for the credit, the owner of the facility must make or acquire capital investments in the facility of not less than \$50 million.

Under a separate but similar urban transit hub tax credit program established by the Stimulus Act, a developer may receive tax credits of up to 20 percent of its capital investment in a qualified residential project located in a urban transit hub, subject to the same \$50 million project investment requirement applicable to a qualified business facility.

This substitute extends eligibility for these credits to participants in a mixed use project comprising both a qualified business facility and a qualified residential project, neither of which by itself satisfies the

total investment minimum of \$50 million, so long as the investment in the component of the mixed use project for which the participant seeks credit amounts to at least \$17.5 million, and the total amount invested in the mixed use project as a whole is at least \$50 million. The substitute provides that, for purposes of the UHTCA, a mixed use project's business component must employ 250 full-time employees to qualify.

The substitute makes certain changes to the UHTCA to modify the manner in which tax credits under the UHTCA are treated by eligible businesses. The substitute allows businesses receiving tax credits under the UHTCA to carry forward allowable credits into not more than 20 subsequent tax accounting or privilege periods, and limits the value of all credits approved in any fiscal year to \$150 million. The substitute clarifies the definition of "urban transit hub" under the UHTCA so that businesses may utilize a rail spur located adjacent to or within a one mile radius surrounding the entrance to property for loading and unloading freight cars on trains.

The substitute makes certain changes to the urban transit hub tax credit program established by the Stimulus Act to modify the amount of credit a developer of a residential project is eligible to receive. The substitute increases from 20 to 35 percent the proportion of the cost of capital invested in a qualified residential project located within an urban transit hub that a developer is eligible to receive as a tax credit. That increased percentage (35 percent) for qualified residential project developers is identical to the percentage that a developer of a mixed use project will be eligible to receive as a tax credit under the substitute.

The substitute makes certain changes to the UHTCA regarding the treatment of intra-State job transfers under the New Jersey Economic Development Authority's net benefit analysis. The substitute provides that, in determining if a proposed capital investment will yield a net positive benefit, the authority will not consider the transfer of an existing job from one location in the State to another location in the State as the creation of a new job, unless the business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality, or the business's chief executive officer, or equivalent officer, submits a certification to the authority indicating that the existing jobs are at risk of leaving the State and that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the authority and that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility.

The substitute provides that if a certification submitted to the authority by the business's chief executive officer, or equivalent officer, for purposes of the authority's net benefit analysis is found to

be willfully false, the authority may revoke any award of tax credits in their entirety, which revocation will be in addition to any other criminal or civil penalties. The substitute specifies that when considering an application involving intra-State job transfers, the authority must require a company to submit certain enumerated information as part of its application, and based on that information, and any other information the authority deems relevant, the authority must independently verify and confirm, by way of making a factual finding by separate vote of the authority's board, the business's assertion that the jobs are actually at risk of leaving the State, before a business may be awarded any tax credits.

It has always been the intent of the Legislature that the authority will consider jobs that are already located in the State to the extent that those jobs are at risk of leaving the State, in addition to out-of State jobs, in performing the net benefit analysis. The substitute provides that the new requirements for the consideration of intra-State job transfers will apply prospectively.

The substitute makes certain changes to certain affordable housing requirements that affect projects in which a business receives an urban transit hub tax credit. The substitute provides that, for the purposes of mixed use projects or qualified residential projects in which a business receives an urban transit hub tax credit, eligible municipalities under the UHTCA are allowed to determine the amount of the percentage, up to 20 percent of the total, of newly-constructed residential units set aside for occupancy by low or moderate income households. However, the substitute provides that for a mixed use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of the substitute, the percentage will be deemed to be the percentage, if any, of units required to be reserved for low or moderate income households in accordance with such approval.

Economic Redevelopment and Growth Grant Program:

The substitute amends the Stimulus Act to expand the definition of "qualifying economic redevelopment and growth grant incentive area" provided under current law to include an area zoned for development pursuant to a master plan or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission and any land owned by the New Jersey Sports and Exposition Authority within the boundaries of the Hackensack Meadowlands District.

The purpose of this change is to make certain redevelopment projects within those qualifying areas eligible for incentive grants under the economic redevelopment and growth grant program established by the Stimulus Act.

FISCAL IMPACT:

The Office of Legislative Services (OLS) lacks information necessary to determine the net fiscal impact on State and local finances that may result from the substitute's: (1) modifications to the urban transit hub tax credit program, and (2) expansion of the definition of "qualifying economic redevelopment and growth grant incentive area" under the Stimulus Act for purposes of the economic redevelopment and growth grant program.

With respect to (1) the modifications to the urban transit hub tax credit program, the OLS notes that if the changes provided by the substitute result in the pursuit of projects that absent the legislation would not have been pursued, then these projects will produce a direct State revenue loss and opportunity costs to the State from the granting of the additional subsidies that will be offset, in whole or in part, by an indirect revenue gain to the State and affected local governments from secondary economic and fiscal activity generated by these projects. If, on the other hand, the changes provided by the substitute result in the awarding of subsidies to projects that absent the legislation would have been pursued anyway, the subsidies to these projects will produce a direct State revenue loss and opportunity costs to the State from the granting of the additional subsidies without generating any offsetting indirect revenue gain to the State or affected local governments that could be attributed to the subsidies.

In terms of (2) the expansion of the definition of "qualifying economic redevelopment and growth grant incentive area" under the Stimulus Act for purposes of the economic redevelopment and growth grant program, the OLS notes that it is not possible to ascertain the impact of this change at this time. In part, the program provides a framework for the provisions of incentive grants but the New Jersey Economic Development Authority is empowered to determine the ultimate terms of any grant agreement. Until an agreement is made between a developer and the authority there is no way to identify the size of the grants that may be awarded. Moreover, the potential fiscal impact that may result from this substitute depends largely upon whether a redevelopment project receiving an incentive grant under the economic redevelopment and growth grant program would have ultimately been constructed without the incentive grant funds. If the project would have been constructed regardless of an incentive grant, there will be a local and State cost; if not, then the substitute will generate local and State revenue.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4161
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JULY 6, 2011

SUMMARY

- Synopsis:** Makes various changes to urban hub tax credit program concerning mixed use projects, in-State job relocation, tax credit and investment criteria, and affordable housing; makes certain NJ Meadowlands area properties eligible for incentive grants.
- Type of Impact:** Indeterminate State and local tax revenue impact from additional development offset by tax credits.
- Agencies Affected:** Department of Treasury, New Jersey Economic Development Authority (EDA), New Jersey Sports and Exposition Authority, and New Jersey Meadowlands Commission.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		
Local Cost	Indeterminate – See comments below		

Urban Transit Hub Tax Credit Act (UTHTCA) provisions:

- The Office of Legislative Services (OLS) cannot quantify the State or local revenue impact from extending the eligibility for the UTHTCA to additional mixed use projects and raising the tax credit amount for some mixed use and residential projects. At this point it is not clear how many new projects would qualify under these provisions, the amount of increased credits, or whether the \$1.5 billion cap under the UTHTCA would have been reached without the enactment of this legislation. The tax credit is strict in its criteria, being allowable only to projects of at least \$50 million in value with a prospective employment of at least 250 persons. Mixed use development projects of this size within close proximity to transit stations are infrequent in the State and as a result it is unlikely that many mixed use projects will be newly eligible under the bill than under current law.

- The fiscal impact of the UTHHTCA changes depends largely on whether the tax credits are the factor that is responsible for these projects being constructed or not. To a lesser degree it also depends upon whether these projects would have taken place anyways but the tax credit was the motivating factor in site selection, placing the facility near transit rather than elsewhere in the State. If the substitute is enabling projects that would not otherwise take place then the substitute will generate revenue, and if the projects would take place without the tax credits then the substitute will cost revenue.

Economic Redevelopment and Growth (ERG) Program provisions:

- Potential fiscal impact depends largely upon whether a redevelopment project receiving an incentive grant under the ERG Program would have ultimately been constructed without the incentive grant funds. If the project would be completed anyways, there will be a local and State cost; if not, then the bill will generate local and State revenue.
- The American Dream Meadowlands project is the highest profile project to be impacted by this legislation and the most likely to obtain an incentive grant under the three year window of the fiscal estimate. Based upon news reports the American Dream project would be eligible for up to \$300 million in incentives over 20 years or approximately \$15 million per year under the ERG program.

BILL DESCRIPTION

The Assembly Committee Substitute for Assembly Bill No. 4161 of 2011 expands the UTHHTCA to include certain mixed use projects as creditable investments and expands the qualifying area for the ERG program.

Under the UTHHTCA, a business may receive tax credits of up to 100 percent of its qualified capital investment in a business facility that is located in an urban transit hub, and employees at least 250 persons at the facility. Annually for ten years, the business may apply a credit equal to 10 percent of the amount of the investment against certain business-related State tax liability. Under a separate but similar UTHHTCA program, a developer may receive tax credits of up to 20 percent of its capital investment in a qualified residential project located in an urban transit hub, subject to the same \$50 million project investment requirement applicable to a qualified business facility.

The substitute extends eligibility for these credits to participants in a mixed use project comprising both a qualified business facility and a qualified residential project, neither of which by itself satisfies the total investment minimum of \$50 million, so long as the investment in the component of the mixed use project for which the participant seeks credit amounts to at least \$17.5 million, and the total amount invested in the project as a whole is at least \$50 million. A project's business component must also employ 250 full-time employees to qualify.

The substitute changes the way credits under the UTHHTCA are treated by eligible businesses by allowing companies receiving tax credits to carry forward allowable credits for up to 20 tax accounting periods and limits the value of the credit in any given year to \$150 million. The substitute increases the size of the tax credit for residential UTHHTCA projects from a maximum of 20 percent to 35 percent of total capital invested in a qualifying project as a tax credit. Newly eligible mixed use projects will also be eligible for 35 percent of capital invested in a qualifying project under the substitute. Additionally, for UTHHTCA projects with a residential component,

mixed use or otherwise, eligible municipalities are eligible to determine the percentage of residential units that are to be set aside for occupancy by low or moderate income households, up to 20 percent of the total units.

The substitute also makes certain changes to the UHTCA regarding the treatment of intra-State job transfers under the EDA net benefit analysis. In addition to determining if a proposed capital investment will yield a net positive benefit, the authority will not consider the transfer of an existing job from one location in the State to another location in the State as the creation of a new job, unless the business proposed to transfer existing jobs as part of a consolidation of business operations from two or more other locations that are not in the same municipality, or the business's chief executive officer, or equivalent officer, submits a certification to the authority indicating that the existing jobs are at risk of leaving the State and the business intends to employ not fewer than 500 full-time employees in the qualified business facility.

The substitute also amends the "New Jersey Economic Stimulus Act of 2009" to expand the definition of "qualifying economic redevelopment and growth grant incentive area" under the act to include an area zoned for development pursuant to a master plan or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission and any land owned by the New Jersey Sports and Exposition Authority within the boundaries of the Hackensack Meadowlands District, thereby making projects within these areas eligible for incentive grants under the Economic Redevelopment and Growth (ERG) Grant program established by the act.

The Economic Redevelopment and Growth Grant program is an incentive grant program that allows municipalities and/or the State to provide grant funding for redevelopment projects. The grant can be no more than 20 percent of the total cost of the redevelopment. The grant may provide up to 75 percent of the annual incremental State and/or local tax revenue for a period of up to 20 years. The State grant is to be awarded in the form of an agreement negotiated between the developer and the CEO of the New Jersey Economic Development Authority (EDA) in consultation with the State Treasurer. A local grant is to take the form of a contract negotiated between the developer and the governing body of a municipality once adopted by ordinance. The grant program also requires that the revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer for its project financing gap.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

Urban Transit Hub Tax Credit Act:

The OLS cannot quantify the State or local revenue impact from extending the eligibility for the UHTCA to additional mixed use projects and raising the tax credit amount for some mixed use and residential projects. At this point it is not clear how many new projects would qualify under these provisions, the amount of increased credits, or whether the \$1.5 billion cap under the UHTCA would have been reached without the enactment of this legislation.

The tax credit is strict in its criteria, being allowable only to projects of at least \$50 million in value with a prospective employment of at least 250 persons. Mixed use development projects

of this size within close proximity to transit stations are infrequent in the State and as a result it is unlikely that many mixed use projects will be newly eligible under the bill than under current law. Additionally, the UHTCA has a limit of \$1.5 billion on total grants awarded with no end date. As of December, 2010, eight projects for \$234.8 million had been approved under the UHTCA. It is highly likely that at some point in the future the full \$1.5 billion would be awarded under the UHTCA. This means that in the long run, the amendments to the UHTCA will not result in any additional costs than those that would be incurred under the original UHTCA, but it will most likely result in the \$1.5 billion being drawn down more quickly than it otherwise would have been.

Another impact of the increased eligibility and increased grants for residential projects is that it is now more likely that at least some portion of the grant money awarded to a project would not be necessary for the project to occur in the first place. For instance, if a residential project could only be completed with a tax credit equal to 10 percent of the project cost, the UHTCA would be a causal factor in allowing this project to be created with or without the substitute, however before the substitute the State would only be providing 10 percent of the financing in excess of what would be necessary for the project to take place. Under the substitute, the project will obtain 25 percent of the project cost in excess of what is necessary to allow the project to take place. Any future residential project that would have taken place under the UHTCA without the substitute will now be provided with 15 percent more project funding in tax breaks than is necessary under the substitute. On the other hand, any mixed use or residential project that will newly be funded as a result of the substitution will provide additional tax revenue from the project less the size of the tax credit and the original tax collections on the property before the development. There will also be economic benefits and job creation from the project itself.

The fiscal impact of the UHTCA changes depend largely on whether the tax credits are the factor that is responsible for these projects being constructed or not. To a lesser degree it also depends upon whether these projects would have taken place anyways but the tax credit was the motivating factor in site selection, placing the facility near transit rather than elsewhere in the State. In the event that the project would take place at the same site regardless of the tax credit, then the State is giving up revenue that would otherwise be available. In the event that the project would take place but impacted the site selection, the State would be giving up the tax revenue, less any second order impacts of the site selection decision such as reduced demand for road infrastructure due to transit proximity, or increased property values from new employees reinvesting in the local housing stock, rather than moving to more distant locations. In the event that the project would not have taken place without the tax incentives, any tax revenue derived from the project would represent positive revenue for the State, less whatever tax revenue the site generated prior to the development project.

The changes to the way the EDA evaluates job creation are unlikely to have a fiscal impact, however they could result in some projects not being approved under the UHTCA that otherwise would have been approved. The impact of the extension of the tax credit to 20 privilege periods from 10 for 10 percent per year is that if there were a company that would completely eliminate their tax liability over the original 10 years and have remaining tax credit that it would be unable to utilize; the increase to 20 years may allow a company to utilize tax credits that it would otherwise be unable to use. This would represent a cost to the State; however it is not in any way clear that this would have happened under the original UHTCA.

Economic Redevelopment and Growth Grant Program:

The OLS finds that it is not possible to ascertain the full impact of the substitute at this point in time. There are two major sources of uncertainty that limit the ability of the OLS to identify

the future fiscal impact. The first is that this legislation provides a framework for the provisions of ERG grants but the EDA is empowered to determine the ultimate terms of the grant agreement. This means that a future redevelopment project in the Meadowlands covered by this substitute may receive a grant for 20 percent of the redevelopment cost, it could be for just 10 percent of the cost, or the EDA could decide not to provide any funding at all. Similarly the grant funding could take place over anywhere from 1 to 20 years and for anywhere from 1 to 75 percent of incremental tax revenue. Until an agreement is made between the developer and the EDA there is no way to identify the size of the grants. The second source of uncertainty is that there is no way to know for sure whether a redevelopment project would have taken place without the funding provided by the ERG grant. If a project covered by this substitute would have eventually taken place regardless of the ERG grant, then the State would be giving up tax revenue that it would have otherwise received, resulting in a cost to the State. In the event that the redevelopment project could not have happened without the ERG grant funding, then the substitute would be responsible for all incremental revenue from the redevelopment and the State would be realizing revenue equal to the amount of the incremental tax collections not provided to the developer.

At this point in time there appears to be one project that may become a recipient of ERG funds under the proposed substitute. The American Dream Meadowlands project being completed by the Triple Five Group will be eligible for grant funding to subsidize its estimated \$1.5 billion redevelopment project in the Meadowlands. Under the terms of the ERG program this project would be eligible for a grant of up to \$300 million. This grant would take place over up to 20 years and provide approximately \$15 million per year in grant funding. If the American Dream Meadowlands project might have been completed without this funding then award of the grants would entail \$300 million in cost to the State with \$45 million being incurred in the first three years. If the project could not have been completed without the funding then there will be a revenue gain to the State in the amount of total incremental tax collections, less \$15 million per year. This project is likely to dwarf any other projects that might obtain ERG grant funding over the three year analysis period for the Fiscal Estimate. As a result, the Office of Legislative Services finds that the fiscal impact of this bill will fall between a cost of up to \$15 million per year and an indeterminate amount of revenue based upon future incremental tax collection from the American Dream Meadowlands project.

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Patrick Brennan
Assistant Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

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

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).



Governor Christie Takes Action to Spur Job Creation Through Expanded Economic Development Programs

Tuesday, July 26, 2011 Tags: [Jobs and the Economy](#)

Trenton, NJ – Continuing to act on his commitment to create jobs for New Jersey families, Governor Chris Christie today signed Senate Bill 2972 to expand job-creating tax incentives and provide an immediate economic boost to the state. Governor Christie was joined by Mayor Cory Booker at the Broad Street train station in Newark, a designated Urban Transit Hub, in signing the legislation that makes changes to incentive programs utilized by the state of New Jersey to promote economic growth and job creation – the Economic Redevelopment and Growth Grant (ERGG); the Urban Transit Hub Tax Credit Act; and a residential development program originally created under the New Jersey Economic Stimulus Act. Numerous large-scale development projects currently pending around the state are expected to be jump-started by the expansion of these programs.

"Creating good paying, lasting jobs for New Jersey families is a top priority of this Administration, which is why tax cuts and incentive programs that help businesses grow and expand were a core aspect of my budget, and will continue to serve as tools to foster economic growth. Today, we are providing needed changes to incentives that are critical to growing our economy, creating jobs, and providing more opportunities for New Jersey families," said Governor Christie. "Putting in place targeted incentives to encourage businesses to build, develop and expand in the state is a critical piece of our broader efforts to drive New Jersey's economic recovery. New Jerseyans put to work as a result of our efforts are the final and most important beneficiaries of everything we do, which is why we will continue working aggressively to build on the positive, early progress we've made in returning our state to prosperity and affordability."

S-2972 expands the ERGG program to make growth areas in the Meadowlands eligible for ERGG grants, adding the Meadowlands to the other areas of the state where growth is encouraged and eligibility for ERGG grants is already provided, including State Planning Areas, Pinelands growth areas, transit villages and closed federal military bases. This change will impact the American Dream at Meadowlands project that Governor Christie has worked to get back on track with a new plan under a new developer – Triple Five, owners of the Mall of America.

In addition, the legislation also makes several changes to the Urban Hub program: increasing the credit for residential projects from 20% to 35% of eligible costs over 10 years; providing that affordable housing requirements for an Urban Hub project are to be determined in the sole discretion of the municipality; allowing mixed use projects to receive tax credits for both the residential component and the commercial components of a project; allowing the tax credits to be carried forward for up to 20 years; clarifying existing law that property located within an Urban Hub area, but adjacent to a rail spur for freight rail that is not within an Urban Hub area, is eligible; and providing new standards and procedures for the net benefit analysis for in-state job moves.

Over the course of the last year, the New Jersey Economic Development Authority (EDA) has been involved in discussions with developers advancing significant mixed use projects across the state. The goal of the Urban Transit Hub Tax Credit program is promoting vibrant communities where people can work, live and shop, and the changes signed into law today are a significant step forward for impactful revitalization projects. The Christie Administration expects renewed activity in moving them forward. Examples of these projects include the Teachers Village project in Newark, the Gateway project in New Brunswick and Haddon Avenue Transit Village in Camden, each representing game-changing projects with investments aimed at providing housing and retail opportunities with commercial components and each leading to significant job creation and private sector investment.

"This is a significant day for Newark and for New Jersey – a day when the state's urban centers receive a set of supercharged tools to create jobs and kick-start New Jersey's economy. The bill Governor Christie signed today is the product of a true bipartisan collaboration. I am grateful to the Governor and his Administration – as well as to Senator Ray Lesniak, Assemblyman Al Coutinho, and the Legislature – for joining forces with cities like ours and crafting this important package," said Mayor Cory A. Booker. "In Newark, these incentives will enable crucial development projects to break ground. With credit to our collective efforts to date as well as these new measures, over 25 development projects in Newark will be underway in 2011. That represents over \$700 million in total development, producing over 2,500 construction jobs and over 2,500 permanent jobs. Together, these projects will have a transformative impact here in New Jersey's largest city. Thanks to our partnership with Governor Christie and the Legislature, this is Newark's Groundbreaking Year – and we look forward to making much more progress together."

In addition, as part of the Fiscal Year 2012 Budget proposal, Governor Christie provided \$180 million in targeted tax cuts for small businesses in New Jersey to spur job growth and increase business investment and expansion. Among the tax reforms included were: a change in the corporate business tax formula from a three-factor formula to a single

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sales factor formula; an option for taxpayers to carry forward losses from certain business-related categories of gross incomes for up to two years; a 25 percent reduction in the minimum tax for S-Corporations; a doubling of the research and development credits; and a phase out of the Transitional Energy Facility Assessment (TEFA) by January 2012. The Governor has consistently stressed the need for reform and fiscal discipline to break from the state's hostile climate towards business expansion and job growth.


Since Governor Christie took office, the Administration has been committed to bringing real, bipartisan solutions to the critical challenges faced by the state. These include signing into law a Fiscal Year 2012 Budget that provides \$180 million in job creating tax cuts for small businesses and that does not raise taxes on New Jersey families, closing an \$11 billion budget deficit without tax increases, passing Cap 2.0 to bring real property tax relief, and enacting historic, bipartisan pension and health benefits reforms. Yesterday, Governor Christie and Lt. Governor Guadagno reported that since 2010, new foreign direct investment in New Jersey is expected to support more than 410 new jobs, 1,500 construction jobs and contribute over \$1.4 billion of capital investment into the state.

Additionally, the Administration has continued to advance policies to further improve New Jersey's business climate by sunsetting the corporate business tax surcharge, signing new, robust business attraction legislation, and protecting businesses from an average \$400 per employee, or 52% increase in the unemployment insurance payroll tax. Those policies, coupled with recent activities like the Governor's 'Creating Jersey Jobs Summit,' and the Lt. Governor's '100 Businesses' initiative all demonstrate that New Jersey is well-positioned for business expansion, economic growth and job creation as our economy recovers.

Sponsors of S-2972 included Senators Raymond Lesniak and Donald Norcross, and Assemblymembers Alberto Coutinho, Lou Greenwald and Jason O'Donnell.

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