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"Lawmakers approve massive incentive package to try to win Amazon HQ for Newark," NJ Spotlight, January 8, 2018

"Christie signs Amazon incentive bill," NJBIZ, January 11, 2018

"Christie signs bill offering Amazon \$5B tax break," Politico, January 11, 2018

"Christie signs Amazon tax incentives legislation into law," Burlington County Times, January 11, 2018

"Christie Signs Bill That Could Give \$5 Billion in Tax Breaks to Amazon," Observer, January 11, 2018

"Christie's parting gift: Billions to get Amazon," Politico, January 11, 2018

"New Jersey promising billions to get Amazon headquarters, Associated Press State Wire: New Jersey, January 11, 2018

"The Latest: Christie signs bill offering Amazon tax credits," Associated Press State Wire: New Jersey, January 11, 2018

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P.L. 2017, CHAPTER 282, *approved January 11, 2018*

Assembly No. 5340

1 AN ACT concerning tax credits for certain business headquarters
2 located in this State and supplementing P.L.1974, c.80 (C.34:1B-
3 1 et seq.).

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

7
8 1. The Legislature finds and declares that:

9 a. (1) the Grow New Jersey Assistance Program (Grow
10 Program) is the State's premier job creation and retention business
11 incentive program that offers eligible businesses creating or
12 retaining jobs in New Jersey tax credits for making certain capital
13 investments at certain locations in the State;

14 (2) according to the New Jersey Economic Development
15 Authority (authority), the State agency that administers the Grow
16 Program, as of the end of July 2017, the authority approved 229
17 projects, amounting to more than \$4.4 billion in tax credits to be
18 awarded after these businesses create or retain jobs and make
19 capital investments;

20 (3) the authority reports that, collectively, these eligible
21 businesses are to make a total capital investment of \$3.85 billion,
22 create 28,800 new full-time jobs, retain 30,420 jobs at risk of
23 leaving the State, and create 15,730 estimated construction jobs,
24 having an estimated net benefit to the State of \$13.4 billion; and

25 (4) although the Grow Program is achieving its intended result of
26 having businesses locate in the commercial areas of the State's
27 cities and shuttered suburban office parks, thereby revitalizing these
28 commercial areas, the State has opportunities from time to time to
29 attract corporate headquarters that have the effect of transforming
30 the economy of a region of the State.

31 b. Therefore, the Legislature determines that it is in the
32 economic interest of the residents of this State that a new, enhanced
33 business incentive program be created to supplement the Grow
34 Program, where an eligible business creating at least 30,000 new,
35 full-time, high-paying jobs and making a capital investment of at
36 least \$3 billion at a site in this State, be awarded an enhanced
37 amount of tax credits by the authority for undertaking the
38 construction of a corporate headquarters that has the effect of
39 transforming the economy of a region of the State.

40
41 2. As used in P.L. , c. (C.) (pending before the
42 Legislature as this bill):

1 "Affiliate" means an entity that directly or indirectly controls, is
2 under common control with, or is controlled by the business.
3 Control exists in all cases in which the entity is a member of a
4 controlled group of corporations as defined pursuant to section 1563
5 of the Internal Revenue Code (26 U.S.C. s.1563) or the entity is an
6 organization in a group of organizations under common control as
7 defined pursuant to subsection (b) or (c) of section 414 of the
8 Internal Revenue Code (26 U.S.C. s.414). A taxpayer may establish
9 by clear and convincing evidence, as determined by the Director of
10 the Division of Taxation in the Department of the Treasury, that
11 control exists in situations involving lesser percentages of
12 ownership than required by those statutes.

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

15 "Business" means an applicant proposing to own or lease
16 premises in a transformative corporate headquarters that is a
17 corporation that is subject to the tax imposed pursuant to section 5
18 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945,
19 c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231
20 (C.17:32-15), or N.J.S.17B:23-5. A business shall include an
21 affiliate of the business if that business applies for a credit based
22 upon any capital investment made by or full-time employees of an
23 affiliate.

24 "Capital investment" in a transformative corporate headquarters
25 means expenses by a business or any affiliate of the business
26 incurred after application for:

- 27 a. site preparation and construction, repair, renovation,
28 improvement, equipping, or furnishing on real property or of a
29 building, structure, facility, or improvement to real property; and
30 b. obtaining and installing furnishings and machinery,
31 apparatus, or equipment, including but not limited to material goods
32 subject to bonus depreciation under sections 168 and 179 of the
33 federal Internal Revenue Code (26 U.S.C. s.168 and s.179), for the
34 operation of a business on real property or in a building, structure,
35 facility, or improvement to real property.

36 In addition to the foregoing, if a business acquires or leases a
37 transformative corporate headquarters, the capital investment made
38 or acquired by the seller or owner, as the case may be, if pertaining
39 primarily to the premises of the transformative corporate
40 headquarters, shall be considered a capital investment by the
41 business and, if pertaining generally to the transformative corporate
42 headquarters being acquired or leased, shall be allocated to the
43 premises of the transformative corporate headquarters on the basis
44 of the gross leasable area of the premises in relation to the total
45 gross leasable area in the transformative corporate headquarters.
46 The capital investment described herein may include any capital
47 investment made or acquired within 24 months prior to the date of
48 application so long as the amount of capital investment made or
49 acquired by the business, any affiliate of the business, or any owner

1 after the date of application equals at least 50 percent of the amount
2 of capital investment, allocated to the premises of the
3 transformative corporate headquarters being acquired or leased on
4 the basis of the gross leasable area of the premises in relation to the
5 total gross leasable area in the transformative corporate
6 headquarters made or acquired prior to the date of application.

7 "Commitment period" means the period of time that is one and a
8 half times the eligibility period for each applicable phase
9 agreement.

10 "Director" means the Director of the Division of Taxation in the
11 Department of the Treasury.

12 "Eligibility period" means the period in which a business may
13 claim a tax credit under the Transformative Headquarters Economic
14 Assistance Program for a given project phase, beginning with the
15 tax period in which the authority accepts certification of the
16 business that it has met the capital investment and employment
17 requirements of the respective phase of the program and extending
18 thereafter for a term of not more than 10 years, with the term to be
19 determined solely at the discretion of the applicant.

20 "Eligible position" or "full-time job" means a new full-time
21 position at a transformative corporate headquarters, which the
22 business has filled with a full-time employee of that business.

23 "Full-time employee" means a person:

24 a. who is employed by a business for consideration for at least
25 35 hours a week, or who renders any other standard of service
26 generally accepted by custom or practice as full-time employment;
27 and

28 b. who is provided, by the business, with employee health
29 benefits under a health benefits plan authorized pursuant to State or
30 federal law.

31 "Full-time employee" shall not include any person who works as
32 an independent contractor or on a consulting basis for the business.
33 Full-time employee shall also not include any person who, at the
34 time of the transformative corporate headquarters application,
35 works in New Jersey for consideration for at least 35 hours per
36 week, or who renders any other standard of service generally
37 accepted by custom or practice as full-time employment but who
38 prior to the application was not provided, by the business, with
39 employee health benefits under a health benefits plan authorized
40 pursuant to State or federal law.

41 "Government entity" means the State government, a local unit of
42 government, or a State or local government agency or authority.

43 "Incentive agreement" means the contract between the business
44 and the authority, which sets forth the terms and conditions under
45 which the business shall be eligible to receive the incentives
46 authorized pursuant to the Transformative Headquarters Economic
47 Assistance Program.

48 "Incentive phase agreement" means a sub-agreement of the
49 incentive agreement that governs the timing, capital investment,

1 employment levels, and other applicable details of the respective
2 phase.

3 "Incentive phase agreement effective date" means the date the
4 authority issues a tax credit for a portion of the total tax credits
5 awarded proportionate to the number of new full-time jobs created
6 during the respective phase, based on documentation submitted by a
7 business pursuant to subsection a. of section 6 of P.L. , c. (C.)
8 (pending before the Legislature as this bill).

9 "Minimum environmental and sustainability standards" means
10 standards established by the authority in accordance with the green
11 building manual prepared by the Commissioner of Community
12 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6),
13 regarding the use of renewable energy, energy-efficient technology,
14 and non-renewable resources in order to reduce environmental
15 degradation and encourage long-term cost reduction.

16 "New full-time job" means an eligible position created by the
17 business at the transformative corporate headquarters that did not
18 previously exist in this State.

19 "Program" means the "Transformative Headquarters Economic
20 Assistance Program" established pursuant to section 3 of P.L. ,
21 c. (C.) (pending before the Legislature as this bill).

22 "Providing public infrastructure" means:

- 23 a. undertaking and paying for the construction of public
24 infrastructure;
25 b. contributing money or paying debt service for the
26 construction of public infrastructure; or
27 c. deeding land to a government entity for use as public
28 infrastructure.

29 "Public infrastructure" means:

- 30 a. buildings and structures such as: schools; fire houses; police
31 stations; recreation centers; public works garages; and water and
32 sewer treatment and pumping facilities;
33 b. open space with improvements such as: athletic fields;
34 playgrounds; and planned parks;
35 c. open space without improvements;
36 d. public transportation facilities such as: train stations and
37 public parking facilities; and
38 e. sidewalks, streets, roads, ramps, and jug handles.

39 To qualify as "public infrastructure," the facilities, land, or both,
40 shall have a minimum fair market value of \$5,000,000; provided,
41 however, that multiple lands and facilities, valued individually at
42 less than \$5,000,000, that are part of the same redevelopment
43 project may be aggregated to achieve the minimum \$5,000,000
44 requirement. In the case of open space without improvements, the
45 land shall have a minimum fair market value of at least \$1,000,000
46 prior to its dedication as open space.

47 "Qualified business facility" means within any building, complex
48 of buildings or structural components of buildings, and all
49 machinery and equipment, at one or more sites zoned for that

1 purpose located anywhere within this State, used in connection with
2 the operation of a business.

3 “Transformative corporate headquarters” or “headquarters”
4 means the corporate headquarters of a business that is a qualified
5 business facility at which the business intends to create at least
6 30,000 new full-time jobs and make at least \$3,000,000,000 in
7 capital investment.

8
9 3. a. The Transformative Headquarters Economic Assistance
10 Program is hereby established as a program under the jurisdiction of
11 the New Jersey Economic Development Authority and shall be
12 administered by the authority. The purpose of the program shall be
13 to encourage economic development and job creation in New Jersey
14 by providing tax credits to a business establishing a transformative
15 corporate headquarters in this State, at which at least 30,000 new
16 full-time jobs will be created and at least \$3,000,000,000 in capital
17 investment will be made. To implement this purpose, the program
18 may provide tax credits claimed by an eligible business for an
19 eligibility period not to exceed 10 years per project phase.

20 b. To be eligible for any tax credits pursuant to P.L. , c.
21 (C.) (pending before the Legislature as this bill), a business's chief
22 executive officer or equivalent officer shall demonstrate to the
23 authority, at the time of application, that:

24 (1) the business, expressly including its landlord or seller, will
25 make, acquire, or lease a capital investment equal to, or greater
26 than, \$3,000,000,000 at a transformative corporate headquarters at
27 which it intends to create new full-time jobs in an amount equal to
28 or greater than 30,000;

29 (2) the transformative corporate headquarters shall be
30 constructed in accordance with the minimum environmental and
31 sustainability standards as determined by the authority;

32 (3) (a) the capital investment resultant from the award of tax
33 credits and the resultant creation of full-time jobs will yield a net
34 positive benefit to the State equaling at least 115 percent of the
35 requested tax credit allocation amount where the net positive
36 benefit determination shall be calculated for each phase and based
37 on the benefits generated during a period of up to 50 years
38 following completion of each phase of the transformative corporate
39 headquarters, as determined by the authority, and shall equal at least
40 115 percent of the requested tax credit allocation amount;

41 (b) an individual phase may generate a net benefit of less than
42 115 percent of the tax credit allocation amount, provided that the
43 total of all phases calculated up to that point, including the current
44 phase, is at least 115 percent; and

45 (c) the calculation of future phases of the headquarters shall not
46 be used to claim a net positive benefit to the State equaling at least
47 115 percent of the requested tax credit allocation amount towards
48 the calculation of the current phase; and

1 (4) the award of tax credits will be a material factor in the
2 business's decision to create at least 30,000 new full-time jobs at the
3 headquarters for eligibility under the program.

4 c. The minimum capital investment required to be eligible
5 under the program shall be \$120 per square foot of gross leasable
6 area for construction of a transformative corporate headquarters.

7 d. To assist the authority in determining whether a proposed
8 capital investment will yield a net positive benefit, the business's
9 chief executive officer, or equivalent officer, shall submit a
10 certification to the authority indicating:

11 (1) that any projected creation of new full-time jobs at a
12 transformative corporate headquarters would not occur but for the
13 provision of tax credits under the program; and

14 (2) that the business's chief executive officer, or equivalent
15 officer, has reviewed the information submitted to the authority and
16 that the representations contained therein are accurate, provided
17 however, that in satisfaction of the provisions of paragraphs (2) and
18 (3) of subsection b. of this section, the certification shall indicate
19 that the provision of tax credits under the program is a material
20 factor in the business decision to create the minimum number of
21 new full-time jobs set forth in the business's application and make a
22 minimum amount of capital investment of \$3,000,000,000 at a
23 transformative corporate headquarters.

24 In the event that this certification by the business's chief
25 executive officer, or equivalent officer, is found to be willfully
26 false, the authority may revoke any award of tax credits in their
27 entirety, which revocation shall be in addition to any other criminal
28 or civil penalties that the business and the officer may be subject to.
29

30 4. The authority shall require an eligible business to enter into
31 an incentive agreement prior to the issuance of tax credits. The
32 incentive agreement shall include, but not be limited to, the
33 following:

34 a. a detailed description of the proposed transformative
35 corporate headquarters, including the phases for completion of the
36 headquarters and the number of new full-time jobs that are
37 approved for tax credits;

38 b. an incentive phase agreement which for each phase,
39 identifies a description of the phase, the expected capital investment
40 and number of new full-time jobs, and the time following
41 acceptance of the incentive agreement when each phase is to begin
42 and be completed, with the awarding of tax credits under the
43 incentive agreement to be predicated on the number of full-time
44 jobs created through the fulfillment of each incentive phase
45 agreement;

46 c. the eligibility period of the tax credits for each phase,
47 including the first year for which the tax credits may be claimed;

48 d. personnel information that will enable the authority to
49 administer the program;

- 1 e. (1) a requirement that the applicant maintain each phase of
2 the headquarters at a location in New Jersey for the commitment
3 period and a provision to permit the authority to recapture all or
4 part of any tax credits awarded, at its discretion, if the business does
5 not remain in compliance with this provision for the required term
6 according to the incentive phase agreement schedule required
7 pursuant to subsection b. of this section;
- 8 (2) a provision which requires the applicant to complete a
9 number of phases of the headquarters equal to 30,000 new full-time
10 jobs and \$3,000,000,000 in capital investment prior to the 20th year
11 following authority approval of the incentive agreement and a
12 provision setting forth the requirements pursuant to subsection c. of
13 section 8 of P.L. , c. (C.) (pending before the Legislature
14 as this bill) in the event the headquarters fails to achieve the
15 required employment level of new full-time jobs or capital
16 investment by the 20th year of the incentive agreement;
- 17 (3) a provision that up to \$25,000,000 of the tax credits awarded
18 to the business may be sold annually, pursuant to subsection c. of
19 section 7 of P.L. , c. (C.) (pending before the Legislature
20 as this bill), to a third party, provided that the maximum amount of
21 tax credits the business may sell shall be \$500,000,000, and that the
22 proceeds from the sales of tax credit are used for providing public
23 infrastructure;
- 24 (4) a provision that each phase shall have a minimum
25 investment of \$300,000,000 and that the first phase shall employ a
26 minimum of 5,000 new full-time jobs; and
- 27 (5) in the instance of the business terminating an existing
28 incentive agreement in order to participate in an incentive
29 agreement authorized pursuant to the P.L. , c. (C.)
30 (pending before the Legislature as this bill), the permitted recapture
31 may be calculated to recognize the period of time that the business
32 was in compliance prior to termination.
- 33 f. a method for the business to certify that the business has met
34 the employment and capital investment requirements of the
35 program, pursuant to incentive phase agreements and the incentive
36 agreement towards the headquarters completion and job creation
37 schedule, and to report annually to the authority the number of new
38 full-time employees against which the tax credits are to be made;
- 39 g. a provision permitting an audit of the payroll records of the
40 business from time to time, as the authority deems necessary;
- 41 h. a provision which permits the authority to amend the
42 agreement; and
- 43 i. a provision establishing the conditions under which the
44 agreement may be terminated.
- 45
- 46 5. a. The total amount of the tax credit awarded for an eligible
47 business for each new full-time job shall be \$10,000 per year for 10
48 years. The total tax credit amount shall be calculated and credited
49 to the business annually for each year of the eligibility period

1 following the creation of the full-time job pursuant to the incentive
2 phase agreements.

3 b. Following the enactment of P.L. , c. (C.) (pending
4 before the Legislature as this bill), there shall be no monetary cap
5 on the value of credits approved by the authority attributable to the
6 program.

7
8 6. a. (1) A business shall submit an application for tax credits
9 to the authority prior to July 1, 2019. If the business requests
10 additional time to submit its application, the authority shall have the
11 discretion to grant one six-month extension of this deadline. A
12 business shall submit its documentation indicating that it has met
13 the capital investment and employment requirements for the first
14 phase, as specified in the incentive agreement and the incentive
15 phase agreement, for certification of its tax credit amount within
16 three years following the date of approval of its application by the
17 authority. The authority shall have the discretion to grant two, one-
18 year extensions of this deadline.

19 (2) Full-time employment for a tax period shall be determined
20 as the average of the monthly full-time employment for the tax
21 period.

22 b. In conducting its annual review, the authority may require a
23 business to submit any information determined by the authority to
24 be necessary and relevant to its review.

25
26 7. a. The total tax credit amount calculated and credited to the
27 business annually for each year of the eligibility period may be
28 applied against the tax liability otherwise due and required to be
29 paid by the business pursuant to section 5 of P.L.1945, c.162
30 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and
31 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or
32 N.J.S.17B:23-5 for the privilege period or the tax accounting period
33 of the business that coincides with the year of the business's
34 eligibility period for which the tax credit has been issued.

35 b. The order of priority of the application of the tax credit
36 issued to a business by the authority pursuant to section 5 of P.L. ,
37 c. (C.) (pending before the Legislature as this bill), and any
38 other tax credits allowed by law, shall be as prescribed by the
39 director. The amount of the tax credit applied under this section
40 against the tax imposed pursuant to section 5 of P.L.1945, c.162
41 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and
42 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or
43 N.J.S.17B:23-5 for the privilege period or the tax accounting
44 period, with any other credits allowed by law, shall not reduce the
45 tax liability otherwise due and required to be paid to an amount less
46 than zero. If the tax credit issued to a business exceeds the amount
47 of tax otherwise due and required to be paid, the amount of that
48 excess may be carried over, if necessary, to the 50 privilege periods

1 or tax accounting periods following the privilege period or taxable
2 year for which the tax credit is first allowed to be applied.

3 c. A business issued an annual installment of a tax credit may
4 apply to the authority and the director for a tax credit transfer
5 certificate in lieu of the business being allowed any amount of the
6 tax credit against the tax liability otherwise due and required to be
7 paid by the business, subject to the limitations on the annual and
8 total amounts of tax credits that may be sold pursuant to paragraph
9 (3) of subsection e. of section 4 of P.L. , c. (C.) (pending
10 before the Legislature as this bill). The tax credit transfer
11 certificate, upon receipt thereof by the business from the authority
12 and the director, may be sold or assigned, in full or in part, to any
13 other person that may have a tax liability pursuant to section 5 of
14 P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132
15 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-
16 15), or N.J.S.17B:23-5. The certificate issued to the business shall
17 include a statement waiving the business's right to claim that
18 amount of the annual installment of the tax credit against the taxes
19 that the business has elected to sell or assign. The sale or
20 assignment of any amount of a tax credit transfer certificate allowed
21 pursuant to this subsection shall not be sold or exchanged for
22 consideration received by the business of less than 75 percent of the
23 transferred tax credit amount. The amount of any tax credit transfer
24 certificate used by a purchaser or assignee against a tax liability
25 otherwise due and required to be paid shall be subject to the same
26 limitations and conditions that apply to the use of the credit by the
27 business that was issued the annual installment of the tax credit.

28
29 8. a. If, in any tax period, the number of new full-time
30 employees employed by the business at the headquarters drops
31 below 80 percent of the number of new full-time jobs specified in
32 the incentive phase agreements for all phases completed, then the
33 business shall forfeit its credit amount for that tax period and each
34 subsequent tax period, until the first tax period for which
35 documentation demonstrating the restoration of the number of full-
36 time employees employed by the business at the headquarters to 80
37 percent of the number of jobs specified in the incentive phase
38 agreements for all phases completed.

39 b. If the headquarters is sold by the owner in whole or in part
40 during the eligibility period, the new owner shall not acquire the
41 capital investment of the seller and the seller shall forfeit all credits
42 for the tax period in which the sale occurs and all subsequent tax
43 periods, provided however, that any credits of the business shall
44 remain unaffected.

45 c. If the headquarters fails to achieve an employment level of
46 30,000 new full-time jobs or a capital investment of at least
47 \$3,000,000,000 by the 20th year of the incentive agreement, then
48 the business shall not receive any tax credits for an incomplete

1 phase, and for a completed phase, if the total employment achieved
2 is between:

3 (1) 20,000 and 29,999 new full-time jobs, the amount of tax
4 credits shall be reduced to \$7,000 per employee per year;

5 (2) 10,000 and 19,999 new full-time jobs, the amount of tax
6 credits shall be reduced to \$5,000 per employee per year; and

7 (3) 5,000 and 9,999 new full-time jobs, the amount of tax credits
8 shall be reduced to \$3,000 per employee per year.

9 The business shall repay any amount of tax credits allowed prior
10 to the 20th year of the incentive agreement that is in excess of the
11 amount calculated based on the reduced tax credit first by forfeiting
12 any tax credit amounts carried over, pursuant to subsection b. of
13 section 7 of P.L. , c. (C.) (pending before the Legislature
14 as this bill), and then by payment of current funds.

15
16 9. a. The chief executive officer of the authority, in
17 consultation with the Director of the Division of Taxation in the
18 Department of the Treasury, shall adopt rules and regulations
19 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
20 (C.52:14B-1 et seq.) as are necessary to implement P.L. , c.
21 (C.) (pending before the Legislature as this bill), including but not
22 limited to:

23 (1) examples of and the determination of capital investment at
24 the headquarters;

25 (2) the determination of the limits, if any, on the expense or type
26 of furnishings that may constitute capital improvements;

27 (3) the promulgation of procedures and forms necessary to apply
28 for a tax credit, including the enumeration of the certification
29 procedures and allocation of tax credits for different phases of a
30 headquarters; and

31 (4) provisions for tax credit applicants to be charged an initial
32 application fee and ongoing service fees to cover the administrative
33 costs related to the tax credit.

34 b. Through regulation, the authority shall establish standards
35 by which a headquarters shall be constructed or renovated in
36 compliance with the minimum environmental and sustainability
37 standards.

38
39 10. This act shall take effect immediately.

40

41

42

STATEMENT

43

44 The Grow New Jersey Assistance Program (Grow Program) is
45 the State's premier job creation and retention business incentive
46 program that offers eligible businesses creating or retaining jobs in
47 New Jersey tax credits for making certain capital investments at
48 certain locations in the State. Although the Grow Program is
49 achieving its intended result of having businesses locate to the

1 commercial areas of the State's cities and shuttered suburban office
2 parks, thereby revitalizing these commercial areas, the State has
3 opportunities from time to time to attract corporate headquarters
4 that have the effect of transforming the economy of a region of the
5 State by establishing a new business incentive program that
6 complements the Grow Program.

7 This bill establishes a "Transformative Headquarters Economic
8 Assistance Program" (program) under the jurisdiction of the New
9 Jersey Economic Development Authority (authority). The purpose
10 of this new business incentive program is to encourage economic
11 development and new job creation in New Jersey at a corporate
12 headquarters (headquarters) that is transformational to the regional
13 economy, where at least 30,000 new full-time jobs are created and
14 at least \$3 billion in capital investment is made. The program
15 provides tax credits claimed by an eligible business for an
16 eligibility period not to exceed 10 years for each phase of the
17 headquarters.

18 To be eligible for tax credits under the bill, an eligible business's
19 chief executive officer or equivalent officer is to demonstrate to the
20 authority, at the time of application, that:

21 (1) the business will make, acquire, or lease a capital investment
22 equal to, or greater than, \$3 billion at a headquarters at which it will
23 create at least 30,000 new full-time jobs;

24 (2) the headquarters is to be constructed in accordance with the
25 minimum environmental and sustainability standards;

26 (3) the capital investment resultant from the award of tax credits
27 and the resultant creation of new full-time jobs will yield a net
28 positive benefit to the State equaling at least 115 percent of the
29 requested tax credit allocation amount where the net positive
30 benefit determination shall be calculated for each phase of the
31 headquarters based on the benefits generated during a period of up
32 to 50 years following completion of the headquarters; and

33 (4) the award of tax credits will be a material factor in the
34 business's decision to create at least 30,000 new full-time jobs for
35 eligibility under the program.

36 The bill requires a business to submit an application for tax
37 credits to the authority prior to July 1, 2019. If the business
38 requests additional time to submit its application, the authority is to
39 have the discretion to grant one six-month extension of this
40 deadline.

41 Under the bill, the authority is to require an eligible business to
42 enter into an incentive agreement prior to the issuance of tax
43 credits. The incentive agreement is to include, but not be limited
44 to:

45 (1) a detailed description of the proposed headquarters,
46 including the phases for completion of the headquarters and the
47 number of new full-time jobs that are approved for tax credits;

48 (2) the eligibility period of the tax credits for each phase,
49 including the first year for which the tax credits may be claimed;

1 (3) personnel information that will enable the authority to
2 administer the program;

3 (4) a requirement that the applicant maintain the headquarters at
4 a location in New Jersey for the commitment period and a provision
5 to permit the authority to recapture all or part of any tax credits
6 awarded, at its discretion, if the business does not remain in
7 compliance with this provision for the required term;

8 (5) a provision that up to \$25,000,000 of the tax credits awarded
9 to the business may be sold annually to a third party, provided that
10 the maximum amount of tax credits the business may sell shall be
11 \$500,000,000 and that the proceeds are used for providing public
12 infrastructure;

13 (6) a method for the business to certify that it has met the
14 employment and capital investment requirements of the program
15 pursuant to a phased-in headquarters completion and new full-time
16 job creation employment schedule and to report annually to the
17 authority the number of new full-time employees against which the
18 tax credits are to be made;

19 (7) a provision permitting an audit of the payroll records of the
20 business from time to time, as the authority deems necessary; and

21 (8) a provision which permits the authority to amend the
22 agreement and provisions establishing the conditions under which
23 the agreement may be terminated.

24 The total amount of the tax credit for an eligible business for
25 each new full-time job is \$10,000 per year for up to 10 years. The
26 total tax credit amount is to be calculated and credited to the
27 business annually for each year of the eligibility period. There is no
28 monetary cap on the value of credits approved by the authority
29 attributable to the program. If the tax credit issued to a business
30 exceeds the amount of tax otherwise due and required to be paid,
31 the amount of that excess may be carried over, if necessary, to the
32 50 tax periods following the taxable year for which the tax credit is
33 first allowed to be applied.

34 If, in any tax period, the number of new full-time employees
35 employed by the business at its headquarters drops below 80
36 percent of the number of new full-time jobs specified in the
37 incentive phase agreements for all phases completed, then the
38 business is to forfeit its credit amount for that tax period and each
39 subsequent tax period, until the first tax period for which
40 documentation demonstrating the restoration of the number of full-
41 time employees employed by the business at the headquarters to 80
42 percent of the number of jobs specified in the incentive phase
43 agreements for all phases completed.

44

45

46

47

48 Provides tax credits for certain business headquarters located in
49 State.

ASSEMBLY, No. 5340

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JANUARY 5, 2018

Sponsored by:

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator SAMUEL D. THOMPSON

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Provides tax credits for certain business headquarters located in State.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/9/2018)

1 AN ACT concerning tax credits for certain business headquarters
2 located in this State and supplementing P.L.1974, c.80 (C.34:1B-
3 1 et seq.).

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

7
8 1. The Legislature finds and declares that:

9 a. (1) the Grow New Jersey Assistance Program (Grow
10 Program) is the State's premier job creation and retention business
11 incentive program that offers eligible businesses creating or
12 retaining jobs in New Jersey tax credits for making certain capital
13 investments at certain locations in the State;

14 (2) according to the New Jersey Economic Development
15 Authority (authority), the State agency that administers the Grow
16 Program, as of the end of July 2017, the authority approved 229
17 projects, amounting to more than \$4.4 billion in tax credits to be
18 awarded after these businesses create or retain jobs and make
19 capital investments;

20 (3) the authority reports that, collectively, these eligible
21 businesses are to make a total capital investment of \$3.85 billion,
22 create 28,800 new full-time jobs, retain 30,420 jobs at risk of
23 leaving the State, and create 15,730 estimated construction jobs,
24 having an estimated net benefit to the State of \$13.4 billion; and

25 (4) although the Grow Program is achieving its intended result of
26 having businesses locate in the commercial areas of the State's
27 cities and shuttered suburban office parks, thereby revitalizing these
28 commercial areas, the State has opportunities from time to time to
29 attract corporate headquarters that have the effect of transforming
30 the economy of a region of the State.

31 b. Therefore, the Legislature determines that it is in the
32 economic interest of the residents of this State that a new, enhanced
33 business incentive program be created to supplement the Grow
34 Program, where an eligible business creating at least 30,000 new,
35 full-time, high-paying jobs and making a capital investment of at
36 least \$3 billion at a site in this State, be awarded an enhanced
37 amount of tax credits by the authority for undertaking the
38 construction of a corporate headquarters that has the effect of
39 transforming the economy of a region of the State.

40
41 2. As used in P.L. , c. (C.) (pending before the
42 Legislature as this bill):

43 "Affiliate" means an entity that directly or indirectly controls, is
44 under common control with, or is controlled by the business.
45 Control exists in all cases in which the entity is a member of a
46 controlled group of corporations as defined pursuant to section 1563
47 of the Internal Revenue Code (26 U.S.C. s.1563) or the entity is an
48 organization in a group of organizations under common control as

1 defined pursuant to subsection (b) or (c) of section 414 of the
2 Internal Revenue Code (26 U.S.C. s.414). A taxpayer may establish
3 by clear and convincing evidence, as determined by the Director of
4 the Division of Taxation in the Department of the Treasury, that
5 control exists in situations involving lesser percentages of
6 ownership than required by those statutes.

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

9 "Business" means an applicant proposing to own or lease
10 premises in a transformative corporate headquarters that is a
11 corporation that is subject to the tax imposed pursuant to section 5
12 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945,
13 c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231
14 (C.17:32-15), or N.J.S.17B:23-5. A business shall include an
15 affiliate of the business if that business applies for a credit based
16 upon any capital investment made by or full-time employees of an
17 affiliate.

18 "Capital investment" in a transformative corporate headquarters
19 means expenses by a business or any affiliate of the business
20 incurred after application for:

21 a. site preparation and construction, repair, renovation,
22 improvement, equipping, or furnishing on real property or of a
23 building, structure, facility, or improvement to real property; and

24 b. obtaining and installing furnishings and machinery,
25 apparatus, or equipment, including but not limited to material goods
26 subject to bonus depreciation under sections 168 and 179 of the
27 federal Internal Revenue Code (26 U.S.C. s.168 and s.179), for the
28 operation of a business on real property or in a building, structure,
29 facility, or improvement to real property.

30 In addition to the foregoing, if a business acquires or leases a
31 transformative corporate headquarters, the capital investment made
32 or acquired by the seller or owner, as the case may be, if pertaining
33 primarily to the premises of the transformative corporate
34 headquarters, shall be considered a capital investment by the
35 business and, if pertaining generally to the transformative corporate
36 headquarters being acquired or leased, shall be allocated to the
37 premises of the transformative corporate headquarters on the basis
38 of the gross leasable area of the premises in relation to the total
39 gross leasable area in the transformative corporate headquarters.
40 The capital investment described herein may include any capital
41 investment made or acquired within 24 months prior to the date of
42 application so long as the amount of capital investment made or
43 acquired by the business, any affiliate of the business, or any owner
44 after the date of application equals at least 50 percent of the amount
45 of capital investment, allocated to the premises of the
46 transformative corporate headquarters being acquired or leased on
47 the basis of the gross leasable area of the premises in relation to the
48 total gross leasable area in the transformative corporate
49 headquarters made or acquired prior to the date of application.

1 "Commitment period" means the period of time that is one and a
2 half times the eligibility period for each applicable phase
3 agreement.

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

6 "Eligibility period" means the period in which a business may
7 claim a tax credit under the Transformative Headquarters Economic
8 Assistance Program for a given project phase, beginning with the
9 tax period in which the authority accepts certification of the
10 business that it has met the capital investment and employment
11 requirements of the respective phase of the program and extending
12 thereafter for a term of not more than 10 years, with the term to be
13 determined solely at the discretion of the applicant.

14 "Eligible position" or "full-time job" means a new full-time
15 position at a transformative corporate headquarters, which the
16 business has filled with a full-time employee of that business.

17 "Full-time employee" means a person:

18 a. who is employed by a business for consideration for at least
19 35 hours a week, or who renders any other standard of service
20 generally accepted by custom or practice as full-time employment;
21 and

22 b. who is provided, by the business, with employee health
23 benefits under a health benefits plan authorized pursuant to State or
24 federal law.

25 "Full-time employee" shall not include any person who works as
26 an independent contractor or on a consulting basis for the business.
27 Full-time employee shall also not include any person who, at the
28 time of the transformative corporate headquarters application,
29 works in New Jersey for consideration for at least 35 hours per
30 week, or who renders any other standard of service generally
31 accepted by custom or practice as full-time employment but who
32 prior to the application was not provided, by the business, with
33 employee health benefits under a health benefits plan authorized
34 pursuant to State or federal law.

35 "Government entity" means the State government, a local unit of
36 government, or a State or local government agency or authority.

37 "Incentive agreement" means the contract between the business
38 and the authority, which sets forth the terms and conditions under
39 which the business shall be eligible to receive the incentives
40 authorized pursuant to the Transformative Headquarters Economic
41 Assistance Program.

42 "Incentive phase agreement" means a sub-agreement of the
43 incentive agreement that governs the timing, capital investment,
44 employment levels, and other applicable details of the respective
45 phase.

46 "Incentive phase agreement effective date" means the date the
47 authority issues a tax credit for a portion of the total tax credits
48 awarded proportionate to the number of new full-time jobs created
49 during the respective phase, based on documentation submitted by a

1 business pursuant to subsection a. of section 6 of P.L. , c. (C.)
2 (pending before the Legislature as this bill).

3 "Minimum environmental and sustainability standards" means
4 standards established by the authority in accordance with the green
5 building manual prepared by the Commissioner of Community
6 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6),
7 regarding the use of renewable energy, energy-efficient technology,
8 and non-renewable resources in order to reduce environmental
9 degradation and encourage long-term cost reduction.

10 "New full-time job" means an eligible position created by the
11 business at the transformative corporate headquarters that did not
12 previously exist in this State.

13 "Program" means the "Transformative Headquarters Economic
14 Assistance Program" established pursuant to section 3 of P.L. ,
15 c. (C.) (pending before the Legislature as this bill).

16 "Providing public infrastructure" means:

- 17 a. undertaking and paying for the construction of public
18 infrastructure;
19 b. contributing money or paying debt service for the
20 construction of public infrastructure; or
21 c. deeding land to a government entity for use as public
22 infrastructure.

23 "Public infrastructure" means:

- 24 a. buildings and structures such as: schools; fire houses; police
25 stations; recreation centers; public works garages; and water and
26 sewer treatment and pumping facilities;
27 b. open space with improvements such as: athletic fields;
28 playgrounds; and planned parks;
29 c. open space without improvements;
30 d. public transportation facilities such as: train stations and
31 public parking facilities; and
32 e. sidewalks, streets, roads, ramps, and jug handles.

33 To qualify as "public infrastructure," the facilities, land, or both,
34 shall have a minimum fair market value of \$5,000,000; provided,
35 however, that multiple lands and facilities, valued individually at
36 less than \$5,000,000, that are part of the same redevelopment
37 project may be aggregated to achieve the minimum \$5,000,000
38 requirement. In the case of open space without improvements, the
39 land shall have a minimum fair market value of at least \$1,000,000
40 prior to its dedication as open space.

41 "Qualified business facility" means within any building, complex
42 of buildings or structural components of buildings, and all
43 machinery and equipment, at one or more sites zoned for that
44 purpose located anywhere within this State, used in connection with
45 the operation of a business.

46 "Transformative corporate headquarters" or "headquarters"
47 means the corporate headquarters of a business that is a qualified
48 business facility at which the business intends to create at least

1 30,000 new full-time jobs and make at least \$3,000,000,000 in
2 capital investment.

3
4 3. a. The Transformative Headquarters Economic Assistance
5 Program is hereby established as a program under the jurisdiction of
6 the New Jersey Economic Development Authority and shall be
7 administered by the authority. The purpose of the program shall be
8 to encourage economic development and job creation in New Jersey
9 by providing tax credits to a business establishing a transformative
10 corporate headquarters in this State, at which at least 30,000 new
11 full-time jobs will be created and at least \$3,000,000,000 in capital
12 investment will be made. To implement this purpose, the program
13 may provide tax credits claimed by an eligible business for an
14 eligibility period not to exceed 10 years per project phase.

15 b. To be eligible for any tax credits pursuant to P.L. , c.
16 (C.) (pending before the Legislature as this bill), a business's chief
17 executive officer or equivalent officer shall demonstrate to the
18 authority, at the time of application, that:

19 (1) the business, expressly including its landlord or seller, will
20 make, acquire, or lease a capital investment equal to, or greater
21 than, \$3,000,000,000 at a transformative corporate headquarters at
22 which it intends to create new full-time jobs in an amount equal to
23 or greater than 30,000;

24 (2) the transformative corporate headquarters shall be
25 constructed in accordance with the minimum environmental and
26 sustainability standards as determined by the authority;

27 (3) (a) the capital investment resultant from the award of tax
28 credits and the resultant creation of full-time jobs will yield a net
29 positive benefit to the State equaling at least 115 percent of the
30 requested tax credit allocation amount where the net positive
31 benefit determination shall be calculated for each phase and based
32 on the benefits generated during a period of up to 50 years
33 following completion of each phase of the transformative corporate
34 headquarters, as determined by the authority, and shall equal at least
35 115 percent of the requested tax credit allocation amount;

36 (b) an individual phase may generate a net benefit of less than
37 115 percent of the tax credit allocation amount, provided that the
38 total of all phases calculated up to that point, including the current
39 phase, is at least 115 percent; and

40 (c) the calculation of future phases of the headquarters shall not
41 be used to claim a net positive benefit to the State equaling at least
42 115 percent of the requested tax credit allocation amount towards
43 the calculation of the current phase; and

44 (4) the award of tax credits will be a material factor in the
45 business's decision to create at least 30,000 new full-time jobs at the
46 headquarters for eligibility under the program.

47 c. The minimum capital investment required to be eligible
48 under the program shall be \$120 per square foot of gross leasable
49 area for construction of a transformative corporate headquarters.

1 d. To assist the authority in determining whether a proposed
2 capital investment will yield a net positive benefit, the business's
3 chief executive officer, or equivalent officer, shall submit a
4 certification to the authority indicating:

5 (1) that any projected creation of new full-time jobs at a
6 transformative corporate headquarters would not occur but for the
7 provision of tax credits under the program; and

8 (2) that the business's chief executive officer, or equivalent
9 officer, has reviewed the information submitted to the authority and
10 that the representations contained therein are accurate, provided
11 however, that in satisfaction of the provisions of paragraphs (2) and
12 (3) of subsection b. of this section, the certification shall indicate
13 that the provision of tax credits under the program is a material
14 factor in the business decision to create the minimum number of
15 new full-time jobs set forth in the business's application and make a
16 minimum amount of capital investment of \$3,000,000,000 at a
17 transformative corporate headquarters.

18 In the event that this certification by the business's chief
19 executive officer, or equivalent officer, is found to be willfully
20 false, the authority may revoke any award of tax credits in their
21 entirety, which revocation shall be in addition to any other criminal
22 or civil penalties that the business and the officer may be subject to.

23

24 4. The authority shall require an eligible business to enter into
25 an incentive agreement prior to the issuance of tax credits. The
26 incentive agreement shall include, but not be limited to, the
27 following:

28 a. a detailed description of the proposed transformative
29 corporate headquarters, including the phases for completion of the
30 headquarters and the number of new full-time jobs that are
31 approved for tax credits;

32 b. an incentive phase agreement which for each phase,
33 identifies a description of the phase, the expected capital investment
34 and number of new full-time jobs, and the time following
35 acceptance of the incentive agreement when each phase is to begin
36 and be completed, with the awarding of tax credits under the
37 incentive agreement to be predicated on the number of full-time
38 jobs created through the fulfillment of each incentive phase
39 agreement;

40 c. the eligibility period of the tax credits for each phase,
41 including the first year for which the tax credits may be claimed;

42 d. personnel information that will enable the authority to
43 administer the program;

44 e. (1) a requirement that the applicant maintain each phase of
45 the headquarters at a location in New Jersey for the commitment
46 period and a provision to permit the authority to recapture all or
47 part of any tax credits awarded, at its discretion, if the business does
48 not remain in compliance with this provision for the required term

1 according to the incentive phase agreement schedule required
2 pursuant to subsection b. of this section;

3 (2) a provision which requires the applicant to complete a
4 number of phases of the headquarters equal to 30,000 new full-time
5 jobs and \$3,000,000,000 in capital investment prior to the 20th year
6 following authority approval of the incentive agreement and a
7 provision setting forth the requirements pursuant to subsection c. of
8 section 8 of P.L. , c. (C.) (pending before the Legislature
9 as this bill) in the event the headquarters fails to achieve the
10 required employment level of new full-time jobs or capital
11 investment by the 20th year of the incentive agreement;

12 (3) a provision that up to \$25,000,000 of the tax credits awarded
13 to the business may be sold annually, pursuant to subsection c. of
14 section 7 of P.L. , c. (C.) (pending before the Legislature
15 as this bill), to a third party, provided that the maximum amount of
16 tax credits the business may sell shall be \$500,000,000, and that the
17 proceeds from the sales of tax credit are used for providing public
18 infrastructure;

19 (4) a provision that each phase shall have a minimum
20 investment of \$300,000,000 and that the first phase shall employ a
21 minimum of 5,000 new full-time jobs; and

22 (5) in the instance of the business terminating an existing
23 incentive agreement in order to participate in an incentive
24 agreement authorized pursuant to the P.L. , c. (C.)
25 (pending before the Legislature as this bill), the permitted recapture
26 may be calculated to recognize the period of time that the business
27 was in compliance prior to termination.

28 f. a method for the business to certify that the business has met
29 the employment and capital investment requirements of the
30 program, pursuant to incentive phase agreements and the incentive
31 agreement towards the headquarters completion and job creation
32 schedule, and to report annually to the authority the number of new
33 full-time employees against which the tax credits are to be made;

34 g. a provision permitting an audit of the payroll records of the
35 business from time to time, as the authority deems necessary;

36 h. a provision which permits the authority to amend the
37 agreement; and

38 i. a provision establishing the conditions under which the
39 agreement may be terminated.

40

41 5. a. The total amount of the tax credit awarded for an eligible
42 business for each new full-time job shall be \$10,000 per year for 10
43 years. The total tax credit amount shall be calculated and credited
44 to the business annually for each year of the eligibility period
45 following the creation of the full-time job pursuant to the incentive
46 phase agreements.

47 b. Following the enactment of P.L. , c. (C.) (pending
48 before the Legislature as this bill), there shall be no monetary cap

1 on the value of credits approved by the authority attributable to the
2 program.

3
4 6. a. (1) A business shall submit an application for tax credits
5 to the authority prior to July 1, 2019. If the business requests
6 additional time to submit its application, the authority shall have the
7 discretion to grant one six-month extension of this deadline. A
8 business shall submit its documentation indicating that it has met
9 the capital investment and employment requirements for the first
10 phase, as specified in the incentive agreement and the incentive
11 phase agreement, for certification of its tax credit amount within
12 three years following the date of approval of its application by the
13 authority. The authority shall have the discretion to grant two, one-
14 year extensions of this deadline.

15 (2) Full-time employment for a tax period shall be determined
16 as the average of the monthly full-time employment for the tax
17 period.

18 b. In conducting its annual review, the authority may require a
19 business to submit any information determined by the authority to
20 be necessary and relevant to its review.

21
22 7. a. The total tax credit amount calculated and credited to the
23 business annually for each year of the eligibility period may be
24 applied against the tax liability otherwise due and required to be
25 paid by the business pursuant to section 5 of P.L.1945, c.162
26 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and
27 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or
28 N.J.S.17B:23-5 for the privilege period or the tax accounting period
29 of the business that coincides with the year of the business's
30 eligibility period for which the tax credit has been issued.

31 b. The order of priority of the application of the tax credit
32 issued to a business by the authority pursuant to section 5 of P.L. ,
33 c. (C.) (pending before the Legislature as this bill), and any
34 other tax credits allowed by law, shall be as prescribed by the
35 director. The amount of the tax credit applied under this section
36 against the tax imposed pursuant to section 5 of P.L.1945, c.162
37 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and
38 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or
39 N.J.S.17B:23-5 for the privilege period or the tax accounting
40 period, with any other credits allowed by law, shall not reduce the
41 tax liability otherwise due and required to be paid to an amount less
42 than zero. If the tax credit issued to a business exceeds the amount
43 of tax otherwise due and required to be paid, the amount of that
44 excess may be carried over, if necessary, to the 50 privilege periods
45 or tax accounting periods following the privilege period or taxable
46 year for which the tax credit is first allowed to be applied.

47 c. A business issued an annual installment of a tax credit may
48 apply to the authority and the director for a tax credit transfer
49 certificate in lieu of the business being allowed any amount of the

1 tax credit against the tax liability otherwise due and required to be
2 paid by the business, subject to the limitations on the annual and
3 total amounts of tax credits that may be sold pursuant to paragraph
4 (3) of subsection e. of section 4 of P.L. , c. (C.) (pending
5 before the Legislature as this bill). The tax credit transfer
6 certificate, upon receipt thereof by the business from the authority
7 and the director, may be sold or assigned, in full or in part, to any
8 other person that may have a tax liability pursuant to section 5 of
9 P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132
10 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-
11 15), or N.J.S.17B:23-5. The certificate issued to the business shall
12 include a statement waiving the business's right to claim that
13 amount of the annual installment of the tax credit against the taxes
14 that the business has elected to sell or assign. The sale or
15 assignment of any amount of a tax credit transfer certificate allowed
16 pursuant to this subsection shall not be sold or exchanged for
17 consideration received by the business of less than 75 percent of the
18 transferred tax credit amount. The amount of any tax credit transfer
19 certificate used by a purchaser or assignee against a tax liability
20 otherwise due and required to be paid shall be subject to the same
21 limitations and conditions that apply to the use of the credit by the
22 business that was issued the annual installment of the tax credit.

23
24 8. a. If, in any tax period, the number of new full-time
25 employees employed by the business at the headquarters drops
26 below 80 percent of the number of new full-time jobs specified in
27 the incentive phase agreements for all phases completed, then the
28 business shall forfeit its credit amount for that tax period and each
29 subsequent tax period, until the first tax period for which
30 documentation demonstrating the restoration of the number of full-
31 time employees employed by the business at the headquarters to 80
32 percent of the number of jobs specified in the incentive phase
33 agreements for all phases completed.

34 b. If the headquarters is sold by the owner in whole or in part
35 during the eligibility period, the new owner shall not acquire the
36 capital investment of the seller and the seller shall forfeit all credits
37 for the tax period in which the sale occurs and all subsequent tax
38 periods, provided however, that any credits of the business shall
39 remain unaffected.

40 c. If the headquarters fails to achieve an employment level of
41 30,000 new full-time jobs or a capital investment of at least
42 \$3,000,000,000 by the 20th year of the incentive agreement, then
43 the business shall not receive any tax credits for an incomplete
44 phase, and for a completed phase, if the total employment achieved
45 is between:

46 (1) 20,000 and 29,999 new full-time jobs, the amount of tax
47 credits shall be reduced to \$7,000 per employee per year;

48 (2) 10,000 and 19,999 new full-time jobs, the amount of tax
49 credits shall be reduced to \$5,000 per employee per year; and

1 (3) 5,000 and 9,999 new full-time jobs, the amount of tax credits
2 shall be reduced to \$3,000 per employee per year.

3 The business shall repay any amount of tax credits allowed prior
4 to the 20th year of the incentive agreement that is in excess of the
5 amount calculated based on the reduced tax credit first by forfeiting
6 any tax credit amounts carried over, pursuant to subsection b. of
7 section 7 of P.L. , c. (C.) (pending before the Legislature
8 as this bill), and then by payment of current funds.

9
10 9. a. The chief executive officer of the authority, in
11 consultation with the Director of the Division of Taxation in the
12 Department of the Treasury, shall adopt rules and regulations
13 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
14 (C.52:14B-1 et seq.) as are necessary to implement P.L. , c.
15 (C.) (pending before the Legislature as this bill), including but not
16 limited to:

17 (1) examples of and the determination of capital investment at
18 the headquarters;

19 (2) the determination of the limits, if any, on the expense or type
20 of furnishings that may constitute capital improvements;

21 (3) the promulgation of procedures and forms necessary to apply
22 for a tax credit, including the enumeration of the certification
23 procedures and allocation of tax credits for different phases of a
24 headquarters; and

25 (4) provisions for tax credit applicants to be charged an initial
26 application fee and ongoing service fees to cover the administrative
27 costs related to the tax credit.

28 b. Through regulation, the authority shall establish standards
29 by which a headquarters shall be constructed or renovated in
30 compliance with the minimum environmental and sustainability
31 standards.

32
33 10. This act shall take effect immediately.

34
35
36 STATEMENT

37
38 The Grow New Jersey Assistance Program (Grow Program) is
39 the State's premier job creation and retention business incentive
40 program that offers eligible businesses creating or retaining jobs in
41 New Jersey tax credits for making certain capital investments at
42 certain locations in the State. Although the Grow Program is
43 achieving its intended result of having businesses locate to the
44 commercial areas of the State's cities and shuttered suburban office
45 parks, thereby revitalizing these commercial areas, the State has
46 opportunities from time to time to attract corporate headquarters
47 that have the effect of transforming the economy of a region of the
48 State by establishing a new business incentive program that
49 complements the Grow Program.

1 This bill establishes a “Transformative Headquarters Economic
2 Assistance Program” (program) under the jurisdiction of the New
3 Jersey Economic Development Authority (authority). The purpose
4 of this new business incentive program is to encourage economic
5 development and new job creation in New Jersey at a corporate
6 headquarters (headquarters) that is transformational to the regional
7 economy, where at least 30,000 new full-time jobs are created and
8 at least \$3 billion in capital investment is made. The program
9 provides tax credits claimed by an eligible business for an
10 eligibility period not to exceed 10 years for each phase of the
11 headquarters.

12 To be eligible for tax credits under the bill, an eligible business's
13 chief executive officer or equivalent officer is to demonstrate to the
14 authority, at the time of application, that:

15 (1) the business will make, acquire, or lease a capital investment
16 equal to, or greater than, \$3 billion at a headquarters at which it will
17 create at least 30,000 new full-time jobs;

18 (2) the headquarters is to be constructed in accordance with the
19 minimum environmental and sustainability standards;

20 (3) the capital investment resultant from the award of tax credits
21 and the resultant creation of new full-time jobs will yield a net
22 positive benefit to the State equaling at least 115 percent of the
23 requested tax credit allocation amount where the net positive
24 benefit determination shall be calculated for each phase of the
25 headquarters based on the benefits generated during a period of up
26 to 50 years following completion of the headquarters; and

27 (4) the award of tax credits will be a material factor in the
28 business's decision to create at least 30,000 new full-time jobs for
29 eligibility under the program.

30 The bill requires a business to submit an application for tax
31 credits to the authority prior to July 1, 2019. If the business
32 requests additional time to submit its application, the authority is to
33 have the discretion to grant one six-month extension of this
34 deadline.

35 Under the bill, the authority is to require an eligible business to
36 enter into an incentive agreement prior to the issuance of tax
37 credits. The incentive agreement is to include, but not be limited
38 to:

39 (1) a detailed description of the proposed headquarters,
40 including the phases for completion of the headquarters and the
41 number of new full-time jobs that are approved for tax credits;

42 (2) the eligibility period of the tax credits for each phase,
43 including the first year for which the tax credits may be claimed;

44 (3) personnel information that will enable the authority to
45 administer the program;

46 (4) a requirement that the applicant maintain the headquarters at
47 a location in New Jersey for the commitment period and a provision
48 to permit the authority to recapture all or part of any tax credits

1 awarded, at its discretion, if the business does not remain in
2 compliance with this provision for the required term;

3 (5) a provision that up to \$25,000,000 of the tax credits awarded
4 to the business may be sold annually to a third party, provided that
5 the maximum amount of tax credits the business may sell shall be
6 \$500,000,000 and that the proceeds are used for providing public
7 infrastructure;

8 (6) a method for the business to certify that it has met the
9 employment and capital investment requirements of the program
10 pursuant to a phased-in headquarters completion and new full-time
11 job creation employment schedule and to report annually to the
12 authority the number of new full-time employees against which the
13 tax credits are to be made;

14 (7) a provision permitting an audit of the payroll records of the
15 business from time to time, as the authority deems necessary; and

16 (8) a provision which permits the authority to amend the
17 agreement and provisions establishing the conditions under which
18 the agreement may be terminated.

19 The total amount of the tax credit for an eligible business for
20 each new full-time job is \$10,000 per year for up to 10 years. The
21 total tax credit amount is to be calculated and credited to the
22 business annually for each year of the eligibility period. There is no
23 monetary cap on the value of credits approved by the authority
24 attributable to the program. If the tax credit issued to a business
25 exceeds the amount of tax otherwise due and required to be paid,
26 the amount of that excess may be carried over, if necessary, to the
27 50 tax periods following the taxable year for which the tax credit is
28 first allowed to be applied.

29 If, in any tax period, the number of new full-time employees
30 employed by the business at its headquarters drops below 80
31 percent of the number of new full-time jobs specified in the
32 incentive phase agreements for all phases completed, then the
33 business is to forfeit its credit amount for that tax period and each
34 subsequent tax period, until the first tax period for which
35 documentation demonstrating the restoration of the number of full-
36 time employees employed by the business at the headquarters to 80
37 percent of the number of jobs specified in the incentive phase
38 agreements for all phases completed.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5340

STATE OF NEW JERSEY

DATED: JANUARY 5, 2018

The Assembly Judiciary Committee reports favorably Assembly Bill No. 5340.

The Grow New Jersey Assistance Program (Grow Program) is the State's premier job creation and retention business incentive program that offers eligible businesses creating or retaining jobs in New Jersey tax credits for making certain capital investments at certain locations in the State. Although the Grow Program is achieving its intended result of having businesses locate to the commercial areas of the State's cities and shuttered suburban office parks, thereby revitalizing these commercial areas, the State has opportunities from time to time to attract corporate headquarters that have the effect of transforming the economy of a region of the State by establishing a new business incentive program that complements the Grow Program.

This bill establishes a "Transformative Headquarters Economic Assistance Program" (program) under the jurisdiction of the New Jersey Economic Development Authority (authority). The purpose of this new business incentive program is to encourage economic development and new job creation in New Jersey at a corporate headquarters (headquarters) that is transformational to the regional economy, where at least 30,000 new full-time jobs are created and at least \$3 billion in capital investment is made. The program provides tax credits claimed by an eligible business for an eligibility period not to exceed 10 years for each phase of the headquarters.

To be eligible for tax credits under the bill, an eligible business's chief executive officer or equivalent officer is to demonstrate to the authority, at the time of application, that:

(1) the business will make, acquire, or lease a capital investment equal to, or greater than, \$3 billion at a headquarters at which it will create at least 30,000 new full-time jobs;

(2) the headquarters is to be constructed in accordance with the minimum environmental and sustainability standards;

(3) the capital investment resultant from the award of tax credits and the resultant creation of new full-time jobs will yield a net positive benefit to the State equaling at least 115 percent of the requested tax credit allocation amount where the net positive benefit determination shall be calculated for each phase of the

headquarters based on the benefits generated during a period of up to 50 years following completion of the headquarters; and

(4) the award of tax credits will be a material factor in the business's decision to create at least 30,000 new full-time jobs for eligibility under the program.

The bill requires a business to submit an application for tax credits to the authority prior to July 1, 2019. If the business requests additional time to submit its application, the authority is to have the discretion to grant one six-month extension of this deadline.

Under the bill, the authority is to require an eligible business to enter into an incentive agreement prior to the issuance of tax credits. The incentive agreement is to include, but not be limited to:

(1) a detailed description of the proposed headquarters, including the phases for completion of the headquarters and the number of new full-time jobs that are approved for tax credits;

(2) the eligibility period of the tax credits for each phase, including the first year for which the tax credits may be claimed;

(3) personnel information that will enable the authority to administer the program;

(4) a requirement that the applicant maintain the headquarters at a location in New Jersey for the commitment period and a provision to permit the authority to recapture all or part of any tax credits awarded, at its discretion, if the business does not remain in compliance with this provision for the required term;

(5) a provision that up to \$25,000,000 of the tax credits awarded to the business may be sold annually to a third party, provided that the maximum amount of tax credits the business may sell shall be \$500,000,000 and that the proceeds are used for providing public infrastructure;

(6) a method for the business to certify that it has met the employment and capital investment requirements of the program pursuant to a phased-in headquarters completion and new full-time job creation employment schedule and to report annually to the authority the number of new full-time employees against which the tax credits are to be made;

(7) a provision permitting an audit of the payroll records of the business from time to time, as the authority deems necessary; and

(8) a provision which permits the authority to amend the agreement and provisions establishing the conditions under which the agreement may be terminated.

The total amount of the tax credit for an eligible business for each new full-time job is \$10,000 per year for up to 10 years. The total tax credit amount is to be calculated and credited to the business annually for each year of the eligibility period. There is no monetary cap on the value of credits approved by the authority

attributable to the program. If the tax credit issued to a business exceeds the amount of tax otherwise due and required to be paid, the amount of that excess may be carried over, if necessary, to the 50 tax periods following the taxable year for which the tax credit is first allowed to be applied.

If, in any tax period, the number of new full-time employees employed by the business at its headquarters drops below 80 percent of the number of new full-time jobs specified in the incentive phase agreements for all phases completed, then the business is to forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the headquarters to 80 percent of the number of jobs specified in the incentive phase agreements for all phases completed.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 5340
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: JANUARY 11, 2018

SUMMARY

Synopsis: Provides tax credits for certain business headquarters located in State.

Type of Impact: Indeterminate fiscal net impact on State General Fund and Property Tax Relief Fund; potential revenue increase to affected local governments.

Agencies Affected: Department of the Treasury;
 New Jersey Economic Development Authority; and
 Certain local governments.

Office of Legislative Services Estimate

Fiscal Impact	Multi-Year Lifespan of Tax Credit Awards
Direct <u>State</u> Revenue Loss	Indeterminate — See comments below
Indirect <u>State</u> Revenue Gain	Indeterminate — See comments below
<u>State</u> Opportunity Cost	Indeterminate — See comments below
Indirect <u>Local</u> Revenue Gain	Indeterminate — See comments below

- The Office of Legislative Services (OLS) cannot determine whether the bill will have a positive or negative net fiscal impact on the State. The inability to determine the direction and magnitude of the fiscal net impact is rooted in imperfect information on the number and attributes of projects that, under the bill, might qualify for Transformative Headquarters Economic Assistance Program tax credits.
- The bill’s direct revenue loss to the State from Transformative Headquarters Economic Assistance Program tax credit awards cannot be quantified. However, the OLS notes that tax credits awarded under the program could exceed \$3.0 billion for each project. This calculation is based on a project resulting in the creation of 30,000 new full-time jobs (as is intended by the bill) with each new full-time job worth \$10,000 in tax credits per year for up to 10 years. There is no monetary cap on the total value of tax credits the New Jersey Economic Development Authority (EDA) may approve under the program.

- The OLS notes that the fiscal impact of the tax credit awards could extend over several decades because the bill provides that if a tax credit issued to a business exceeds the amount of tax otherwise due and required to be paid, the amount of that excess may be carried over to 50 tax periods following the tax year for which the tax credit is first allowed to be applied.
- The bill might accrue an indeterminate revenue gain to affected local governments if the bill results in the EDA extending financial assistance to business projects that would not be undertaken absent the assistance and if the business projects involve value-increasing improvements to taxable real estate.

BILL DESCRIPTION

This bill establishes the “Transformative Headquarters Economic Assistance Program” under the jurisdiction of the EDA. To be eligible for tax credits under the program, an eligible business’s chief executive officer must demonstrate to the EDA, at the time of application, that: 1) the business will make, acquire, or lease a capital investment equal to, or greater than, \$3.0 billion at a headquarters where at least 30,000 new full-time jobs will be created; 2) the headquarters is to be constructed in accordance with the bill’s minimum environmental and sustainability standards; 3) the capital investment resultant from the awards of tax credits and the creation of new full-time jobs will yield a net positive benefit to the State equaling at least 115 percent of the requested tax credit allocation amount generated over a period of up to 50 years following the completion of the headquarters; and 4) the awards of tax credits will be a material factor in the business’s decision to create at least 30,000 new full-time jobs.

The amount of the tax credit for an eligible business for each new full-time job is \$10,000 per year for up to 10 years. The bill includes provisions that require the reduction, cancellation, or recapture of certain tax credit amounts if a recipient business fails to achieve 30,000 new full-time jobs or \$3.0 billion in capital investments by the 20th year following the EDA’s approval of the incentive agreement. There is no monetary cap on the total value of tax credits the EDA may approve under the program.

The bill requires a business to submit an application for tax credits to the authority prior to July 1, 2019, with the opportunity for the EDA to grant one six-month extension.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds the bill may produce an indeterminate revenue gain to affected local governments if the bill results in the EDA extending financial assistance to business projects that would not be undertaken absent the assistance and if the business projects involve value-increasing improvements to taxable real estate.

On the other hand, it is unclear whether the bill will have a positive or negative fiscal net impact on the State. The inability to determine the direction and the magnitude of the fiscal net impact is rooted in imperfect information on the number and attributes of projects that, under the bill, might qualify for Transformative Headquarters Economic Assistance Program tax credits.

Conceptually, the State fiscal net impact is calculated by adding the direct revenue loss from awarding tax credits and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain that will accrue from additional economic activity that the additional incentive amounts will catalyze.

Direct State Revenue Loss: The OLS cannot quantify the direct revenue loss the bill will impose on the State because of imperfect information on the number and attributes of projects that, under the bill, might qualify for Transformative Headquarters Economic Assistance Program tax credits.

The bill allows a business which intends to create at least 30,000 new full-time jobs and make at least \$3.0 billion in capital investments to receive Transformative Headquarters Economic Assistance Program tax credits. Similar to other tax credit programs, eligible businesses are required to enter into incentive agreements with the EDA prior to the issuance of tax credits. However, the Transformative Headquarters Economic Assistance Program features sub-agreements, referred to in the bill as incentive phase agreements, which allow a business to fulfil the obligations of its incentive agreement over a series of phases. Each phase is required to have a minimum capital investment of \$300 million and the first phase must result in the creation of at least 5,000 new full-time jobs.

The amount of the credit awarded for an eligible business for each new full-time job is \$10,000 per year for 10 years. If a qualified project results in the creation of at least 30,000 new full-time jobs, the total cost of the project in tax credit awards could be at least \$3.0 billion over several decades. Certain program parameters will limit the State revenue loss, for example, the program requires eligible projects to meet two financial conditions: a) the financial assistance provided must be a material factor in a project's realization; and b) the project must yield fiscal benefits to the State over a period of up to 50 years that equal or exceed 115 percent of the tax credit amount. However, there is no monetary cap on the total value of tax credits the EDA may approve under the program.

Any revenue loss will be: a) temporally limited, for the EDA will only consider applications received prior to July 1, 2019, unless this deadline is extended by six months; and b) spread out over several years, for incentive awards are only to be used in up to 10 annual installments following the completion of each phase. If the tax credit issued to a business exceeds the amount of tax otherwise due and required to be paid, the amount of that excess may be carried over to the 50 tax periods following the tax period for which the tax credit is first allowed to be applied. Thus, the fiscal impact of the tax credit awards could extend over several decades.

If the business fails to achieve 30,000 new full-time jobs or \$3.0 billion in capital investments by the 20th year following the EDA's approval of the incentive agreement, the business will not receive any tax credits for an incomplete phase, and for a completed phase, if certain total employment numbers are achieved, the business will be required to repay an amount equal to the excess awarded above the reduced tax credit award amount. Further, if, in any tax period, the number of new full-time employees employed by the business at the headquarters drops below 80 percent of the number of new full-time jobs specified in the incentive phase agreements for all phases completed, then the business is required to forfeit its credit amount for that tax period and each subsequent tax period, until the number of employees is restored to amounts agreed upon in the incentive phase agreement for all phases completed.

Indirect State and Local Revenue Gain: The OLS cannot quantify the bill's indirect revenue gain to the State and local governments because of imperfect information on the number and attributes of creditable projects. For reasons laid out below, it is unclear whether the bill's indirect fiscal State benefits will exceed its direct State revenue loss.

Analytical Framework: Like any government expenditure, economic development incentive awards inject new spending into the economy. Once businesses and individuals receive payments they would not receive absent the incentive awards, at least a portion of these payments will newly circulate in New Jersey's economy and produce so-called "multiplier effects." As the additional financial resources flow through the economy they generate, as a byproduct, additional State and local revenue collections—the indirect revenue gain discussed in this section. Examples are enhanced local property tax collections accruing when an incentive recipient invests the incentive amount in facility improvements, which then appreciate the property's value; or additional State sales and use tax collections from construction workers employed in the facility improvement spending their resultant income on taxable goods and services.

Indirect State fiscal effects offset the State's direct cost of awarding incentives in part or potentially even in whole. Fiscal "multiplier effects" tend to be maximized whenever an incentive award serves as the indispensable impetus for additional spending by the incentive recipient that would not otherwise occur. In this case, the incentive recipient magnifies the positive economic and fiscal impacts of the State's outlay. Depending on project and incentive attributes, the induced project may even yield indirect fiscal State benefits exceeding the cost of the subsidy. The larger the proportion of the public assistance relative to the financial outlay by the subsidized party, however, the lower the probability that the subsidized activity will generate positive net returns to the State.

In contrast, the State's return on investment is negative whenever the State subsidizes a project that a taxpayer would have undertaken with or without public assistance. Because the financial inducement has not caused the project's realization, none of its economic and fiscal feedback effects are attributable to the incentive, and therefore must be excluded from the tabulation of the incentive's indirect fiscal benefits.

Nevertheless, even if the State provides financial assistance to a project that would be realized anyway, some, albeit comparatively small, indirect fiscal benefits may still accrue to the State. These would occur whenever the subsidy beneficiary spends the incentive award in New Jersey on goods and services that the beneficiary would otherwise not have procured. In that event the incentive award still represents an injection of additional cash into New Jersey's economy whose ripple effects include the accumulation of indirect fiscal State benefits.

Lastly, given the high degree of integration of New Jersey's economy with the national and global economies, an addition of spending in New Jersey will eventually leak into other jurisdictions and cease to circulate within the State. Consequently, any tabulation of a subsidy payment's New Jersey feedback effects must disregard feedback effects that other jurisdictions will absorb.

Bill's State Indirect Fiscal Effects: It is unclear whether the bill's indirect fiscal State benefits will exceed its direct State revenue loss.

The bill may generate additional indirect fiscal benefits to the State in excess of the direct State revenue loss from awarding tax credits. This is so because under the program the financial assistance must be a material factor in a project's realization and the project must pass a net benefit test. The multiplier-based net benefit test calculation is intended to ensure that the EDA will award incentives only to capital projects that are estimated to generate indirect State revenue equal to at least 115 percent of an inducement's direct State revenue loss. Therefore, to the extent that the bill allows for tax credits to projects that otherwise would be ineligible to receive

the incentive award needed for project realization, the bill will yield fiscal net benefits to the State.

Irrespective of the magnitude of the bill's indirect fiscal benefits, the analysis of its full impact on State finances is incomplete without considering the bill's opportunity costs.

State Opportunity Costs: Given the State's finite resources and its balanced budget requirement, the decision to award tax credits to eligible projects will invariably divert resources from policy alternatives to which they would have been applied absent the inducements. These policy alternatives also produce direct State costs and indirect State revenue collections. The concept of opportunity costs captures the value of these fiscal benefits the State forgoes as it redirects cash flows. Once opportunity costs are factored into the analysis, it is therefore possible for a bill to produce a *net* fiscal loss to the State even if its indirect fiscal benefits exceed its direct cost.

For example, if, instead of this legislation, the State invested in road construction the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the Transformative Headquarters Economic Assistance Program tax credit awards to eligible projects—or the direct State cost of awarding tax credits to those projects, minus the incentives' indirect State fiscal effects—and that of the forgone road construction investment.

Section: Revenue, Finance and Appropriations

*Analyst: Jordan M. DiGiovanni
Associate Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

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

SENATE, No. 3631

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED DECEMBER 18, 2017

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator SAMUEL D. THOMPSON

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Provides tax credits for certain business headquarters located in State.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning tax credits for certain business headquarters
2 located in this State and supplementing P.L.1974, c.80 (C.34:1B-
3 1 et seq.).

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

7
8 1. The Legislature finds and declares that:

9 a. (1) the Grow New Jersey Assistance Program (Grow
10 Program) is the State's premier job creation and retention business
11 incentive program that offers eligible businesses creating or
12 retaining jobs in New Jersey tax credits for making certain capital
13 investments at certain locations in the State;

14 (2) according to the New Jersey Economic Development
15 Authority (authority), the State agency that administers the Grow
16 Program, as of the end of July 2017, the authority approved 229
17 projects, amounting to more than \$4.4 billion in tax credits to be
18 awarded after these businesses create or retain jobs and make
19 capital investments;

20 (3) the authority reports that, collectively, these eligible
21 businesses are to make a total capital investment of \$3.85 billion,
22 create 28,800 new full-time jobs, retain 30,420 jobs at risk of
23 leaving the State, and create 15,730 estimated construction jobs,
24 having an estimated net benefit to the State of \$13.4 billion; and

25 (4) although the Grow Program is achieving its intended result of
26 having businesses locate in the commercial areas of the State's
27 cities and shuttered suburban office parks, thereby revitalizing these
28 commercial areas, the State has opportunities from time to time to
29 attract corporate headquarters that have the effect of transforming
30 the economy of a region of the State.

31 b. Therefore, the Legislature determines that it is in the
32 economic interest of the residents of this State that a new, enhanced
33 business incentive program be created to supplement the Grow
34 Program, where an eligible business creating at least 30,000 new,
35 full-time, high-paying jobs and making a capital investment of at
36 least \$3 billion at a site in this State, be awarded an enhanced
37 amount of tax credits by the authority for undertaking the
38 construction of a corporate headquarters that has the effect of
39 transforming the economy of a region of the State.

40

41 2. As used in P.L. , c. (C.) (pending before the
42 Legislature as this bill):

43 "Affiliate" means an entity that directly or indirectly controls, is
44 under common control with, or is controlled by the business.
45 Control exists in all cases in which the entity is a member of a
46 controlled group of corporations as defined pursuant to section 1563
47 of the Internal Revenue Code (26 U.S.C. s.1563) or the entity is an
48 organization in a group of organizations under common control as

1 defined pursuant to subsection (b) or (c) of section 414 of the
2 Internal Revenue Code (26 U.S.C. s.414). A taxpayer may establish
3 by clear and convincing evidence, as determined by the Director of
4 the Division of Taxation in the Department of the Treasury, that
5 control exists in situations involving lesser percentages of
6 ownership than required by those statutes.

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

9 "Business" means an applicant proposing to own or lease
10 premises in a transformative corporate headquarters that is a
11 corporation that is subject to the tax imposed pursuant to section 5
12 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945,
13 c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231
14 (C.17:32-15), or N.J.S.17B:23-5. A business shall include an
15 affiliate of the business if that business applies for a credit based
16 upon any capital investment made by or full-time employees of an
17 affiliate.

18 "Capital investment" in a transformative corporate headquarters
19 means expenses by a business or any affiliate of the business
20 incurred after application for:

- 21 a. site preparation and construction, repair, renovation,
22 improvement, equipping, or furnishing on real property or of a
23 building, structure, facility, or improvement to real property; and
- 24 b. obtaining and installing furnishings and machinery,
25 apparatus, or equipment, including but not limited to material goods
26 subject to bonus depreciation under sections 168 and 179 of the
27 federal Internal Revenue Code (26 U.S.C. s.168 and s.179), for the
28 operation of a business on real property or in a building, structure,
29 facility, or improvement to real property.

30 In addition to the foregoing, if a business acquires or leases a
31 transformative corporate headquarters, the capital investment made
32 or acquired by the seller or owner, as the case may be, if pertaining
33 primarily to the premises of the transformative corporate
34 headquarters, shall be considered a capital investment by the
35 business and, if pertaining generally to the transformative corporate
36 headquarters being acquired or leased, shall be allocated to the
37 premises of the transformative corporate headquarters on the basis
38 of the gross leasable area of the premises in relation to the total
39 gross leasable area in the transformative corporate headquarters.
40 The capital investment described herein may include any capital
41 investment made or acquired within 24 months prior to the date of
42 application so long as the amount of capital investment made or
43 acquired by the business, any affiliate of the business, or any owner
44 after the date of application equals at least 50 percent of the amount
45 of capital investment, allocated to the premises of the
46 transformative corporate headquarters being acquired or leased on
47 the basis of the gross leasable area of the premises in relation to the

1 total gross leasable area in the transformative corporate
2 headquarters made or acquired prior to the date of application.

3 "Commitment period" means the period of time that is one and a
4 half times the eligibility period for each applicable phase
5 agreement.

6 "Director" means the Director of the Division of Taxation in the
7 Department of the Treasury.

8 "Eligibility period" means the period in which a business may
9 claim a tax credit under the Transformative Headquarters Economic
10 Assistance Program for a given project phase, beginning with the
11 tax period in which the authority accepts certification of the
12 business that it has met the capital investment and employment
13 requirements of the respective phase of the program and extending
14 thereafter for a term of not more than 10 years, with the term to be
15 determined solely at the discretion of the applicant.

16 "Eligible position" or "full-time job" means a new full-time
17 position at a transformative corporate headquarters, which the
18 business has filled with a full-time employee of that business.

19 "Full-time employee" means a person:

20 a. who is employed by a business for consideration for at least
21 35 hours a week, or who renders any other standard of service
22 generally accepted by custom or practice as full-time employment;
23 and

24 b. who is provided, by the business, with employee health
25 benefits under a health benefits plan authorized pursuant to State or
26 federal law.

27 "Full-time employee" shall not include any person who works as
28 an independent contractor or on a consulting basis for the business.
29 Full-time employee shall also not include any person who, at the
30 time of the transformative corporate headquarters application,
31 works in New Jersey for consideration for at least 35 hours per
32 week, or who renders any other standard of service generally
33 accepted by custom or practice as full-time employment but who
34 prior to the application was not provided, by the business, with
35 employee health benefits under a health benefits plan authorized
36 pursuant to State or federal law.

37 "Government entity" means the State government, a local unit of
38 government, or a State or local government agency or authority.

39 "Incentive agreement" means the contract between the business
40 and the authority, which sets forth the terms and conditions under
41 which the business shall be eligible to receive the incentives
42 authorized pursuant to the Transformative Headquarters Economic
43 Assistance Program.

44 "Incentive phase agreement" means a sub-agreement of the
45 incentive agreement that governs the timing, capital investment,
46 employment levels, and other applicable details of the respective
47 phase.

1 "Incentive phase agreement effective date" means the date the
2 authority issues a tax credit for a portion of the total tax credits
3 awarded proportionate to the number of new full-time jobs created
4 during the respective phase, based on documentation submitted by a
5 business pursuant to subsection a. of section 6 of P.L. , c. (C.)
6 (pending before the Legislature as this bill).

7 "Minimum environmental and sustainability standards" means
8 standards established by the authority in accordance with the green
9 building manual prepared by the Commissioner of Community
10 Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6),
11 regarding the use of renewable energy, energy-efficient technology,
12 and non-renewable resources in order to reduce environmental
13 degradation and encourage long-term cost reduction.

14 "New full-time job" means an eligible position created by the
15 business at the transformative corporate headquarters that did not
16 previously exist in this State.

17 "Program" means the "Transformative Headquarters Economic
18 Assistance Program" established pursuant to section 3 of P.L. ,
19 c. (C.) (pending before the Legislature as this bill).

20 "Providing public infrastructure" means:

- 21 a. undertaking and paying for the construction of public
22 infrastructure;
- 23 b. contributing money or paying debt service for the
24 construction of public infrastructure; or
- 25 c. deeding land to a government entity for use as public
26 infrastructure.

27 "Public infrastructure" means:

- 28 a. buildings and structures such as: schools; fire houses; police
29 stations; recreation centers; public works garages; and water and
30 sewer treatment and pumping facilities;
- 31 b. open space with improvements such as: athletic fields;
32 playgrounds; and planned parks;
- 33 c. open space without improvements;
- 34 d. public transportation facilities such as: train stations and
35 public parking facilities; and
- 36 e. sidewalks, streets, roads, ramps, and jug handles.

37 To qualify as "public infrastructure," the facilities, land, or both,
38 shall have a minimum fair market value of \$5,000,000; provided,
39 however, that multiple lands and facilities, valued individually at
40 less than \$5,000,000, that are part of the same redevelopment
41 project may be aggregated to achieve the minimum \$5,000,000
42 requirement. In the case of open space without improvements, the
43 land shall have a minimum fair market value of at least \$1,000,000
44 prior to its dedication as open space.

45 "Qualified business facility" means within any building, complex
46 of buildings or structural components of buildings, and all
47 machinery and equipment, at one or more sites zoned for that

1 purpose located anywhere within this State, used in connection with
2 the operation of a business.

3 “Transformative corporate headquarters” or “headquarters”
4 means the corporate headquarters of a business that is a qualified
5 business facility at which the business intends to create at least
6 30,000 new full-time jobs and make at least \$3,000,000,000 in
7 capital investment.

8
9 3. a. The Transformative Headquarters Economic Assistance
10 Program is hereby established as a program under the jurisdiction of
11 the New Jersey Economic Development Authority and shall be
12 administered by the authority. The purpose of the program shall be
13 to encourage economic development and job creation in New Jersey
14 by providing tax credits to a business establishing a transformative
15 corporate headquarters in this State, at which at least 30,000 new
16 full-time jobs will be created and at least \$3,000,000,000 in capital
17 investment will be made. To implement this purpose, the program
18 may provide tax credits claimed by an eligible business for an
19 eligibility period not to exceed 10 years per project phase.

20 b. To be eligible for any tax credits pursuant to P.L. ,

21 c. (C.) (pending before the Legislature as this bill), a business's
22 chief executive officer or equivalent officer shall demonstrate to the
23 authority, at the time of application, that:

24 (1) the business, expressly including its landlord or seller, will
25 make, acquire, or lease a capital investment equal to, or greater
26 than, \$3,000,000,000 at a transformative corporate headquarters at
27 which it intends to create new full-time jobs in an amount equal to
28 or greater than 30,000;

29 (2) the transformative corporate headquarters shall be
30 constructed in accordance with the minimum environmental and
31 sustainability standards as determined by the authority;

32 (3) (a) the capital investment resultant from the award of tax
33 credits and the resultant creation of full-time jobs will yield a net
34 positive benefit to the State equaling at least 115 percent of the
35 requested tax credit allocation amount where the net positive
36 benefit determination shall be calculated for each phase and based
37 on the benefits generated during a period of up to 50 years
38 following completion of each phase of the transformative corporate
39 headquarters, as determined by the authority, and shall equal at least
40 115 percent of the requested tax credit allocation amount;

41 (b) an individual phase may generate a net benefit of less than
42 115 percent of the tax credit allocation amount, provided that the
43 total of all phases calculated up to that point, including the current
44 phase, is at least 115 percent; and

45 (c) the calculation of future phases of the headquarters shall not
46 be used to claim a net positive benefit to the State equaling at least
47 115 percent of the requested tax credit allocation amount towards
48 the calculation of the current phase; and

1 (4) the award of tax credits will be a material factor in the
2 business's decision to create at least 30,000 new full-time jobs at the
3 headquarters for eligibility under the program.

4 c. The minimum capital investment required to be eligible
5 under the program shall be \$120 per square foot of gross leasable
6 area for construction of a transformative corporate headquarters.

7 d. To assist the authority in determining whether a proposed
8 capital investment will yield a net positive benefit, the business's
9 chief executive officer, or equivalent officer, shall submit a
10 certification to the authority indicating:

11 (1) that any projected creation of new full-time jobs at a
12 transformative corporate headquarters would not occur but for the
13 provision of tax credits under the program; and

14 (2) that the business's chief executive officer, or equivalent
15 officer, has reviewed the information submitted to the authority and
16 that the representations contained therein are accurate, provided
17 however, that in satisfaction of the provisions of paragraphs (2) and
18 (3) of subsection b. of this section, the certification shall indicate
19 that the provision of tax credits under the program is a material
20 factor in the business decision to create the minimum number of
21 new full-time jobs set forth in the business's application and make a
22 minimum amount of capital investment of \$3,000,000,000 at a
23 transformative corporate headquarters.

24 In the event that this certification by the business's chief
25 executive officer, or equivalent officer, is found to be willfully
26 false, the authority may revoke any award of tax credits in their
27 entirety, which revocation shall be in addition to any other criminal
28 or civil penalties that the business and the officer may be subject to.
29

30 4. The authority shall require an eligible business to enter into
31 an incentive agreement prior to the issuance of tax credits. The
32 incentive agreement shall include, but not be limited to, the
33 following:

34 a. a detailed description of the proposed transformative
35 corporate headquarters, including the phases for completion of the
36 headquarters and the number of new full-time jobs that are
37 approved for tax credits;

38 b. an incentive phase agreement which for each phase,
39 identifies a description of the phase, the expected capital investment
40 and number of new full-time jobs, and the time following
41 acceptance of the incentive agreement when each phase is to begin
42 and be completed, with the awarding of tax credits under the
43 incentive agreement to be predicated on the number of full-time
44 jobs created through the fulfillment of each incentive phase
45 agreement;

46 c. the eligibility period of the tax credits for each phase,
47 including the first year for which the tax credits may be claimed;

- 1 d. personnel information that will enable the authority to
2 administer the program;
- 3 e. (1) a requirement that the applicant maintain each phase of
4 the headquarters at a location in New Jersey for the commitment
5 period and a provision to permit the authority to recapture all or
6 part of any tax credits awarded, at its discretion, if the business does
7 not remain in compliance with this provision for the required term
8 according to the incentive phase agreement schedule required
9 pursuant to subsection b. of this section;
- 10 (2) a provision which requires the applicant to complete a
11 number of phases of the headquarters equal to 30,000 new full-time
12 jobs and \$3,000,000,000 in capital investment prior to the 20th year
13 following authority approval of the incentive agreement and a
14 provision setting forth the requirements pursuant to subsection c. of
15 section 8 of P.L. , c. (C.) (pending before the Legislature
16 as this bill) in the event the headquarters fails to achieve the
17 required employment level of new full-time jobs or capital
18 investment by the 20th year of the incentive agreement;
- 19 (3) a provision that up to \$25,000,000 of the tax credits awarded
20 to the business may be sold annually, pursuant to subsection c. of
21 section 7 of P.L. , c. (C.) (pending before the Legislature
22 as this bill), to a third party, provided that the maximum amount of
23 tax credits the business may sell shall be \$500,000,000, and that the
24 proceeds from the sales of tax credit are used for providing public
25 infrastructure;
- 26 (4) a provision that each phase shall have a minimum
27 investment of \$300,000,000 and that the first phase shall employ a
28 minimum of 5,000 new full-time jobs; and
- 29 (5) in the instance of the business terminating an existing
30 incentive agreement in order to participate in an incentive
31 agreement authorized pursuant to the P.L. , c. (C.)
32 (pending before the Legislature as this bill), the permitted recapture
33 may be calculated to recognize the period of time that the business
34 was in compliance prior to termination.
- 35 f. a method for the business to certify that the business has met
36 the employment and capital investment requirements of the
37 program, pursuant to incentive phase agreements and the incentive
38 agreement towards the headquarters completion and job creation
39 schedule, and to report annually to the authority the number of new
40 full-time employees against which the tax credits are to be made;
- 41 g. a provision permitting an audit of the payroll records of the
42 business from time to time, as the authority deems necessary;
- 43 h. a provision which permits the authority to amend the
44 agreement; and
- 45 i. a provision establishing the conditions under which the
46 agreement may be terminated.

1 5. a. The total amount of the tax credit awarded for an eligible
2 business for each new full-time job shall be \$10,000 per year for 10
3 years. The total tax credit amount shall be calculated and credited
4 to the business annually for each year of the eligibility period
5 following the creation of the full-time job pursuant to the incentive
6 phase agreements.

7 b. Following the enactment of P.L. , c. (C.) (pending
8 before the Legislature as this bill), there shall be no monetary cap
9 on the value of credits approved by the authority attributable to the
10 program.

11
12 6. a. (1) A business shall submit an application for tax credits
13 to the authority prior to July 1, 2019. If the business requests
14 additional time to submit its application, the authority shall have the
15 discretion to grant one six-month extension of this deadline. A
16 business shall submit its documentation indicating that it has met
17 the capital investment and employment requirements for the first
18 phase, as specified in the incentive agreement and the incentive
19 phase agreement, for certification of its tax credit amount within
20 three years following the date of approval of its application by the
21 authority. The authority shall have the discretion to grant two, one-
22 year extensions of this deadline.

23 (2) Full-time employment for a tax period shall be determined
24 as the average of the monthly full-time employment for the tax
25 period.

26 b. In conducting its annual review, the authority may require a
27 business to submit any information determined by the authority to
28 be necessary and relevant to its review.

29
30 7. a. The total tax credit amount calculated and credited to the
31 business annually for each year of the eligibility period may be
32 applied against the tax liability otherwise due and required to be
33 paid by the business pursuant to section 5 of P.L.1945, c.162
34 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and
35 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or
36 N.J.S.17B:23-5 for the privilege period or the tax accounting period
37 of the business that coincides with the year of the business's
38 eligibility period for which the tax credit has been issued.

39 b. The order of priority of the application of the tax credit
40 issued to a business by the authority pursuant to section 5 of P.L. ,
41 c. (C.) (pending before the Legislature as this bill), and any
42 other tax credits allowed by law, shall be as prescribed by the
43 director. The amount of the tax credit applied under this section
44 against the tax imposed pursuant to section 5 of P.L.1945, c.162
45 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and
46 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or
47 N.J.S.17B:23-5 for the privilege period or the tax accounting
48 period, with any other credits allowed by law, shall not reduce the

1 tax liability otherwise due and required to be paid to an amount less
2 than zero. If the tax credit issued to a business exceeds the amount
3 of tax otherwise due and required to be paid, the amount of that
4 excess may be carried over, if necessary, to the 50 privilege periods
5 or tax accounting periods following the privilege period or taxable
6 year for which the tax credit is first allowed to be applied.

7 c. A business issued an annual installment of a tax credit may
8 apply to the authority and the director for a tax credit transfer
9 certificate in lieu of the business being allowed any amount of the
10 tax credit against the tax liability otherwise due and required to be
11 paid by the business, subject to the limitations on the annual and
12 total amounts of tax credits that may be sold pursuant to paragraph
13 (3) of subsection e. of section 4 of P.L. , c. (C.) (pending
14 before the Legislature as this bill). The tax credit transfer
15 certificate, upon receipt thereof by the business from the authority
16 and the director, may be sold or assigned, in full or in part, to any
17 other person that may have a tax liability pursuant to section 5 of
18 P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132
19 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-
20 15), or N.J.S.17B:23-5. The certificate issued to the business shall
21 include a statement waiving the business's right to claim that
22 amount of the annual installment of the tax credit against the taxes
23 that the business has elected to sell or assign. The sale or
24 assignment of any amount of a tax credit transfer certificate allowed
25 pursuant to this subsection shall not be sold or exchanged for
26 consideration received by the business of less than 75 percent of the
27 transferred tax credit amount. The amount of any tax credit transfer
28 certificate used by a purchaser or assignee against a tax liability
29 otherwise due and required to be paid shall be subject to the same
30 limitations and conditions that apply to the use of the credit by the
31 business that was issued the annual installment of the tax credit.

32
33 8. a. If, in any tax period, the number of new full-time
34 employees employed by the business at the headquarters drops
35 below 80 percent of the number of new full-time jobs specified in
36 the incentive phase agreements for all phases completed, then the
37 business shall forfeit its credit amount for that tax period and each
38 subsequent tax period, until the first tax period for which
39 documentation demonstrating the restoration of the number of full-
40 time employees employed by the business at the headquarters to 80
41 percent of the number of jobs specified in the incentive phase
42 agreements for all phases completed.

43 b. If the headquarters is sold by the owner in whole or in part
44 during the eligibility period, the new owner shall not acquire the
45 capital investment of the seller and the seller shall forfeit all credits
46 for the tax period in which the sale occurs and all subsequent tax
47 periods, provided however, that any credits of the business shall
48 remain unaffected.

1 c. If the headquarters fails to achieve an employment level of
2 30,000 new full-time jobs or a capital investment of at least
3 \$3,000,000,000 by the 20th year of the incentive agreement, then
4 the business shall not receive any tax credits for an incomplete
5 phase, and for a completed phase, if the total employment achieved
6 is between:

7 (1) 20,000 and 29,999 new full-time jobs, the amount of tax
8 credits shall be reduced to \$7,000 per employee per year;

9 (2) 10,000 and 19,999 new full-time jobs, the amount of tax
10 credits shall be reduced to \$5,000 per employee per year; and

11 (3) 5,000 and 9,999 new full-time jobs, the amount of tax credits
12 shall be reduced to \$3,000 per employee per year.

13 The business shall repay any amount of tax credits allowed prior
14 to the 20th year of the incentive agreement that is in excess of the
15 amount calculated based on the reduced tax credit first by forfeiting
16 any tax credit amounts carried over, pursuant to subsection b. of
17 section 7 of P.L. , c. (C.) (pending before the Legislature
18 as this bill), and then by payment of current funds.

19

20 9. a. The chief executive officer of the authority, in
21 consultation with the Director of the Division of Taxation in the
22 Department of the Treasury, shall adopt rules and regulations
23 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
24 (C.52:14B-1 et seq.) as are necessary to implement P.L. ,
25 c. (C.) (pending before the Legislature as this bill), including
26 but not limited to:

27 (1) examples of and the determination of capital investment at
28 the headquarters;

29 (2) the determination of the limits, if any, on the expense or type
30 of furnishings that may constitute capital improvements;

31 (3) the promulgation of procedures and forms necessary to apply
32 for a tax credit, including the enumeration of the certification
33 procedures and allocation of tax credits for different phases of a
34 headquarters; and

35 (4) provisions for tax credit applicants to be charged an initial
36 application fee and ongoing service fees to cover the administrative
37 costs related to the tax credit.

38 b. Through regulation, the authority shall establish standards
39 by which a headquarters shall be constructed or renovated in
40 compliance with the minimum environmental and sustainability
41 standards.

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43 10. This act shall take effect immediately.

STATEMENT

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The Grow New Jersey Assistance Program (Grow Program) is the State’s premier job creation and retention business incentive program that offers eligible businesses creating or retaining jobs in New Jersey tax credits for making certain capital investments at certain locations in the State. Although the Grow Program is achieving its intended result of having businesses locate to the commercial areas of the State’s cities and shuttered suburban office parks, thereby revitalizing these commercial areas, the State has opportunities from time to time to attract corporate headquarters that have the effect of transforming the economy of a region of the State by establishing a new business incentive program that complements the Grow Program.

This bill establishes a “Transformative Headquarters Economic Assistance Program” (program) under the jurisdiction of the New Jersey Economic Development Authority (authority). The purpose of this new business incentive program is to encourage economic development and new job creation in New Jersey at a corporate headquarters (headquarters) that is transformational to the regional economy, where at least 30,000 new full-time jobs are created and at least \$3 billion in capital investment is made. The program provides tax credits claimed by an eligible business for an eligibility period not to exceed 10 years for each phase of the headquarters.

To be eligible for tax credits under the bill, an eligible business's chief executive officer or equivalent officer is to demonstrate to the authority, at the time of application, that:

- (1) the business will make, acquire, or lease a capital investment equal to, or greater than, \$3 billion at a headquarters at which it will create at least 30,000 new full-time jobs;
- (2) the headquarters is to be constructed in accordance with the minimum environmental and sustainability standards;
- (3) the capital investment resultant from the award of tax credits and the resultant creation of new full-time jobs will yield a net positive benefit to the State equaling at least 110 percent of the requested tax credit allocation amount where the net positive benefit determination shall be calculated for each phase of the headquarters based on the benefits generated during a period of up to 50 years following completion of the headquarters; and
- (4) the award of tax credits will be a material factor in the business's decision to create at least 30,000 new full-time jobs for eligibility under the program.

The bill requires a business to submit an application for tax credits to the authority prior to July 1, 2019. If the business requests additional time to submit its application, the authority is to have the discretion to grant one six-month extension of this deadline.

1 Under the bill, the authority is to require an eligible business to
2 enter into an incentive agreement prior to the issuance of tax
3 credits. The incentive agreement is to include, but not be limited
4 to:

5 (1) a detailed description of the proposed headquarters,
6 including the phases for completion of the headquarters and the
7 number of new full-time jobs that are approved for tax credits;

8 (2) the eligibility period of the tax credits for each phase,
9 including the first year for which the tax credits may be claimed;

10 (3) personnel information that will enable the authority to
11 administer the program;

12 (4) a requirement that the applicant maintain the headquarters at
13 a location in New Jersey for the commitment period and a provision
14 to permit the authority to recapture all or part of any tax credits
15 awarded, at its discretion, if the business does not remain in
16 compliance with this provision for the required term;

17 (5) a provision that up to \$25,000,000 of the tax credits awarded
18 to the business may be sold annually to a third party, provided that
19 the maximum amount of tax credits the business may sell shall be
20 \$500,000,000 and that the proceeds are used for providing public
21 infrastructure;

22 (6) a method for the business to certify that it has met the
23 employment and capital investment requirements of the program
24 pursuant to a phased-in headquarters completion and new full-time
25 job creation employment schedule and to report annually to the
26 authority the number of new full-time employees against which the
27 tax credits are to be made;

28 (7) a provision permitting an audit of the payroll records of the
29 business from time to time, as the authority deems necessary; and

30 (8) a provision which permits the authority to amend the
31 agreement and provisions establishing the conditions under which
32 the agreement may be terminated.

33 The total amount of the tax credit for an eligible business for
34 each new full-time job is \$10,000 per year for up to 10 years. The
35 total tax credit amount is to be calculated and credited to the
36 business annually for each year of the eligibility period. There is no
37 monetary cap on the value of credits approved by the authority
38 attributable to the program. If the tax credit issued to a business
39 exceeds the amount of tax otherwise due and required to be paid,
40 the amount of that excess may be carried over, if necessary, to the
41 50 tax periods following the taxable year for which the tax credit is
42 first allowed to be applied.

43 If, in any tax period, the number of new full-time employees
44 employed by the business at its headquarters drops below 80
45 percent of the number of new full-time jobs specified in the
46 incentive phase agreements for all phases completed, then the
47 business is to forfeit its credit amount for that tax period and each
48 subsequent tax period, until the first tax period for which

S3631 LESNIAK, THOMPSON

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- 1 documentation demonstrating the restoration of the number of full-
- 2 time employees employed by the business at the headquarters to 80
- 3 percent of the number of jobs specified in the incentive phase
- 4 agreements for all phases completed.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3631

STATE OF NEW JERSEY

DATED: JANUARY 5, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3631.

This bill, The Grow New Jersey Assistance Program (Grow Program), is the State's premier job creation and retention business incentive program that offers eligible businesses creating or retaining jobs in New Jersey tax credits for making certain capital investments at certain locations in the State. Although the Grow Program is achieving its intended result of having businesses locate to the commercial areas of the State's cities and shuttered suburban office parks, thereby revitalizing these commercial areas, the State has opportunities from time to time to attract corporate headquarters that have the effect of transforming the economy of a region of the State by establishing a new business incentive program that complements the Grow Program.

This bill establishes a "Transformative Headquarters Economic Assistance Program" (program) under the jurisdiction of the New Jersey Economic Development Authority (authority). The purpose of this new business incentive program is to encourage economic development and new job creation in New Jersey at a corporate headquarters (headquarters) that is transformational to the regional economy, where at least 30,000 new full-time jobs are created and at least \$3 billion in capital investment is made. The program provides tax credits claimed by an eligible business for an eligibility period not to exceed 10 years for each phase of the headquarters.

To be eligible for tax credits under the bill, an eligible business's chief executive officer or equivalent officer is to demonstrate to the authority, at the time of application, that:

(1) the business will make, acquire, or lease a capital investment equal to, or greater than, \$3 billion at a headquarters at which it will create at least 30,000 new full-time jobs;

(2) the headquarters is to be constructed in accordance with the minimum environmental and sustainability standards;

(3) the capital investment resultant from the award of tax credits and the resultant creation of new full-time jobs will yield a net positive benefit to the State equaling at least 115 percent of the requested tax credit allocation amount where the net positive benefit determination shall be calculated for each phase of the

headquarters based on the benefits generated during a period of up to 50 years following completion of the headquarters; and

(4) the award of tax credits will be a material factor in the business's decision to create at least 30,000 new full-time jobs for eligibility under the program.

The bill requires a business to submit an application for tax credits to the authority prior to July 1, 2019. If the business requests additional time to submit its application, the authority is to have the discretion to grant one six-month extension of this deadline.

Under the bill, the authority is to require an eligible business to enter into an incentive agreement prior to the issuance of tax credits. The incentive agreement is to include, but not be limited to:

(1) a detailed description of the proposed headquarters, including the phases for completion of the headquarters and the number of new full-time jobs that are approved for tax credits;

(2) the eligibility period of the tax credits for each phase, including the first year for which the tax credits may be claimed;

(3) personnel information that will enable the authority to administer the program;

(4) a requirement that the applicant maintain the headquarters at a location in New Jersey for the commitment period and a provision to permit the authority to recapture all or part of any tax credits awarded, at its discretion, if the business does not remain in compliance with this provision for the required term;

(5) a provision that up to \$25,000,000 of the tax credits awarded to the business may be sold annually to a third party, provided that the maximum amount of tax credits the business may sell shall be \$500,000,000 and that the proceeds are used for providing public infrastructure;

(6) a method for the business to certify that it has met the employment and capital investment requirements of the program pursuant to a phased-in headquarters completion and new full-time job creation employment schedule and to report annually to the authority the number of new full-time employees against which the tax credits are to be made;

(7) a provision permitting an audit of the payroll records of the business from time to time, as the authority deems necessary; and

(8) a provision which permits the authority to amend the agreement and provisions establishing the conditions under which the agreement may be terminated.

The total amount of the tax credit for an eligible business for each new full-time job is \$10,000 per year for up to 10 years. The total tax credit amount is to be calculated and credited to the business annually for each year of the eligibility period. There is no monetary cap on the value of credits approved by the authority

attributable to the program. If the tax credit issued to a business exceeds the amount of tax otherwise due and required to be paid, the amount of that excess may be carried over, if necessary, to the 50 tax periods following the taxable year for which the tax credit is first allowed to be applied.

If, in any tax period, the number of new full-time employees employed by the business at its headquarters drops below 80 percent of the number of new full-time jobs specified in the incentive phase agreements for all phases completed, then the business is to forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the headquarters to 80 percent of the number of jobs specified in the incentive phase agreements for all phases completed.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot determine whether the bill will have a positive or negative net fiscal impact on the State. The inability to determine the direction and magnitude of the fiscal net impact is rooted in imperfect information on the number and attributes of projects that, under the bill, might newly qualify for Transformative Headquarters Economic Assistance Program tax credits. The OLS notes that the State fiscal net impact is calculated by adding the indeterminate direct revenue loss from awarding additional incentive amounts and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain that will accrue from additional economic activity that the additional incentive amounts will catalyze.

The OLS cannot quantify the direct revenue loss the bill will impose on the State because of imperfect information on the number and attributes of projects that, under the bill, might newly qualify for Transformative Headquarters Economic Assistance Program tax credits. However, the OLS notes that tax credits awarded under the program could exceed \$3.0 billion for each project. This calculation is based on a project resulting in the creation of 30,000 new full-time jobs (as is intended by the bill) with each new full-time job worth \$10,000 in tax credits per year for up to 10 years.

The OLS further notes that, if necessary, if a tax credit issued to a business exceeds the amount of tax otherwise due and required to be paid, the amount of that excess may be carried over 50 tax periods following the taxable year for which the tax credit is first allowed to be applied. Thus, the fiscal impact of the tax credit awards could extend over a longer period of time.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 3631
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: JANUARY 11, 2018

SUMMARY

- Synopsis:** Provides tax credits for certain business headquarters located in State.
- Type of Impact:** Indeterminate fiscal net impact on State General Fund and Property Tax Relief Fund; potential revenue increase to affected local governments.
- Agencies Affected:** Department of the Treasury;
 New Jersey Economic Development Authority; and
 Certain local governments.

Office of Legislative Services Estimate

Fiscal Impact	Multi-Year Lifespan of Tax Credit Awards
Direct <u>State</u> Revenue Loss	Indeterminate — See comments below
Indirect <u>State</u> Revenue Gain	Indeterminate — See comments below
<u>State</u> Opportunity Cost	Indeterminate — See comments below
Indirect <u>Local</u> Revenue Gain	Indeterminate — See comments below

- The Office of Legislative Services (OLS) cannot determine whether the bill will have a positive or negative net fiscal impact on the State. The inability to determine the direction and magnitude of the fiscal net impact is rooted in imperfect information on the number and attributes of projects that, under the bill, might qualify for Transformative Headquarters Economic Assistance Program tax credits.
- The bill’s direct revenue loss to the State from Transformative Headquarters Economic Assistance Program tax credit awards cannot be quantified. However, the OLS notes that tax credits awarded under the program could exceed \$3.0 billion for each project. This calculation is based on a project resulting in the creation of 30,000 new full-time jobs (as is intended by the bill) with each new full-time job worth \$10,000 in tax credits per year for up to 10 years. There is no monetary cap on the total value of tax credits the New Jersey Economic Development Authority (EDA) may approve under the program.
- The OLS notes that the fiscal impact of the tax credit awards could extend over several decades because the bill provides that if a tax credit issued to a business exceeds the amount



of tax otherwise due and required to be paid, the amount of that excess may be carried over to 50 tax periods following the tax year for which the tax credit is first allowed to be applied.

- The bill might accrue an indeterminate revenue gain to affected local governments if the bill results in the EDA extending financial assistance to business projects that would not be undertaken absent the assistance and if the business projects involve value-increasing improvements to taxable real estate.

BILL DESCRIPTION

This bill establishes the “Transformative Headquarters Economic Assistance Program” under the jurisdiction of the EDA. To be eligible for tax credits under the program, an eligible business’s chief executive officer must demonstrate to the EDA, at the time of application, that: 1) the business will make, acquire, or lease a capital investment equal to, or greater than, \$3.0 billion at a headquarters where at least 30,000 new full-time jobs will be created; 2) the headquarters is to be constructed in accordance with the bill’s minimum environmental and sustainability standards; 3) the capital investment resultant from the awards of tax credits and the creation of new full-time jobs will yield a net positive benefit to the State equaling at least 115 percent of the requested tax credit allocation amount generated over a period of up to 50 years following the completion of the headquarters; and 4) the awards of tax credits will be a material factor in the business’s decision to create at least 30,000 new full-time jobs.

The amount of the tax credit for an eligible business for each new full-time job is \$10,000 per year for up to 10 years. The bill includes provisions that require the reduction, cancellation, or recapture of certain tax credit amounts if a recipient business fails to achieve 30,000 new full-time jobs or \$3.0 billion in capital investments by the 20th year following the EDA’s approval of the incentive agreement. There is no monetary cap on the total value of tax credits the EDA may approve under the program.

The bill requires a business to submit an application for tax credits to the authority prior to July 1, 2019, with the opportunity for the EDA to grant one six-month extension.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds the bill may produce an indeterminate revenue gain to affected local governments if the bill results in the EDA extending financial assistance to business projects that would not be undertaken absent the assistance and if the business projects involve value-increasing improvements to taxable real estate.

On the other hand, it is unclear whether the bill will have a positive or negative fiscal net impact on the State. The inability to determine the direction and the magnitude of the fiscal net impact is rooted in imperfect information on the number and attributes of projects that, under the bill, might qualify for Transformative Headquarters Economic Assistance Program tax credits.

Conceptually, the State fiscal net impact is calculated by adding the direct revenue loss from awarding tax credits and their opportunity costs (the fiscal benefits the State forgoes as spending is redirected from one economic activity to another) and subtracting from that sum the indirect revenue gain that will accrue from additional economic activity that the additional incentive amounts will catalyze.

Direct State Revenue Loss: The OLS cannot quantify the direct revenue loss the bill will impose on the State because of imperfect information on the number and attributes of projects that, under the bill, might qualify for Transformative Headquarters Economic Assistance Program tax credits.

The bill allows a business which intends to create at least 30,000 new full-time jobs and make at least \$3.0 billion in capital investments to receive Transformative Headquarters Economic Assistance Program tax credits. Similar to other tax credit programs, eligible businesses are required to enter into incentive agreements with the EDA prior to the issuance of tax credits. However, the Transformative Headquarters Economic Assistance Program features sub-agreements, referred to in the bill as incentive phase agreements, which allow a business to fulfil the obligations of its incentive agreement over a series of phases. Each phase is required to have a minimum capital investment of \$300 million and the first phase must result in the creation of at least 5,000 new full-time jobs.

The amount of the credit awarded for an eligible business for each new full-time job is \$10,000 per year for 10 years. If a qualified project results in the creation of at least 30,000 new full-time jobs, the total cost of the project in tax credit awards could be at least \$3.0 billion over several decades. Certain program parameters will limit the State revenue loss, for example, the program requires eligible projects to meet two financial conditions: a) the financial assistance provided must be a material factor in a project's realization; and b) the project must yield fiscal benefits to the State over a period of up to 50 years that equal or exceed 115 percent of the tax credit amount. However, there is no monetary cap on the total value of tax credits the EDA may approve under the program.

Any revenue loss will be: a) temporally limited, for the EDA will only consider applications received prior to July 1, 2019, unless this deadline is extended by six months; and b) spread out over several years, for incentive awards are only to be used in up to 10 annual installments following the completion of each phase. If the tax credit issued to a business exceeds the amount of tax otherwise due and required to be paid, the amount of that excess may be carried over to the 50 tax periods following the tax period for which the tax credit is first allowed to be applied. Thus, the fiscal impact of the tax credit awards could extend over several decades.

If the business fails to achieve 30,000 new full-time jobs or \$3.0 billion in capital investments by the 20th year following the EDA's approval of the incentive agreement, the business will not receive any tax credits for an incomplete phase, and for a completed phase, if certain total employment numbers are achieved, the business will be required to repay an amount equal to the excess awarded above the reduced tax credit award amount. Further, if, in any tax period, the number of new full-time employees employed by the business at the headquarters drops below 80 percent of the number of new full-time jobs specified in the incentive phase agreements for all phases completed, then the business is required to forfeit its credit amount for that tax period and each subsequent tax period, until the number of employees is restored to amounts agreed upon in the incentive phase agreement for all phases completed.

Indirect State and Local Revenue Gain: The OLS cannot quantify the bill's indirect revenue gain to the State and local governments because of imperfect information on the number and

attributes of creditable projects. For reasons laid out below, it is unclear whether the bill's indirect fiscal State benefits will exceed its direct State revenue loss.

Analytical Framework: Like any government expenditure, economic development incentive awards inject new spending into the economy. Once businesses and individuals receive payments they would not receive absent the incentive awards, at least a portion of these payments will newly circulate in New Jersey's economy and produce so-called "multiplier effects." As the additional financial resources flow through the economy they generate, as a byproduct, additional State and local revenue collections—the indirect revenue gain discussed in this section. Examples are enhanced local property tax collections accruing when an incentive recipient invests the incentive amount in facility improvements, which then appreciate the property's value; or additional State sales and use tax collections from construction workers employed in the facility improvement spending their resultant income on taxable goods and services.

Indirect State fiscal effects offset the State's direct cost of awarding incentives in part or potentially even in whole. Fiscal "multiplier effects" tend to be maximized whenever an incentive award serves as the indispensable impetus for additional spending by the incentive recipient that would not otherwise occur. In this case, the incentive recipient magnifies the positive economic and fiscal impacts of the State's outlay. Depending on project and incentive attributes, the induced project may even yield indirect fiscal State benefits exceeding the cost of the subsidy. The larger the proportion of the public assistance relative to the financial outlay by the subsidized party, however, the lower the probability that the subsidized activity will generate positive net returns to the State.

In contrast, the State's return on investment is negative whenever the State subsidizes a project that a taxpayer would have undertaken with or without public assistance. Because the financial inducement has not caused the project's realization, none of its economic and fiscal feedback effects are attributable to the incentive, and therefore must be excluded from the tabulation of the incentive's indirect fiscal benefits.

Nevertheless, even if the State provides financial assistance to a project that would be realized anyway, some, albeit comparatively small, indirect fiscal benefits may still accrue to the State. These would occur whenever the subsidy beneficiary spends the incentive award in New Jersey on goods and services that the beneficiary would otherwise not have procured. In that event the incentive award still represents an injection of additional cash into New Jersey's economy whose ripple effects include the accumulation of indirect fiscal State benefits.

Lastly, given the high degree of integration of New Jersey's economy with the national and global economies, an addition of spending in New Jersey will eventually leak into other jurisdictions and cease to circulate within the State. Consequently, any tabulation of a subsidy payment's New Jersey feedback effects must disregard feedback effects that other jurisdictions will absorb.

Bill's State Indirect Fiscal Effects: It is unclear whether the bill's indirect fiscal State benefits will exceed its direct State revenue loss.

The bill may generate additional indirect fiscal benefits to the State in excess of the direct State revenue loss from awarding tax credits. This is so because under the program the financial assistance must be a material factor in a project's realization and the project must pass a net benefit test. The multiplier-based net benefit test calculation is intended to ensure that the EDA will award incentives only to capital projects that are estimated to generate indirect State revenue equal to at least 115 percent of an inducement's direct State revenue loss. Therefore, to the extent that the bill allows for tax credits to projects that otherwise would be ineligible to receive the incentive award needed for project realization, the bill will yield fiscal net benefits to the State.

Irrespective of the magnitude of the bill's indirect fiscal benefits, the analysis of its full impact on State finances is incomplete without considering the bill's opportunity costs.

State Opportunity Costs: Given the State's finite resources and its balanced budget requirement, the decision to award tax credits to eligible projects will invariably divert resources from policy alternatives to which they would have been applied absent the inducements. These policy alternatives also produce direct State costs and indirect State revenue collections. The concept of opportunity costs captures the value of these fiscal benefits the State forgoes as it redirects cash flows. Once opportunity costs are factored into the analysis, it is therefore possible for a bill to produce a *net* fiscal loss to the State even if its indirect fiscal benefits exceed its direct cost.

For example, if, instead of this legislation, the State invested in road construction the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the Transformative Headquarters Economic Assistance Program tax credit awards to eligible projects—or the direct State cost of awarding tax credits to those projects, minus the incentives' indirect State fiscal effects—and that of the forgone road construction investment.

Section: Revenue, Finance and Appropriations

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

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The Deal Is Real: Governor Christie Signs Bipartisan Bill To Draw Amazon's HQ2 To New Jersey

Thursday, January 11, 2018

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Trenton, NJ – Governor Chris Christie today signed bipartisan legislation authorizing billions of dollars in state tax incentives to draw Amazon’s second headquarters, known as HQ2, along with 30,000 to 50,000 new jobs, to New Jersey. Governor Christie has urged Amazon to consider Newark as the ideal location, and the new law A-5340/S-3631 (Prieto, Bramnick, Pintor Marin/Lesniak, Thompson) will produce the majority of \$7 billion being offered in State and city tax credits to Amazon’s HQ2 to locate in the Garden State.

“Today’s bipartisan action proves that nobody in any other state wants Amazon’s HQ2 more than New Jersey and the City of Newark, and there is nowhere better for this tremendously innovative job creator to grow and thrive,” Governor Christie said. “It shows we deliver on our promises, and Amazon’s leaders have to be thrilled about this premier opportunity to drive Newark’s technology boom and benefit from all that this diverse city has to offer, including its central location in the largest economic region, a phenomenal regional and global transportation network, a top-notch workforce, and America’s fastest Internet. Amazon’s HQ2 in New Jersey means thousands of six-figure jobs for residents, as well as consumer and revenue growth for area businesses and vendors.”

In October, the Governor joined U.S. Senator Cory Booker and Newark Mayor Ras Baraka to announce Newark as the best applicant in Amazon’s ongoing selection process. A breakdown of the total offering to Amazon is as follows:

- A merit-based state tax incentive through the state Economic Development Authority (EDA) that could reach \$5 billion over 20 years, with the creation of 50,000 new jobs;
- A City property tax abatement that could be worth \$1 billion; and
- A City wage tax waiver that would allow Amazon HQ2 employees to keep an estimated \$1 billion of their hard-earned money over 20 years.

Amazon now employs about 13,000 people in New Jersey, including at its strategically located and thriving fulfillment centers that have opened during the Christie administration.

EDA initiatives have worked to help transform Newark into an attractive location for businesses investment, development, and growth. Since 2010, nearly 40 projects with EDA support are associated with more than \$2.2 billion in private investment, the creation of 5,000 new jobs, 11,000 construction jobs and the retention of nearly 2,000 jobs at risk of leaving New Jersey.

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