

54:10A-5.17

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 399

NJSA: 54:10A-5.17 (Electric and thermal energy production tax credit)

BILL NO: S2761 (Substituted for A3979)

SPONSOR(S): Kyrillos and Bryant

DATE INTRODUCED: November 29, 2001

COMMITTEE: **ASSEMBLY:** Appropriation
SENATE: Budget

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 7, 2002
SENATE: December 17, 2001

DATE OF APPROVAL: January 8, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Original version of bill enacted)

S2761	
SPONSORS STATEMENT: (Begins on page 6 of original bill)	Yes
COMMITTEE STATEMENT:	ASSEMBLY: Yes
	SENATE: Yes
FLOOR AMENDMENT STATEMENTS:	No
LEGISLATIVE FISCAL ESTIMATE:	No
A3979	
SPONSORS STATEMENT: (Begins on page 4 of original bill)	Yes
COMMITTEE STATEMENT:	ASSEMBLY: Yes
	SENATE: No
FLOOR AMENDMENT STATEMENTS:	No
LEGISLATIVE FISCAL ESTIMATE:	No
FINAL VERSION (first reprint):	Yes
VETO MESSAGE:	No
GOVERNOR'S PRESS RELEASE ON SIGNING:	No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

SENATE, No. 2761

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED NOVEMBER 29, 2001

Sponsored by:

Senator JOSEPH M. KYRILLOS, JR.
District 13 (Middlesex and Monmouth)
Senator WAYNE R. BRYANT
District 5 (Camden and Gloucester)

Co-Sponsored by:

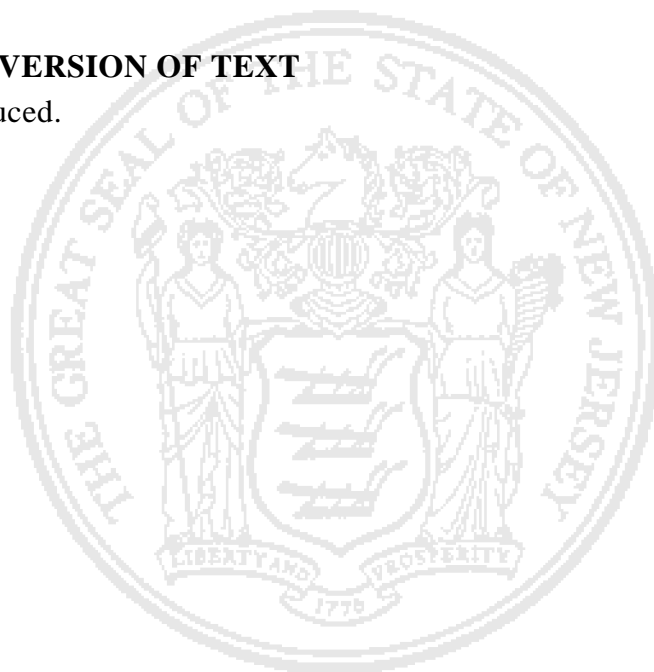
Senators Bucco, Inverso, Bark, Kavanaugh, Littell, Kenny and James

SYNOPSIS

Provides the manufacturing equipment and employment investment tax credit under the corporation business tax for electric energy and thermal energy production.

CURRENT VERSION OF TEXT

As introduced.



S2761 KYRILLOS, BRYANT

2

1 AN ACT providing the manufacturing equipment and employment
2 investment tax credit under the corporation business tax for electric
3 energy and thermal energy production, amending P.L.1993, c.171.

4

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

7

8 1. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to
9 read as follows:

10 2. For the purposes of this act:

11 "Control," with respect to a corporation, means ownership, directly
12 or indirectly, of stock possessing 50% or more of the total combined
13 voting power of all classes of the stock of the corporation entitled to
14 vote; "control," with respect to a trust, means ownership, directly or
15 indirectly, of 50% or more of the beneficial interest in the principal or
16 income of the trust. The ownership of stock in a corporation, of a
17 capital or profits interest in a partnership or association or of a
18 beneficial interest in a trust shall be determined in accordance with the
19 rules for constructive ownership of stock provided in subsection (c) of
20 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
21 s.267, other than paragraph (3) of subsection (c) of that section.

22 "Controlled group" means one or more chains of corporations
23 connected through stock ownership with a common parent corporation
24 if stock possessing at least 50% of the voting power of all classes of
25 stock of each of the corporations is owned directly or indirectly by one
26 or more of the corporations; and the common parent owns directly
27 stock possessing at least 50% of the voting power of all classes of
28 stock of at least one of the other corporations.

29 "Director" means the Director of the Division of Taxation in the
30 Department of the Treasury.

31 "Full-time employee" means an employee working for the taxpayer
32 for at least 140 hours per month at a wage not less than the State or
33 federal minimum wage, if either minimum wage provision is applicable
34 to the business, on a permanent basis, which does not include
35 employment that is temporary or seasonal.

36 "Investment credit base" means the cost of qualified equipment. The
37 cost of qualified equipment shall not include the value of equipment
38 given in trade or exchange for the equipment purchased for business
39 relocation or expansion. If equipment is damaged or destroyed by fire,
40 flood, storm or other casualty, or is stolen, the cost of replacement
41 equipment shall not include any insurance proceeds received in
42 compensation for the loss. In the case of self-constructed equipment,
43 the cost thereof shall be the amount properly charged to the capital

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

Matter underlined thus is new matter.

1 account for depreciation in accordance with federal income tax law.
2 The cost of equipment acquired by written lease is the minimum
3 amount required by the agreement, agreements, contract or contracts
4 to be paid over the term of the lease, provided however, that the
5 minimum amount shall not include any amount required to be paid, as
6 determined by the director, after the expiration of the useful life of the
7 equipment.

8 "Number of new employees" means the increase in the average
9 number of full-time employees and full-time employee equivalents
10 residing and domiciled in this State employed at work locations in this
11 State from the employment base year to the employment measurement
12 year. The employment base year is the tax year immediately preceding
13 the tax year for which the credit pursuant to section 3 of P.L.1993,
14 c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was
15 not subject to tax and did not have a tax year immediately precede the
16 tax year for which a credit pursuant to section 3 of P.L.1993, c.171
17 (C.54:10A-5.18), was allowed the employment base year is the tax
18 year in which the credit pursuant to section 3 of P.L.1993, c.171
19 (C.54:10A-5.18), was allowed. The measurement year is the tax year
20 immediately following the tax year in which the credit pursuant to
21 section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The
22 hours of part-time employees shall be aggregated to determine the
23 number of full-time employee equivalents.

24 "Part-time employee" means an employee working for the taxpayer
25 for at least 20 hours per week for at least six months during the tax
26 year.

27 "Purchase" means any acquisition of property, including an
28 acquisition pursuant to a lease, but only if:

29 a. the property is not acquired from a person whose relationship to
30 the person acquiring it would result in the disallowance of deductions
31 under section 267 or subsection (b) of section 707 of the federal
32 Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

33 b. the property is not acquired by one member of a controlled
34 group from another member of the same controlled group. The
35 director may waive this requirement if the property was acquired from
36 a related person for its then fair market value; and

37 c. the basis of the property for federal income tax purposes, in the
38 hands of the person acquiring it, is not determined:

39 (1) in whole or in part by reference to the federal adjusted basis of
40 such property in the hands of the person from whom it was acquired;
41 or

42 (2) under subsection (e) of section 1014 of the federal Internal
43 Revenue Code of 1986, 26 U.S.C. s.1014.

44 "Qualified equipment" means machinery, apparatus or equipment
45 acquired by purchase for use or consumption by the taxpayer directly
46 and primarily in the production of tangible personal property by

1 manufacturing, processing, assembling or refining, as defined pursuant
2 to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13),
3 having a useful life of four or more years, placed in service in this
4 State and machinery, apparatus or equipment acquired by purchase for
5 use or consumption directly and primarily in the generation of
6 electricity as defined pursuant to subsection b. of section 25 of
7 P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the
8 grid, or in the generation of thermal energy, having a useful life of four
9 or more years, placed in service in this State. Qualified equipment does
10 not include tangible personal property which the taxpayer contracts or
11 agrees to lease or rent to another person or licenses another person to
12 use.

13 "Related person" means:

14 a. a corporation, partnership, association or trust controlled by the
15 taxpayer;

16 b. an individual, corporation, partnership, association or trust that
17 is in control of the taxpayer;

18 c. a corporation, partnership, association or trust controlled by an
19 individual, corporation, partnership, association or trust that is in
20 control of the taxpayer; or

21 d. a member of the same controlled group as the taxpayer.

22 "Tax year" means the fiscal or calendar accounting year of a
23 taxpayer.

24 (cf: P.L.1993, c.171, s.2)

25

26 2. Section 4 of P.L.1993, c.171 (C.54:10A-5.19) is amended to
27 read as follows:

28 4. a. A taxpayer allowed a credit under section 3 of P.L.1993,
29 c.171 (C.54:10A-5.18), with respect to the investment credit base,
30 shall be allowed a credit for the increase in employment by the
31 taxpayer determined by the number of new employees for each of the
32 two tax years next succeeding the tax year for which the credit under
33 section 3 of P.L.1993, c.171 (C.54:10A-5.18), is allowed, in an
34 amount equal to 3% of the investment credit base, not to exceed a
35 maximum allowed amount for each of the two tax years of \$1,000
36 multiplied by the number of new employees.

37 b. The tax imposed for the tax year pursuant to section 5 of
38 P.L.1945, c.162, shall first be reduced by the amount of any credit
39 allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78),
40 then by any credit allowed pursuant to section 12 of P.L.1985, c.227
41 (C.55:19-13), then by any credit allowed pursuant to section 42 of
42 P.L.1987, c.102 (C.54:10A-5.3), and then by any credit allowed
43 pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), prior to
44 applying any credits allowable pursuant to this section. Credits
45 allowable pursuant to this section shall be applied in the order of the
46 tax year of the credit allowed pursuant to section 3 of P.L.1993, c.171

1 (C.54:10A-5.18), to which the credit under this section relates and
2 then by the order of the credits' tax years. The amount of the credits
3 applied under this section and section 3 of P.L.1993, c.171
4 (C.54:10A-5.18), against the tax imposed pursuant to section 5 of
5 P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability
6 otherwise due and shall not reduce the tax liability to an amount less
7 than the statutory minimum provided in subsection (e) of section 5 of
8 P.L.1945, c.162.

9 c. The amount of tax year credit otherwise allowable under
10 subsection a. of this section which cannot be applied for the tax year
11 due to the limitations of subsection b. of this section may be carried
12 over, if necessary, to the seven tax years following a credit's tax year.
13 Provided however, that a taxpayer may not carry over any amount of
14 credit or credits allowed under subsection a. of this section to a tax
15 year during which a corporate acquisition with respect to which the
16 taxpayer was a target corporation occurred or during which the
17 taxpayer was a party to a merger or a consolidation, or to any
18 subsequent tax year, if the credit was allowed for a tax year prior to
19 the year of acquisition, merger or consolidation; provided further,
20 however, that if in the case of a corporate merger or corporate
21 consolidation the taxpayer can demonstrate, through the submission
22 of a copy of the plan of merger or consolidation and such other
23 evidence as may be required by the director, the identity of the
24 constituent corporation which was the acquiring person, a credit
25 allowed to the acquiring person may be carried over by the taxpayer.
26 "Acquiring person" means the constituent corporation the stockholders
27 of which own the largest proportion of the total voting power in the
28 surviving or consolidated corporation after the merger or
29 consolidation.

30 d. (1) With respect to equipment that is three-year property, as
31 described in subsection (e) of section 168 of the federal Internal
32 Revenue Code of 1986, 26 U.S.C. s.168, which is disposed of or
33 ceases to be qualified equipment prior to the end of the 36 month
34 period following being placed in service in this State, the amount of
35 credit allowed shall be that portion of the credit provided for in
36 subsection a. of this section which represents the ratio which the
37 months of qualified use bear to 36, and the difference between the
38 credit taken and the credit allowed for actual use shall be forfeited.
39 Additionally, except when the property is damaged or destroyed by
40 fire, flood, storm or other casualty, or is stolen, the taxpayer shall
41 redetermine the amount of credit allowed for the tax year of the credit
42 by reducing the investment credit base by the cost of the amount of the
43 disposed or disqualified equipment. If the redetermination of the
44 credit results in an increase in final liability for any tax year in which
45 the credit was applied, then, notwithstanding the four year limitation
46 of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid

1 liability, if any, shall be considered a deficiency for the purposes of the
2 State [Tax] Uniform Tax Procedure Law, R.S.54:48-1 et seq. The
3 amount of credit allowed for actual use shall be determined by
4 multiplying the original credit by the ratio which the months of
5 qualified use bear to 36.

6 (2) With respect to property other than that described in
7 subparagraph (1) of this subsection which is disposed of or ceases to
8 be qualified equipment prior to the end of the 60 month period
9 following being placed in service in this State, the amount of credit
10 allowed shall be that portion of the credit provided for in subsection
11 a. of this section which represents the ratio which the months of
12 qualified use bear to 60, and the difference between the credit taken
13 and the credit allowed for actual use shall be forfeited. Additionally,
14 except when the property is damaged or destroyed by fire, flood,
15 storm or other casualty, or is stolen, the taxpayer shall redetermine the
16 amount of credit allowed for the tax year of the credit by reducing the
17 investment credit base by the cost of the amount of the disposed or
18 disqualified equipment. If the redetermination of the credit results in
19 an increase in final liability for any tax year in which the credit was
20 applied, then, notwithstanding the four year limitation of subsection b.
21 of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any,
22 shall be considered a deficiency for the purposes of the State [Tax]
23 Uniform Tax Procedure Law, R.S.54:48-1 et seq. The amount of
24 credit allowed for actual use shall be determined by multiplying the
25 original credit by the ratio which the months of qualified use bear to
26 60.

27 e. A taxpayer that claims a credit pursuant to this section shall not
28 be eligible to receive a grant pursuant to the "Business Relocation
29 Assistance Act, P.L.1996, c.25 (C.34:1B-112 et seq.) or the "Business
30 Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et
31 seq.).

32 (cf: P.L.1993, c.171, s.4)

33

34 3. This act shall take effect shall take effect immediately and apply
35 to tax years beginning on and after January 1 next following
36 enactment.

37

38

39

STATEMENT

40

41 This bill provides the manufacturing equipment and employment
42 investment tax credit under the corporation business tax for electric
43 energy and thermal energy production. This bill will provide the tax
44 credit for investment in electric generation facilities and thermal
45 energy generation facilities consistent with the tax treatment available
46 under the "Manufacturing Equipment and Employment Incentive Tax

S2761 KYRILLOS, BRYANT

7

1 Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et seq.). This
2 corporation business investment tax credit will encourage needed
3 investment in electric and thermal energy generation facilities in New
4 Jersey to further stabilize energy prices and meet the energy needs of
5 the region.

6 This investment tax credit will encourage competition in electric
7 and thermal energy generation which is needed to ensure that the State
8 continues to have an adequate supply of electric and thermal energy
9 generation capacity. By encouraging the construction of additional
10 generation capacity the State can avoid the type of energy supply crisis
11 recently experienced in the state of California where electric energy
12 demand has outpaced growth in generation capacity.

13 The bill also eliminates eligibility for Business Relocation
14 Assistance Program and Business Employment Incentive Program
15 grants for taxpayers who claim an employment investment tax credit
16 under the corporation business tax.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2761

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 17, 2001

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2761.

This bill allows the manufacturing equipment and employment investment tax credit under the corporation business tax for certain electric energy and thermal energy production. This bill will provide the tax credit for investment in electric generation facilities and thermal energy generation facilities consistent with the tax treatment available under the "Manufacturing Equipment and Employment Incentive Tax Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et seq.).

COMMITTEE AMENDMENTS

The committee amendments delete the section of the bill that would have prohibited any taxpayers that claim the manufacturing equipment and employment incentive tax credit from receiving grants under the Business Relocation Assistance Program and Business Employment Incentive Program. The committee amendments also amend the effective date of the bill to clarify that the tax credit applies to tax years commencing on and after January 1, 2002

FISCAL IMPACT

The committee has no information from which it may predict the new qualified investments or increase in employment that may occur as a result of the manufacturing equipment and employment investment tax credit for electric energy and thermal energy production provided for in the bill. The committee does note that under the "Manufacturing Equipment and Employment Incentive Tax Credit Act," a credit amount equal to 2% of the investment credit base is subject to annual limits of 50% of the taxpayer's tax liability and \$1,000,000 per tax year. Any credit amounts unused in a tax year because of these limits may be carried forward for seven tax years following a credit's tax year. Also the employment investment tax credit is an amount equal to 3% of the investment credit base not to exceed a maximum annual amount for the two tax years next following the investment equal to \$1,000 multiplied by the number of new employees. The employment investment tax credit is also subject to

annual limits of 50% of the taxpayer's tax liability and any credit amounts unused in a tax year because of this limit may be carried forward for seven tax years following a credit's tax year.

[First Reprint]

SENATE, No. 2761

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED NOVEMBER 29, 2001

Sponsored by:

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

Co-Sponsored by:

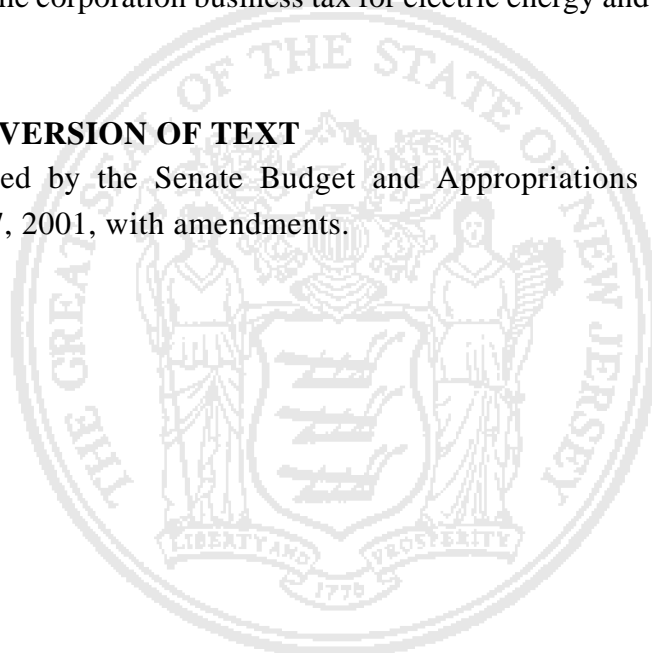
**Senators Bucco, Inverso, Bark, Kavanaugh, Littell, Kenny, James,
Assemblymen DiGaetano and Doria**

SYNOPSIS

Provides the manufacturing equipment and employment investment tax credit under the corporation business tax for electric energy and thermal energy production.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on December 17, 2001, with amendments.



(Sponsorship Updated As Of: 1/8/2002)

1 AN ACT providing the manufacturing equipment and employment
2 investment tax credit under the corporation business tax for electric
3 energy and thermal energy production, amending P.L.1993, c.171.

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

7
8 1. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to
9 read as follows:

10 2. For the purposes of this act:

11 "Control," with respect to a corporation, means ownership, directly
12 or indirectly, of stock possessing 50% or more of the total combined
13 voting power of all classes of the stock of the corporation entitled to
14 vote; "control," with respect to a trust, means ownership, directly or
15 indirectly, of 50% or more of the beneficial interest in the principal or
16 income of the trust. The ownership of stock in a corporation, of a
17 capital or profits interest in a partnership or association or of a
18 beneficial interest in a trust shall be determined in accordance with the
19 rules for constructive ownership of stock provided in subsection (c) of
20 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
21 s.267, other than paragraph (3) of subsection (c) of that section.

22 "Controlled group" means one or more chains of corporations
23 connected through stock ownership with a common parent corporation
24 if stock possessing at least 50% of the voting power of all classes of
25 stock of each of the corporations is owned directly or indirectly by one
26 or more of the corporations; and the common parent owns directly
27 stock possessing at least 50% of the voting power of all classes of
28 stock of at least one of the other corporations.

29 "Director" means the Director of the Division of Taxation in the
30 Department of the Treasury.

31 "Full-time employee" means an employee working for the taxpayer
32 for at least 140 hours per month at a wage not less than the State or
33 federal minimum wage, if either minimum wage provision is applicable
34 to the business, on a permanent basis, which does not include
35 employment that is temporary or seasonal.

36 "Investment credit base" means the cost of qualified equipment. The
37 cost of qualified equipment shall not include the value of equipment
38 given in trade or exchange for the equipment purchased for business
39 relocation or expansion. If equipment is damaged or destroyed by fire,
40 flood, storm or other casualty, or is stolen, the cost of replacement
41 equipment shall not include any insurance proceeds received in
42 compensation for the loss. In the case of self-constructed equipment,

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted December 17, 2001.

1 the cost thereof shall be the amount properly charged to the capital
2 account for depreciation in accordance with federal income tax law.
3 The cost of equipment acquired by written lease is the minimum
4 amount required by the agreement, agreements, contract or contracts
5 to be paid over the term of the lease, provided however, that the
6 minimum amount shall not include any amount required to be paid, as
7 determined by the director, after the expiration of the useful life of the
8 equipment.

9 "Number of new employees" means the increase in the average
10 number of full-time employees and full-time employee equivalents
11 residing and domiciled in this State employed at work locations in this
12 State from the employment base year to the employment measurement
13 year. The employment base year is the tax year immediately preceding
14 the tax year for which the credit pursuant to section 3 of P.L.1993,
15 c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was
16 not subject to tax and did not have a tax year immediately precede the
17 tax year for which a credit pursuant to section 3 of P.L.1993, c.171
18 (C.54:10A-5.18), was allowed the employment base year is the tax
19 year in which the credit pursuant to section 3 of P.L.1993, c.171
20 (C.54:10A-5.18), was allowed. The measurement year is the tax year
21 immediately following the tax year in which the credit pursuant to
22 section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The
23 hours of part-time employees shall be aggregated to determine the
24 number of full-time employee equivalents.

25 "Part-time employee" means an employee working for the taxpayer
26 for at least 20 hours per week for at least six months during the tax
27 year.

28 "Purchase" means any acquisition of property, including an
29 acquisition pursuant to a lease, but only if:

30 a. the property is not acquired from a person whose relationship to
31 the person acquiring it would result in the disallowance of deductions
32 under section 267 or subsection (b) of section 707 of the federal
33 Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

34 b. the property is not acquired by one member of a controlled
35 group from another member of the same controlled group. The
36 director may waive this requirement if the property was acquired from
37 a related person for its then fair market value; and

38 c. the basis of the property for federal income tax purposes, in the
39 hands of the person acquiring it, is not determined:

40 (1) in whole or in part by reference to the federal adjusted basis of
41 such property in the hands of the person from whom it was acquired;
42 or

43 (2) under subsection (e) of section 1014 of the federal Internal
44 Revenue Code of 1986, 26 U.S.C. s.1014.

45 "Qualified equipment" means machinery, apparatus or equipment
46 acquired by purchase for use or consumption by the taxpayer directly

1 and primarily in the production of tangible personal property by
2 manufacturing, processing, assembling or refining, as defined pursuant
3 to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13),
4 having a useful life of four or more years, placed in service in this
5 State and machinery, apparatus or equipment acquired by purchase for
6 use or consumption directly and primarily in the generation of
7 electricity as defined pursuant to subsection b. of section 25 of
8 P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the
9 grid, or in the generation of thermal energy, having a useful life of four
10 or more years, placed in service in this State. Qualified equipment does
11 not include tangible personal property which the taxpayer contracts or
12 agrees to lease or rent to another person or licenses another person to
13 use.

14 "Related person" means:

15 a. a corporation, partnership, association or trust controlled by the
16 taxpayer;

17 b. an individual, corporation, partnership, association or trust that
18 is in control of the taxpayer;

19 c. a corporation, partnership, association or trust controlled by an
20 individual, corporation, partnership, association or trust that is in
21 control of the taxpayer; or

22 d. a member of the same controlled group as the taxpayer.

23 "Tax year" means the fiscal or calendar accounting year of a
24 taxpayer.

25 (cf: P.L.1993, c.171, s.2)

26

27 ¹[2. Section 4 of P.L.1993, c.171 (C.54:10A-5.19) is amended to
28 read as follows:

29 4. a. A taxpayer allowed a credit under section 3 of P.L.1993,
30 c.171 (C.54:10A-5.18), with respect to the investment credit base,
31 shall be allowed a credit for the increase in employment by the
32 taxpayer determined by the number of new employees for each of the
33 two tax years next succeeding the tax year for which the credit under
34 section 3 of P.L.1993, c.171 (C.54:10A-5.18), is allowed, in an
35 amount equal to 3% of the investment credit base, not to exceed a
36 maximum allowed amount for each of the two tax years of \$1,000
37 multiplied by the number of new employees.

38 b. The tax imposed for the tax year pursuant to section 5 of
39 P.L.1945, c.162, shall first be reduced by the amount of any credit
40 allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78),
41 then by any credit allowed pursuant to section 12 of P.L.1985, c.227
42 (C.55:19-13), then by any credit allowed pursuant to section 42 of
43 P.L.1987, c.102 (C.54:10A-5.3), and then by any credit allowed
44 pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), prior to
45 applying any credits allowable pursuant to this section. Credits
46 allowable pursuant to this section shall be applied in the order of the

1 tax year of the credit allowed pursuant to section 3 of P.L.1993, c.171
2 (C.54:10A-5.18), to which the credit under this section relates and
3 then by the order of the credits' tax years. The amount of the credits
4 applied under this section and section 3 of P.L.1993, c.171
5 (C.54:10A-5.18), against the tax imposed pursuant to section 5 of
6 P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability
7 otherwise due and shall not reduce the tax liability to an amount less
8 than the statutory minimum provided in subsection (e) of section 5 of
9 P.L.1945, c.162.

10 c. The amount of tax year credit otherwise allowable under
11 subsection a. of this section which cannot be applied for the tax year
12 due to the limitations of subsection b. of this section may be carried
13 over, if necessary, to the seven tax years following a credit's tax year.
14 Provided however, that a taxpayer may not carry over any amount of
15 credit or credits allowed under subsection a. of this section to a tax
16 year during which a corporate acquisition with respect to which the
17 taxpayer was a target corporation occurred or during which the
18 taxpayer was a party to a merger or a consolidation, or to any
19 subsequent tax year, if the credit was allowed for a tax year prior to
20 the year of acquisition, merger or consolidation; provided further,
21 however, that if in the case of a corporate merger or corporate
22 consolidation the taxpayer can demonstrate, through the submission
23 of a copy of the plan of merger or consolidation and such other
24 evidence as may be required by the director, the identity of the
25 constituent corporation which was the acquiring person, a credit
26 allowed to the acquiring person may be carried over by the taxpayer.
27 "Acquiring person" means the constituent corporation the stockholders
28 of which own the largest proportion of the total voting power in the
29 surviving or consolidated corporation after the merger or
30 consolidation.

31 d. (1) With respect to equipment that is three-year property, as
32 described in subsection (e) of section 168 of the federal Internal
33 Revenue Code of 1986, 26 U.S.C. s.168, which is disposed of or
34 ceases to be qualified equipment prior to the end of the 36 month
35 period following being placed in service in this State, the amount of
36 credit allowed shall be that portion of the credit provided for in
37 subsection a. of this section which represents the ratio which the
38 months of qualified use bear to 36, and the difference between the
39 credit taken and the credit allowed for actual use shall be forfeited.
40 Additionally, except when the property is damaged or destroyed by
41 fire, flood, storm or other casualty, or is stolen, the taxpayer shall
42 redetermine the amount of credit allowed for the tax year of the credit
43 by reducing the investment credit base by the cost of the amount of the
44 disposed or disqualified equipment. If the redetermination of the
45 credit results in an increase in final liability for any tax year in which
46 the credit was applied, then, notwithstanding the four year limitation

1 of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid
2 liability, if any, shall be considered a deficiency for the purposes of the
3 State [Tax] Uniform Tax Procedure Law, R.S.54:48-1 et seq. The
4 amount of credit allowed for actual use shall be determined by
5 multiplying the original credit by the ratio which the months of
6 qualified use bear to 36.

7 (2) With respect to property other than that described in
8 subparagraph (1) of this subsection which is disposed of or ceases to
9 be qualified equipment prior to the end of the 60 month period
10 following being placed in service in this State, the amount of credit
11 allowed shall be that portion of the credit provided for in subsection
12 a. of this section which represents the ratio which the months of
13 qualified use bear to 60, and the difference between the credit taken
14 and the credit allowed for actual use shall be forfeited. Additionally,
15 except when the property is damaged or destroyed by fire, flood,
16 storm or other casualty, or is stolen, the taxpayer shall redetermine the
17 amount of credit allowed for the tax year of the credit by reducing the
18 investment credit base by the cost of the amount of the disposed or
19 disqualified equipment. If the redetermination of the credit results in
20 an increase in final liability for any tax year in which the credit was
21 applied, then, notwithstanding the four year limitation of subsection b.
22 of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any,
23 shall be considered a deficiency for the purposes of the State [Tax]
24 Uniform Tax Procedure Law, R.S.54:48-1 et seq. The amount of
25 credit allowed for actual use shall be determined by multiplying the
26 original credit by the ratio which the months of qualified use bear to
27 60.

28 e. A taxpayer that claims a credit pursuant to this section shall not
29 be eligible to receive a grant pursuant to the "Business Relocation
30 Assistance Act, P.L.1996, c.25 (C.34:1B-112 et seq.) or the "Business
31 Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et
32 seq.).

33 (cf: P.L.1993, c.171, s.4)]¹

34

35 ¹[3.] 2.¹ This act shall take effect ¹[shall take effect]¹
36 immediately ¹be retroactive to January 1, 2002¹ and apply to tax
37 years beginning on and after January 1 ¹[next following enactment],
38 2002¹.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2761

STATE OF NEW JERSEY

DATED: DECEMBER 20, 2001

The Assembly Appropriations Committee reports favorably Senate Bill No. 2761 (1R).

Senate Bill No. 2761 (1R) allows the manufacturing equipment and employment investment tax credit under the corporation business tax for certain electric energy and thermal energy production. This bill will provide the tax credit for investment in electric generation facilities and thermal energy generation facilities consistent with the tax treatment available under the "Manufacturing Equipment and Employment Incentive Tax Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et seq.).

The provisions of this bill are identical to Assembly Bill No. 3979, as amended and reported by the committee.

FISCAL IMPACT

The committee has no information from which it may predict the new qualified investments or increase in employment that may occur as a result of the manufacturing equipment and employment investment tax credit for electric energy and thermal energy production provided for in the bill. The committee does note that under the "Manufacturing Equipment and Employment Incentive Tax Credit Act," a credit amount equal to 2% of the investment credit base is subject to annual limits of 50% of the taxpayer's tax liability and \$1,000,000 per tax year. Any credit amounts unused in a tax year because of these limits may be carried forward for seven tax years following a credit's tax year. Also the employment investment tax credit is an amount equal to 3% of the investment credit base not to exceed a maximum annual amount for the two tax years next following the investment equal to \$1,000 multiplied by the number of new employees. The employment investment tax credit is also subject to annual limits of 50% of the taxpayer's tax liability and any credit amounts unused in a tax year because of this limit may be carried forward for seven tax years following a credit's tax year.

ASSEMBLY, No. 3979

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED DECEMBER 6, 2001

Sponsored by:

Assemblyman PAUL DIGAETANO

District 36 (Bergen, Essex and Passaic)

Assemblyman JOSEPH V. DORIA, JR.

District 31 (Hudson)

SYNOPSIS

Provides the manufacturing equipment and employment investment tax credit under the corporation business tax for electric energy and thermal energy production.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/21/2001)

1 AN ACT providing the manufacturing equipment and employment
2 investment tax credit under the corporation business tax for electric
3 energy and thermal energy production, amending P.L.1993, c.171.

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

7
8 1. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to
9 read as follows:

10 2. For the purposes of this act:

11 "Control," with respect to a corporation, means ownership, directly
12 or indirectly, of stock possessing 50% or more of the total combined
13 voting power of all classes of the stock of the corporation entitled to
14 vote; "control," with respect to a trust, means ownership, directly or
15 indirectly, of 50% or more of the beneficial interest in the principal or
16 income of the trust. The ownership of stock in a corporation, of a
17 capital or profits interest in a partnership or association or of a
18 beneficial interest in a trust shall be determined in accordance with the
19 rules for constructive ownership of stock provided in subsection (c) of
20 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
21 s.267, other than paragraph (3) of subsection (c) of that section.

22 "Controlled group" means one or more chains of corporations
23 connected through stock ownership with a common parent corporation
24 if stock possessing at least 50% of the voting power of all classes of
25 stock of each of the corporations is owned directly or indirectly by one
26 or more of the corporations; and the common parent owns directly
27 stock possessing at least 50% of the voting power of all classes of
28 stock of at least one of the other corporations.

29 "Director" means the Director of the Division of Taxation in the
30 Department of the Treasury.

31 "Full-time employee" means an employee working for the taxpayer
32 for at least 140 hours per month at a wage not less than the State or
33 federal minimum wage, if either minimum wage provision is applicable
34 to the business, on a permanent basis, which does not include
35 employment that is temporary or seasonal.

36 "Investment credit base" means the cost of qualified equipment. The
37 cost of qualified equipment shall not include the value of equipment
38 given in trade or exchange for the equipment purchased for business
39 relocation or expansion. If equipment is damaged or destroyed by fire,
40 flood, storm or other casualty, or is stolen, the cost of replacement
41 equipment shall not include any insurance proceeds received in
42 compensation for the loss. In the case of self-constructed equipment,
43 the cost thereof shall be the amount properly charged to the capital

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

Matter underlined thus is new matter.

1 account for depreciation in accordance with federal income tax law.
2 The cost of equipment acquired by written lease is the minimum
3 amount required by the agreement, agreements, contract or contracts
4 to be paid over the term of the lease, provided however, that the
5 minimum amount shall not include any amount required to be paid, as
6 determined by the director, after the expiration of the useful life of the
7 equipment.

8 "Number of new employees" means the increase in the average
9 number of full-time employees and full-time employee equivalents
10 residing and domiciled in this State employed at work locations in this
11 State from the employment base year to the employment measurement
12 year. The employment base year is the tax year immediately preceding
13 the tax year for which the credit pursuant to section 3 of P.L.1993,
14 c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was
15 not subject to tax and did not have a tax year immediately preced the
16 tax year for which a credit pursuant to section 3 of P.L.1993, c.171
17 (C.54:10A-5.18), was allowed the employment base year is the tax
18 year in which the credit pursuant to section 3 of P.L.1993, c.171
19 (C.54:10A-5.18), was allowed. The measurement year is the tax year
20 immediately following the tax year in which the credit pursuant to
21 section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The
22 hours of part-time employees shall be aggregated to determine the
23 number of full-time employee equivalents.

24 "Part-time employee" means an employee working for the taxpayer
25 for at least 20 hours per week for at least six months during the tax
26 year.

27 "Purchase" means any acquisition of property, including an
28 acquisition pursuant to a lease, but only if:

29 a. the property is not acquired from a person whose relationship to
30 the person acquiring it would result in the disallowance of deductions
31 under section 267 or subsection (b) of section 707 of the federal
32 Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

33 b. the property is not acquired by one member of a controlled group
34 from another member of the same controlled group. The director may
35 waive this requirement if the property was acquired from a related
36 person for its then fair market value; and

37 c. the basis of the property for federal income tax purposes, in the
38 hands of the person acquiring it, is not determined:

39 (1) in whole or in part by reference to the federal adjusted basis of
40 such property in the hands of the person from whom it was acquired;

41 or

42 (2) under subsection (e) of section 1014 of the federal Internal
43 Revenue Code of 1986, 26 U.S.C. s.1014.

44 "Qualified equipment" means machinery, apparatus or equipment
45 acquired by purchase for use or consumption by the taxpayer directly
46 and primarily in the production of tangible personal property by

1 manufacturing, processing, assembling or refining, as defined pursuant
2 to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13),
3 having a useful life of four or more years, placed in service in this
4 State and machinery, apparatus or equipment acquired by purchase for
5 use or consumption directly and primarily in the generation of
6 electricity as defined pursuant to subsection b. of section 25 of
7 P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the
8 grid, or in the generation of thermal energy, having a useful life of four
9 or more years, placed in service in this State. Qualified equipment does
10 not include tangible personal property which the taxpayer contracts or
11 agrees to lease or rent to another person or licenses another person to
12 use.

13 "Related person" means:

14 a. a corporation, partnership, association or trust controlled by the
15 taxpayer;

16 b. an individual, corporation, partnership, association or trust that
17 is in control of the taxpayer;

18 c. a corporation, partnership, association or trust controlled by an
19 individual, corporation, partnership, association or trust that is in
20 control of the taxpayer; or

21 d. a member of the same controlled group as the taxpayer.

22 "Tax year" means the fiscal or calendar accounting year of a
23 taxpayer.

24 (cf: P.L.1993, c.171, s.2)

25

26 2. This act shall take effect shall take effect immediately and apply
27 to tax years beginning on and after January 1 next following
28 enactment.

29

30

31

STATEMENT

32

33 This bill provides the manufacturing equipment and employment
34 investment tax credit under the corporation business tax for electric
35 energy and thermal energy production. This bill will provide the tax
36 credit for investment in electric generation facilities and thermal
37 energy generation facilities consistent with the tax treatment available
38 under the "Manufacturing Equipment and Employment Incentive Tax
39 Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et seq.). This
40 corporation business investment tax credit will encourage needed
41 investment in electric and thermal energy generation facilities in New
42 Jersey to further stabilize energy prices and meet the energy needs of
43 the region.

44 This investment tax credit will encourage competition in electric
45 and thermal energy generation which is needed to ensure that the State
46 continues to have an adequate supply of electric and thermal energy

- 1 generation capacity. By encouraging the construction of additional
- 2 generation capacity the State can avoid the type of energy supply crisis
- 3 recently experienced in the state of California where electric energy
- 4 demand has outpaced growth in generation capacity.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3979

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 20, 2001

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3979 with committee amendments.

Assembly Bill No. 3970, as amended, the bill allows the manufacturing equipment and employment investment tax credit under the corporation business tax for certain electric energy and thermal energy production. This bill will provide the tax credit for investment in electric generation facilities and thermal energy generation facilities consistent with the tax treatment available under the "Manufacturing Equipment and Employment Incentive Tax Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et seq.).

As amended and reported, the provisions of this bill are identical to Senate Bill No. 2761 (1R), as also reported by the committee.

FISCAL IMPACT

The committee has no information from which it may predict the new qualified investments or increase in employment that may occur as a result of the manufacturing equipment and employment investment tax credit for electric energy and thermal energy production provided for in the bill. The committee does note that under the "Manufacturing Equipment and Employment Incentive Tax Credit Act," a credit amount equal to 2% of the investment credit base is subject to annual limits of 50% of the taxpayer's tax liability and \$1,000,000 per tax year. Any credit amounts unused in a tax year because of these limits may be carried forward for seven tax years following a credit's tax year. Also the employment investment tax credit is an amount equal to 3% of the investment credit base not to exceed a maximum annual amount for the two tax years next following the investment equal to \$1,000 multiplied by the number of new employees. The employment investment tax credit is also subject to annual limits of 50% of the taxpayer's tax liability and any credit amounts unused in a tax year because of this limit may be carried forward for seven tax years following a credit's tax year.

COMMITTEE AMENDMENTS

The committee amendments change the effective date of the bill to clarify that the tax credit applies to tax years commencing on and after January 1, 2002.

[First Reprint]

ASSEMBLY, No. 3979

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 6, 2001

Sponsored by:

Assemblyman PAUL DIGAETANO

District 36 (Bergen, Essex and Passaic)

Assemblyman JOSEPH V. DORIA, JR.

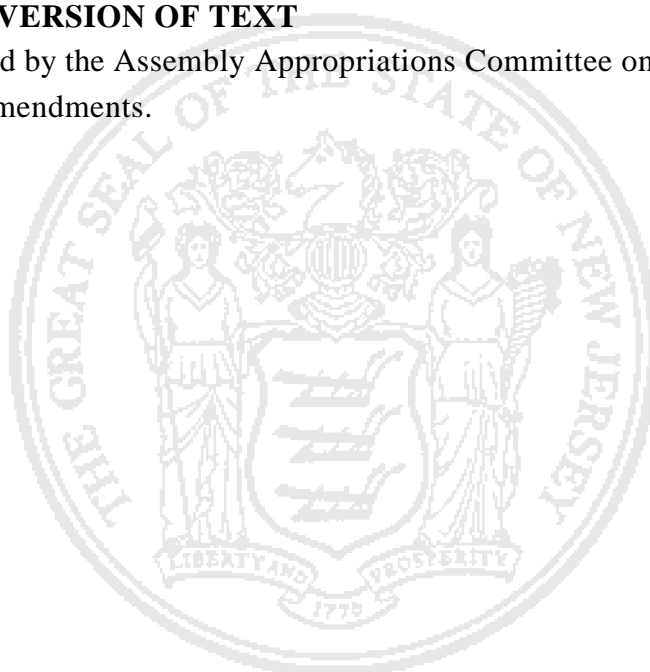
District 31 (Hudson)

SYNOPSIS

Provides the manufacturing equipment and employment investment tax credit under the corporation business tax for electric energy and thermal energy production.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 20, 2001, with amendments.



(Sponsorship Updated As Of: 12/21/2001)

1 AN ACT providing the manufacturing equipment and employment
2 investment tax credit under the corporation business tax for electric
3 energy and thermal energy production, amending P.L.1993, c.171.

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

7
8 1. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to
9 read as follows:

10 2. For the purposes of this act:

11 "Control," with respect to a corporation, means ownership, directly
12 or indirectly, of stock possessing 50% or more of the total combined
13 voting power of all classes of the stock of the corporation entitled to
14 vote; "control," with respect to a trust, means ownership, directly or
15 indirectly, of 50% or more of the beneficial interest in the principal or
16 income of the trust. The ownership of stock in a corporation, of a
17 capital or profits interest in a partnership or association or of a
18 beneficial interest in a trust shall be determined in accordance with the
19 rules for constructive ownership of stock provided in subsection (c) of
20 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
21 s.267, other than paragraph (3) of subsection (c) of that section.

22 "Controlled group" means one or more chains of corporations
23 connected through stock ownership with a common parent corporation
24 if stock possessing at least 50% of the voting power of all classes of
25 stock of each of the corporations is owned directly or indirectly by one
26 or more of the corporations; and the common parent owns directly
27 stock possessing at least 50% of the voting power of all classes of
28 stock of at least one of the other corporations.

29 "Director" means the Director of the Division of Taxation in the
30 Department of the Treasury.

31 "Full-time employee" means an employee working for the taxpayer
32 for at least 140 hours per month at a wage not less than the State or
33 federal minimum wage, if either minimum wage provision is applicable
34 to the business, on a permanent basis, which does not include
35 employment that is temporary or seasonal.

36 "Investment credit base" means the cost of qualified equipment. The
37 cost of qualified equipment shall not include the value of equipment
38 given in trade or exchange for the equipment purchased for business
39 relocation or expansion. If equipment is damaged or destroyed by fire,
40 flood, storm or other casualty, or is stolen, the cost of replacement
41 equipment shall not include any insurance proceeds received in
42 compensation for the loss. In the case of self-constructed equipment,

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted December 20, 2001.

1 the cost thereof shall be the amount properly charged to the capital
2 account for depreciation in accordance with federal income tax law.
3 The cost of equipment acquired by written lease is the minimum
4 amount required by the agreement, agreements, contract or contracts
5 to be paid over the term of the lease, provided however, that the
6 minimum amount shall not include any amount required to be paid, as
7 determined by the director, after the expiration of the useful life of the
8 equipment.

9 "Number of new employees" means the increase in the average
10 number of full-time employees and full-time employee equivalents
11 residing and domiciled in this State employed at work locations in this
12 State from the employment base year to the employment measurement
13 year. The employment base year is the tax year immediately preceding
14 the tax year for which the credit pursuant to section 3 of P.L.1993,
15 c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was
16 not subject to tax and did not have a tax year immediately precede the
17 tax year for which a credit pursuant to section 3 of P.L.1993, c.171
18 (C.54:10A-5.18), was allowed the employment base year is the tax
19 year in which the credit pursuant to section 3 of P.L.1993, c.171
20 (C.54:10A-5.18), was allowed. The measurement year is the tax year
21 immediately following the tax year in which the credit pursuant to
22 section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The
23 hours of part-time employees shall be aggregated to determine the
24 number of full-time employee equivalents.

25 "Part-time employee" means an employee working for the taxpayer
26 for at least 20 hours per week for at least six months during the tax
27 year.

28 "Purchase" means any acquisition of property, including an
29 acquisition pursuant to a lease, but only if:

30 a. the property is not acquired from a person whose relationship to
31 the person acquiring it would result in the disallowance of deductions
32 under section 267 or subsection (b) of section 707 of the federal
33 Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

34 b. the property is not acquired by one member of a controlled group
35 from another member of the same controlled group. The director may
36 waive this requirement if the property was acquired from a related
37 person for its then fair market value; and

38 c. the basis of the property for federal income tax purposes, in the
39 hands of the person acquiring it, is not determined:

40 (1) in whole or in part by reference to the federal adjusted basis of
41 such property in the hands of the person from whom it was acquired;
42 or

43 (2) under subsection (e) of section 1014 of the federal Internal
44 Revenue Code of 1986, 26 U.S.C. s.1014.

45 "Qualified equipment" means machinery, apparatus or equipment
46 acquired by purchase for use or consumption by the taxpayer directly

1 and primarily in the production of tangible personal property by
2 manufacturing, processing, assembling or refining, as defined pursuant
3 to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13),
4 having a useful life of four or more years, placed in service in this
5 State and machinery, apparatus or equipment acquired by purchase for
6 use or consumption directly and primarily in the generation of
7 electricity as defined pursuant to subsection b. of section 25 of
8 P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the
9 grid, or in the generation of thermal energy, having a useful life of four
10 or more years, placed in service in this State. Qualified equipment does
11 not include tangible personal property which the taxpayer contracts or
12 agrees to lease or rent to another person or licenses another person to
13 use.

14 "Related person" means:

15 a. a corporation, partnership, association or trust controlled by the
16 taxpayer;

17 b. an individual, corporation, partnership, association or trust that
18 is in control of the taxpayer;

19 c. a corporation, partnership, association or trust controlled by an
20 individual, corporation, partnership, association or trust that is in
21 control of the taxpayer; or

22 d. a member of the same controlled group as the taxpayer.

23 "Tax year" means the fiscal or calendar accounting year of a
24 taxpayer.

25 (cf: P.L.1993, c.171, s.2)

26

27 2. This act shall take effect ¹[shall take effect]¹ immediately ¹.be
28 retroactive to January 1, 2002¹ and apply to tax years beginning on
29 and after January 1 ¹[next following enactment] , 2002¹.

P.L. 2001, CHAPTER 399, *approved January 8, 2002*
Senate, No. 2761 (*First Reprint*)

1 **AN ACT** providing the manufacturing equipment and employment
2 investment tax credit under the corporation business tax for electric
3 energy and thermal energy production, amending P.L.1993, c.171.
4

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

7
8 1. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to
9 read as follows:

10 2. For the purposes of this act:

11 "Control," with respect to a corporation, means ownership, directly
12 or indirectly, of stock possessing 50% or more of the total combined
13 voting power of all classes of the stock of the corporation entitled to
14 vote; "control," with respect to a trust, means ownership, directly or
15 indirectly, of 50% or more of the beneficial interest in the principal or
16 income of the trust. The ownership of stock in a corporation, of a
17 capital or profits interest in a partnership or association or of a
18 beneficial interest in a trust shall be determined in accordance with the
19 rules for constructive ownership of stock provided in subsection (c) of
20 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
21 s.267, other than paragraph (3) of subsection (c) of that section.

22 "Controlled group" means one or more chains of corporations
23 connected through stock ownership with a common parent corporation
24 if stock possessing at least 50% of the voting power of all classes of
25 stock of each of the corporations is owned directly or indirectly by one
26 or more of the corporations; and the common parent owns directly
27 stock possessing at least 50% of the voting power of all classes of
28 stock of at least one of the other corporations.

29 "Director" means the Director of the Division of Taxation in the
30 Department of the Treasury.

31 "Full-time employee" means an employee working for the taxpayer
32 for at least 140 hours per month at a wage not less than the State or
33 federal minimum wage, if either minimum wage provision is applicable
34 to the business, on a permanent basis, which does not include
35 employment that is temporary or seasonal.

36 "Investment credit base" means the cost of qualified equipment. The
37 cost of qualified equipment shall not include the value of equipment
38 given in trade or exchange for the equipment purchased for business
39 relocation or expansion. If equipment is damaged or destroyed by fire,
40 flood, storm or other casualty, or is stolen, the cost of replacement

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted December 17, 2001.

1 equipment shall not include any insurance proceeds received in
2 compensation for the loss. In the case of self-constructed equipment,
3 the cost thereof shall be the amount properly charged to the capital
4 account for depreciation in accordance with federal income tax law.
5 The cost of equipment acquired by written lease is the minimum
6 amount required by the agreement, agreements, contract or contracts
7 to be paid over the term of the lease, provided however, that the
8 minimum amount shall not include any amount required to be paid, as
9 determined by the director, after the expiration of the useful life of the
10 equipment.

11 "Number of new employees" means the increase in the average
12 number of full-time employees and full-time employee equivalents
13 residing and domiciled in this State employed at work locations in this
14 State from the employment base year to the employment measurement
15 year. The employment base year is the tax year immediately preceding
16 the tax year for which the credit pursuant to section 3 of P.L.1993,
17 c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was
18 not subject to tax and did not have a tax year immediately precede the
19 tax year for which a credit pursuant to section 3 of P.L.1993, c.171
20 (C.54:10A-5.18), was allowed the employment base year is the tax
21 year in which the credit pursuant to section 3 of P.L.1993, c.171
22 (C.54:10A-5.18), was allowed. The measurement year is the tax year
23 immediately following the tax year in which the credit pursuant to
24 section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The
25 hours of part-time employees shall be aggregated to determine the
26 number of full-time employee equivalents.

27 "Part-time employee" means an employee working for the taxpayer
28 for at least 20 hours per week for at least six months during the tax
29 year.

30 "Purchase" means any acquisition of property, including an
31 acquisition pursuant to a lease, but only if:

32 a. the property is not acquired from a person whose relationship to
33 the person acquiring it would result in the disallowance of deductions
34 under section 267 or subsection (b) of section 707 of the federal
35 Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

36 b. the property is not acquired by one member of a controlled
37 group from another member of the same controlled group. The
38 director may waive this requirement if the property was acquired from
39 a related person for its then fair market value; and

40 c. the basis of the property for federal income tax purposes, in the
41 hands of the person acquiring it, is not determined:

42 (1) in whole or in part by reference to the federal adjusted basis of
43 such property in the hands of the person from whom it was acquired;

44 or

45 (2) under subsection (e) of section 1014 of the federal Internal
46 Revenue Code of 1986, 26 U.S.C. s.1014.

1 "Qualified equipment" means machinery, apparatus or equipment
2 acquired by purchase for use or consumption by the taxpayer directly
3 and primarily in the production of tangible personal property by
4 manufacturing, processing, assembling or refining, as defined pursuant
5 to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13),
6 having a useful life of four or more years, placed in service in this
7 State and machinery, apparatus or equipment acquired by purchase for
8 use or consumption directly and primarily in the generation of
9 electricity as defined pursuant to subsection b. of section 25 of
10 P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the
11 grid, or in the generation of thermal energy, having a useful life of four
12 or more years, placed in service in this State. Qualified equipment does
13 not include tangible personal property which the taxpayer contracts or
14 agrees to lease or rent to another person or licenses another person to
15 use.

16 "Related person" means:

17 a. a corporation, partnership, association or trust controlled by the
18 taxpayer;

19 b. an individual, corporation, partnership, association or trust that
20 is in control of the taxpayer;

21 c. a corporation, partnership, association or trust controlled by an
22 individual, corporation, partnership, association or trust that is in
23 control of the taxpayer; or

24 d. a member of the same controlled group as the taxpayer.

25 "Tax year" means the fiscal or calendar accounting year of a
26 taxpayer.

27 (cf: P.L.1993, c.171, s.2)

28

29 ¹[2. Section 4 of P.L.1993, c.171 (C.54:10A-5.19) is amended to
30 read as follows:

31 4. a. A taxpayer allowed a credit under section 3 of P.L.1993,
32 c.171 (C.54:10A-5.18), with respect to the investment credit base,
33 shall be allowed a credit for the increase in employment by the
34 taxpayer determined by the number of new employees for each of the
35 two tax years next succeeding the tax year for which the credit under
36 section 3 of P.L.1993, c.171 (C.54:10A-5.18), is allowed, in an
37 amount equal to 3% of the investment credit base, not to exceed a
38 maximum allowed amount for each of the two tax years of \$1,000
39 multiplied by the number of new employees.

40 b. The tax imposed for the tax year pursuant to section 5 of
41 P.L.1945, c.162, shall first be reduced by the amount of any credit
42 allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78),
43 then by any credit allowed pursuant to section 12 of P.L.1985, c.227
44 (C.55:19-13), then by any credit allowed pursuant to section 42 of
45 P.L.1987, c.102 (C.54:10A-5.3), and then by any credit allowed
46 pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), prior to

1 applying any credits allowable pursuant to this section. Credits
2 allowable pursuant to this section shall be applied in the order of the
3 tax year of the credit allowed pursuant to section 3 of P.L.1993, c.171
4 (C.54:10A-5.18), to which the credit under this section relates and
5 then by the order of the credits' tax years. The amount of the credits
6 applied under this section and section 3 of P.L.1993, c.171
7 (C.54:10A-5.18), against the tax imposed pursuant to section 5 of
8 P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability
9 otherwise due and shall not reduce the tax liability to an amount less
10 than the statutory minimum provided in subsection (e) of section 5 of
11 P.L.1945, c.162.

12 c. The amount of tax year credit otherwise allowable under
13 subsection a. of this section which cannot be applied for the tax year
14 due to the limitations of subsection b. of this section may be carried
15 over, if necessary, to the seven tax years following a credit's tax year.
16 Provided however, that a taxpayer may not carry over any amount of
17 credit or credits allowed under subsection a. of this section to a tax
18 year during which a corporate acquisition with respect to which the
19 taxpayer was a target corporation occurred or during which the
20 taxpayer was a party to a merger or a consolidation, or to any
21 subsequent tax year, if the credit was allowed for a tax year prior to
22 the year of acquisition, merger or consolidation; provided further,
23 however, that if in the case of a corporate merger or corporate
24 consolidation the taxpayer can demonstrate, through the submission
25 of a copy of the plan of merger or consolidation and such other
26 evidence as may be required by the director, the identity of the
27 constituent corporation which was the acquiring person, a credit
28 allowed to the acquiring person may be carried over by the taxpayer.
29 "Acquiring person" means the constituent corporation the stockholders
30 of which own the largest proportion of the total voting power in the
31 surviving or consolidated corporation after the merger or
32 consolidation.

33 d. (1) With respect to equipment that is three-year property, as
34 described in subsection (e) of section 168 of the federal Internal
35 Revenue Code of 1986, 26 U.S.C. s.168, which is disposed of or
36 ceases to be qualified equipment prior to the end of the 36 month
37 period following being placed in service in this State, the amount of
38 credit allowed shall be that portion of the credit provided for in
39 subsection a. of this section which represents the ratio which the
40 months of qualified use bear to 36, and the difference between the
41 credit taken and the credit allowed for actual use shall be forfeited.
42 Additionally, except when the property is damaged or destroyed by
43 fire, flood, storm or other casualty, or is stolen, the taxpayer shall
44 redetermine the amount of credit allowed for the tax year of the credit
45 by reducing the investment credit base by the cost of the amount of the
46 disposed or disqualified equipment. If the redetermination of the

1 credit results in an increase in final liability for any tax year in which
 2 the credit was applied, then, notwithstanding the four year limitation
 3 of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid
 4 liability, if any, shall be considered a deficiency for the purposes of the
 5 State **[Tax]** Uniform Tax Procedure Law, R.S.54:48-1 et seq. The
 6 amount of credit allowed for actual use shall be determined by
 7 multiplying the original credit by the ratio which the months of
 8 qualified use bear to 36.

9 (2) With respect to property other than that described in
 10 subparagraph (1) of this subsection which is disposed of or ceases to
 11 be qualified equipment prior to the end of the 60 month period
 12 following being placed in service in this State, the amount of credit
 13 allowed shall be that portion of the credit provided for in subsection
 14 a. of this section which represents the ratio which the months of
 15 qualified use bear to 60, and the difference between the credit taken
 16 and the credit allowed for actual use shall be forfeited. Additionally,
 17 except when the property is damaged or destroyed by fire, flood,
 18 storm or other casualty, or is stolen, the taxpayer shall redetermine the
 19 amount of credit allowed for the tax year of the credit by reducing the
 20 investment credit base by the cost of the amount of the disposed or
 21 disqualified equipment. If the redetermination of the credit results in
 22 an increase in final liability for any tax year in which the credit was
 23 applied, then, notwithstanding the four year limitation of subsection b.
 24 of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any,
 25 shall be considered a deficiency for the purposes of the State **[Tax]**
 26 Uniform Tax Procedure Law, R.S.54:48-1 et seq. The amount of
 27 credit allowed for actual use shall be determined by multiplying the
 28 original credit by the ratio which the months of qualified use bear to
 29 60.

30 e. A taxpayer that claims a credit pursuant to this section shall not
 31 be eligible to receive a grant pursuant to the "Business Relocation
 32 Assistance Act, P.L.1996, c.25 (C.34:1B-112 et seq.) or the "Business
 33 Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et
 34 seq.).
 35 (cf: P.L.1993, c.171, s.4)]¹
 36

37 ¹[3.] 2.¹ This act shall take effect **[shall take effect]** ¹
 38 immediately ¹be retroactive to January 1, 2002 ¹and apply to tax
 39 years beginning on and after January 1 ¹**[next following enactment]**,
 40 2002¹.
 41
 42
 43

44 Provides the manufacturing equipment and employment investment tax
 45 credit under the corporation business tax for electric energy and
 46 thermal energy production.

CHAPTER 399

AN ACT providing the manufacturing equipment and employment investment tax credit under the corporation business tax for electric energy and thermal energy production, amending P.L.1993, c.171.

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

1. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to read as follows:

C.54:10A-5.17 Definitions.

2. For the purposes of this act:

"Control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50% or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; "control," with respect to a trust, means ownership, directly or indirectly, of 50% or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267, other than paragraph (3) of subsection (c) of that section.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50% of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least 50% of the voting power of all classes of stock of at least one of the other corporations.

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

"Full-time employee" means an employee working for the taxpayer for at least 140 hours per month at a wage not less than the State or federal minimum wage, if either minimum wage provision is applicable to the business, on a permanent basis, which does not include employment that is temporary or seasonal.

"Investment credit base" means the cost of qualified equipment. The cost of qualified equipment shall not include the value of equipment given in trade or exchange for the equipment purchased for business relocation or expansion. If equipment is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the cost of replacement equipment shall not include any insurance proceeds received in compensation for the loss. In the case of self-constructed equipment, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law. The cost of equipment acquired by written lease is the minimum amount required by the agreement, agreements, contract or contracts to be paid over the term of the lease, provided however, that the minimum amount shall not include any amount required to be paid, as determined by the director, after the expiration of the useful life of the equipment.

"Number of new employees" means the increase in the average number of full-time employees and full-time employee equivalents residing and domiciled in this State employed at work locations in this State from the employment base year to the employment measurement year. The employment base year is the tax year immediately preceding the tax year for which the credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was not subject to tax and did not have a tax year immediately precede the tax year for which a credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed the employment base year is the tax year in which the credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The measurement year is the tax year immediately following the tax year in which the credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The hours of part-time employees shall be aggregated to determine the number of full-time employee equivalents.

"Part-time employee" means an employee working for the taxpayer for at least 20 hours per week for at least six months during the tax year.

"Purchase" means any acquisition of property, including an acquisition pursuant to a lease, but only if:

a. the property is not acquired from a person whose relationship to the person acquiring it

would result in the disallowance of deductions under section 267 or subsection (b) of section 707 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

b. the property is not acquired by one member of a controlled group from another member of the same controlled group. The director may waive this requirement if the property was acquired from a related person for its then fair market value; and

c. the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(1) in whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(2) under subsection (e) of section 1014 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1014.

"Qualified equipment" means machinery, apparatus or equipment acquired by purchase for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining, as defined pursuant to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13), having a useful life of four or more years, placed in service in this State and machinery, apparatus or equipment acquired by purchase for use or consumption directly and primarily in the generation of electricity as defined pursuant to subsection b. of section 25 of P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the grid, or in the generation of thermal energy, having a useful life of four or more years, placed in service in this State. Qualified equipment does not include tangible personal property which the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use.

"Related person" means:

a. a corporation, partnership, association or trust controlled by the taxpayer;

b. an individual, corporation, partnership, association or trust that is in control of the taxpayer;

c. a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

d. a member of the same controlled group as the taxpayer.

"Tax year" means the fiscal or calendar accounting year of a taxpayer.

2. This act shall take effect immediately, be retroactive to January 1, 2002 and apply to tax years beginning on and after January 1, 2002

Approved January 8, 2002.