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LAW/KR

Title 34.
Part XIII (New)
Grow New Jersey
Assistance Act.
§§1-9 –
C.34:1B-242 to
34:1B-250
§15 - Repealer

P.L.2011, CHAPTER 149, *approved January 5, 2012*
Senate, No. 3033 (*Fifth Reprint*)

1 AN ACT providing for the availability of tax credits to certain
2 businesses ⁴, authorizing a transfer of certain real property.⁴ and
3 supplementing Title 34 of the Revised Statutes ¹[and].¹
4 amending ¹[P.L.2007, c.346] various parts of the statutory law,
5 and repealing section 6 of P.L.1996, c.25¹.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 1. (New section) Sections 1 through ⁴**[8]** ⁹9⁴ of this act shall be
11 known and may be cited as the "Grow New Jersey Assistance Act."
12

13 2. (New section) As used in this act:

14 "Affiliate" means an entity that directly or indirectly controls, is
15 under common control with, or is controlled by the business.
16 Control exists in all cases in which the entity is a member of a
17 controlled group of corporations as defined pursuant to section 1563
18 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the
19 entity is an organization in a group of organizations under common
20 control as defined pursuant to subsection (b) or (c) of section 414 of
21 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
22 may establish by clear and convincing evidence, as determined by
23 the Director of the Division of Taxation in the Department of the
24 Treasury, that control exists in situations involving lesser
25 percentages of ownership than required by those statutes. An
26 affiliate of a business may contribute to meeting either the qualified
27 investment or full-time employee requirements of a business that
28 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
29 209).

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEG committee amendments adopted September 19, 2011.

²Senate SBA committee amendments adopted September 22, 2011.

³Senate floor amendments adopted September 26, 2011.

⁴Assembly ACE committee amendments adopted November 21, 2011.

⁵Assembly AAP committee amendments adopted December 1, 2011.

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

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

12 "Capital investment" in a qualified business facility means
13 expenses incurred after application, but before the end of the tenth
14 year after, the effective date of P.L. , c. (C.) (pending
15 before the Legislature as this bill) for: a. site preparation and
16 construction, repair, renovation, improvement, equipping, or
17 furnishing of a building, structure, facility, or improvement to real
18 property; and b. obtaining and installing furnishings and machinery,
19 apparatus, or equipment for the operation of a business in a
20 building, structure, facility, or improvement to real property.

21 "Eligible position" means a full-time position retained or
22 ³[hired] created³ by a business in this State for which a business
23 provides employee health benefits under a group health plan as
24 defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health
25 benefits plan as defined under section 1 of P.L.1992, c.162
26 (C.17B:27A-17), or a policy or contract of health insurance
27 covering more than one person issued pursuant to Article 2 of
28 chapter 27 of Title 17B of the New Jersey Statutes.¹

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

1 et seq. "Full-time employee" shall not include any person who
2 works as an independent contractor or on a consulting basis for the
3 business.

4 ³"New full-time job" means an eligible position created by the
5 business at the qualified business facility that did not previously
6 exist in this State. For the purposes of determining a number of
7 new full-time jobs, the eligible positions of an affiliate shall be
8 considered eligible positions of the business.³

9 "Partnership" means an entity classified as a partnership for
10 federal income tax purposes.

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

14 "Program" means the "Grow New Jersey Assistance Program"
15 established pursuant to section 3 of P.L. , c. (C.) (pending
16 before the Legislature as this bill).

17 "Qualified business facility" means any building, complex of
18 buildings or structural components of buildings, and all machinery
19 and equipment located within a qualified incentive area, used in
20 connection with the operation of a business.

21 "Qualified incentive area" means an area designated pursuant to
22 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
23 (Metropolitan), Planning Area 2 (Suburban) ², or any urban,
24 regional, or town designated center under the State Development
25 and Redevelopment Plan²; an area zoned for development pursuant
26 to a master plan adopted by the New Jersey Meadowlands
27 Commission pursuant to subsection (i) of section 6 of P.L.1968,
28 c.404 (C.13:17-6) or subject to a redevelopment plan adopted by the
29 New Jersey Meadowlands Commission pursuant to section 20 of
30 P.L.1968, c.404 (C.13:17-21); any land owned by the New Jersey
31 Sports and Exposition Authority, established pursuant to P.L.1971,
32 c.137 (C.5:10-1 et seq.), within the boundaries of the Hackensack
33 Meadowlands District as delineated in section 4 of P.L.1968, c.404
34 (C.13:17-4); a pinelands regional growth area, a pinelands town
35 management area, a pinelands village, or a military and federal
36 installation area established pursuant to the pinelands
37 comprehensive management plan adopted pursuant to P.L.1979,
38 c.111 (C.13:18A-1 et seq.); an area designated for development,
39 redevelopment, or economic growth within the Highlands Region;
40 federally owned land approved for closure under any federal Base
41 Closure and Realignment Commission action; or any property
42 consisting of a vacant commercial building having over 400,000
43 square feet of office ¹, laboratory, or industrial¹ space available for
44 occupancy for a period of over one year or is negatively impacted
45 by the approval of a "qualified business facility," as defined
46 pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

1 "Retained full-time job" means an eligible position that
2 currently exists in New Jersey and is filled by a full-time employee
3 but which, because of a potential relocation by the business, is at
4 risk of being lost to another state or country. For the purposes of
5 determining a number of retained full-time jobs, the eligible
6 positions of an affiliate shall be considered ³[the]³ eligible
7 positions of the business.¹

8
9 3. (New section) a. The Grow New Jersey Assistance Program
10 is hereby established as a program under the jurisdiction of the New
11 Jersey Economic Development Authority and shall be administered
12 by the authority. The purpose of the program is to encourage
13 economic development and job creation and to preserve jobs that
14 currently exist in New Jersey but which are in danger of being
15 relocated outside of the State. To implement this purpose, and to
16 the extent that funding for the program is available, the program
17 may provide tax credits to eligible businesses. To be eligible for
18 any tax credits pursuant to P.L. , c. (C.) (pending before the
19 Legislature as this bill), a business's chief executive officer or
20 equivalent officer shall demonstrate to the authority, at the time of
21 application, that: (1) the business will make, acquire, or lease a
22 capital investment of at least \$20,000,000 at a qualified business
23 facility at which it will ³(a)³ employ at least 100 full-time
24 employees in retained full-time jobs ³, or (b) create at least 100 new
25 full-time jobs in an industry identified by the authority as desirable
26 for the State to maintain or attract³; ³[and]³ (2) the capital
27 investment resultant from the award of tax credits and the resultant
28 retention and creation of eligible positions will yield a net positive
29 benefit to the State ³; and ⁵, except as provided in subsection d. of
30 this section,⁵ (3) the award of tax credits will be a material factor in
31 the business's decision to create or retain the minimum number of
32 full-time jobs for eligibility under the program³.

33 b. ³[In] To assist the authority in³ determining whether a
34 proposed capital investment will yield a net positive benefit, the
35 business's chief executive officer, or equivalent officer, shall submit
36 a certification to the authority indicating that ³[the] any³ existing
37 jobs are at risk of leaving the State ³, that any projected creation of
38 new full-time jobs would not occur but for the provision of tax
39 credits under the program,³ and that the business's chief executive
40 officer, or equivalent officer, has reviewed the information
41 submitted to the authority and that the representations contained
42 therein are accurate. In the event that this certification by the
43 business's chief executive officer, or equivalent officer, is found to
44 be willfully false, the authority may revoke any award of tax credits
45 in their entirety, which revocation shall be in addition to any other
46 criminal or civil penalties that the business and the officer may be
47 subject to. When considering an application involving intra-State

1 job transfers, the authority shall require the business to submit the
2 following information as part of its application: a full economic
3 analysis of all locations under consideration by the business; all
4 lease agreements, ownership documents, or substantially similar
5 documentation for the business's current in-State locations; and all
6 lease agreements, ownership documents, or substantially similar
7 documentation for the potential out-of-State location alternatives, to
8 the extent they exist. Based on this information, and any other
9 information deemed relevant by the authority, the authority shall
10 independently verify and confirm, by way of making a factual
11 finding by separate vote of the authority's board, the business's
12 assertion that the jobs are actually at risk of leaving the State,
13 before a business may be awarded any tax credits under this section.

14 ¹c. A project that consists solely of point-of-final-purchase
15 retail facilities shall not be eligible for a grant of tax credits. If a
16 project consists of both point-of-final-purchase retail facilities and
17 non-retail facilities, only the portion of the project consisting of
18 non-retail facilities shall be eligible for a grant of tax credits. If a
19 warehouse facility is part of a point-of-final-purchase retail facility
20 and supplies only that facility, the warehouse facility shall not be
21 eligible for a grant of tax credits. For the purposes of this section,
22 catalog distribution centers shall not be considered point-of-final-
23 purchase retail facilities.¹

24 ⁵d. The authority may determine as eligible for tax credits under
25 the program any business that is required to respond to a request for
26 proposals and to fulfill a contract with the federal government
27 although the business's chief executive officer or equivalent officer
28 has not demonstrated to the authority that the award of tax credits
29 will be a material factor in the business's decision to retain at least
30 100 full-time jobs, as otherwise required by paragraph 3 of
31 subsection a. of this section. The authority may, in its discretion,
32 consider the economic benefit of the retained jobs servicing the
33 contract in conducting a net benefit analysis required by paragraph
34 2 of subsection a. of this section. For the purposes of this
35 subsection, "retained jobs" includes jobs that are at risk of being
36 eliminated. Applications to the authority for eligibility under the
37 program pursuant to the criteria set forth in this subsection shall be
38 completed by March 31, 2012. Submission of a proposal to the
39 federal government prior to authority approval shall not disqualify a
40 business from the program.⁵

41
42 4. (New section) The authority shall require an eligible
43 business to enter an agreement prior to the issuance of tax credits.
44 The agreement shall include, but shall not be limited to, the
45 following:

46 a. A detailed description of the proposed project which will
47 result in job creation or retention, and the number of full-time
48 employees.

- 1 b. The term of the tax credits, and the first year for which the
2 tax credits may be claimed.
- 3 c. Personnel information that will enable the authority to
4 administer the program.
- 5 d. A requirement that the applicant maintain the project at a
6 location in New Jersey for at least 1.5 times the number of years of
7 the term of the tax credits, with at least the number of full-time
8 employees as required by section 6 of P.L. , c. (C.) (pending
9 before the Legislature as this bill) and a provision to permit the
10 authority to recapture all or part of any tax credit awarded, at its
11 discretion, if the business does not remain at the site for the
12 required term.
- 13 e. A method for the business to report annually to the authority
14 the number of full-time employees for which the tax credits are to
15 be made.
- 16 f. A provision permitting an audit of the payroll records of the
17 business from time to time, as the authority deems necessary.
- 18 g. A provision which permits the authority to amend the
19 agreement.
- 20 h. A provision establishing the conditions under which the
21 agreement may be terminated and awarded tax credits are
22 recaptured, in whole or in part, by the authority at its discretion.
23
- 24 5. (New section) a. The value of each tax credit for an eligible
25 business shall be equal to \$5,000 per year for a period of ten years
26 for each new or retained full-time job ³**[certified]** determined³ by
27 the authority pursuant to section 3 of P.L. , c. (C.) (pending
28 before the Legislature as this bill) to be located at the qualified
29 business facility, subject to the provisions of this section.
- 30 b. In addition to any grant of tax credits determined pursuant to
31 subsection a. of this section, a bonus award of up to an additional
32 \$3,000 per job of the amount of the original tax credits may be
33 made to any eligible business as determined by the authority. In
34 making a bonus award to an eligible business, the authority shall
35 consider the following factors, such that whether the business: (1) is
36 an industry identified by the authority as desirable for the State to
37 maintain ³or attract³; (2) ²locates or² relocates to a location within a
38 qualified incentive area adjacent to ¹, or within walking distance or
39 short-distance-shuttle service of,¹ a public transit facility, as
40 determined by the authority ¹, ¹ by regulation; (3) creates jobs using
41 full-time employees in eligible positions whose annual salaries,
42 according to the Department of Labor and Workforce Development,
43 are greater than the average full-time salary in this State; or (4) is
44 locating to a project site that is or has been negatively impacted by
45 the approval of a “qualified business facility,” as defined pursuant
46 to section 2 of P.L.2007, c.346 (C.34:1B-208).

1 ¹c. Notwithstanding the provisions of subsections a. and b. of
2 this section, (1) the amount of tax credits available to be applied by
3 the business annually shall not exceed ⁴the lesser of⁴ one tenth of
4 the capital investment certified by the authority pursuant to section
5 6 of P.L. , c. (C.) (pending before the Legislature as this
6 bill) ⁴or \$4,000,000⁴, and (2) the number of new full-time jobs ³for
7 which a business receives a tax credit³ shall not exceed the number
8 of retained full-time jobs for which a business receives a tax credit
9 ³, unless the business qualifies by creating at least 100 new full-
10 time jobs in an industry identified by the authority as desirable for
11 the State to maintain or attract³. ³[For the purposes of this section,
12 a "new full-time job" means an eligible position created by the
13 business at the qualified business facility that did not previously
14 exist in this State.]³ ¹
15

16 6. (New section) a. (1) The value of all credits approved by the
17 authority pursuant to P.L. , c. (C.) (pending before the
18 Legislature as this bill) shall not exceed \$200,000,000, except that
19 the value of all credits approved by the authority pursuant to this
20 section may exceed \$200,000,000 if the board of the authority
21 determines the credits to be reasonable, justifiable, and appropriate;
22 provided, however, the combined value of all credits approved by
23 the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq. and
24 P.L. , c. (C.) (pending before the Legislature as this bill)
25 shall not exceed \$1,500,000,000.

26 (2) A business, including any affiliate of the business or any
27 business that is a tenant within any qualified business facility, shall
28 make or acquire capital investments totaling not less than
29 \$20,000,000 in a qualified business facility, at which the business
30 shall employ not fewer than 100 full-time employees to be eligible
31 for a credit pursuant to P.L. , c. (pending before the Legislature
32 as this bill). A business that acquires or leases a qualified business
33 facility shall also be deemed to have acquired the capital investment
34 made or acquired by the seller or landlord, as the case may be.

35 (3) A business shall not be allowed tax credits pursuant to
36 P.L.1996, c.25 (C.34:1B-112 et seq.) ³or P.L.1996, c.26 (C.34:1B-
37 124 et seq.)³ relating to the same capital and employees that qualify
38 the business for tax credits pursuant to P.L. , c. (pending before
39 the Legislature as this bill). A business that is allowed a tax credit
40 under this section shall not be eligible for incentives authorized
41 pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall
42 not qualify for a tax credit under this section, based upon capital
43 investment and employment of full-time employees, if that capital
44 investment or employment was the basis for which a grant was
45 provided to the business pursuant to the "Urban Transit Hub Tax
46 Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.).

1 (4) Full-time employment for an accounting or privilege period
2 shall be determined as the average of the monthly full-time
3 employment for the period.

4 (5) The capital investment of the owner of a qualified business
5 facility is that percentage of the capital investment made or
6 acquired by the owner of the building that the percentage of net
7 leasable area of the qualified business facility not leased to tenants
8 is of the total net leasable area of the qualified business facility.
9 ¹For a business that is a tenant, the amount of capital investment in
10 a facility that a leased area represents shall be equal to that
11 percentage of the owner's total capital investment in the facility that
12 the percentage of net leasable area leased by the tenant is of the
13 total net leasable area of the qualified business facility. Capital
14 investments made by a tenant shall be deemed to be included in the
15 calculation of the capital investment made or acquired by the
16 owner, but only to the extent necessary to meet the owner's
17 minimum capital investment of \$20,000,000. Capital investments
18 made by a tenant and not allocated to meet the owner's minimum
19 capital investment threshold of ²[\$50,000,000] \$20,000,000² shall
20 be added to the amount of capital investment represented by the
21 tenant's leased area in the qualified business facility.¹

22 b. A business shall apply for the tax credit prior to July 1,
23 2014, and shall submit its documentation indicating that it has met
24 the capital investment and employment specified in the project
25 agreement for certification of its credit amount no later than July
26 28, 2017.

27 c. (1) The amount of credit allowed shall not exceed the capital
28 investment made by the business or the capital investment
29 represented by the business' leased area, as certified by the authority
30 pursuant to subsection b. of this section, as having met the
31 investment capital and employment qualifications, subject to any
32 reduction or disqualification as provided by subsection d. of this
33 section as determined by annual review by the authority. In
34 conducting its annual review, the authority may require a business
35 to submit any information determined by the authority to be
36 necessary and relevant to its review.

37 The credit amount for any tax period ending after July 28, 2017,
38 during which the documentation of a business' credit amount
39 remains uncertified shall be forfeited, although credit amounts for
40 the remainder of the years of the 10-year credit period shall remain
41 available to it.

42 The credit amount that may be taken for a tax period of the
43 business that exceeds the final liabilities of the business for the tax
44 period may be carried forward for use by the business in the next 20
45 successive tax periods, and shall expire thereafter, provided that the
46 value of all credits approved by the authority against tax liabilities
47 pursuant to P.L. , c. (pending before the Legislature as this bill),
48 in any fiscal year shall not exceed \$150,000,000 and the combined

1 value of all credits approved by the authority pursuant to P.L.2007,
2 c.346 (C.34:1B-207 et seq.) and P.L. , c. (C.) (pending
3 before the Legislature as this bill) shall not exceed \$1,500,000,000.

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

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

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

25 d. (1) If, in any tax period, the business reduces the total
26 number of full-time employees in its Statewide workforce by more
27 than 20 percent from the number of full-time employees in its
28 Statewide workforce in the last tax period prior to the credit amount
29 approval under section 3 of P.L. , c. (pending before the
30 Legislature as this bill), then the business shall forfeit its credit
31 amount for that tax period and each subsequent tax period, until the
32 first tax period for which documentation demonstrating the
33 restoration of the business' Statewide workforce to the threshold
34 levels required by this paragraph has been reviewed and approved
35 by the authority, for which tax period and each subsequent tax
36 period the full amount of the credit shall be allowed.

37 (2) If, in any tax period, the number of full-time employees
38 employed by the business at the qualified business facility located
39 within a qualified incentive area drops below 100 or 80 percent of
40 the number of new and retained full-time jobs specified in the
41 project agreement, then the business shall forfeit its credit amount
42 for that tax period and each subsequent tax period, until the first tax
43 period for which documentation demonstrating the restoration of the
44 number of full-time employees employed by the business at the
45 qualified business facility to 100.

46 (3) (a) If the qualified business facility is sold in whole or in
47 part during the 10-year eligibility period the new owner shall not
48 acquire the capital investment of the seller and the seller shall

1 forfeit all credits for the tax period in which the sale occurs and all
2 subsequent tax periods, provided however that any credits of
3 tenants shall remain unaffected.

4 (b) If a tenant subleases its tenancy in whole or in part during
5 the 10-year eligibility period the new tenant shall not acquire the
6 credit of the sublessor, and the sublessor tenant shall forfeit all
7 credits for the tax period of its sublease and all subsequent tax
8 periods.

9
10 7. (New section) A business may apply to the Director of the
11 Division of Taxation in the Department of the Treasury and the
12 chief executive officer of the authority for a tax credit transfer
13 certificate, covering one or more years, in lieu of the business being
14 allowed any amount of the credit against the tax liability of the
15 business. The tax credit transfer certificate, upon receipt thereof by
16 the business from the director and the chief executive officer of the
17 authority, may be sold or assigned, in full or in part, to any other
18 person that may have a tax liability pursuant to section 5 of
19 P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of
20 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1
21 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.
22 The certificate provided to the business shall include a statement
23 waiving the business's right to claim that amount of the credit
24 against the taxes that the business has elected to sell or assign. The
25 sale or assignment of any amount of a tax credit transfer certificate
26 allowed under this section shall not be exchanged for consideration
27 received by the business of less than 75 percent of the transferred
28 credit amount. Any amount of a tax credit transfer certificate used
29 by a purchaser or assignee against a tax liability shall be subject to
30 the same limitations and conditions that apply to the use of the
31 credit by the business that originally applied for and was allowed
32 the credit.

33
34 8. (New section) a. The chief executive officer of the authority,
35 in consultation with the Director of the Division of Taxation in the
36 Department of the Treasury, shall adopt rules in accordance with
37 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
38 seq.) as are necessary to implement P.L. , c. (C.) (pending
39 before the Legislature as this bill), including but not limited to:
40 examples of and the determination of capital investment; the
41 enumeration of qualified incentive areas; specific delineation of
42 these incentive areas; the determination of the limits, if any, on the
43 expense or type of furnishings that may constitute capital
44 improvements; the promulgation of procedures and forms necessary
45 to apply for a tax credit, including the enumeration of the
46 certification procedures and allocation of tax credits for different
47 phases of a qualified business facility; and provisions for tax credit
48 applicants to be charged an initial application fee, and ongoing

1 service fees, to cover the administrative costs related to the tax
2 credit.

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

11

12 49. (New section) a. Notwithstanding the provisions of
13 P.L.1962, c. 220 (C.52:31-1.1 et seq.), P.L. 2011, c.85, or any other
14 law or regulation to the contrary, and without the requirement for
15 the approval by any other party or entity, the State Treasurer is
16 hereby authorized to sell and convey, to the New Jersey Performing
17 Arts Center, in one or more series of transactions, all or any portion
18 of the State of New Jersey's right, title and interest in the land and
19 improvements located in the City of Newark, County of Essex, now
20 subject to the sublease between the State Treasurer and the New
21 Jersey Performing Arts Center which appear on the tax map of the
22 City of Newark and are designated as Block 125, Lots 23, 26 and
23 115, Block 126.01, Lot 21, such portion of Block 17, Lot 1, which
24 was designated for commercial development pursuant to the
25 sublease, and Block 17, Lots 20 and 21. Such conveyances shall be
26 on such terms and conditions, and for such consideration, as shall
27 be determined by the State Treasurer in the State Treasurer's sole
28 discretion. The proceeds from any such sales and conveyances
29 shall be deposited and applied as provided by law. In the event that
30 the identification of any of the property contained in this section by
31 block and lot number is inaccurate, the State Treasurer is authorized
32 to convey such blocks and lots which are subject to the sublease
33 between the State Treasurer and the New Jersey Performing Arts
34 Center as represent the actual parcels to be conveyed.

35 b. The State Treasurer is hereby authorized to enter into any
36 agreements, and to amend any existing agreements, required to
37 effectuate this sale and conveyance to the New Jersey Performing
38 Arts Center and any such agreements and amendments shall not
39 require the approval of any other party or entity, notwithstanding
40 any other law or
41 regulation to the contrary.

42 c. The New Jersey Economic Development Authority is hereby
43 authorized to sell and convey all or any portion of its right, title,
44 and interest in the property described in subsection a. of this section
45 to the New Jersey Performing Arts Center, in one or more series of
46 transactions on such terms and conditions, and for such
47 consideration, as shall be determined by the authority in its sole
48 discretion and to enter into any agreements and amend any existing

1 agreements required to effectuate this sale and conveyance. Any
2 such sale or conveyance shall not require the approval of any other
3 party or entity, notwithstanding any other law or regulation to the
4 contrary.⁴

5
6 ⁴[9.] 10.⁴ Section 2 of P.L.2007, c.346 (C.34:1B-208) is
7 amended to read as follows:

8 2. As used in this act:

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

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

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

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

45 "Eligible municipality" means a municipality: (1) which qualifies
46 for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or
47 which was continued to be a qualified municipality thereunder
48 pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of

1 the value of real property was exempt from local property taxation
2 during tax year 2006. The percentage of exempt property shall be
3 calculated by dividing the total exempt value by the sum of the net
4 valuation which is taxable and that which is tax exempt.

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

28 "Mixed use project" means a project comprising both a qualified
29 business facility and a qualified residential project.

30 "Partnership" means an entity classified as a partnership for
31 federal income tax purposes.

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

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

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

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

45 "Urban transit hub" means:

46 a. ⁵(1)⁵ property located within a ⁴[1/2] ⁵[one⁴] ¹/2⁵ mile
47 radius surrounding the mid point of a New Jersey Transit
48 Corporation, Port Authority Transit Corporation or Port Authority

- 1 Trans-Hudson Corporation rail station platform area ⁴], including
 2 all light rail stations]⁴, ⁵including all light rail stations.⁵ and
 3 ⁵(2)⁵ property located within a one mile radius of the mid point
 4 of the platform area of ⁴[such]⁴ ⁵such⁵ a ⁵[⁴light⁴]⁵ rail station if
 5 the property is in a qualified municipality under the "Municipal
 6 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
 7 (C.52:27BBB-1 et seq.) ⁵or in an area that is the subject of a Choice
 8 Neighborhoods Transformation Plan funded by the federal
 9 Department of Housing and Urban Development, and
 10 (3) the site of the campus of an acute care medical facility
 11 located within a one mile radius of the mid point of the platform
 12 area of such a rail station, and
 13 (4) the site of a closed hospital located within a one mile radius
 14 of the mid point of the platform area of such a rail station⁵;
 15 b. property located within a 1/2 mile radius surrounding the
 16 mid point of ⁵[⁴(1) any light rail station platform area other than a
 17 station that is in a qualified municipality under the "Municipal
 18 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
 19 (C.52:27BBB-1 et seq.) and (2)⁴]⁵ one of up to two underground
 20 light rail stations' platform areas that are most proximate to an
 21 interstate rail station;
 22 c. property adjacent to, or connected by rail spur to, a freight
 23 rail line if the business utilizes that freight line at any rail spur
 24 located adjacent to or within a one mile radius surrounding the
 25 entrance to the property for loading and unloading freight cars on
 26 trains;
 27 which property shall have been specifically delineated by the
 28 authority pursuant to subsection e. of section 3 of P.L.2007, c.346
 29 (C.34:1B-209).
 30 A property which is partially included within the radius shall
 31 only be considered part of the urban transit hub if over 50 percent
 32 of its land area falls within the radius.
 33 "Rail station" shall not include any rail station located at an
 34 international airport, except that any property within a 1/2 mile
 35 radius surrounding the mid point of a New Jersey Transit
 36 Corporation rail station platform area at an international airport
 37 upon which a qualified business facility is constructed or renovated
 38 commencing after the effective date of P.L. , c. (C.)
 39 (pending before the Legislature as this bill) shall be deemed an
 40 urban transit hub, excluding any property owned or controlled by
 41 the Port Authority of New York and New Jersey.
 42 (cf: P.L.2011, c.89, s.1)
 43
 44 ⁴[¹10.] 11.⁴ Section 3 of P.L.2007, c.346 (C.34:1B-209) is
 45 amended to read as follows:
 46 3. a. (1) A business, upon application to and approval from the
 47 authority, shall be allowed a credit of 100 percent of its capital

1 investment, made after the effective date of P.L.2007, c.346
2 (C.34:1B-207 et seq.) but prior to its submission of documentation
3 pursuant to subsection c. of this section, in a qualified business
4 facility within an eligible municipality, pursuant to the restrictions
5 and requirements of this section. To be eligible for any tax credits
6 authorized under this section, a business shall demonstrate to the
7 authority, at the time of application, that the State's financial
8 support of the proposed capital investment in a qualified business
9 facility will yield a net positive benefit to both the State and the
10 eligible municipality. The value of all credits approved by the
11 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall
12 not exceed \$1,500,000,000.

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

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

41 (4) A business shall not be allowed tax credits under this section
42 if the business participates in a business employment incentive
43 grant relating to the same capital and employees that qualify the
44 business for this credit, or if the business receives assistance
45 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is
46 allowed a tax credit under this section shall not be eligible for
47 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et
48 al.). A business shall not qualify for a tax credit under this section,

1 based upon capital investment and employment of full-time
2 employees, if that capital investment or employment was the basis
3 for which a grant was provided to the business pursuant to the
4 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-
5 237 et seq.).

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

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

14 (7) A business shall be allowed a tax credit of 100 percent of its
15 capital investment, made after the effective date of P.L.2011, c.89
16 but prior to its submission of documentation pursuant to subsection
17 c. of this section, in a qualified business facility that is part of a
18 mixed use project, provided that (a) the qualified business facility
19 represents at least \$17,500,000 of the total capital investment in the
20 mixed use project, (b) the business employs not fewer than 250 full-
21 time employees in the qualified business facility, and (c) the total
22 capital investment in the mixed use project of which the qualified
23 business facility is a part is not less than \$50,000,000. The
24 allowance of credits under this paragraph shall be subject to the
25 restrictions and requirements, to the extent that those are not
26 inconsistent with the provisions of this paragraph, set forth in
27 paragraphs (1) through (6) of this subsection, including but not
28 limited to the requirement that the business shall demonstrate to the
29 authority, at the time of application, that the State's financial
30 support of the proposed capital investment in a qualified business
31 facility will yield a net positive benefit to both the State and the
32 eligible municipality.

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

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

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

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

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

43 The credit amount that may be taken for a tax period of the
44 business that exceeds the final liabilities of the business for the tax
45 period may be carried forward for use by the business in the next 20
46 successive tax periods, and shall expire thereafter, provided that the
47 value of all credits approved by the authority against tax liabilities

1 pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year
2 shall not exceed \$150,000,000.

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

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

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

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

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

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

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

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

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

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

1 cover the administrative costs related to the credit.

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

9 (cf: P.L.2011, c.89, s.2)

10

11 ⁴[¹¹.] 12.⁴ Section 2 of P.L.1996, c.25 (C.34:1B-113) is
12 amended to read as follows:

13 2. As used in this act:

14 "Affiliate" means an entity that directly or indirectly controls, is
15 under common control with, or is controlled by the business.
16 Control exists in all cases in which the entity is a member of a
17 controlled group of corporations as defined pursuant to section 1563
18 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the
19 entity is an organization in a group of organizations under common
20 control as defined pursuant to subsection (b) or (c) of section 414 of
21 the Internal Revenue Code of 1986 (26 U.S.C. s.414). An entity
22 may establish by clear and convincing evidence, as determined by
23 the Director of the Division of Taxation in the Department of the
24 Treasury, that control exists in situations involving lesser
25 percentages of ownership than required by those statutes;

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

28 "Business retention or relocation grant of tax credits" or "grant of
29 tax credits" means a grant which consists of the value of
30 corporation business tax credits against the liability imposed
31 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or credits
32 against the taxes imposed on insurers pursuant to P.L.1945, c.132
33 (C.54:18A-1 et al.), section 1 of P.L.1950, c.231 (C.17:32-15), and
34 N.J.S.17B:23-5, provided to fund a portion of retention and
35 relocation costs pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.);

36 "Business" means an employer located in this State that has
37 operated continuously in the State, in whole or in part, in its current
38 form or as a predecessor entity for at least 10 years prior to filing an
39 application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and
40 which is subject to the provisions of R.S.43:21-1 et seq. and may
41 include a sole proprietorship, a partnership, or a corporation that
42 has made an election under Subchapter S of Chapter One of Subtitle
43 A of the Internal Revenue Code of 1986, or any other business
44 entity through which income flows as a distributive share to its
45 owners, limited liability company, nonprofit corporation, or any
46 other form of business organization located either within or outside
47 the State. A business shall include an affiliate of the business if that
48 business applies for a credit based upon any capital investment

1 made by an affiliate or based upon retained full-time jobs of an
2 affiliate;

3 "Capital investment" means expenses that the business incurs
4 following its submission of an application to the authority pursuant
5 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the
6 Capital Investment Completion Date, as shall be defined in the
7 project agreement, for: (1) the site preparation and construction,
8 renovation, improvement, equipping of, or obtaining and installing
9 fixtures and machinery, apparatus or equipment in, a newly
10 constructed, renovated or improved building, structure, facility, or
11 improvement to real property in this State; and (2) obtaining and
12 installing fixtures and machinery, apparatus or equipment in a
13 building, structure, or facility in this State. Provided however, that
14 "capital investment" shall not include soft costs such as financing
15 and design, furniture or decorative items such as artwork or plants,
16 or office equipment if the office equipment is property with a
17 recovery period of less than five years. The recovery period of any
18 property, for purposes of this section, shall be determined as of the
19 date such property is first placed in service or use in this State by
20 the business, determined in accordance with section 168 of the
21 federal Internal Revenue Code of 1986 (26 U.S.C. s.168. A
22 business that acquires or leases a qualified business facility shall
23 also be deemed to have acquired the capital investment made or
24 acquired by the seller or landlord, as the case may be;

25 "Certificate of compliance" means a certificate issued by the
26 authority pursuant to section 9 of P.L.1996, c.25 (C.34:1B-120);

27 "Chief executive officer" means the chief executive officer of the
28 New Jersey Economic Development Authority;

29 "Commitment duration" means the tax credit term and five years
30 from the end of the tax credit term specified in the project
31 agreement entered into pursuant to section 5 of P.L.1996, c.25
32 (C.34:1B-116);

33 "Designated industry" means an industry identified by the
34 authority as desirable for the State to maintain, which may be
35 designated and amended via the promulgation of rules by the
36 authority to reflect changing market conditions;

37 "Designated urban center" means an urban center designated in
38 the State Development and Redevelopment Plan adopted by the
39 State Planning Commission;

40 "Eligible position" means a full-time position retained by a
41 business in this State for which a business provides employee health
42 benefits under a group health plan as defined under section 14 of
43 P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined
44 under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or
45 contract of health insurance covering more than one person issued
46 pursuant to Article 2 of Chapter 27 of Title 17B of the New Jersey
47 Statutes;

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

25 "New business location" means the premises to which a business
26 will relocate that the business has either purchased or built or for
27 which the business has entered into a purchase agreement or a
28 written lease for a period of no less than the commitment duration
29 or eight years, whichever is greater, from the date of relocation. A
30 "new business location" also means the business's current location
31 or locations if the business makes a capital investment equal to the
32 total value of the business retention or relocation grant of tax credits
33 to the business at that location or locations;

34 "Program" means the Business Retention and Relocation
35 Assistance Grant Program created pursuant to P.L.1996, c.25
36 (C.34:1B-112 et seq.);

37 "Project agreement" means an agreement between a business and
38 the authority that sets the forecasted schedule for completion and
39 occupancy of the project, the date the commitment duration shall
40 commence, the amount and tax credit term of the applicable grant of
41 tax credits, and other such provisions which further the purposes of
42 P.L.1996, c.25 (C.34:1B-112 et seq.);

43 "Retained full-time job" means an eligible position that currently
44 exists in New Jersey and is filled by a full-time employee but
45 which, because of a potential relocation by the business, is at risk of
46 being lost to another state or country. For the purposes of
47 determining a number of retained full-time jobs, the eligible

1 positions of an affiliate shall be considered the eligible positions of
2 the business;

3 "Tax credit term" means the period of time commencing with the
4 first issuance of tax credits and continuing during the period in
5 which the recipient of a grant of tax credits is eligible to apply the
6 tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3);
7 and

8 "Yearly tax credit amount" means \$1,500 times the number of
9 retained full-time jobs. "Yearly tax credit amount" does not include
10 the amount of any bonus award authorized pursuant to section 5 of
11 P.L.2004, c.65 (C.34:1B-115.1).¹
12 (cf: P.L.2010, c.123, s.1)

13

14 ⁴[¹12.] 13.⁴ Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is
15 amended to read as follows:

16 7. a. The total value of the grants of tax credits, approved by
17 the authority pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that
18 may be applied against tax liability **[in a fiscal year]** for any tax
19 period shall not exceed an aggregate annual limit of \$20,000,000.
20 The total value of the grants of tax credits, issued pursuant to
21 P.L.1996, c.25 (C.34:1B-112 et seq.), that a single business may
22 apply against its tax liability shall not exceed an aggregate annual
23 limit of \$10,000,000 in a fiscal year. A tax credit issued pursuant to
24 P.L.1996, c.25 may be applied against liability in the single tax
25 period in which the tax credit or portion of the tax credit may be
26 applied as prescribed by the project agreement and as set forth in
27 subsection b. of this section and shall expire thereafter.

28 b. Subject to the limitation set forth in subsection a. of this
29 section, grants of tax credits shall be approved for qualifying
30 businesses according to the following schedule, and shall be issued
31 upon the execution and satisfaction of the requirements of the
32 project agreement between the authority and the business with an
33 approved project:

34 (1) for a project that covers a business relocating or retaining 50
35 to 250 full-time employees, a grant of tax credits shall be for the
36 yearly tax credit amount plus any applicable bonus award
37 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1),
38 and may be applied against liability in the tax period in which the
39 tax credit is issued;

40 (2) for a project that covers a business relocating or retaining
41 251 to 400 full-time employees, a grant of tax credits shall be for
42 two times the yearly tax credit amount plus any applicable bonus
43 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
44 115.1), and may be applied against liability in the tax period in
45 which the tax credit is issued and the following tax period, for one-
46 half of the total grant award per tax period, provided that the use of
47 the credit must be accompanied by a certificate of compliance;

1 (3) for a project that covers a business relocating or retaining
2 401 to 600 full-time employees, a grant of tax credits shall be for
3 three times the yearly tax credit amount plus any applicable bonus
4 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
5 115.1) and may be applied against liability in the tax period in
6 which the tax credit is issued and the following two tax periods, for
7 one-third of the total grant award per tax period, provided that the
8 use of the credit must be accompanied by a certificate of
9 compliance;

10 (4) for a project that covers a business relocating or retaining
11 601 to 800 full-time employees, a grant of tax credits shall be for
12 four times the yearly tax credit amount plus any applicable bonus
13 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
14 115.1) and may be applied against liability in the tax period in
15 which the tax credit is issued and the following three tax periods,
16 for one-fourth of the total grant award per tax period, provided that
17 the use of the credit must be accompanied by a certificate of
18 compliance;

19 (5) for a project that covers a business relocating or retaining
20 801 to 1,000 full-time employees, a grant of tax credits shall be for
21 five times the yearly tax credit amount plus any applicable bonus
22 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
23 115.1) and may be applied against liability in the tax period in
24 which the tax credit is issued and the following four tax periods for
25 one-fifth of the total grant award per tax period, provided that the
26 use of the credit must be accompanied by a certificate of
27 compliance; and

28 (6) for a project that covers a business relocating or retaining
29 1,001 or more full-time employees, a grant of tax credits shall be
30 for six times the yearly tax credit amount plus any applicable bonus
31 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
32 115.1) and may be applied against liability in the tax period in
33 which the tax credit is issued and the following five tax periods, for
34 one-sixth of the total grant award per tax period, provided that the
35 use of the credit must be accompanied by a certificate of
36 compliance.

37 c. If the approval of a grant of tax credits pursuant to this
38 section would exceed the \$20,000,000 aggregate annual limit, the
39 authority may award a smaller grant of tax credits or no grants of
40 tax credits, as necessary to comply with the aggregate annual limit.¹
41 (cf: P.L.2010, c.123, s.6)

42
43 ⁴[¹13.] 14.⁴ Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is
44 amended to read as follows:

45 17. a. The authority shall establish a corporation business tax
46 credit and insurance premiums tax credit certificate transfer
47 program to allow businesses in this State with unused amounts of
48 tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and

1 otherwise allowable, that cannot be applied by the business to
2 which originally issued before the expiration of the credit, to
3 surrender those tax credits for use by other corporation business and
4 insurance premiums taxpayers in this State. The tax credits may be
5 used on the corporation business tax and insurance premiums tax
6 returns to be filed by those taxpayers in exchange for private
7 financial assistance to be provided by the corporation business
8 taxpayer or insurance premiums taxpayer that is the recipient of the
9 corporation business tax credit certificate or insurance premiums
10 tax credit certificate to assist in the funding of costs incurred by the
11 relocating business.

12 b. Businesses may apply to the executive director of the
13 authority and the Director of the Division of Taxation for a tax
14 credit transfer certificate, covering one or more years. Upon receipt
15 thereof, the business may sell or assign the tax credit certificate in
16 exchange for private financial assistance to be made by the
17 purchaser in an amount equal to at least 75% of the amount of the
18 surrendered tax credit of a business relocating in the State. The
19 private financial assistance shall assist in funding expenses incurred
20 in connection with the operation of the business in the State,
21 including but not limited to the expenses of fixed assets, such as the
22 construction and acquisition and development of real estate,
23 materials, start-up, tenant fit-out, working capital, salaries, research
24 and development expenditures and any other expenses determined
25 by the authority to be necessary to carry out the purposes of
26 P.L.1996, c.25 (C.34:1B-112 et seq.).

27 c. The authority shall establish procedures to facilitate such
28 transfers and encourage liquidity and simplicity in the market for
29 the purchase and sale of such certificates, including, in the
30 authority's discretion, coordinating the applications for surrender
31 and acquisition of unused but otherwise allowable tax credits
32 pursuant to this section in a manner that can best stimulate and
33 encourage the extension of private financial assistance to businesses
34 in this State.

35 d. The authority shall, in consultation with the Director of the
36 Division of Taxation, develop criteria for the approval or
37 disapproval of applications.¹
38 (cf: P.L.2010, c.123, s.14)

39
40 ⁴[¹14.] ^{15.}⁴ (New section) Section 6 of P.L.1996, c.25 (34:1B-
41 117) is repealed.¹

42
43 ¹[10.] ⁴[^{15.}¹] ^{16.}⁴ This act shall take effect immediately.

S3033 [5R]

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6

Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs; authorizes transfer of certain real property.

SENATE, No. 3033

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED SEPTEMBER 19, 2011

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

SYNOPSIS

Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; establishes certain property as urban transit hubs.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT providing for the availability of tax credits to certain
2 businesses and supplementing Title 34 of the Revised Statutes
3 and amending P.L.2007, c.346.

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

7
8 1. (New section) Sections 1 through 8 of this act shall be
9 known and may be cited as the "Grow New Jersey Assistance Act."

10
11 2. (New section) As used in this act:

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

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

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

39 "Capital investment" in a qualified business facility means
40 expenses incurred after application, but before the end of the tenth
41 year after, the effective date of P.L. , c. (C.) (pending
42 before the Legislature as this bill) for: a. site preparation and
43 construction, repair, renovation, improvement, equipping, or
44 furnishing of a building, structure, facility, or improvement to real
45 property; and b. obtaining and installing furnishings and machinery,

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 apparatus, or equipment for the operation of a business in a
2 building, structure, facility, or improvement to real property.

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

26 "Partnership" means an entity classified as a partnership for
27 federal income tax purposes.

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

31 "Program" means the "Grow New Jersey Assistance Program"
32 established pursuant to section 3 of P.L. , c. (C.) (pending
33 before the Legislature as this bill).

34 "Qualified business facility" means any building, complex of
35 buildings or structural components of buildings, and all machinery
36 and equipment located within a qualified incentive area, used in
37 connection with the operation of a business.

38 "Qualified incentive area" means an area designated pursuant to
39 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
40 (Metropolitan), Planning Area 2 (Suburban); an area zoned for
41 development pursuant to a master plan adopted by the New Jersey
42 Meadowlands Commission pursuant to subsection (i) of section 6 of
43 P.L.1968, c.404 (C.13:17-6) or subject to a redevelopment plan
44 adopted by the New Jersey Meadowlands Commission pursuant to
45 section 20 of P.L.1968, c.404 (C.13:17-21); any land owned by the
46 New Jersey Sports and Exposition Authority, established pursuant
47 to P.L.1971, c.137 (C.5:10-1 et seq.), within the boundaries of the
48 Hackensack Meadowlands District as delineated in section 4 of

1 P.L.1968, c.404 (C.13:17-4); a pinelands regional growth area, a
2 pinelands town management area, a pinelands village, or a military
3 and federal installation area established pursuant to the pinelands
4 comprehensive management plan adopted pursuant to P.L.1979,
5 c.111 (C.13:18A-1 et seq.); an area designated for development,
6 redevelopment, or economic growth within the Highlands Region;
7 federally owned land approved for closure under any federal Base
8 Closure and Realignment Commission action; or any property
9 consisting of a vacant commercial building having over 400,000
10 square feet of office space available for occupancy for a period of
11 over one year or is negatively impacted by the approval of a
12 “qualified business facility,” as defined pursuant to section 2 of
13 P.L.2007, c.346 (C.34:1B-208).

14

15 3. (New section) a. The Grow New Jersey Assistance Program
16 is hereby established as a program under the jurisdiction of the New
17 Jersey Economic Development Authority and shall be administered
18 by the authority. The purpose of the program is to encourage
19 economic development and job creation and to preserve jobs that
20 currently exist in New Jersey but which are in danger of being
21 relocated outside of the State. To implement this purpose, and to
22 the extent that funding for the program is available, the program
23 may provide tax credits to eligible businesses. To be eligible for
24 any tax credits pursuant to P.L. , c. (C.) (pending before
25 the Legislature as this bill), a business’s chief executive officer or
26 equivalent officer shall demonstrate to the authority, at the time of
27 application, that: (1) the business will make, acquire, or lease a
28 capital investment of at least \$20,000,000 at a qualified business
29 facility at which it will employ at least 100 full-time employees in
30 retained full-time jobs; and (2) the capital investment resultant from
31 the award of tax credits and the resultant retention and creation of
32 eligible positions will yield a net positive benefit to the State.

33 b. In determining whether a proposed capital investment will
34 yield a net positive benefit, the business's chief executive officer, or
35 equivalent officer, shall submit a certification to the authority
36 indicating that the existing jobs are at risk of leaving the State and
37 that the business's chief executive officer, or equivalent officer, has
38 reviewed the information submitted to the authority and that the
39 representations contained therein are accurate. In the event that this
40 certification by the business's chief executive officer, or equivalent
41 officer, is found to be willfully false, the authority may revoke any
42 award of tax credits in their entirety, which revocation shall be in
43 addition to any other criminal or civil penalties that the business
44 and the officer may be subject to. When considering an application
45 involving intra-State job transfers, the authority shall require the
46 business to submit the following information as part of its
47 application: a full economic analysis of all locations under
48 consideration by the business; all lease agreements, ownership

1 documents, or substantially similar documentation for the business's
2 current in-State locations; and all lease agreements, ownership
3 documents, or substantially similar documentation for the potential
4 out-of-State location alternatives, to the extent they exist. Based on
5 this information, and any other information deemed relevant by the
6 authority, the authority shall independently verify and confirm, by
7 way of making a factual finding by separate vote of the authority's
8 board, the business's assertion that the jobs are actually at risk of
9 leaving the State, before a business may be awarded any tax credits
10 under this section.

11

12 4. (New section) The authority shall require an eligible
13 business to enter an agreement prior to the issuance of tax credits.
14 The agreement shall include, but shall not be limited to, the
15 following:

16 a. A detailed description of the proposed project which will
17 result in job creation or retention, and the number of full-time
18 employees.

19 b. The term of the tax credits, and the first year for which the
20 tax credits may be claimed.

21 c. Personnel information that will enable the authority to
22 administer the program.

23 d. A requirement that the applicant maintain the project at a
24 location in New Jersey for at least 1.5 times the number of years of
25 the term of the tax credits, with at least the number of full-time
26 employees as required by section 6 of P.L. , c. (C.)
27 (pending before the Legislature as this bill) and a provision to
28 permit the authority to recapture all or part of any tax credit
29 awarded, at its discretion, if the business does not remain at the site
30 for the required term.

31 e. A method for the business to report annually to the authority
32 the number of full-time employees for which the tax credits are to
33 be made.

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

36 g. A provision which permits the authority to amend the
37 agreement.

38 h. A provision establishing the conditions under which the
39 agreement may be terminated and awarded tax credits are
40 recaptured, in whole or in part, by the authority at its discretion.

41

42 5. (New section) a. The value of each tax credit for an eligible
43 business shall be equal to \$5,000 per year for a period of ten years
44 for each new or retained full-time job certified by the authority
45 pursuant to section 3 of P.L. , c. (C.) (pending before the
46 Legislature as this bill) to be located at the qualified business
47 facility, subject to the provisions of this section.

1 b. In addition to any grant of tax credits determined pursuant to
2 subsection a. of this section, a bonus award of up to an additional
3 \$3,000 per job of the amount of the original tax credits may be
4 made to any eligible business as determined by the authority. In
5 making a bonus award to an eligible business, the authority shall
6 consider the following factors, such that whether the business: (1) is
7 an industry identified by the authority for the State to maintain; (2)
8 relocates to a location within a qualified incentive area adjacent to a
9 public transit facility, as determined by the authority by regulation;
10 (3) creates jobs using full-time employees in eligible positions
11 whose annual salaries, according to the Department of Labor and
12 Workforce Development, are greater than the average full-time
13 salary in this State; or (4) is locating to a project site that is or has
14 been negatively impacted by the approval of a "qualified business
15 facility," as defined pursuant to section 2 of P.L.2007, c.346
16 (C.34:1B-208).

17

18 6. (New section) a. (1) The value of all credits approved by the
19 authority pursuant to P.L. , c. (C.) (pending before the
20 Legislature as this bill) shall not exceed \$200,000,000, except that
21 the value of all credits approved by the authority pursuant to this
22 section may exceed \$200,000,000 if the board of the authority
23 determines the credits to be reasonable, justifiable, and appropriate;
24 provided, however, the combined value of all credits approved by
25 the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and
26 P.L. , c. (C.) (pending before the Legislature as this bill)
27 shall not exceed \$1,500,000,000.

28 (2) A business, including any affiliate of the business or any
29 business that is a tenant within any qualified business facility, shall
30 make or acquire capital investments totaling not less than
31 \$20,000,000 in a qualified business facility, at which the business
32 shall employ not fewer than 100 full-time employees to be eligible
33 for a credit pursuant to P.L. , c. (pending before the Legislature
34 as this bill). A business that acquires or leases a qualified business
35 facility shall also be deemed to have acquired the capital investment
36 made or acquired by the seller or landlord, as the case may be.

37 (3) A business shall not be allowed tax credits pursuant to
38 P.L.1996, c.25 (C.34:1B-112 et seq.) relating to the same capital
39 and employees that qualify the business for tax credits pursuant to
40 P.L. , c. (pending before the Legislature as this bill). A business
41 that is allowed a tax credit under this section shall not be eligible
42 for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1
43 et al.). A business shall not qualify for a tax credit under this
44 section, based upon capital investment and employment of full-time
45 employees, if that capital investment or employment was the basis
46 for which a grant was provided to the business pursuant to the
47 "Urban Transit Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-207
48 et seq.).

1 (4) Full-time employment for an accounting or privilege period
2 shall be determined as the average of the monthly full-time
3 employment for the period.

4 (5) The capital investment of the owner of a qualified business
5 facility is that percentage of the capital investment made or
6 acquired by the owner of the building that the percentage of net
7 leasable area of the qualified business facility not leased to tenants
8 is of the total net leasable area of the qualified business facility.

9 b. A business shall apply for the tax credit prior to July 1,
10 2014, and shall submit its documentation indicating that it has met
11 the capital investment and employment specified in the project
12 agreement for certification of its credit amount no later than July
13 28, 2017.

14 c. (1) The amount of credit allowed shall not exceed the capital
15 investment made by the business or the capital investment
16 represented by the business' leased area, as certified by the authority
17 pursuant to subsection b. of this section, as having met the
18 investment capital and employment qualifications, subject to any
19 reduction or disqualification as provided by subsection d. of this
20 section as determined by annual review by the authority. In
21 conducting its annual review, the authority may require a business
22 to submit any information determined by the authority to be
23 necessary and relevant to its review.

24 The credit amount for any tax period ending after July 28, 2017,
25 during which the documentation of a business' credit amount
26 remains uncertified shall be forfeited, although credit amounts for
27 the remainder of the years of the 10-year credit period shall remain
28 available to it.

29 The credit amount that may be taken for a tax period of the
30 business that exceeds the final liabilities of the business for the tax
31 period may be carried forward for use by the business in the next 20
32 successive tax periods, and shall expire thereafter, provided that the
33 value of all credits approved by the authority against tax liabilities
34 pursuant to P.L. , c. (pending before the Legislature as this bill),
35 in any fiscal year shall not exceed \$150,000,000 and the combined
36 value of all credits approved by the authority pursuant to P.L.2007,
37 c.346 (C.34:1B-207 et seq.) and P.L. , c. (C.) (pending
38 before the Legislature as this bill) shall not exceed \$1,500,000,000.

39 The amount of credit allowed for a tax period to a business that
40 is a tenant in a qualified business facility shall not exceed the
41 business' total lease payments for occupancy of the qualified
42 business facility for the tax period.

43 (2) A business that is a partnership shall not be allowed a credit
44 under this section directly, but the amount of credit of an owner of a
45 business shall be determined by allocating to each owner of the
46 partnership that proportion of the credit of the business that is equal
47 to the owner of the partnership's share, whether or not distributed,
48 of the total distributive income or gain of the partnership for its tax

1 period ending within or with the owner's tax period, or that
2 proportion that is allocated by an agreement, if any, among the
3 owners of the partnership that has been provided to the Director of
4 the Division of Taxation in the Department of the Treasury by such
5 time and accompanied by such additional information as the
6 director may require.

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

12 d. (1) If, in any tax period, the business reduces the total
13 number of full-time employees in its Statewide workforce by more
14 than 20 percent from the number of full-time employees in its
15 Statewide workforce in the last tax period prior to the credit amount
16 approval under section 3 of P.L. , c. (pending before the
17 Legislature as this bill), then the business shall forfeit its credit
18 amount for that tax period and each subsequent tax period, until the
19 first tax period for which documentation demonstrating the
20 restoration of the business' Statewide workforce to the threshold
21 levels required by this paragraph has been reviewed and approved
22 by the authority, for which tax period and each subsequent tax
23 period the full amount of the credit shall be allowed.

24 (2) If, in any tax period, the number of full-time employees
25 employed by the business at the qualified business facility located
26 within a qualified incentive area drops below 100 or 80 percent of
27 the number of new and retained full-time jobs specified in the
28 project agreement, then the business shall forfeit its credit amount
29 for that tax period and each subsequent tax period, until the first tax
30 period for which documentation demonstrating the restoration of the
31 number of full-time employees employed by the business at the
32 qualified business facility to 100.

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

39 (b) If a tenant subleases its tenancy in whole or in part during
40 the 10-year eligibility period the new tenant shall not acquire the
41 credit of the sublessor, and the sublessor tenant shall forfeit all
42 credits for the tax period of its sublease and all subsequent tax
43 periods.

44
45 7. (New section) A business may apply to the Director of the
46 Division of Taxation in the Department of the Treasury and the
47 chief executive officer of the authority for a tax credit transfer
48 certificate, covering one or more years, in lieu of the business being

1 allowed any amount of the credit against the tax liability of the
2 business. The tax credit transfer certificate, upon receipt thereof by
3 the business from the director and the chief executive officer of the
4 authority, may be sold or assigned, in full or in part, to any other
5 person that may have a tax liability pursuant to section 5 of
6 P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of
7 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1
8 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.
9 The certificate provided to the business shall include a statement
10 waiving the business's right to claim that amount of the credit
11 against the taxes that the business has elected to sell or assign. The
12 sale or assignment of any amount of a tax credit transfer certificate
13 allowed under this section shall not be exchanged for consideration
14 received by the business of less than 75 percent of the transferred
15 credit amount. Any amount of a tax credit transfer certificate used
16 by a purchaser or assignee against a tax liability shall be subject to
17 the same limitations and conditions that apply to the use of the
18 credit by the business that originally applied for and was allowed
19 the credit.

20

21 8. (New section) a. The chief executive officer of the authority,
22 in consultation with the Director of the Division of Taxation in the
23 Department of the Treasury, shall adopt rules in accordance with
24 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
25 seq.) as are necessary to implement P.L. , c. (C.) (pending
26 before the Legislature as this bill), including but not limited to:
27 examples of and the determination of capital investment; the
28 enumeration of qualified incentive areas; specific delineation of
29 these incentive areas; the determination of the limits, if any, on the
30 expense or type of furnishings that may constitute capital
31 improvements; the promulgation of procedures and forms necessary
32 to apply for a tax credit, including the enumeration of the
33 certification procedures and allocation of tax credits for different
34 phases of a qualified business facility; and provisions for tax credit
35 applicants to be charged an initial application fee, and ongoing
36 service fees, to cover the administrative costs related to the tax
37 credit.

38 b. Through regulation, the authority shall establish standards
39 by which qualified business facilities shall be constructed or
40 renovated based on the green building manual prepared by the
41 Commissioner of Community Affairs pursuant to section 1 of
42 P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable
43 energy, energy-efficient technology, and non-renewable resources
44 in order to reduce environmental degradation and encourage long-
45 term cost reduction.

46

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

1 2. As used in this act:

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

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

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

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

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

46 "Full-time employee" means a person employed by the business
47 for consideration for at least 35 hours a week, or who renders any
48 other standard of service generally accepted by custom or practice

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

21 "Mixed use project" means a project comprising both a qualified
22 business facility and a qualified residential project.

23 "Partnership" means an entity classified as a partnership for
24 federal income tax purposes.

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

28 "Qualified business facility" means any building, complex of
29 buildings or structural components of buildings, and all machinery
30 and equipment located within a designated urban transit hub in an
31 eligible municipality, used in connection with the operation of a
32 business.

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

35 "Residential unit" means a residential dwelling unit such as a
36 rental apartment, a condominium or cooperative unit, a hotel room,
37 or a dormitory room.

38 "Urban transit hub" means:

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

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

4 c. property adjacent to, or connected by rail spur to, a freight
5 rail line if the business utilizes that freight line at any rail spur
6 located adjacent to or within a one mile radius surrounding the
7 entrance to the property for loading and unloading freight cars on
8 trains;

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

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

15 "Rail station" shall not include any rail station located at an
16 international airport, except that any property within a 1/2 mile
17 radius surrounding the mid point of a New Jersey Transit
18 Corporation rail station platform area at an international airport
19 upon which a qualified business facility is constructed or renovated
20 commencing after the effective date of P.L. , c. (C.)
21 (pending before the Legislature as this bill) shall be deemed an
22 urban transit hub, excluding any property owned or controlled by
23 the Port Authority of New York and New Jersey.

24 (cf: P.L.2011, c.89, s.1)

25
26 10. This act shall take effect immediately.

27
28
29 STATEMENT

30
31 This bill establishes the Grow New Jersey Assistance Program
32 ("program") to provide certain eligible businesses with tax credits
33 for creating a minimum of 100 full-time jobs as well as making
34 capital investments of at least \$20 million in certain incentive areas
35 as designated in the bill.

36 Specifically, the bill establishes a \$200 million tax credit
37 incentive program that emphasizes growth of New Jersey-based
38 companies through capital investment and job subsidies that
39 incentivize both retained and new jobs. The program's cost would
40 fall under the \$1.5 billion cap established under the "Urban Transit
41 Hub Tax Credit" ("UTHTC") program. The initial \$200 million
42 program allocation could be increased at discretion of board of the
43 New Jersey Economic Development Authority ("EDA") if the board
44 determines the credits to be reasonable, justifiable, and appropriate.
45 All applications for eligibility under the program shall be made to
46 the EDA by July 1, 2014.

47 Under the program, a minimum of \$20 million in capital
48 investment would be required to be spent at the project site, with

1 owners, tenants, and affiliates allowed to participate in cost sharing
2 to meet this eligibility requirement. "Green" building standards
3 would need to be used in the design and construction of any eligible
4 project that are based on the green building manual prepared by the
5 Commissioner of Community Affairs pursuant to section 1 of
6 P.L.2007, c.132 (C.52:27D-130.6). Areas of the State where
7 program assistance would be available include: 1) Planning Area 1
8 (Metropolitan) and Planning Area 2 (Suburban) locations under the
9 State Development and Redevelopment Plan; 2) former military
10 bases closed under the federal Base Closure and Realignment law;
11 3) vacant commercial office properties having over 400,000 square
12 feet for at least one year or impacted by UTHTC program approval;
13 and 4) areas designated for development in the New Jersey
14 Meadowlands, Highlands, and Pinelands, as specified in the acts
15 establishing these areas.

16 Under the program, an eligible business would receive a base tax
17 credit of \$5,000 per job, per year, for 10 years with no distinction
18 between retained or new jobs. The tax credit term of 10 years
19 includes an annual compliance review for credit issuance. Tax
20 credits issued to an eligible business may be transferable. The base
21 tax credit may be increased of an amount up to \$3,000 per job by an
22 eligible business that, as determined by the authority: 1) is an
23 industry identified by the authority for the State to maintain; 2)
24 relocates to a location adjacent to a public transit facility; 3) creates
25 jobs using full-time employees in eligible positions whose annual
26 salaries, according to the Department of Labor and Workforce
27 Development, are greater than the average full-time salary in this
28 State; or 4) is locating to a project site that is or has been negatively
29 impacted by the approval of a "qualified business facility," under
30 the UTHTC program. The per project benefit shall not exceed the
31 capital investment at the project site.

32 At the time of the application, the business's CEO must certify
33 that: 1) the business will make, acquire, or lease a capital
34 investment of at least \$20 million at a qualified business facility at
35 which it will employ at least 100 full-time employees in retained
36 full-time jobs; and 2) the capital investment resultant from the
37 award of tax credits and the resultant retention and creation of
38 eligible positions will yield a "net positive benefit" to the State as
39 that term is described in the bill.

40 Further, the program provides for performance requirement
41 "claw backs" (i.e., forfeiting the amount of assistance received in
42 any year) if a business receiving assistance under the program does
43 not employ a minimum of 100 full-time jobs or meet an 80 percent
44 Statewide full-time job maintenance and 15-year full-time job
45 maintenance requirements.

46 Finally, the bill amends the definition of "urban transit hub"
47 under the UTHTC law to include eligibility for that tax credit
48 assistance program any project commencing construction after the

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- 1 effective date of the bill that is located within a half mile radius of a
- 2 New Jersey Transit Corporation rail station located at an
- 3 international airport, except for any property owned or controlled
- 4 by the Port Authority of New York and New Jersey.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 3033

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 2011

The Senate Economic Growth Committee reports favorably Senate Bill No. 3033 with committee amendments.

This bill, as amended, establishes the Grow New Jersey Assistance Program (“program”) to provide certain eligible businesses with tax credits for creating a minimum of 100 new or retained full-time jobs as well as making capital investments of at least \$20 million in certain incentive areas as designated in the bill.

Specifically, the amended bill establishes a \$200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment and job subsidies that incentivize both retained and new jobs. The program’s cost would fall under the \$1.5 billion cap established under the “Urban Transit Hub Tax Credit” (“UTHTC”) program. The initial \$200 million program allocation could be increased at the discretion of board of the New Jersey Economic Development Authority (“EDA”) if the board determines the credits to be reasonable, justifiable, and appropriate. All applications for eligibility under the program shall be made to the EDA by July 1, 2014.

Under the program, a minimum of \$20 million in capital investment would be required to be spent at the project site, with owners, tenants, and affiliates allowed to participate in cost sharing to meet this eligibility requirement. “Green” building standards would need to be used in the design and construction of any eligible project that are based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Areas of the State where program assistance would be available include: 1) Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment law; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the program, an eligible business would receive a base tax credit of \$5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. Tax credits issued to an eligible business may be transferable. The base tax credit may be increased of an amount up to \$3,000 per job by an eligible business that, as determined by the authority: 1) is an industry identified by the authority as desirable for the State to maintain; 2) relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a “qualified business facility,” under the UTHTC program. The per project benefit shall not exceed the capital investment at the project site.

At the time of the application, the business’s CEO must certify that retained jobs are at risk of leaving the State. Additionally, in order to be eligible, a business shall demonstrate to the EDA, at the time of application, that the tax credits and resultant retention of full-time jobs and any capital investment will yield a “net positive benefit” to the State as that term is described in the bill.

Further, the program provides for performance requirement "claw backs" (i.e., forfeiting the amount of assistance received in any year) if a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

In addition, the amended bill: 1) amends the definition of “urban transit hub” under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey, 2) clarify that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, that the business met the capital investments and employment requirements prior to claiming the tax credits.

The committee amended the bill to clarify eligibility under the program, including: 1) adding definitions of “eligible position” and “retained full-time job” to the program and changing the definition of “qualified incentive area” to require vacant laboratory or industrial facilities be included with the criterion of property consisting of a vacant commercial building having over 400,000 square feet of office, available for occupancy for a period of over one year or is negatively impacted by UTHTC program approval; 2) regarding the bonus tax

credit provision, that the criterion for receipt of the bonus credit be extended to a location within walking distance or short shuttle service, as determined by the EDA by regulation; 3) providing that projects consisting solely of point-of-final-purchase retail facilities shall not be eligible for tax credits under the program; 4) providing that a) the amount of tax credits available to be applied to the business annually shall not exceed one tenth of the capital investment and b) the number of new full-time jobs shall not exceed the number of retained full-time jobs; and 5) concerning capital investments made by a tenant, the amount capital investment in a facility that a leased area represents shall be equal to that percentage of the owner's total capital investment in the facility that the percentage of net leasable area leased by the tenant is of the total net leasable area of the qualified business facility.

In addition, the amendments make changes to the UTHTC law to clarify that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, that the business met the capital investments and employment requirements prior to claiming the tax credits.

Further, the amendments make clarifying changes to the "Business Retention and Relocation Assistance Grant" ("BRRAG") program to: 1) change the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility as deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeals the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3033

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 22, 2011

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3033 (1R), with committee amendments.

As amended, this bill establishes the Grow New Jersey Assistance Program (“program”) to provide certain eligible businesses with tax credits for creating a minimum of 100 new or retained full-time jobs as well as making capital investments of at least \$20 million at a qualified business facility in certain qualified incentive areas as designated in the bill.

Specifically, the bill establishes a \$200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment and job subsidies that incentivize both retained and new jobs. The program’s cost would fall under the \$1.5 billion cap established under the “Urban Transit Hub Tax Credit” (“UTHTC”) program. The initial \$200 million program allocation could be increased at discretion of board of the New Jersey Economic Development Authority (“EDA”) if the board determines the credits to be reasonable, justifiable, and appropriate. All applications for eligibility under the program shall be made to the EDA by July 1, 2014.

Under the program, a minimum of \$20 million in capital investment would be required to be spent at the project site, with owners, tenants, and affiliates allowed to participate in cost sharing to meet this eligibility requirement. “Green” building standards would need to be used in the design and construction of any eligible project that are based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Areas of the State where program assistance would be available include: 1) Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), and any urban, regional, or town designated center locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment law; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4)

areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the program, an eligible business would receive a base tax credit of \$5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to \$3,000 per job by an eligible business that, as determined by the authority, meets the following factors: 1) is an industry identified by the authority as desirable for the State to maintain; 2) locates or relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a "qualified business facility," under the UTHTC program. The per project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

At the time of the application, the business's CEO must certify that retained jobs are at risk of leaving the State. Additionally, in order to be eligible, a business shall demonstrate to the EDA, at the time of application, that the tax credits and resultant retention of full-time jobs and any capital investment will yield a "net positive benefit" to the State as that term is described in the bill.

Further, the program provides for performance requirement "claw backs" (i.e., forfeiting the amount of assistance received in any year) if a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

In addition, the bill: 1) amends the definition of "urban transit hub" under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey, 2) clarify that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, that the business met the capital investments and employment requirements prior to claiming the tax credits.

Also, the bill makes clarifying changes to the "Business Retention and Relocation Assistance Grant" ("BRRAG") program to: 1) change the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility as

deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeals the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

COMMITTEE AMENDMENTS:

The committee amendments include locations deemed urban, regional, or town designated center locations under the State Development and Redevelopment Plan as areas of the State where program assistance will be available. The committee amendments also correct the reference in section 5 of the bill to the capital investment requirement of \$20 million under the Grow New Jersey Assistance Program. The committee amendments also add to one of the tax credit bonus award business factors, in addition to relocating, the original locating of a business within a qualified incentive area or within walking distance or short-distance-shuttle service of a public transit facility.

FISCAL IMPACT:

In establishing the Grow New Jersey Assistance Program and in amending the Urban Transit Hub Tax Credit Act, the bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could be no higher than \$1.11 billion -- the difference between the urban transit hub tax credit program's \$1.5 billion cap and the \$394 million in tax credits the EDA has awarded to ten projects through April 18, 2011 -- accumulated over several years.

In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the State General Fund could be no higher than \$17.3 million annually -- the difference between the program's \$20 million annual cap and the estimated \$2.7 million in such credits currently claimed under the program.

Whether the bill's impact will actually approach those respective cost ceilings will largely depend on the extent to which the program's caps would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the programs would reach their caps, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.

To the extent that additional tax credits awarded pursuant to this bill are essential to the realization of capital projects, such projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety, the revenue loss and opportunity cost of providing the financial assistance authorized by the bill. The Office of Legislative Services,

however, cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State and local government tax receipts, and therefore cannot posit an annual net fiscal impact estimate.

STATEMENT TO
[Second Reprint]
SENATE, No. 3033

with Senate Floor Amendments
(Proposed by Senator LESNIAK)

ADOPTED: SEPTEMBER 26, 2011

These floor amendments: 1) revise the qualifications that a business must demonstrate to be eligible under the “Grow New Jersey Assistance Program” (“program”) by (a) allowing the 100-employee “full-time jobs” requirement to be met with newly created jobs, provided those jobs are in an industry identified by the New Jersey Economic Development Authority (“authority”) as desirable for the State to maintain or attract and add a definition of “new full-time job” and (b) requiring the business to show that the award of tax credits will be a material factor in the business’ decision to create or retain the minimum number of full-time jobs for eligibility under the program; 2) include, as part of the information that the authority is to receive for its use in determining whether a proposed capital investment will yield a net positive benefit to the State, the business’s certification that the creation of any new full-time jobs would not occur but for the provision of tax credits under the program; 3) modify the requirement that the number of new full-time jobs shall not exceed the number of retained full-time jobs for which a business receives a tax credit by exempting from that requirement a business creating at least 100 new full-time jobs in an industry identified by the authority as desirable for the State to maintain or attract; and 4) prohibit a business from receiving tax credits under the program relating to the same capital and employees that qualify the business for tax credits under the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 3033

STATE OF NEW JERSEY 214th LEGISLATURE

DATED: OCTOBER 5, 2011

SUMMARY

- Synopsis:** Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs.
- Type of Impact:** Unknown net effect of two countervailing impacts: 1) a multi-year revenue loss to the State General Fund and the Property Tax Relief Fund from awarding tax credits; 2) an annual revenue increase to the State General Fund, Property Tax Relief Fund, and local governments from fiscal activity catalyzed by tax credit-induced economic activity.
- Agencies Affected:** Department of the Treasury.
New Jersey Economic Development Authority.
Local Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Cumulative Multi-Year Impact</u>
Direct State Revenue Loss	Indeterminate — Potentially up to \$1.2 billion
Indirect State Revenue Gain	Indeterminate — See comments below
State Opportunity Cost	Indeterminate — See comments below
Indirect Local Revenue Gain	Indeterminate — See comments below

- The Office of Legislative Services (OLS) can determine neither the direction nor the magnitude of the bill's fiscal net impact on the State and affected local governments. On the one side of the ledger, the bill could produce a State revenue loss of up to \$1.2 billion from awarding additional tax credits in addition to the indeterminate opportunity cost of the tax expenditure—opportunity costs capture the fiscal benefits the State forgoes as spending is redirected from one economic activity to another. On the other side of the ledger, additional tax credits that are essential to the realization of capital projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety, the revenue loss and opportunity cost of providing the financial assistance.

- In creating the Grow New Jersey Assistance Program, the bill could result in a \$1.11 billion maximum direct State revenue loss, reflecting the difference between the \$1.5 billion cap for the Urban Transit Hub Tax Credit program, to which that program's tax credits are subject, and the \$394 million in urban transit hub tax credits the New Jersey Economic Development Authority (EDA) has awarded through April 18, 2011. Given the wide range of locales in which a creditable project may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap.
- Whether that revenue loss totals \$1.11 billion will largely depend on the extent to which the program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce a \$1.11 billion State revenue loss, however, if the bill results in the granting of Grow New Jersey tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.
- In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the General Fund could be up to \$17.3 million annually, reflecting the difference between the \$20 million annual cap on that program's tax credits and the estimated \$2.7 million in such credits currently claimed. Again, if this aspect of the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.
- Capital investments for which the tax credits will serve as the impetus will also generate indirect fiscal benefits to the State and local governments. In the converse, extending the tax credit to capital projects that taxpayers would also make absent the tax incentive will produce sunk costs to the State, or an expense without a benefit, as the tax credit will not have affected the decision to proceed with the investment. For reasons outlined on pages 4-5 of this legislative fiscal estimate, it is reasonable to expect, however, that most of the indirect effects of credits awarded will count as a benefit to the State and affected local governments. The OLS, however, cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State and local government tax receipts.

BILL DESCRIPTION

Senate Bill No. 3033 (2R) of 2011 creates a new tax credit for businesses under the Grow New Jersey Assistance Program, expands the existing Urban Transit Hub Tax Credit program, and makes revisions to the Business Retention and Relocation Assistance Grant Program.

A) Grow New Jersey Assistance Program: The bill creates a new tax credit program under which a business will receive a tax credit for making a minimum \$20 million capital investment in a business facility and creating or retaining at least 100 full-time positions in a qualified area, but only if the project yields a positive fiscal net benefit to the State and if the business applies for the credit before July 1, 2014. A qualified area is a) a vacant commercial building having over 400,000 square feet of office, laboratory or industrial space available; b) an area designated for development within the Highlands, Meadowlands, and Pinelands; c) Fort Monmouth; and d)

areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or as an urban, regional or town center under the State Development and Redevelopment Plan.

The credit equals ten annual installments of \$5,000 each per full-time position created or retained. The annual credit amount increases to \$8,000 if a) the business operates in an industry the EDA identifies as desirable to maintain, b) the business is in proximity to a qualified area adjacent to a public transit facility, c) the full-time jobs created carry salaries in excess of New Jersey's average full-time salary, or d) the qualified area is negatively affected by the approval of a "qualified business facility" under the Urban Transit Hub Tax Credit Act. A total cap on tax credits that can be applied by any business is set at the certified capital investment, and an annual cap on tax credits that can be applied by any business is set at one-tenth of the certified capital investment. If the business does not have a sufficient tax liability against which to offset the tax credit, the business may carry any unused balance forward for 20 years or sell it to another taxpayer. Tax credit amounts may be reduced or revoked if the business fails to meet its New Jersey full-time employment target as specified in the tax credit agreement. The tax credits are subject to the existing \$1.5 billion cap for all credits under the Urban Transit Hub Tax Credit program and an annual \$150 million cap imposed on the new tax credits by the bill.

B) Urban Transit Hub Tax Credit Program: The bill expands the Urban Transit Hub Tax Credit program to the area within a half-mile radius of the rail or light rail station at Newark Liberty International Airport (but not to property within that area owned or controlled by the Port Authority of New York and New Jersey). Under the program, the State awards up to \$1.5 billion in tax credits to taxpayers who make certain capital investments in real property in urban transit hubs.

To qualify for a business facility tax credit of up to 100 percent of the investment, a capital investment in real property must a) equal at least \$50 million; b) pave the way for at least 250 full-time employees working in the business facility; c) be made within eight years from January 13, 2008, the effective date of P.L.2007, c.346; and d) yield a net positive benefit to the State and the municipality hosting the transit hub.

Tenants in qualified business facilities may also receive a credit if they occupy space in the facility that represents at least \$17.5 million of the capital investment and employ at least 250 persons in the facility. If fewer than 200 of the 250 full-time positions in a business facility represent a net gain to New Jersey, then the tax credit maxes out at 80 percent of the qualified capital investment.

To qualify for a residential tax credit of up to 20 percent of the investment, an investment in a residential project must a) equal at least \$50 million; b) be made within eight years from July 28, 2009, the effective date of P.L.2009, c.90; and c) not occur absent the receipt of a tax credit.

Mixed use projects may qualify for a business facility tax credit for the amount of the investment in the project's business facility component only if it meets all of the aforementioned conditions for such a tax credit. Alternatively, the entire investment in a mixed use project may qualify for a residential tax credit if it meets all of the aforementioned conditions of such a tax credit and if more than half of the project's square footage is residential.

C) Business Retention and Relocation Assistance Grant Program: The bill clarifies that the annual aggregate limit on tax credits under the program is calculated by tax period rather than fiscal year, and changes the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility is deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be. The bill also deletes the prohibition on use of program tax credits by a business unless the retained State tax revenue from the business, in the tax period prior to the use of tax credits, equals or exceeds the amount of tax credits.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS can determine neither the direction nor the magnitude of the bill's fiscal net impact on the State and affected local governments. The State fiscal net impact is calculated by adding the direct revenue loss from granting the 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 from granting the tax credits. In addition, the bill is also likely to accrue an indirect revenue gain to local governments. Although the OLS is able to pinpoint the bill's maximum direct revenue loss, it cannot calculate its opportunity cost or its offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on the characteristics of capital investments that will earn tax credits.

Direct State Revenue Loss: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund from the establishment of the Grow New Jersey Assistance Program and the expansion of the existing Urban Transit Hub Tax Credit program could be as high as \$1.11 billion accumulated over several years, or the difference between the urban transit hub tax credit program's \$1.5 billion cap and the \$394 million in tax credits the EDA has awarded to ten projects through April 18, 2011.

Given the wide range of locales in which a creditable project may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap. In any event, whether the bill will actually cost \$1.11 billion will largely depend on the extent to which the program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce a \$1.11 billion State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.

The bill's direct revenue loss to the State General Fund from revisions to the Business Retention and Relocation Assistance Grant Program could be no higher than \$17.3 million annually, the difference between the program's annual \$20 million annual cap and the estimated \$2.7 million in tax credits currently claimed under the program. Again, the maximum annual revenue loss results from the bill only to the extent that tax credits are granted to projects that could not have received credits under the program in its current form. It is reasonable to assume that some businesses would secure tax credits under the bill that could not do so under the current law, but the OLS has no information on which to base an estimate of the credits to be claimed by such businesses.

Indirect State and Local Revenue Gain: The bill may generate an indeterminate indirect revenue gain to the State and local governments that may partially offset the direct State revenue loss from and State opportunity cost of providing tax credits in accordance with the bill. The OLS, however, does not have the capacity to quantify the bill's secondary effects, since it cannot

estimate the volume and types of capital investments that the tax credit will directly spur and their ensuing indirect effect on State and local government tax receipts.

In general, any indirect revenue gain will result from the economic ramifications of tax credit-induced behavior changes. Once New Jerseyans will receive payments they would not have received absent the incentive, at least a portion of these payments will newly circulate in New Jersey's economy. As these ramifications will flow through the economy, they will affect State and local revenue collections. Indirect fiscal effects encompass secondary tax collections from credit-induced capital investments (such as enhanced gross income tax collections from employees whose positions are retained in New Jersey because of the tax credit and increased property tax collections if the investment appreciates the value of a property) and credit-induced spending by all impacted firms and their employees (such as employees whose positions are retained in New Jersey because of the tax credit spending their income on taxable goods and services).

Nonetheless, the OLS points out that not all of the economic and fiscal feedback effects of capital investments benefitting from the credit may represent a gain to the State and affected municipalities. Only the ripple effects caused by credit-induced purchases should enter the fiscal estimate, while those from investments that would also be made absent the credit must be excluded. The exclusion of investments that will happen with or without the credit takes into account that the tax incentive has no economic impact whenever it benefits taxpayers who would invest in a project anyway. In such a scenario, the State will only incur the direct cost of the subsidy, while the capital investment's secondary effects cannot be attributed to the bill.

Applying the general principle to this bill, it is reasonable to expect that most of the indirect effects of credits awarded will count as a benefit to the State. This is so because credits can only be awarded if a project passes the net benefit test. As part of that test, the EDA excludes from the analysis the indirect benefits from jobs that are neither "at risk," classified as a "suburban to urban move" or otherwise deemed new jobs to the State. Therefore, only those tax credits will not produce an indirect revenue gain to the State that represent a relocation of jobs from a suburban area of the State to an urban area or that represent an incorrect assessment regarding the likelihood of a job created or retained within New Jersey absent a credit award. It remains unclear, however, whether or not the indirect revenue gains attributable to the credits will exceed the direct State revenue loss and opportunity cost they will cause.

Lastly, the OLS notes that any estimate of the credit's New Jersey feedback effects must also exclude from the total feedback effects the portion of the credit-induced spending that would leak into other jurisdictions. A New York resident holding a job in New Jersey would have a New Jersey income tax liability, but most of the New Yorker's private spending might not occur in this State.

Opportunity Costs: Opportunity costs capture the economic and fiscal benefits the economy and the State forego as spending is redirected from one economic activity to another. Given the State's finite resources and its balanced budget requirement, the decision to subsidize certain capital investments will invariably divert resources from policy alternatives to which they would have been applied absent the tax credit. Therefore, if, instead of this legislation, the State invested in road construction, for example, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on subsidizing taxpayers' capital investments and that of the foregone road construction investment.

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Senior Fiscal Analyst*

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

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

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

[Third Reprint]
SENATE, No. 3033

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 21, 2011

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Senate Bill No. 3033 (3R).

This bill, as amended by the committee, establishes the Grow New Jersey Assistance Program (“program”) to encourage businesses to engage in economic development, job creation and the preservation of existing jobs within New Jersey. The bill establishes a \$200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment, creation of new jobs and retention of existing jobs.

To be eligible for program tax credits, a business would have to make capital investments of at least \$20,000,000 at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs, or create at least 100 new full-time jobs in an industry deemed desirable by the New Jersey Economic Development Authority (EDA). Eligibility for program tax credits will also be based upon a determination by the EDA that the capital investment will yield a net positive benefit to the State and that the award of tax credits is a material factor in the business decision to create or retain the minimum number of full-time jobs.

The program’s cost would fall under the \$1.5 billion cap established under the “Urban Transit Hub Tax Credit” (“UTHTC”) program. The initial \$200 million program allocation could be increased by the board of the EDA if the board determines the credits to be reasonable, justifiable, and appropriate. All applications for eligibility under the program shall be made to the EDA by July 1, 2014.

Under the program, a minimum of \$20 million in capital investment would be required to be spent at the project site. Owners, tenants, and affiliates would be allowed to participate in cost sharing to meet this eligibility requirement. The bill, as amended, provides that the amount of tax credits that can be applied by a business annually

under the program cannot exceed the lesser of one-tenth of the capital investment or \$4,000,000.

The bill requires the EDA to establish standards for the construction and renovation of business facilities based on the green building manual prepared by the Commissioner of Community Affairs. Areas of the State where program assistance would be available include: 1) Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), and any urban, regional, or town designated center locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment Act; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the program, an eligible business would receive a base tax credit of \$5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to \$3,000 per job by an eligible business that, as determined by the authority, meets the following factors: 1) is an industry identified by the authority as desirable for the State to maintain or attract; 2) locates or relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a "qualified business facility," under the UTHTC program. The per project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

The program provides for performance requirement "claw backs" (i.e., forfeiting the amount of assistance received in any year) if a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

The bill, as amended by the committee, amends the definition of "urban transit hub" under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey. The bill, as amended by the committee, also amends the definition of "urban transit hub" under the UTHTC law to expand the radius, from one-half to one mile

the area, which surrounds the mid point of other New Jersey Transit Corporation rail stations and Port Authority Transit Corporation and Port Authority Trans-Hudson Corporation rail station platform areas.

The bill, as amended, also clarifies that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, and that the business met the capital investments and employment requirements prior to claiming the tax credits.

The bill, as amended, also makes clarifying changes to the "Business Retention and Relocation Assistance Grant" ("BRRAG") program to: 1) change the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility as deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeal the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

The bill, as amended, authorizes the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey's right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease.

This bill is identical to Assembly Bill No. 4306 ACA, (Coutinho/Conaway/Bucco/Chiusano) which the committee also reported on this date.

COMMITTEE AMENDMENTS

Committee amendments to the bill:

- clarify that the amount of tax credits available to be applied by the business annually under the program shall not exceed the lesser of one tenth of the capital investment or \$4,000,000;
- authorize the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey's right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease; and
- modify the boundaries of an "urban transit hub" UTHTCA by expanding the radius, from one-half to one mile the area, which

surrounds the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Fourth Reprint]

SENATE, No. 3033

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 1, 2011

The Assembly Appropriations Committee reports favorably Senate Bill No. 3033(4R), with committee amendments.

As amended, this bill establishes the Grow New Jersey Assistance Program (“program”) to encourage businesses to engage in economic development, job creation and the preservation of existing jobs within New Jersey. The bill establishes a \$200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment, creation of new jobs and retention of existing jobs.

To be eligible for program tax credits, the bill requires a business to make capital investments of at least \$20,000,000 at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs, or create at least 100 new full-time jobs in an industry deemed desirable by the New Jersey Economic Development Authority (EDA). Eligibility for program tax credits will also be based upon a determination by the EDA that the capital investment will yield a net positive benefit to the State and that the award of tax credits is a material factor in the business decision to create or retain the minimum number of full-time jobs.

The program’s cost falls under the \$1.5 billion cap established under the “Urban Transit Hub Tax Credit” (“UTHTC”) program. The bill allows the initial \$200 million program allocation to be increased by the board of the EDA if the board determines the credits to be reasonable, justifiable, and appropriate. The bill requires that all applications for eligibility under the program shall be made to the EDA by July 1, 2014.

The bill requires that a minimum of \$20 million in capital investment be spent at the project site. Owners, tenants, and affiliates will be allowed to participate in cost sharing to meet this eligibility requirement. The bill provides that the amount of tax credits that can be applied by a business annually under the program cannot exceed the lesser of one-tenth of the capital investment, or \$4,000,000.

The bill requires the EDA to establish standards for the construction and renovation of business facilities based on the green building manual prepared by the Commissioner of Community Affairs. Areas of the State where program assistance will be available include: 1) Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), and any urban, regional, or town designated center locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment Act; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the bill's program, an eligible business will receive a base tax credit of \$5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to \$3,000 per job by an eligible business that, as determined by the authority, meets the following factors: 1) is an industry identified by the authority as desirable for the State to maintain or attract; 2) locates or relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a "qualified business facility," under the UTHTC program. The per-project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

The bill's program provides for forfeiting the amount of assistance received in the current year and any future year in which a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

The bill expands the definition of "urban transit hub" under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey.

The bill clarifies that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, and that the business met the capital investments and employment requirements prior to claiming the tax credits.

The bill makes clarifying changes to the "Business Retention and Relocation Assistance Grant" ("BRRAG") program to: 1) change the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility as deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeal the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

The bill authorizes the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey's right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease.

As amended and reported by the committee, this bill is identical to Assembly Bill No.4306 (1R), as also amended and reported by the committee.

FISCAL IMPACT:

In establishing the Grow New Jersey Assistance Program and in amending the Urban Transit Hub Tax Credit Act, the bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could be no higher than \$1.11 billion -- the difference between the urban transit hub tax credit program's \$1.5 billion cap and the \$394 million in tax credits the EDA has awarded to ten projects through April 18, 2011 -- accumulated over several years.

In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the State General Fund could be no higher than \$17.3 million annually -- the difference between the program's \$20 million annual cap and the estimated \$2.7 million in such credits currently claimed under the program.

Whether the bill's impact will actually approach those respective cost ceilings will largely depend on the extent to which the program's caps would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the programs would reach their caps, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.

To the extent that additional tax credits awarded pursuant to this bill are essential to the realization of capital projects, such projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety,

the revenue loss and opportunity cost of providing the financial assistance authorized by the bill. The Office of Legislative Services, however, cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State and local government tax receipts, and therefore cannot posit an annual net fiscal impact estimate.

COMMITTEE AMENDMENTS:

The amendments allow the EDA to award GROW-NJ tax credits to a business that must submit a proposal and fulfill a contract with the federal government although the award of tax credits is not a *material factor* in the business's decision to retain at least 100 full-time jobs, as is otherwise required of businesses under the bill.

The amendments modify the definition of "Urban Transit Hub" under current law to include:

- 1 - property located within a one mile radius of a rail station if the property is in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the federal Department of Housing and Urban Development,
- 2 - the site of the campus of an acute care medical facility located within a one mile radius of a rail station, and
- 3 - the site of a closed hospital located within a one mile radius of a rail station.

LEGISLATIVE FISCAL ESTIMATE

[Fifth Reprint]

SENATE, No. 3033

STATE OF NEW JERSEY 214th LEGISLATURE

DATED: DECEMBER 13, 2011

SUMMARY

- Synopsis:** Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs; authorizes transfer of certain real property.
- Type of Impact:** Unknown net effect of four countervailing impacts: 1) a multi-year revenue loss to the State General Fund and the Property Tax Relief Fund from awarding tax credits; 2) an annual revenue increase to the State General Fund, Property Tax Relief Fund, and local governments from fiscal activity catalyzed by tax credit-induced economic activity; 3) a revenue increase to the State General Fund from selling State-owned properties; 4) a potential revenue loss from cessation of rental income from these properties.
- Agencies Affected:** Department of the Treasury.
New Jersey Economic Development Authority.
Local Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Cumulative Multi-Year Impact</u>
Direct State Revenue Loss (from Awarding of Additional Tax Credits)	Indeterminate — Potentially up to \$1.1 billion
Indirect State Revenue Gain (from Awarding of Additional Tax Credits)	Indeterminate — See comments below
State Opportunity Cost (of Awarding of Additional Tax Credits)	Indeterminate — See comments below
Indirect Local Revenue Gain (from Awarding of Additional Tax Credits)	Indeterminate — See comments below
State Revenue Gain (from Sale of State-Owned Properties)	Indeterminate — See comments below
State Revenue Loss (from Loss of Rental Income from State-Owned Properties)	Indeterminate — See comments below

- The Office of Legislative Services (OLS) can determine neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of the bill's provisions relating to tax credits under the Grow New Jersey Assistance Program, the Urban Transit Hub Tax Credit Program, and the Business Retention and Relocation Assistance Grant Program. On the one side of the ledger, the bill could produce a State revenue loss of up to \$1.1 billion from awarding additional tax credits in addition to the indeterminate opportunity cost of the tax expenditure—opportunity costs capture the fiscal benefits the State forgoes as spending is redirected from one economic activity to another. On the other side of the ledger, additional tax credits that are essential to the realization of capital projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety, the revenue loss and opportunity cost of providing the financial assistance.
- In creating the Grow New Jersey Assistance Program and expanding the Urban Transit Hub Tax Credit program, the bill could result in a \$1.11 billion maximum direct State revenue loss, reflecting the difference between the \$1.5 billion cap applicable to the two programs combined and the \$394 million in urban transit hub tax credits the New Jersey Economic Development Authority (EDA) has awarded through April 18, 2011. Given the wide range of locales in which creditable projects may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap.
- Whether that revenue loss will total \$1.1 billion will largely depend on the extent to which the program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce a \$1.1 billion State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.
- In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the General Fund could be up to \$17.3 million annually, reflecting the difference between the \$20 million annual cap on that program's tax credits and the estimated \$2.7 million in such credits currently claimed. If this bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.
- Capital investments for which tax credits will serve as the impetus will also generate indirect fiscal benefits to the State and local governments. In the converse, extending tax credits to capital projects that taxpayers would also undertake absent the incentive will produce sunk costs to the State, or an expense without a benefit, as the tax credit will have no bearing on the decision to execute the projects. Consequently, the indirect fiscal effects from projects that would be undertaken anyway have to be excluded from the analysis. Applying the general principle to this bill, it is reasonable to expect that almost all the tax credits' indirect effects will count as a benefit. This is so because the bill requires that credits be instrumental to the execution of a credit-receiving capital project and that the project yield incremental receipts to the State that exceed the credit amount. But it is possible that in spite of its due diligence the EDA will be misled about an applicant's true intentions in this regard. In

addition, the bill waives the requirement that a Grow New Jersey Assistance Program tax credit be a decisive factor in the pursuit of a credit-receiving project for a subset of projects so that the indirect fiscal benefits of those projects cannot be attributed to the bill. In all, however, the OLS cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State and local government tax receipts.

- Without knowledge of the final sales arrangement, the OLS can gauge neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

BILL DESCRIPTION

Senate Bill No. 3033 (5R) of 2011 creates a new tax credit for businesses under the Grow New Jersey Assistance Program, expands the existing Urban Transit Hub Tax Credit program, makes revisions to the Business Retention and Relocation Assistance Grant Program, and authorizes the sale of certain State-owned properties in the City of Newark to the New Jersey Performing Arts Center.

A) Grow New Jersey Assistance Program: The bill creates a new tax credit program under which a business will receive a tax credit for a) making a minimum \$20 million capital investment in a business facility in a qualified area and b) at that business facility either retaining at least 100 full-time positions with health benefits in New Jersey or creating at least 100 new full-time positions with health benefits in an industry the EDA identifies as desirable to maintain or attract. Tax credits will be awarded only if a) the project yields a positive fiscal net benefit to the State, b) the award of the tax credit is a material factor in the business decision to create or retain eligible full-time positions, c) the project does not involve a point-of-final-purchase retail facility, and d) the business applies for the credit before July 1, 2014. Notwithstanding these general restrictions, the bill authorizes the EDA to exempt at its discretion from the material factor requirement businesses meeting all other eligibility criteria if the business is required to respond to requests for proposal and to fulfill a contract with the federal government and if the application for a tax credit will have been submitted by March 31, 2012.

The credit equals ten annual installments of \$5,000 each per full-time position created or retained as long as the number of new full-time jobs for which a business receives a tax credit does not exceed the number of retained full-time jobs for which a business receives a credit, unless the business qualifies by creating at least 100 new full-time positions in an industry identified by the EDA as desirable for the State to attract or maintain.

The annual credit amount increases to \$8,000 if a) the business operates in an industry the EDA identifies as desirable to maintain or attract, b) the business is in proximity to a qualified area adjacent to or within walking distance or short-distance-shuttle service of a public transit facility, c) the full-time jobs created carry salaries in excess of New Jersey's average full-time salary, or d) the qualified area is negatively affected by the approval of a "qualified business facility" under the Urban Transit Hub Tax Credit Act.

But a total tax credit award cannot exceed the value of a project's certified capital investment and must be taken in ten annual installments with each installment equal to the lesser of one-tenth of the certified capital investment or \$4 million. If the business does not have a sufficient

tax liability against which to offset the tax credit, the business may carry any unused balance forward for 20 years or sell it to another taxpayer. Tax credit amounts may be reduced or revoked if the business fails to meet its New Jersey full-time employment target as specified in the tax credit agreement. The tax credits are subject to the existing \$1.5 billion cap for all credits under the Urban Transit Hub Tax Credit program and an annual \$150 million cap imposed on the new tax credits by the bill.

A qualified area is a) a vacant commercial building having over 400,000 square feet of office, laboratory or industrial space available; b) an area designated for development within the Highlands, Meadowlands, and Pinelands; c) Fort Monmouth; and d) areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or as an urban, regional or town designated center under the State Development and Redevelopment Plan.

B) Urban Transit Hub Tax Credit Program: The bill expands the areas of the State that are designated as urban transit hubs under the Urban Transit Hub Tax Credit program. Under the program, the State awards up to \$1.5 billion in tax credits to taxpayers who make certain capital investments in real property in urban transit hubs.

The bill newly includes among urban transit hubs the area within a half-mile radius of the rail or light rail station at Newark Liberty International Airport (but not to property within that area owned or controlled by the Port Authority of New York and New Jersey) and the area within a one-mile radius of a rail or light rail station that is subject to a Choice Neighborhoods Transformation Plan. (The only New Jersey Choice Neighborhood is currently in Jersey City at the McGinley Square – Montgomery Corridor.) In addition, the bill makes urban transit hub tax credits available to acute care medical facilities and closed hospitals located within a one-mile radius of a rail or light rail station.

To qualify for a business facility tax credit of up to 100 percent of the investment under the Urban Transit Hub Tax Credit program, a capital investment in real property must a) equal at least \$50 million; b) pave the way for at least 250 full-time employees working in the business facility; c) be made within eight years from January 13, 2008, the effective date of P.L.2007, c.346; and d) yield a net positive benefit to the State and the municipality hosting the transit hub.

Tenants in qualified business facilities may also receive a credit if they occupy space in the facility that represents at least \$17.5 million of the capital investment and employ at least 250 persons in the facility. If fewer than 200 of the 250 full-time positions in a business facility represent a net gain to New Jersey, then the tax credit maxes out at 80 percent of the qualified capital investment.

To qualify for a residential tax credit of up to 35 percent of the investment, an investment in a residential project must a) equal at least \$50 million; b) be made within eight years from July 28, 2009, the effective date of P.L.2009, c.90; and c) not occur absent the receipt of a tax credit.

Two mutually exclusive tax credit options exist for developers of mixed use projects representing a capital investment of at least \$50 million. They may either receive a residential tax credit for the entire investment subject to the conditions of that tax credit or they may receive a residential tax credit for the project's residential component if it represents at least a \$17.5 million capital investment and otherwise meets the conditions of that tax credit and a business facility tax credit for the project's business facility component if it represents at least a \$17.5 million capital investment and otherwise meets the conditions of that tax credit.

C) Business Retention and Relocation Assistance Grant Program: The bill clarifies that the annual aggregate limit on tax credits under the program is calculated by tax period rather than fiscal year, and changes the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility is deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be. The bill also deletes the prohibition on use of program tax credits by a business unless the retained State tax

revenue from the business, in the tax period prior to the use of tax credits, equals or exceeds the amount of tax credits.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS can determine neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of the bill's provisions relating to tax credits under the Grow New Jersey Assistance Program, the Urban Transit Hub Tax Credit Program, and the Business Retention and Relocation Assistance Grant Program. Their State fiscal net impact would be calculated by adding the direct revenue loss from granting the 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 from granting the tax credits. In addition, the bill is also likely to accrue an indirect revenue gain to local governments. Although the OLS is able to pinpoint the bill's maximum direct revenue loss, it cannot calculate its opportunity cost or its offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on the characteristics of capital investments that will earn tax credits.

Without knowledge of the final sales arrangement, the OLS also can gauge neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

Direct State Revenue Loss: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund from the establishment of the Grow New Jersey Assistance Program and the expansion of the existing Urban Transit Hub Tax Credit program could be as high as \$1.11 billion accumulated over several years, or the difference between the urban transit hub tax credit program's \$1.5 billion cap and the \$394 million in tax credits the EDA has awarded to ten projects through April 18, 2011.

Given the wide range of locales in which a creditable project may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap. In any event, whether the bill's provisions governing the Grow New Jersey Assistance Program and the Urban Transit Hub Tax Credit program will actually cost \$1.11 billion will largely depend on the extent to which the \$1.5 billion program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce a \$1.11 billion State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.

The bill's direct revenue loss to the State General Fund from the revisions to the Business Retention and Relocation Assistance Grant Program could be no higher than \$17.3 million annually, the difference between the program's \$20 million annual cap and the estimated \$2.7 million in tax credits currently claimed under the program. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce an annual \$17.3 million State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more tax credits would be awarded under the program.

Irrespective of the State fiscal effects of the bill's provisions relating to the three tax credit programs, taxpayers earning credits will share their benefit with the federal government. This will be so because taxpayers can deduct their State and local income tax payments on their federal income tax returns. Consequently, a lower New Jersey corporation business tax liability translates into a lower federal deduction, and thus a higher federal income tax liability. At the federal corporation income tax rate of 35 percent, taxpayers receiving a State tax credit will therefore only hold on to 65 percent of the tax credit amount, while the remaining 35 percent of the benefit will accrue to the United States government.

Indirect State and Local Revenue Gain: The bill may generate an indeterminate indirect revenue gain to the State and local governments that may partially offset the direct State revenue loss from and State opportunity cost of providing tax credits in accordance with the bill. The OLS, however, does not have the capacity to quantify the bill's secondary effects, since it cannot estimate the volume and types of capital investments that the tax credit will directly spur and their ensuing indirect effect on State and local government tax receipts.

In general, any indirect revenue gain will result from the economic ramifications of tax credit-induced behavior changes. Once New Jerseyans will receive payments they would not have received absent the incentive, at least a portion of these payments will newly circulate in New Jersey's economy. As these ramifications will flow through the economy, they will affect State and local revenue collections. Indirect fiscal effects encompass secondary tax collections from credit-induced capital investments (such as enhanced gross income tax collections from employees whose positions are retained in New Jersey because of the tax credit and increased property tax collections if the investment appreciates the value of a property) and credit-induced spending by all impacted firms and their employees (such as employees whose positions are retained in New Jersey because of the tax credit spending their income on taxable goods and services).

Nonetheless, the OLS points out that not all of the economic and fiscal feedback effects of capital investments benefitting from the credit may represent a gain to the State and affected municipalities. Only the ripple effects caused by credit-induced purchases should enter the fiscal estimate, while those from investments that would also be made absent the credit must be excluded. The exclusion of investments that will happen with or without the credit takes into account that the tax incentive has no economic impact whenever it benefits taxpayers who would invest in a project anyway. In such a scenario, the State will only incur the direct cost of the subsidy, while the capital investment's secondary effects cannot be attributed to the bill.

Applying the general principle to this bill, it is reasonable to expect that most of the indirect effects of credits awarded will count as a benefit to the State. This is so because credits can only be awarded if a project passes the net benefit test. As part of that test, the EDA excludes from the analysis the indirect benefits from jobs that are neither "at risk," classified as a "suburban to urban move" or otherwise deemed new jobs to the State. Therefore, only those tax credits will not produce an indirect revenue gain to the State that represent a relocation of jobs from a

suburban area of the State to an urban area or that represent an incorrect assessment regarding the likelihood of a job created or retained within New Jersey absent a credit award. It remains unclear, however, whether or not the indirect revenue gains attributable to the credits will exceed the direct State revenue loss and opportunity cost they will cause.

Lastly, the OLS notes that any estimate of the credit's New Jersey feedback effects must also exclude from the total feedback effects the portion of the credit-induced spending that would leak into other jurisdictions. A New York resident holding a job in New Jersey would have a New Jersey income tax liability, but most of the New Yorker's private spending might not occur in this State.

Opportunity Costs: Opportunity costs capture the economic and fiscal benefits the economy and the State forego as spending is redirected from one economic activity to another. Given the State's finite resources and its balanced budget requirement, the decision to subsidize certain capital investments will invariably divert resources from policy alternatives to which they would have been applied absent the tax credit. Therefore, if, instead of this legislation, the State invested in road construction, for example, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on subsidizing taxpayers' capital investments and that of the foregone road construction investment.

Sale of State-Owned Properties to New Jersey Performing Arts Center: Without knowledge of the final sales arrangement, the OLS also can calculate neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

The property sale appears to relate to the proposed construction by Prudential Financial Inc. of a new office tower totaling 600,000 square feet along with a parking structure for 1,600 vehicles adjacent to the New Jersey Performing Arts Center. According to a November 9, 2011 memorandum by the Chief Executive Officer of the EDA to the members of the EDA Board, the project will cost Prudential Financial an estimated \$369 million and stands to receive an urban transit hub tax credit of \$250.8 million from the State.

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Lead Fiscal Analyst*

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

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

ASSEMBLY, No. 4306

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED NOVEMBER 21, 2011

Sponsored by:

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblyman ANTHONY M. BUCCO

District 25 (Morris)

Assemblyman GARY R. CHIUSANO

District 24 (Sussex, Hunterdon and Morris)

Co-Sponsored by:

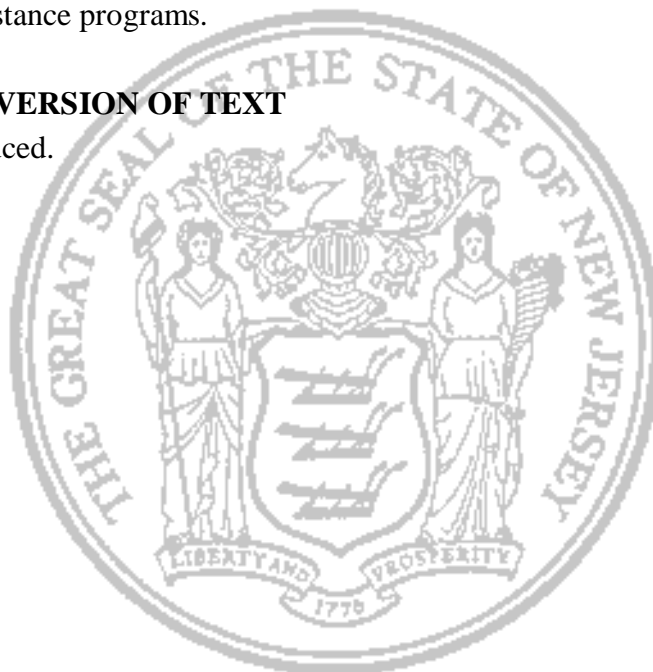
Assemblywomen McHose, Spencer and Assemblyman Coughlin

SYNOPSIS

Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/22/2011)

1 AN ACT providing for the availability of tax credits to certain
2 businesses and supplementing Title 34 of the Revised Statutes,
3 amending various parts of the statutory law, and repealing
4 section 6 of P.L.1996, c.25.

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

8
9 1. (New section) Sections 1 through 8 of this act shall be
10 known and may be cited as the "Grow New Jersey Assistance Act."

11
12 2. (New section) As used in this act:

13 "Affiliate" means an entity that directly or indirectly controls, is
14 under common control with, or is controlled by the business.
15 Control exists in all cases in which the entity is a member of a
16 controlled group of corporations as defined pursuant to section 1563
17 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the
18 entity is an organization in a group of organizations under common
19 control as defined pursuant to subsection (b) or (c) of section 414 of
20 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
21 may establish by clear and convincing evidence, as determined by
22 the Director of the Division of Taxation in the Department of the
23 Treasury, that control exists in situations involving lesser
24 percentages of ownership than required by those statutes. An
25 affiliate of a business may contribute to meeting either the qualified
26 investment or full-time employee requirements of a business that
27 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
28 209).

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

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

40 "Capital investment" in a qualified business facility means
41 expenses incurred after application, but before the end of the tenth
42 year after, the effective date of P.L. , c. (C.) (pending
43 before the Legislature as this bill) for: a. site preparation and
44 construction, repair, renovation, improvement, equipping, or

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 furnishing of a building, structure, facility, or improvement to real
2 property; and b. obtaining and installing furnishings and machinery,
3 apparatus, or equipment for the operation of a business in a
4 building, structure, facility, or improvement to real property.

5 "Eligible position" means a full-time position retained or created
6 by a business in this State for which a business provides employee
7 health benefits under a group health plan as defined under section
8 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as
9 defined under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a
10 policy or contract of health insurance covering more than one
11 person issued pursuant to Article 2 of chapter 27 of Title 17B of the
12 New Jersey Statutes.

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

36 "New full-time job" means an eligible position created by the
37 business at the qualified business facility that did not previously
38 exist in this State. For the purposes of determining a number of
39 new full-time jobs, the eligible positions of an affiliate shall be
40 considered eligible positions of the business.

41 "Partnership" means an entity classified as a partnership for
42 federal income tax purposes.

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

46 "Program" means the "Grow New Jersey Assistance Program"
47 established pursuant to section 3 of P.L. , c. (C.) (pending
48 before the Legislature as this bill).

1 "Qualified business facility" means any building, complex of
2 buildings or structural components of buildings, and all machinery
3 and equipment located within a qualified incentive area, used in
4 connection with the operation of a business.

5 "Qualified incentive area" means an area designated pursuant to
6 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1
7 (Metropolitan), Planning Area 2 (Suburban), or any urban, regional,
8 or town designated center under the State Development and
9 Redevelopment Plan; an area zoned for development pursuant to a
10 master plan adopted by the New Jersey Meadowlands Commission
11 pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-
12 6) or subject to a redevelopment plan adopted by the New Jersey
13 Meadowlands Commission pursuant to section 20 of P.L.1968,
14 c.404 (C.13:17-21); any land owned by the New Jersey Sports and
15 Exposition Authority, established pursuant to P.L.1971, c.137
16 (C.5:10-1 et seq.), within the boundaries of the Hackensack
17 Meadowlands District as delineated in section 4 of P.L.1968, c.404
18 (C.13:17-4); a pinelands regional growth area, a pinelands town
19 management area, a pinelands village, or a military and federal
20 installation area established pursuant to the pinelands
21 comprehensive management plan adopted pursuant to P.L.1979,
22 c.111 (C.13:18A-1 et seq.); an area designated for development,
23 redevelopment, or economic growth within the Highlands Region;
24 federally owned land approved for closure under any federal Base
25 Closure and Realignment Commission action; or any property
26 consisting of a vacant commercial building having over 400,000
27 square feet of office, laboratory, or industrial space available for
28 occupancy for a period of over one year or is negatively impacted
29 by the approval of a "qualified business facility," as defined
30 pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

31 "Retained full-time job" means an eligible position that currently
32 exists in New Jersey and is filled by a full-time employee but
33 which, because of a potential relocation by the business, is at risk of
34 being lost to another state or country. For the purposes of
35 determining a number of retained full-time jobs, the eligible
36 positions of an affiliate shall be considered eligible positions of the
37 business.

38
39 3. (New section) a. The Grow New Jersey Assistance Program
40 is hereby established as a program under the jurisdiction of the New
41 Jersey Economic Development Authority and shall be administered
42 by the authority. The purpose of the program is to encourage
43 economic development and job creation and to preserve jobs that
44 currently exist in New Jersey but which are in danger of being
45 relocated outside of the State. To implement this purpose, and to
46 the extent that funding for the program is available, the program
47 may provide tax credits to eligible businesses. To be eligible for
48 any tax credits pursuant to P.L. , c. (C.) (pending before the

1 Legislature as this bill), a business's chief executive officer or
2 equivalent officer shall demonstrate to the authority, at the time of
3 application, that: (1) the business will make, acquire, or lease a
4 capital investment of at least \$20,000,000 at a qualified business
5 facility at which it will (a) employ at least 100 full-time employees
6 in retained full-time jobs, or (b) create at least 100 new full-time
7 jobs in an industry identified by the authority as desirable for the
8 State to maintain or attract; (2) the capital investment resultant from
9 the award of tax credits and the resultant retention and creation of
10 eligible positions will yield a net positive benefit to the State; and
11 (3) the award of tax credits will be a material factor in the
12 business's decision to create or retain the minimum number of full-
13 time jobs for eligibility under the program.

14 b. To assist the authority in determining whether a proposed
15 capital investment will yield a net positive benefit, the business's
16 chief executive officer, or equivalent officer, shall submit a
17 certification to the authority indicating that any existing jobs are at
18 risk of leaving the State, that any projected creation of new full-
19 time jobs would not occur but for the provision of tax credits under
20 the program, and that the business's chief executive officer, or
21 equivalent officer, has reviewed the information submitted to the
22 authority and that the representations contained therein are accurate.
23 In the event that this certification by the business's chief executive
24 officer, or equivalent officer, is found to be willfully false, the
25 authority may revoke any award of tax credits in their entirety,
26 which revocation shall be in addition to any other criminal or civil
27 penalties that the business and the officer may be subject to. When
28 considering an application involving intra-State job transfers, the
29 authority shall require the business to submit the following
30 information as part of its application: a full economic analysis of all
31 locations under consideration by the business; all lease agreements,
32 ownership documents, or substantially similar documentation for
33 the business's current in-State locations; and all lease agreements,
34 ownership documents, or substantially similar documentation for
35 the potential out-of-State location alternatives, to the extent they
36 exist. Based on this information, and any other information deemed
37 relevant by the authority, the authority shall independently verify
38 and confirm, by way of making a factual finding by separate vote of
39 the authority's board, the business's assertion that the jobs are
40 actually at risk of leaving the State, before a business may be
41 awarded any tax credits under this section.

42 c. A project that consists solely of point-of-final-purchase
43 retail facilities shall not be eligible for a grant of tax credits. If a
44 project consists of both point-of-final-purchase retail facilities and
45 non-retail facilities, only the portion of the project consisting of
46 non-retail facilities shall be eligible for a grant of tax credits. If a
47 warehouse facility is part of a point-of-final-purchase retail facility
48 and supplies only that facility, the warehouse facility shall not be

1 eligible for a grant of tax credits. For the purposes of this section,
2 catalog distribution centers shall not be considered point-of-final-
3 purchase retail facilities.

4

5 4. (New section) The authority shall require an eligible
6 business to enter an agreement prior to the issuance of tax credits.
7 The agreement shall include, but shall not be limited to, the
8 following:

9 a. A detailed description of the proposed project which will
10 result in job creation or retention, and the number of full-time
11 employees.

12 b. The term of the tax credits, and the first year for which the
13 tax credits may be claimed.

14 c. Personnel information that will enable the authority to
15 administer the program.

16 d. A requirement that the applicant maintain the project at a
17 location in New Jersey for at least 1.5 times the number of years of
18 the term of the tax credits, with at least the number of full-time
19 employees as required by section 6 of P.L. , c. (C.)
20 (pending before the Legislature as this bill) and a provision to
21 permit the authority to recapture all or part of any tax credit
22 awarded, at its discretion, if the business does not remain at the site
23 for the required term.

24 e. A method for the business to report annually to the authority
25 the number of full-time employees for which the tax credits are to
26 be made.

27 f. A provision permitting an audit of the payroll records of the
28 business from time to time, as the authority deems necessary.

29 g. A provision which permits the authority to amend the
30 agreement.

31 h. A provision establishing the conditions under which the
32 agreement may be terminated and awarded tax credits are
33 recaptured, in whole or in part, by the authority at its discretion.

34

35 5. (New section) a. The value of each tax credit for an eligible
36 business shall be equal to \$5,000 per year for a period of ten years
37 for each new or retained full-time job determined by the authority
38 pursuant to section 3 of P.L. , c. (C.) (pending before the
39 Legislature as this bill) to be located at the qualified business
40 facility, subject to the provisions of this section.

41 b. In addition to any grant of tax credits determined pursuant to
42 subsection a. of this section, a bonus award of up to an additional
43 \$3,000 per job of the amount of the original tax credits may be
44 made to any eligible business as determined by the authority. In
45 making a bonus award to an eligible business, the authority shall
46 consider the following factors, such that whether the business: (1) is
47 an industry identified by the authority as desirable for the State to
48 maintain or attract; (2) locates or relocates to a location within a

1 qualified incentive area adjacent to, or within walking distance or
2 short-distance-shuttle service of, a public transit facility, as
3 determined by the authority, by regulation; (3) creates jobs using
4 full-time employees in eligible positions whose annual salaries,
5 according to the Department of Labor and Workforce Development,
6 are greater than the average full-time salary in this State; or (4) is
7 locating to a project site that is or has been negatively impacted by
8 the approval of a “qualified business facility,” as defined pursuant
9 to section 2 of P.L.2007, c.346 (C.34:1B-208).

10 c. Notwithstanding the provisions of subsections a. and b. of
11 this section, (1) the amount of tax credits available to be applied by
12 the business annually shall not exceed one tenth of the capital
13 investment certified by the authority pursuant to section 6 of
14 P.L. , c. (C.) (pending before the Legislature as this bill),
15 and (2) the number of new full-time jobs for which a business
16 receives a tax credit shall not exceed the number of retained full-
17 time jobs for which a business receives a tax credit, unless the
18 business qualifies by creating at least 100 new full-time jobs in an
19 industry identified by the authority as desirable for the State to
20 maintain or attract.

21

22 6. (New section) a. (1) The value of all credits approved by the
23 authority pursuant to P.L. , c. (C.) (pending before the
24 Legislature as this bill) shall not exceed \$200,000,000, except that
25 the value of all credits approved by the authority pursuant to this
26 section may exceed \$200,000,000 if the board of the authority
27 determines the credits to be reasonable, justifiable, and appropriate;
28 provided, however, the combined value of all credits approved by
29 the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq. and
30 P.L. , c. (C.) (pending before the Legislature as this bill)
31 shall not exceed \$1,500,000,000.

32 (2) A business, including any affiliate of the business or any
33 business that is a tenant within any qualified business facility, shall
34 make or acquire capital investments totaling not less than
35 \$20,000,000 in a qualified business facility, at which the business
36 shall employ not fewer than 100 full-time employees to be eligible
37 for a credit pursuant to P.L. , c. (pending before the Legislature
38 as this bill). A business that acquires or leases a qualified business
39 facility shall also be deemed to have acquired the capital investment
40 made or acquired by the seller or landlord, as the case may be.

41 (3) A business shall not be allowed tax credits pursuant to
42 P.L.1996, c.25 (C.34:1B-112 et seq.) or P.L.1996, c.26 (C.34:1B-
43 124 et seq.) relating to the same capital and employees that qualify
44 the business for tax credits pursuant to P.L. , c. (pending before
45 the Legislature as this bill). A business that is allowed a tax credit
46 under this section shall not be eligible for incentives authorized
47 pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.). A business shall
48 not qualify for a tax credit under this section, based upon capital

1 investment and employment of full-time employees, if that capital
2 investment or employment was the basis for which a grant was
3 provided to the business pursuant to the "Urban Transit Hub Tax
4 Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.).

5 (4) Full-time employment for an accounting or privilege period
6 shall be determined as the average of the monthly full-time
7 employment for the period.

8 (5) The capital investment of the owner of a qualified business
9 facility is that percentage of the capital investment made or
10 acquired by the owner of the building that the percentage of net
11 leasable area of the qualified business facility not leased to tenants
12 is of the total net leasable area of the qualified business facility.
13 For a business that is a tenant, the amount of capital investment in a
14 facility that a leased area represents shall be equal to that
15 percentage of the owner's total capital investment in the facility that
16 the percentage of net leasable area leased by the tenant is of the
17 total net leasable area of the qualified business facility. Capital
18 investments made by a tenant shall be deemed to be included in the
19 calculation of the capital investment made or acquired by the
20 owner, but only to the extent necessary to meet the owner's
21 minimum capital investment of \$20,000,000. Capital investments
22 made by a tenant and not allocated to meet the owner's minimum
23 capital investment threshold of \$20,000,000 shall be added to the
24 amount of capital investment represented by the tenant's leased area
25 in the qualified business facility.

26 b. A business shall apply for the tax credit prior to July 1,
27 2014, and shall submit its documentation indicating that it has met
28 the capital investment and employment specified in the project
29 agreement for certification of its credit amount no later than July
30 28, 2017.

31 c. (1) The amount of credit allowed shall not exceed the capital
32 investment made by the business or the capital investment
33 represented by the business' leased area, as certified by the authority
34 pursuant to subsection b. of this section, as having met the
35 investment capital and employment qualifications, subject to any
36 reduction or disqualification as provided by subsection d. of this
37 section as determined by annual review by the authority. In
38 conducting its annual review, the authority may require a business
39 to submit any information determined by the authority to be
40 necessary and relevant to its review.

41 The credit amount for any tax period ending after July 28, 2017,
42 during which the documentation of a business' credit amount
43 remains uncertified shall be forfeited, although credit amounts for
44 the remainder of the years of the 10-year credit period shall remain
45 available to it.

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

1 successive tax periods, and shall expire thereafter, provided that the
2 value of all credits approved by the authority against tax liabilities
3 pursuant to P.L. , c. (pending before the Legislature as this bill),
4 in any fiscal year shall not exceed \$150,000,000 and the combined
5 value of all credits approved by the authority pursuant to P.L.2007,
6 c.346 (C.34:1B-207 et seq.) and P.L. , c. (C.) (pending
7 before the Legislature as this bill) shall not exceed \$1,500,000,000.

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

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

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

29 d. (1) If, in any tax period, the business reduces the total
30 number of full-time employees in its Statewide workforce by more
31 than 20 percent from the number of full-time employees in its
32 Statewide workforce in the last tax period prior to the credit amount
33 approval under section 3 of P.L. , c. (pending before the
34 Legislature as this bill), then the business shall forfeit its credit
35 amount for that tax period and each subsequent tax period, until the
36 first tax period for which documentation demonstrating the
37 restoration of the business' Statewide workforce to the threshold
38 levels required by this paragraph has been reviewed and approved
39 by the authority, for which tax period and each subsequent tax
40 period the full amount of the credit shall be allowed.

41 (2) If, in any tax period, the number of full-time employees
42 employed by the business at the qualified business facility located
43 within a qualified incentive area drops below 100 or 80 percent of
44 the number of new and retained full-time jobs specified in the
45 project agreement, then the business shall forfeit its credit amount
46 for that tax period and each subsequent tax period, until the first tax
47 period for which documentation demonstrating the restoration of the

1 number of full-time employees employed by the business at the
2 qualified business facility to 100.

3 (3) (a) If the qualified business facility is sold in whole or in
4 part during the 10-year eligibility period the new owner shall not
5 acquire the capital investment of the seller and the seller shall
6 forfeit all credits for the tax period in which the sale occurs and all
7 subsequent tax periods, provided however that any credits of
8 tenants shall remain unaffected.

9 (b) If a tenant subleases its tenancy in whole or in part during
10 the 10-year eligibility period the new tenant shall not acquire the
11 credit of the sublessor, and the sublessor tenant shall forfeit all
12 credits for the tax period of its sublease and all subsequent tax
13 periods.

14

15 7. (New section) A business may apply to the Director of the
16 Division of Taxation in the Department of the Treasury and the
17 chief executive officer of the authority for a tax credit transfer
18 certificate, covering one or more years, in lieu of the business being
19 allowed any amount of the credit against the tax liability of the
20 business. The tax credit transfer certificate, upon receipt thereof by
21 the business from the director and the chief executive officer of the
22 authority, may be sold or assigned, in full or in part, to any other
23 person that may have a tax liability pursuant to section 5 of
24 P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of
25 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1
26 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.
27 The certificate provided to the business shall include a statement
28 waiving the business's right to claim that amount of the credit
29 against the taxes that the business has elected to sell or assign. The
30 sale or assignment of any amount of a tax credit transfer certificate
31 allowed under this section shall not be exchanged for consideration
32 received by the business of less than 75 percent of the transferred
33 credit amount. Any amount of a tax credit transfer certificate used
34 by a purchaser or assignee against a tax liability shall be subject to
35 the same limitations and conditions that apply to the use of the
36 credit by the business that originally applied for and was allowed
37 the credit.

38

39 8. (New section) a. The chief executive officer of the authority,
40 in consultation with the Director of the Division of Taxation in the
41 Department of the Treasury, shall adopt rules in accordance with
42 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
43 seq.) as are necessary to implement P.L. , c. (C.) (pending
44 before the Legislature as this bill), including but not limited to:
45 examples of and the determination of capital investment; the
46 enumeration of qualified incentive areas; specific delineation of
47 these incentive areas; the determination of the limits, if any, on the
48 expense or type of furnishings that may constitute capital

1 improvements; the promulgation of procedures and forms necessary
2 to apply for a tax credit, including the enumeration of the
3 certification procedures and allocation of tax credits for different
4 phases of a qualified business facility; and provisions for tax credit
5 applicants to be charged an initial application fee, and ongoing
6 service fees, to cover the administrative costs related to the tax
7 credit.

8 b. Through regulation, the authority shall establish standards
9 by which qualified business facilities shall be constructed or
10 renovated based on the green building manual prepared by the
11 Commissioner of Community Affairs pursuant to section 1 of
12 P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable
13 energy, energy-efficient technology, and non-renewable resources
14 in order to reduce environmental degradation and encourage long-
15 term cost reduction.

16
17 9. Section 2 of P.L.2007, c.346 (C.34:1B-208) is amended to
18 read as follows:

19 2. As used in this act:

20 "Affiliate" means an entity that directly or indirectly controls, is
21 under common control with, or is controlled by the business.
22 Control exists in all cases in which the entity is a member of a
23 controlled group of corporations as defined pursuant to section 1563
24 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the
25 entity is an organization in a group of organizations under common
26 control as defined pursuant to subsection (b) or (c) of section 414 of
27 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
28 may establish by clear and convincing evidence, as determined by
29 the Director of the Division of Taxation in the Department of the
30 Treasury, that control exists in situations involving lesser
31 percentages of ownership than required by those statutes. An
32 affiliate of a business may contribute to meeting either the qualified
33 investment or full-time employee requirements of a business that
34 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
35 209).

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

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

47 "Capital investment" in a qualified business facility means
48 expenses incurred after, but before the end of the eighth year after,

1 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a.
2 the site preparation and construction, repair, renovation,
3 improvement, equipping, or furnishing of a building, structure,
4 facility or improvement to real property; and b. obtaining and
5 installing furnishings and machinery, apparatus or equipment for
6 the operation of a business in a building, structure, facility or
7 improvement to real property.

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

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

39 "Mixed use project" means a project comprising both a qualified
40 business facility and a qualified residential project.

41 "Partnership" means an entity classified as a partnership for
42 federal income tax purposes.

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

46 "Qualified business facility" means any building, complex of
47 buildings or structural components of buildings, and all machinery
48 and equipment located within a designated urban transit hub in an

1 eligible municipality, used in connection with the operation of a
2 business.

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

5 "Residential unit" means a residential dwelling unit such as a
6 rental apartment, a condominium or cooperative unit, a hotel room,
7 or a dormitory room.

8 "Urban transit hub" means:

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

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

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

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

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

31 "Rail station" shall not include any rail station located at an
32 international airport, except that any property within a 1/2 mile
33 radius surrounding the mid point of a New Jersey Transit
34 Corporation rail station platform area at an international airport
35 upon which a qualified business facility is constructed or renovated
36 commencing after the effective date of P.L. , c. (C.)
37 (pending before the Legislature as this bill) shall be deemed an
38 urban transit hub, excluding any property owned or controlled by
39 the Port Authority of New York and New Jersey.

40 (cf: P.L.2011, c.89, s.1)

41

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

44 3. a. (1) A business, upon application to and approval from the
45 authority, shall be allowed a credit of 100 percent of its capital
46 investment, made after the effective date of P.L.2007, c.346
47 (C.34:1B-207 et seq.) but prior to its submission of documentation
48 pursuant to subsection c. of this section, in a qualified business

1 facility within an eligible municipality, pursuant to the restrictions
2 and requirements of this section. To be eligible for any tax credits
3 authorized under this section, a business shall demonstrate to the
4 authority, at the time of application, that the State's financial
5 support of the proposed capital investment in a qualified business
6 facility will yield a net positive benefit to both the State and the
7 eligible municipality. The value of all credits approved by the
8 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall
9 not exceed \$1,500,000,000.

10 (2) A business, other than a tenant eligible pursuant to
11 paragraph (3) of this subsection, shall make or acquire capital
12 investments totaling not less than \$50,000,000 in a qualified
13 business facility, at which the business shall employ not fewer than
14 250 full-time employees to be eligible for a credit under this
15 section. A business that acquires a qualified business facility shall
16 also be deemed to have acquired the capital investment made or
17 acquired by the seller.

18 (3) A business that is a tenant in a qualified business facility, the
19 owner of which has made or acquired capital investments in the
20 facility totaling not less than \$50,000,000, shall occupy a leased
21 area of the qualified business facility that represents at least
22 \$17,500,000 of the capital investment in the facility at which the
23 tenant business and up to two other tenants in the qualified business
24 facility shall employ not fewer than 250 full-time employees in the
25 aggregate to be eligible for a credit under this section. The amount
26 of capital investment in a facility that a leased area represents shall
27 be equal to that percentage of the owner's total capital investment in
28 the facility that the percentage of net leasable area leased by the
29 tenant is of the total net leasable area of the qualified business
30 facility. Capital investments made by a tenant shall be deemed to
31 be included in the calculation of the capital investment made or
32 acquired by the owner, but only to the extent necessary to meet the
33 owner's minimum capital investment of \$50,000,000. Capital
34 investments made by a tenant and not allocated to meet the owner's
35 minimum capital investment threshold of \$50,000,000 shall be
36 added to the amount of capital investment represented by the
37 tenant's leased area in the qualified business facility.

38 (4) A business shall not be allowed tax credits under this section
39 if the business participates in a business employment incentive
40 grant relating to the same capital and employees that qualify the
41 business for this credit, or if the business receives assistance
42 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is
43 allowed a tax credit under this section shall not be eligible for
44 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et
45 al.). A business shall not qualify for a tax credit under this section,
46 based upon capital investment and employment of full-time
47 employees, if that capital investment or employment was the basis
48 for which a grant was provided to the business pursuant to the

1 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-
2 237 et seq.).

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

6 (6) The capital investment of the owner of a qualified business
7 facility is that percentage of the capital investment made or
8 acquired by the owner of the building that the percentage of net
9 leasable area of the qualified business facility not leased to tenants
10 is of the total net leasable area of the qualified business facility.

11 (7) A business shall be allowed a tax credit of 100 percent of its
12 capital investment, made after the effective date of P.L.2011, c.89
13 but prior to its submission of documentation pursuant to subsection
14 c. of this section, in a qualified business facility that is part of a
15 mixed use project, provided that (a) the qualified business facility
16 represents at least \$17,500,000 of the total capital investment in the
17 mixed use project, (b) the business employs not fewer than 250 full-
18 time employees in the qualified business facility, and (c) the total
19 capital investment in the mixed use project of which the qualified
20 business facility is a part is not less than \$50,000,000. The
21 allowance of credits under this paragraph shall be subject to the
22 restrictions and requirements, to the extent that those are not
23 inconsistent with the provisions of this paragraph, set forth in
24 paragraphs (1) through (6) of this subsection, including but not
25 limited to the requirement that the business shall demonstrate to the
26 authority, at the time of application, that the State's financial
27 support of the proposed capital investment in a qualified business
28 facility will yield a net positive benefit to both the State and the
29 eligible municipality.

30 (8) In determining whether a proposed capital investment will
31 yield a net positive benefit, the authority shall not consider the
32 transfer of an existing job from one location in the State to another
33 location in the State as the creation of a new job, unless (a) the
34 business proposes to transfer existing jobs to a municipality in the
35 State as part of a consolidation of business operations from two or
36 more other locations that are not in the same municipality whether
37 in-State or out-of-State, or (b) the business's chief executive officer,
38 or equivalent officer, submits a certification to the authority
39 indicating that the existing jobs are at risk of leaving the State and
40 that the business's chief executive officer, or equivalent officer, has
41 reviewed the information submitted to the authority and that the
42 representations contained therein are accurate, and the business
43 intends to employ not fewer than 500 full-time employees in the
44 qualified business facility. In the event that this certification by the
45 business's chief executive officer, or equivalent officer, is found to
46 be willfully false, the authority may revoke any award of tax credits
47 in their entirety, which revocation shall be in addition to any other
48 criminal or civil penalties that the business and the officer may be

1 subject to. When considering an application involving intra-State
2 job transfers, the authority shall require the company to submit the
3 following information as part of its application: a full economic
4 analysis of all locations under consideration by the company; all
5 lease agreements, ownership documents, or substantially similar
6 documentation for the business's current in-State locations; and all
7 lease agreements, ownership documents, or substantially similar
8 documentation for the potential out-of-State location alternatives, to
9 the extent they exist. Based on this information, and any other
10 information deemed relevant by the authority, the authority shall
11 independently verify and confirm, by way of making a factual
12 finding by separate vote of the authority's board, the business's
13 assertion that the jobs are actually at risk of leaving the State,
14 before a business may be awarded any tax credits under this section.

15 b. A business shall apply for the credit within five years after
16 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and
17 shall submit its documentation for approval of its credit amount
18 within eight years after the effective date of P.L.2007, c.346
19 (C.34:1B-207 et seq.).

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

34 The credit amount for any tax period ending after the date eight
35 years after the effective date of P.L.2007, c.346 (C.34:1B-207 et
36 seq.) during which the documentation of a business' credit amount
37 remains **[unapproved]** uncertified shall be forfeited, although credit
38 amounts for the remainder of the years of the 10-year credit period
39 shall remain available to it.

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

47 The amount of credit allowed for a tax period to a business that
48 is a tenant in a qualified business facility shall not exceed the

1 business' total lease payments for occupancy of the qualified
2 business facility for the tax period.

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

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

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

37 (2) If, in any tax period, the business reduces the total number
38 of full-time employees in its Statewide workforce by more than 20
39 percent from the number of full-time employees in its Statewide
40 workforce in the last tax accounting or privilege period prior to the
41 credit amount approval under subsection a. of this section, then the
42 business shall forfeit its credit amount for that tax period and each
43 subsequent tax period, until the first tax period for which
44 documentation demonstrating the restoration of the business'
45 Statewide workforce to the threshold levels required by this
46 paragraph has been reviewed and approved by the authority, for
47 which tax period and each subsequent tax period the full amount of
48 the credit shall be allowed.

1 (3) If, in any tax period, (a) the number of full-time employees
2 employed by the business at the qualified business facility located
3 in an urban transit hub within an eligible municipality drops below
4 250, or (b) the number of full-time employees, who are not the
5 subject of intra-State job transfers, pursuant to paragraph (8) of
6 subsection a. of this section, employed by the business at any other
7 business facility in the State, whether or not located in an urban
8 transit hub within an eligible municipality, drops by more than 20
9 percent from the number of full-time employees in its workforce in
10 the last tax accounting or privilege period prior to the credit amount
11 approval under this section, then the business shall forfeit its credit
12 amount for that tax period and each subsequent tax period, until the
13 first tax period for which documentation demonstrating the
14 restoration of the number of full-time employees employed by the
15 business at the qualified business facility to 250 or an increase
16 above the 20 percent reduction has been reviewed and approved by
17 the authority, for which tax period and each subsequent tax period
18 the full amount of the credit shall be allowed.

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

25 (ii) If a tenant subleases its tenancy in whole or in part during
26 the 10-year eligibility period the new tenant shall not acquire the
27 credit of the sublessor, and the sublessor tenant shall forfeit all
28 credits for the tax period of its sublease and all subsequent tax
29 periods.

30 e. (1) The Executive Director of the New Jersey Economic
31 Development Authority, in consultation with the Director of the
32 Division of Taxation in the Department of the Treasury, shall adopt
33 rules in accordance with the "Administrative Procedure Act,"
34 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
35 this act, including but not limited to: examples of and the
36 determination of capital investment; the enumeration of eligible
37 municipalities; specific delineation of urban transit hubs; the
38 determination of the limits, if any, on the expense or type of
39 furnishings that may constitute capital improvements; the
40 promulgation of procedures and forms necessary to apply for a
41 credit, including the enumeration of the certification procedures and
42 allocation of tax credits for different phases of a qualified business
43 facility or mixed use project; and provisions for credit applicants to
44 be charged an initial application fee, and ongoing service fees, to
45 cover the administrative costs related to the credit.

46 (2) Through regulation, the Economic Development Authority
47 shall establish standards based on the green building manual
48 prepared by the Commissioner of Community Affairs pursuant to

1 section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of
2 renewable energy, energy-efficient technology, and non-renewable
3 resources in order to reduce environmental degradation and
4 encourage long-term cost reduction.

5 (cf: P.L.2011, c.89, s.2)

6
7 11. Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to
8 read as follows:

9 2. As used in this act:

10 "Affiliate" means an entity that directly or indirectly controls, is
11 under common control with, or is controlled by the business.
12 Control exists in all cases in which the entity is a member of a
13 controlled group of corporations as defined pursuant to section 1563
14 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the
15 entity is an organization in a group of organizations under common
16 control as defined pursuant to subsection (b) or (c) of section 414 of
17 the Internal Revenue Code of 1986 (26 U.S.C. s.414). An entity
18 may establish by clear and convincing evidence, as determined by
19 the Director of the Division of Taxation in the Department of the
20 Treasury, that control exists in situations involving lesser
21 percentages of ownership than required by those statutes;

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

24 "Business retention or relocation grant of tax credits" or "grant of
25 tax credits" means a grant which consists of the value of
26 corporation business tax credits against the liability imposed
27 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or credits
28 against the taxes imposed on insurers pursuant to P.L.1945, c.132
29 (C.54:18A-1 et al.), section 1 of P.L.1950, c.231 (C.17:32-15), and
30 N.J.S.17B:23-5, provided to fund a portion of retention and
31 relocation costs pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.);

32 "Business" means an employer located in this State that has
33 operated continuously in the State, in whole or in part, in its current
34 form or as a predecessor entity for at least 10 years prior to filing an
35 application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and
36 which is subject to the provisions of R.S.43:21-1 et seq. and may
37 include a sole proprietorship, a partnership, or a corporation that
38 has made an election under Subchapter S of Chapter One of Subtitle
39 A of the Internal Revenue Code of 1986, or any other business
40 entity through which income flows as a distributive share to its
41 owners, limited liability company, nonprofit corporation, or any
42 other form of business organization located either within or outside
43 the State. A business shall include an affiliate of the business if that
44 business applies for a credit based upon any capital investment
45 made by an affiliate or based upon retained full-time jobs of an
46 affiliate;

47 "Capital investment" means expenses that the business incurs
48 following its submission of an application to the authority pursuant

1 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the
2 Capital Investment Completion Date, as shall be defined in the
3 project agreement, for: (1) the site preparation and construction,
4 renovation, improvement, equipping of, or obtaining and installing
5 fixtures and machinery, apparatus or equipment in, a newly
6 constructed, renovated or improved building, structure, facility, or
7 improvement to real property in this State; and (2) obtaining and
8 installing fixtures and machinery, apparatus or equipment in a
9 building, structure, or facility in this State. Provided however, that
10 "capital investment" shall not include soft costs such as financing
11 and design, furniture or decorative items such as artwork or plants,
12 or office equipment if the office equipment is property with a
13 recovery period of less than five years. The recovery period of any
14 property, for purposes of this section, shall be determined as of the
15 date such property is first placed in service or use in this State by
16 the business, determined in accordance with section 168 of the
17 federal Internal Revenue Code of 1986 (26 U.S.C. s.168. A
18 business that acquires or leases a qualified business facility shall
19 also be deemed to have acquired the capital investment made or
20 acquired by the seller or landlord, as the case may be;

21 "Certificate of compliance" means a certificate issued by the
22 authority pursuant to section 9 of P.L.1996, c.25 (C.34:1B-120);

23 "Chief executive officer" means the chief executive officer of the
24 New Jersey Economic Development Authority;

25 "Commitment duration" means the tax credit term and five years
26 from the end of the tax credit term specified in the project
27 agreement entered into pursuant to section 5 of P.L.1996, c.25
28 (C.34:1B-116);

29 "Designated industry" means an industry identified by the
30 authority as desirable for the State to maintain, which may be
31 designated and amended via the promulgation of rules by the
32 authority to reflect changing market conditions;

33 "Designated urban center" means an urban center designated in
34 the State Development and Redevelopment Plan adopted by the
35 State Planning Commission;

36 "Eligible position" means a full-time position retained by a
37 business in this State for which a business provides employee health
38 benefits under a group health plan as defined under section 14 of
39 P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined
40 under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or
41 contract of health insurance covering more than one person issued
42 pursuant to Article 2 of Chapter 27 of Title 17B of the New Jersey
43 Statutes;

44 "Full-time employee" means a person employed by the business
45 for consideration for at least 35 hours a week, or who renders any
46 other standard of service generally accepted by custom or practice,
47 as determined by the authority, as full-time employment, or a
48 person who is employed by a professional employer organization

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

20 "New business location" means the premises to which a business
21 will relocate that the business has either purchased or built or for
22 which the business has entered into a purchase agreement or a
23 written lease for a period of no less than the commitment duration
24 or eight years, whichever is greater, from the date of relocation. A
25 "new business location" also means the business's current location
26 or locations if the business makes a capital investment equal to the
27 total value of the business retention or relocation grant of tax credits
28 to the business at that location or locations;

29 "Program" means the Business Retention and Relocation
30 Assistance Grant Program created pursuant to P.L.1996, c.25
31 (C.34:1B-112 et seq.);

32 "Project agreement" means an agreement between a business and
33 the authority that sets the forecasted schedule for completion and
34 occupancy of the project, the date the commitment duration shall
35 commence, the amount and tax credit term of the applicable grant of
36 tax credits, and other such provisions which further the purposes of
37 P.L.1996, c.25 (C.34:1B-112 et seq.);

38 "Retained full-time job" means an eligible position that currently
39 exists in New Jersey and is filled by a full-time employee but
40 which, because of a potential relocation by the business, is at risk of
41 being lost to another state or country. For the purposes of
42 determining a number of retained full-time jobs, the eligible
43 positions of an affiliate shall be considered the eligible positions of
44 the business;

45 "Tax credit term" means the period of time commencing with the
46 first issuance of tax credits and continuing during the period in
47 which the recipient of a grant of tax credits is eligible to apply the

1 tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3);
2 and

3 "Yearly tax credit amount" means \$1,500 times the number of
4 retained full-time jobs. "Yearly tax credit amount" does not include
5 the amount of any bonus award authorized pursuant to section 5 of
6 P.L.2004, c.65 (C.34:1B-115.1).
7 (cf: P.L.2010, c.123, s.1)

8
9 12. Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is amended to
10 read as follows:

11 7. a. The total value of the grants of tax credits, approved by
12 the authority pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that
13 may be applied against tax liability **[in a fiscal year]** for any tax
14 period shall not exceed an aggregate annual limit of \$20,000,000.
15 The total value of the grants of tax credits, issued pursuant to
16 P.L.1996, c.25 (C.34:1B-112 et seq.), that a single business may
17 apply against its tax liability shall not exceed an aggregate annual
18 limit of \$10,000,000 in a fiscal year. A tax credit issued pursuant to
19 P.L.1996, c.25 may be applied against liability in the single tax
20 period in which the tax credit or portion of the tax credit may be
21 applied as prescribed by the project agreement and as set forth in
22 subsection b. of this section and shall expire thereafter.

23 b. Subject to the limitation set forth in subsection a. of this
24 section, grants of tax credits shall be approved for qualifying
25 businesses according to the following schedule, and shall be issued
26 upon the execution and satisfaction of the requirements of the
27 project agreement between the authority and the business with an
28 approved project:

29 (1) for a project that covers a business relocating or retaining 50
30 to 250 full-time employees, a grant of tax credits shall be for the
31 yearly tax credit amount plus any applicable bonus award
32 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1),
33 and may be applied against liability in the tax period in which the
34 tax credit is issued;

35 (2) for a project that covers a business relocating or retaining
36 251 to 400 full-time employees, a grant of tax credits shall be for
37 two times the yearly tax credit amount plus any applicable bonus
38 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
39 115.1), and may be applied against liability in the tax period in
40 which the tax credit is issued and the following tax period, for one-
41 half of the total grant award per tax period, provided that the use of
42 the credit must be accompanied by a certificate of compliance;

43 (3) for a project that covers a business relocating or retaining
44 401 to 600 full-time employees, a grant of tax credits shall be for
45 three times the yearly tax credit amount plus any applicable bonus
46 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
47 115.1) and may be applied against liability in the tax period in
48 which the tax credit is issued and the following two tax periods, for

1 one-third of the total grant award per tax period, provided that the
2 use of the credit must be accompanied by a certificate of
3 compliance;

4 (4) for a project that covers a business relocating or retaining
5 601 to 800 full-time employees, a grant of tax credits shall be for
6 four times the yearly tax credit amount plus any applicable bonus
7 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
8 115.1) and may be applied against liability in the tax period in
9 which the tax credit is issued and the following three tax periods,
10 for one-fourth of the total grant award per tax period, provided that
11 the use of the credit must be accompanied by a certificate of
12 compliance;

13 (5) for a project that covers a business relocating or retaining
14 801 to 1,000 full-time employees, a grant of tax credits shall be for
15 five times the yearly tax credit amount plus any applicable bonus
16 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
17 115.1) and may be applied against liability in the tax period in
18 which the tax credit is issued and the following four tax periods for
19 one-fifth of the total grant award per tax period, provided that the
20 use of the credit must be accompanied by a certificate of
21 compliance; and

22 (6) for a project that covers a business relocating or retaining
23 1,001 or more full-time employees, a grant of tax credits shall be
24 for six times the yearly tax credit amount plus any applicable bonus
25 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
26 115.1) and may be applied against liability in the tax period in
27 which the tax credit is issued and the following five tax periods, for
28 one-sixth of the total grant award per tax period, provided that the
29 use of the credit must be accompanied by a certificate of
30 compliance.

31 c. If the approval of a grant of tax credits pursuant to this
32 section would exceed the \$20,000,000 aggregate annual limit, the
33 authority may award a smaller grant of tax credits or no grants of
34 tax credits, as necessary to comply with the aggregate annual limit.
35 (cf: P.L.2010, c.123, s.6)

36

37 13. Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is amended to
38 read as follows:

39 17. a. The authority shall establish a corporation business tax
40 credit and insurance premiums tax credit certificate transfer
41 program to allow businesses in this State with unused amounts of
42 tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and
43 otherwise allowable, that cannot be applied by the business to
44 which originally issued before the expiration of the credit, to
45 surrender those tax credits for use by other corporation business and
46 insurance premiums taxpayers in this State. The tax credits may be
47 used on the corporation business tax and insurance premiums tax
48 returns to be filed by those taxpayers in exchange for private

1 financial assistance to be provided by the corporation business
2 taxpayer or insurance premiums taxpayer that is the recipient of the
3 corporation business tax credit certificate or insurance premiums
4 tax credit certificate to assist in the funding of costs incurred by the
5 relocating business.

6 b. Businesses may apply to the executive director of the
7 authority and the Director of the Division of Taxation for a tax
8 credit transfer certificate, covering one or more years. Upon receipt
9 thereof, the business may sell or assign the tax credit certificate in
10 exchange for private financial assistance to be made by the
11 purchaser in an amount equal to at least 75% of the amount of the
12 surrendered tax credit of a business relocating in the State. The
13 private financial assistance shall assist in funding expenses incurred
14 in connection with the operation of the business in the State,
15 including but not limited to the expenses of fixed assets, such as the
16 construction and acquisition and development of real estate,
17 materials, start-up, tenant fit-out, working capital, salaries, research
18 and development expenditures and any other expenses determined
19 by the authority to be necessary to carry out the purposes of
20 P.L.1996, c.25 (C.34:1B-112 et seq.).

21 c. The authority shall establish procedures to facilitate such
22 transfers and encourage liquidity and simplicity in the market for
23 the purchase and sale of such certificates, including, in the
24 authority's discretion, coordinating the applications for surrender
25 and acquisition of unused but otherwise allowable tax credits
26 pursuant to this section in a manner that can best stimulate and
27 encourage the extension of private financial assistance to businesses
28 in this State.

29 d. The authority shall, in consultation with the Director of the
30 Division of Taxation, develop criteria for the approval or
31 disapproval of applications.

32 (cf: P.L.2010, c.123, s.14)

33

34 14. (New section) Section 6 of P.L.1996, c.25 (34:1B-117) is
35 repealed.

36

37 15. This act shall take effect immediately.

38

39

40

STATEMENT

41

42 This bill establishes the Grow New Jersey Assistance Program
43 ("program") to provide certain eligible businesses with tax credits
44 for making capital investments of at least \$20 million at a qualified
45 business facility in certain qualified incentive areas, as designated
46 in the bill, at which the business shall: 1) maintain a at least 100
47 retained full-time jobs; or 2) create at least 100 new full-time jobs if
48 it is an industry identified by the New Jersey Economic

1 Development Authority (“EDA”) as desirable for the State to
2 maintain or attract.

3 Specifically, the bill establishes a \$200 million tax credit
4 incentive program that emphasizes growth of New Jersey-based
5 companies through capital investment and job subsidies that
6 incentivize both retained and new jobs. The program’s cost would
7 fall under the \$1.5 billion cap established under the “Urban Transit
8 Hub Tax Credit” (“UTHTC”) program. The initial \$200 million
9 program allocation could be increased at discretion of board of the
10 EDA if the board determines the credits to be reasonable,
11 justifiable, and appropriate. All applications for eligibility under
12 the program shall be made to the EDA by July 1, 2014.

13 Under the program, a minimum of \$20 million in capital
14 investment would be required to be spent at the project site, with
15 owners, tenants, and affiliates allowed to participate in cost sharing
16 to meet this eligibility requirement. “Green” building standards
17 would need to be used in the design and construction of any eligible
18 project that are based on the green building manual prepared by the
19 Commissioner of Community Affairs pursuant to section 1 of
20 P.L.2007, c.132 (C.52:27D-130.6). Areas of the State where
21 program assistance would be available include: 1) Planning Area 1
22 (Metropolitan), Planning Area 2 (Suburban), and any urban,
23 regional, or town designated center locations under the State
24 Development and Redevelopment Plan; 2) former military bases
25 closed under the federal Base Closure and Realignment law; 3)
26 vacant commercial office, laboratory, or industrial properties
27 having over 400,000 square feet for at least one year or impacted by
28 UTHTC program approval; and 4) areas “targeted for development”
29 in the New Jersey Meadowlands, Highlands, and Pinelands, as
30 specified in the acts establishing these areas.

31 Under the program, an eligible business would receive a base tax
32 credit of \$5,000 per job, per year, for 10 years with no distinction
33 between retained or new jobs. The tax credit term of 10 years
34 includes an annual compliance review for credit issuance. The base
35 tax credit may be increased by a bonus award amount of up to
36 \$3,000 per job by an eligible business that, as determined by the
37 authority, meets the following factors: 1) is an industry identified
38 by the authority as desirable for the State to maintain or attract; 2)
39 locates or relocates to a location adjacent to, or within walking
40 distance or short-distance-shuttle service of, a public transit facility,
41 as determined by the EDA, by regulation; 3) creates jobs using full-
42 time employees whose annual salaries, according to the Department
43 of Labor and Workforce Development, are greater than the salary of
44 the average worker employed in this State; or 4) is negatively
45 impacted by the approval of a “qualified business facility,” under
46 the UTHTC program. The per project benefit shall not exceed the
47 capital investment at the project site. Tax credits issued to an

1 eligible business are transferable through elective tax credit transfer
2 certificates.

3 To be eligible for any tax credits under the program, a business's
4 chief executive officer ("CEO") or equivalent officer shall
5 demonstrate to the EDA, at the time of application, that: 1) the
6 business will make, acquire, or lease a capital investment of at least
7 \$20 million at a qualified business facility at which it will (a)
8 employ at least 100 full-time employees in retained full-time jobs,
9 or (b) create at least 100 new full-time jobs in an industry identified
10 by the EDA as desirable for the State to maintain or attract; 2) the
11 capital investment resultant from the award of tax credits and the
12 resultant retention and creation of eligible positions will yield a "net
13 positive benefit" to the State as that term is described in the bill;
14 and 3) the award of tax credits will be a material factor in the
15 business's decision to create or retain the minimum number of full-
16 time jobs for eligibility under the program. To assist the EDA in
17 determining whether a proposed capital investment will yield a net
18 positive benefit, the business's CEO, or equivalent officer, shall
19 submit a certification to the EDA indicating that any existing jobs
20 are at risk of leaving the State and that any projected creation of
21 new full-time jobs would not occur but for the provision of tax
22 credits under the program.

23 Further, the program provides for performance requirement
24 "claw backs" (i.e., forfeiting the amount of assistance received in
25 any year) if a business receiving assistance under the program does
26 not meet an 80 percent Statewide job maintenance and 15-year job
27 maintenance requirements.

28 In addition, the bill: 1) amends the definition of "urban transit
29 hub" under the UTHTC law to include eligibility for that tax credit
30 assistance program any project commencing construction after the
31 effective date of the bill that is located within a half mile radius of a
32 New Jersey Transit Corporation rail station located at an
33 international airport, except for any property owned or controlled
34 by the Port Authority of New York and New Jersey, 2) clarify that
35 an eligible business claiming a tax credit under the UTHTC
36 program must first receive EDA certification, rather than approval,
37 that the business met the capital investments and employment
38 requirements prior to claiming the tax credits.

39 Also, the bill makes clarifying changes to the "Business
40 Retention and Relocation Assistance Grant" ("BRRAG") program
41 to: 1) change the definition of "capital investment" to include under
42 that definition that a business acquiring or leasing a qualified
43 business facility as deemed to have acquired the capital investment
44 made or acquired by the seller or landlord, as the case may be; and
45 2) repeals the requirement that tax credits issued under the BRRAG
46 program may not be applied by the business against liability until
47 the State Treasurer has certified that the amount of retained State
48 tax revenue from the business for the tax period prior to the period

A4306 COUTINHO, CONAWAY

27

- 1 in which the credits will be applied, equals or exceeds the amount
- 2 of the tax credits.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4306

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 21, 2011

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly Bill No. 4306.

This bill, as amended by the committee, establishes the Grow New Jersey Assistance Program (“program”) to encourage businesses to engage in economic development, job creation and the preservation of existing jobs within New Jersey. The bill establishes a \$200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment, creation of new jobs and retention of existing jobs.

To be eligible for program tax credits, a business would have to make capital investments of at least \$20,000,000 at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs, or create at least 100 new full-time jobs in an industry deemed desirable by the New Jersey Economic Development Authority (EDA). Eligibility for program tax credits will also be based upon a determination by the EDA that the capital investment will yield a net positive benefit to the State and that the award of tax credits is a material factor in the business decision to create or retain the minimum number of full-time jobs.

The program’s cost would fall under the \$1.5 billion cap established under the “Urban Transit Hub Tax Credit” (“UTHTC”) program. The initial \$200 million program allocation could be increased by the board of the EDA if the board determines the credits to be reasonable, justifiable, and appropriate. All applications for eligibility under the program shall be made to the EDA by July 1, 2014.

Under the program, a minimum of \$20 million in capital investment would be required to be spent at the project site. Owners, tenants, and affiliates would be allowed to participate in cost sharing to meet this eligibility requirement. The bill, as amended, provides that the amount of tax credits that can be applied by a business annually

under the program cannot exceed the lesser of one-tenth of the capital investment or \$4,000,000.

The bill requires the EDA to establish standards for the construction and renovation of business facilities based on the green building manual prepared by the Commissioner of Community Affairs. Areas of the State where program assistance would be available include: 1) Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), and any urban, regional, or town designated center locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment Act; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the program, an eligible business would receive a base tax credit of \$5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to \$3,000 per job by an eligible business that, as determined by the authority, meets the following factors: 1) is an industry identified by the authority as desirable for the State to maintain or attract; 2) locates or relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a "qualified business facility," under the UTHTC program. The per project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

The program provides for performance requirement "claw backs" (i.e., forfeiting the amount of assistance received in any year) if a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

The bill, as amended by the committee, amends the definition of "urban transit hub" under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey. The bill, as amended by the committee, also amends the definition of "urban transit hub" under the UTHTC law to expand the radius, from one-half to one mile

the area, which surrounds the mid point of other New Jersey Transit Corporation rail stations and Port Authority Transit Corporation and Port Authority Trans-Hudson Corporation rail station platform areas.

The bill, as amended, also clarifies that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, and that the business met the capital investments and employment requirements prior to claiming the tax credits.

The bill, as amended, also makes clarifying changes to the "Business Retention and Relocation Assistance Grant" ("BRRAG") program to: 1) change the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility as deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeal the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

The bill, as amended, authorizes the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey's right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease.

This bill is identical to Senate Bill No. 3033 (3R) ACA (Lesniak/Kyrillos) which the committee also reported on this date.

COMMITTEE AMENDMENTS

Committee amendments to the bill:

- clarify that the amount of tax credits available to be applied by the business annually under the program shall not exceed the lesser of one tenth of the capital investment or \$4,000,000;
- authorize the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey's right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease; and
- modify the boundaries of an "urban transit hub" UTHTCA by expanding the radius, from one-half to one mile the area, which surrounds the mid point of a New Jersey Transit Corporation, Port

Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4306

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 1, 2011

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4306 (1R), with committee amendments.

As amended, this bill establishes the Grow New Jersey Assistance Program (“program”) to encourage businesses to engage in economic development, job creation and the preservation of existing jobs within New Jersey. The bill establishes a \$200 million tax credit incentive program that emphasizes growth of New Jersey-based companies through capital investment, creation of new jobs and retention of existing jobs.

To be eligible for program tax credits, the bill requires a business to make capital investments of at least \$20,000,000 at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs, or create at least 100 new full-time jobs in an industry deemed desirable by the New Jersey Economic Development Authority (EDA). Eligibility for program tax credits will also be based upon a determination by the EDA that the capital investment will yield a net positive benefit to the State and that the award of tax credits is a material factor in the business decision to create or retain the minimum number of full-time jobs.

The program’s cost falls under the \$1.5 billion cap established under the “Urban Transit Hub Tax Credit” (“UTHTC”) program. The bill allows the initial \$200 million program allocation to be increased by the board of the EDA if the board determines the credits to be reasonable, justifiable, and appropriate. The bill requires that all applications for eligibility under the program shall be made to the EDA by July 1, 2014.

The bill requires that a minimum of \$20 million in capital investment be spent at the project site. Owners, tenants, and affiliates will be allowed to participate in cost sharing to meet this eligibility requirement. The bill provides that the amount of tax credits that can be applied by a business annually under the program cannot exceed the lesser of one-tenth of the capital investment, or \$4,000,000.

The bill requires the EDA to establish standards for the construction and renovation of business facilities based on the green

building manual prepared by the Commissioner of Community Affairs. Areas of the State where program assistance will be available include: 1) Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), and any urban, regional, or town designated center locations under the State Development and Redevelopment Plan; 2) former military bases closed under the federal Base Closure and Realignment Act; 3) vacant commercial office, laboratory, or industrial properties having over 400,000 square feet for at least one year or impacted by UTHTC program approval; and 4) areas "targeted for development" in the New Jersey Meadowlands, Highlands, and Pinelands, as specified in the acts establishing these areas.

Under the bill's program, an eligible business will receive a base tax credit of \$5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. The base tax credit may be increased by a bonus award amount of up to \$3,000 per job by an eligible business that, as determined by the authority, meets the following factors: 1) is an industry identified by the authority as desirable for the State to maintain or attract; 2) locates or relocates to a location adjacent to, or within walking distance or short-distance-shuttle service of, a public transit facility, as determined by the EDA, by regulation; 3) creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or 4) is negatively impacted by the approval of a "qualified business facility," under the UTHTC program. The per-project benefit shall not exceed the capital investment at the project site. Tax credits issued to an eligible business are transferable through elective tax credit transfer certificates.

The bill's program provides for forfeiting the amount of assistance received in the current year and any future year in which a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance requirements.

The bill expands the definition of "urban transit hub" under the UTHTC law to include eligibility for that tax credit assistance program any project commencing construction after the effective date of the bill that is located within a half mile radius of a New Jersey Transit Corporation rail station located at an international airport, except for any property owned or controlled by the Port Authority of New York and New Jersey.

The bill clarifies that an eligible business claiming a tax credit under the UTHTC program must first receive EDA certification, rather than approval, and that the business met the capital investments and employment requirements prior to claiming the tax credits.

The bill makes clarifying changes to the "Business Retention and Relocation Assistance Grant" ("BRRAG") program to: 1) change the definition of "capital investment" to include under that definition that a business acquiring or leasing a qualified business facility as deemed to

have acquired the capital investment made or acquired by the seller or landlord, as the case may be; and 2) repeal the requirement that tax credits issued under the BRRAG program may not be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied, equals or exceeds the amount of the tax credits.

The bill authorizes the State Treasurer to sell and convey, to the New Jersey Performing Arts Center, in one or more series of transactions, all or any portion of the State of New Jersey's right, title and interest in the land and improvements located in the City of Newark, now subject to the sublease between the State Treasurer and the New Jersey Performing Arts Center which appear on the tax map of the City of Newark which was designated for commercial development pursuant to the sublease.

As amended and reported by the committee, this bill is identical to Senate Bill No. 3033 (4R), as also amended and reported by the committee.

FISCAL IMPACT:

In establishing the Grow New Jersey Assistance Program and in amending the Urban Transit Hub Tax Credit Act, the bill's direct revenue loss to the State General Fund and Property Tax Relief Fund could be no higher than \$1.11 billion -- the difference between the urban transit hub tax credit program's \$1.5 billion cap and the \$394 million in tax credits the EDA has awarded to ten projects through April 18, 2011 -- accumulated over several years.

In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the State General Fund could be no higher than \$17.3 million annually -- the difference between the program's \$20 million annual cap and the estimated \$2.7 million in such credits currently claimed under the program.

Whether the bill's impact will actually approach those respective cost ceilings will largely depend on the extent to which the program's caps would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the programs would reach their caps, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.

To the extent that additional tax credits awarded pursuant to this bill are essential to the realization of capital projects, such projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety, the revenue loss and opportunity cost of providing the financial assistance authorized by the bill. The Office of Legislative Services, however, cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State

and local government tax receipts, and therefore cannot posit an annual net fiscal impact estimate.

COMMITTEE AMENDMENTS:

The amendments allow the EDA to award GROW-NJ tax credits to a business that must submit a proposal and fulfill a contract with the federal government although the award of tax credits is not a *material factor* in the business's decision to retain at least 100 full-time jobs, as is otherwise required of businesses under the bill.

The amendments modify the definition of "Urban Transit Hub" under current law to include:

- 1 - property located within a one mile radius of a rail station if the property is in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the federal Department of Housing and Urban Development,
- 2 - the site of the campus of an acute care medical facility located within a one mile radius of a rail station, and
- 3 - the site of a closed hospital located within a one mile radius of a rail station.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4306

STATE OF NEW JERSEY 214th LEGISLATURE

DATED: DECEMBER 13, 2011

SUMMARY

- Synopsis:** Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs; authorizes transfer of certain real property.
- Type of Impact:** Unknown net effect of four countervailing impacts: 1) a multi-year revenue loss to the State General Fund and the Property Tax Relief Fund from awarding tax credits; 2) an annual revenue increase to the State General Fund, Property Tax Relief Fund, and local governments from fiscal activity catalyzed by tax credit-induced economic activity; 3) a revenue increase to the State General Fund from selling State-owned properties; 4) a potential revenue loss from cessation of rental income from these properties.
- Agencies Affected:** Department of the Treasury.
New Jersey Economic Development Authority.
Local Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Cumulative Multi-Year Impact</u>
Direct State Revenue Loss (from Awarding of Additional Tax Credits)	Indeterminate — Potentially up to \$1.1 billion
Indirect State Revenue Gain (from Awarding of Additional Tax Credits)	Indeterminate — See comments below
State Opportunity Cost (of Awarding of Additional Tax Credits)	Indeterminate — See comments below
Indirect Local Revenue Gain (from Awarding of Additional Tax Credits)	Indeterminate — See comments below
State Revenue Gain (from Sale of State-Owned Properties)	Indeterminate — See comments below
State Revenue Loss (from Loss of Rental Income from State-Owned Properties)	Indeterminate — See comments below

- The Office of Legislative Services (OLS) can determine neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of the bill's provisions relating to tax credits under the Grow New Jersey Assistance Program, the Urban Transit Hub Tax Credit Program, and the Business Retention and Relocation Assistance Grant Program. On the one side of the ledger, the bill could produce a State revenue loss of up to \$1.1 billion from awarding additional tax credits in addition to the indeterminate opportunity cost of the tax expenditure—opportunity costs capture the fiscal benefits the State forgoes as spending is redirected from one economic activity to another. On the other side of the ledger, additional tax credits that are essential to the realization of capital projects will also generate indeterminate indirect fiscal benefits to the State and affected local governments that may offset, in part or in their entirety, the revenue loss and opportunity cost of providing the financial assistance.
- In creating the Grow New Jersey Assistance Program and expanding the Urban Transit Hub Tax Credit program, the bill could result in a \$1.11 billion maximum direct State revenue loss, reflecting the difference between the \$1.5 billion cap applicable to the two programs combined and the \$394 million in urban transit hub tax credits the New Jersey Economic Development Authority (EDA) has awarded through April 18, 2011. Given the wide range of locales in which creditable projects may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap.
- Whether that revenue loss will total \$1.1 billion will largely depend on the extent to which the program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce a \$1.1 billion State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.
- In amending provisions of law concerning the Business Retention and Relocation Assistance Grant Program, the bill's direct revenue loss to the General Fund could be up to \$17.3 million annually, reflecting the difference between the \$20 million annual cap on that program's tax credits and the estimated \$2.7 million in such credits currently claimed. If this bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits.
- Capital investments for which tax credits will serve as the impetus will also generate indirect fiscal benefits to the State and local governments. In the converse, extending tax credits to capital projects that taxpayers would also undertake absent the incentive will produce sunk costs to the State, or an expense without a benefit, as the tax credit will have no bearing on the decision to execute the projects. Consequently, the indirect fiscal effects from projects that would be undertaken anyway have to be excluded from the analysis. Applying the general principle to this bill, it is reasonable to expect that almost all the tax credits' indirect effects will count as a benefit. This is so because the bill requires that credits be instrumental to the execution of a credit-receiving capital project and that the project yield incremental receipts to the State that exceed the credit amount. But it is possible that in spite of its due diligence the EDA will be misled about an applicant's true intentions in this regard. In

addition, the bill waives the requirement that a Grow New Jersey Assistance Program tax credit be a decisive factor in the pursuit of a credit-receiving project for a subset of projects so that the indirect fiscal benefits of those projects cannot be attributed to the bill. In all, however, the OLS cannot gauge the volume and characteristics of credit-induced investments and their ensuing trickle-down effects on State and local government tax receipts.

- Without knowledge of the final sales arrangement, the OLS can gauge neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

BILL DESCRIPTION

Assembly Bill No. 4306 (2R) of 2011 creates a new tax credit for businesses under the Grow New Jersey Assistance Program, expands the existing Urban Transit Hub Tax Credit program, makes revisions to the Business Retention and Relocation Assistance Grant Program, and authorizes the sale of certain State-owned properties in the City of Newark to the New Jersey Performing Arts Center.

A) Grow New Jersey Assistance Program: The bill creates a new tax credit program under which a business will receive a tax credit for a) making a minimum \$20 million capital investment in a business facility in a qualified area and b) at that business facility either retaining at least 100 full-time positions with health benefits in New Jersey or creating at least 100 new full-time positions with health benefits in an industry the EDA identifies as desirable to maintain or attract. Tax credits will be awarded only if a) the project yields a positive fiscal net benefit to the State, b) the award of the tax credit is a material factor in the business decision to create or retain eligible full-time positions, c) the project does not involve a point-of-final-purchase retail facility, and d) the business applies for the credit before July 1, 2014. Notwithstanding these general restrictions, the bill authorizes the EDA to exempt at its discretion from the material factor requirement businesses meeting all other eligibility criteria if the business is required to respond to requests for proposal and to fulfill a contract with the federal government and if the application for a tax credit will have been submitted by March 31, 2012.

The credit equals ten annual installments of \$5,000 each per full-time position created or retained as long as the number of new full-time jobs for which a business receives a tax credit does not exceed the number of retained full-time jobs for which a business receives a credit, unless the business qualifies by creating at least 100 new full-time positions in an industry identified by the EDA as desirable for the State to attract or maintain.

The annual credit amount increases to \$8,000 if a) the business operates in an industry the EDA identifies as desirable to maintain or attract, b) the business is in proximity to a qualified area adjacent to or within walking distance or short-distance-shuttle service of a public transit facility, c) the full-time jobs created carry salaries in excess of New Jersey's average full-time salary, or d) the qualified area is negatively affected by the approval of a "qualified business facility" under the Urban Transit Hub Tax Credit Act.

But a total tax credit award cannot exceed the value of a project's certified capital investment and must be taken in ten annual installments with each installment equal to the lesser of one-tenth of the certified capital investment or \$4 million. If the business does not have a sufficient tax liability against which to offset the tax credit, the business may carry any unused balance forward for 20 years or sell it to another taxpayer. Tax credit amounts may be reduced or revoked if the business fails to meet its New Jersey full-time employment target as specified in the tax credit agreement. The tax credits are subject to the existing \$1.5 billion cap for all credits under the Urban Transit Hub Tax Credit program and an annual \$150 million cap imposed on the new tax credits by the bill.

A qualified area is a) a vacant commercial building having over 400,000 square feet of office, laboratory or industrial space available; b) an area designated for development within the Highlands, Meadowlands, and Pinelands; c) Fort Monmouth; and d) areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or as an urban, regional or town designated center under the State Development and Redevelopment Plan.

B) Urban Transit Hub Tax Credit Program: The bill expands the areas of the State that are designated as urban transit hubs under the Urban Transit Hub Tax Credit program. Under the program, the State awards up to \$1.5 billion in tax credits to taxpayers who make certain capital investments in real property in urban transit hubs.

The bill newly includes among urban transit hubs the area within a half-mile radius of the rail or light rail station at Newark Liberty International Airport (but not to property within that area owned or controlled by the Port Authority of New York and New Jersey) and the area within a one-mile radius of a rail or light rail station that is subject to a Choice Neighborhoods Transformation Plan. (The only New Jersey Choice Neighborhood is currently in Jersey City at the McGinley Square – Montgomery Corridor.) In addition, the bill makes urban transit hub tax credits available to acute care medical facilities and closed hospitals located within a one-mile radius of a rail or light rail station.

To qualify for a business facility tax credit of up to 100 percent of the investment under the Urban Transit Hub Tax Credit program, a capital investment in real property must a) equal at least \$50 million; b) pave the way for at least 250 full-time employees working in the business facility; c) be made within eight years from January 13, 2008, the effective date of P.L.2007, c.346; and d) yield a net positive benefit to the State and the municipality hosting the transit hub.

Tenants in qualified business facilities may also receive a credit if they occupy space in the facility that represents at least \$17.5 million of the capital investment and employ at least 250 persons in the facility. If fewer than 200 of the 250 full-time positions in a business facility represent a net gain to New Jersey, then the tax credit maxes out at 80 percent of the qualified capital investment.

To qualify for a residential tax credit of up to 35 percent of the investment, an investment in a residential project must a) equal at least \$50 million; b) be made within eight years from July 28, 2009, the effective date of P.L.2009, c.90; and c) not occur absent the receipt of a tax credit.

Two mutually exclusive tax credit options exist for developers of mixed use projects representing a capital investment of at least \$50 million. They may either receive a residential tax credit for the entire investment subject to the conditions of that tax credit or they may receive a residential tax credit for the project's residential component if it represents at least a \$17.5 million capital investment and otherwise meets the conditions of that tax credit and a business facility tax credit for the project's business facility component if it represents at least a \$17.5 million capital investment and otherwise meets the conditions of that tax credit.

C) Business Retention and Relocation Assistance Grant Program: The bill clarifies that the annual aggregate limit on tax credits under the program is calculated by tax period rather than fiscal year, and changes the definition of "capital investment" to include under that definition

that a business acquiring or leasing a qualified business facility is deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be. The bill also deletes the prohibition on use of program tax credits by a business unless the retained State tax revenue from the business, in the tax period prior to the use of tax credits, equals or exceeds the amount of tax credits.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS can determine neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of the bill's provisions relating to tax credits under the Grow New Jersey Assistance Program, the Urban Transit Hub Tax Credit Program, and the Business Retention and Relocation Assistance Grant Program. Their State fiscal net impact would be calculated by adding the direct revenue loss from granting the 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 from granting the tax credits. In addition, the bill is also likely to accrue an indirect revenue gain to local governments. Although the OLS is able to pinpoint the bill's maximum direct revenue loss, it cannot calculate its opportunity cost or its offsetting indirect revenue gain. This inability is rooted in the dearth of reliable information on the characteristics of capital investments that will earn tax credits.

Without knowledge of the final sales arrangement, the OLS also can gauge neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

Direct State Revenue Loss: The bill's direct revenue loss to the State General Fund and Property Tax Relief Fund from the establishment of the Grow New Jersey Assistance Program and the expansion of the existing Urban Transit Hub Tax Credit program could be as high as \$1.11 billion accumulated over several years, or the difference between the urban transit hub tax credit program's \$1.5 billion cap and the \$394 million in tax credits the EDA has awarded to ten projects through April 18, 2011.

Given the wide range of locales in which a creditable project may occur, the OLS deems it plausible that the bill might propel the urban transit hub tax credit program to its cap. In any event, whether the bill's provisions governing the Grow New Jersey Assistance Program and the Urban Transit Hub Tax Credit program will actually cost \$1.11 billion will largely depend on the extent to which the \$1.5 billion program cap would be reached absent this bill. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely

reallocate tax credits. The bill will produce a \$1.11 billion State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more urban transit hub tax credits would be awarded.

The bill's direct revenue loss to the State General Fund from the revisions to the Business Retention and Relocation Assistance Grant Program could be no higher than \$17.3 million annually, the difference between the program's \$20 million annual cap and the estimated \$2.7 million in tax credits currently claimed under the program. If the bill leads to the granting of tax credits to additional capital projects and if absent this bill the program already reaches the cap, then the bill will not spur an additional State revenue loss, but will merely reallocate tax credits. The bill will produce an annual \$17.3 million State revenue loss, however, if the bill results in the granting of tax credits to additional capital projects and if absent this bill no more tax credits would be awarded under the program.

Irrespective of the State fiscal effects of the bill's provisions relating to the three tax credit programs, taxpayers earning credits will share their benefit with the federal government. This will be so because taxpayers can deduct their State and local income tax payments on their federal income tax returns. Consequently, a lower New Jersey corporation business tax liability translates into a lower federal deduction, and thus a higher federal income tax liability. At the federal corporation income tax rate of 35 percent, taxpayers receiving a State tax credit will therefore only hold on to 65 percent of the tax credit amount, while the remaining 35 percent of the benefit will accrue to the United States government.

Indirect State and Local Revenue Gain: The bill may generate an indeterminate indirect revenue gain to the State and local governments that may partially offset the direct State revenue loss from and State opportunity cost of providing tax credits in accordance with the bill. The OLS, however, does not have the capacity to quantify the bill's secondary effects, since it cannot estimate the volume and types of capital investments that the tax credit will directly spur and their ensuing indirect effect on State and local government tax receipts.

In general, any indirect revenue gain will result from the economic ramifications of tax credit-induced behavior changes. Once New Jerseyans will receive payments they would not have received absent the incentive, at least a portion of these payments will newly circulate in New Jersey's economy. As these ramifications will flow through the economy, they will affect State and local revenue collections. Indirect fiscal effects encompass secondary tax collections from credit-induced capital investments (such as enhanced gross income tax collections from employees whose positions are retained in New Jersey because of the tax credit and increased property tax collections if the investment appreciates the value of a property) and credit-induced spending by all impacted firms and their employees (such as employees whose positions are retained in New Jersey because of the tax credit spending their income on taxable goods and services).

Nonetheless, the OLS points out that not all of the economic and fiscal feedback effects of capital investments benefitting from the credit may represent a gain to the State and affected municipalities. Only the ripple effects caused by credit-induced purchases should enter the fiscal estimate, while those from investments that would also be made absent the credit must be excluded. The exclusion of investments that will happen with or without the credit takes into account that the tax incentive has no economic impact whenever it benefits taxpayers who would invest in a project anyway. In such a scenario, the State will only incur the direct cost of the subsidy, while the capital investment's secondary effects cannot be attributed to the bill.

Applying the general principle to this bill, it is reasonable to expect that most of the indirect effects of credits awarded will count as a benefit to the State. This is so because credits can only be awarded if a project passes the net benefit test. As part of that test, the EDA excludes from

the analysis the indirect benefits from jobs that are neither “at risk,” classified as a “suburban to urban move” or otherwise deemed new jobs to the State. Therefore, only those tax credits will not produce an indirect revenue gain to the State that represent a relocation of jobs from a suburban area of the State to an urban area or that represent an incorrect assessment regarding the likelihood of a job created or retained within New Jersey absent a credit award. It remains unclear, however, whether or not the indirect revenue gains attributable to the credits will exceed the direct State revenue loss and opportunity cost they will cause.

Lastly, the OLS notes that any estimate of the credit’s New Jersey feedback effects must also exclude from the total feedback effects the portion of the credit-induced spending that would leak into other jurisdictions. A New York resident holding a job in New Jersey would have a New Jersey income tax liability, but most of the New Yorker’s private spending might not occur in this State.

Opportunity Costs: Opportunity costs capture the economic and fiscal benefits the economy and the State forego as spending is redirected from one economic activity to another. Given the State’s finite resources and its balanced budget requirement, the decision to subsidize certain capital investments will invariably divert resources from policy alternatives to which they would have been applied absent the tax credit. Therefore, if, instead of this legislation, the State invested in road construction, for example, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on subsidizing taxpayers’ capital investments and that of the foregone road construction investment.

Sale of State-Owned Properties to New Jersey Performing Arts Center: Without knowledge of the final sales arrangement, the OLS also can calculate neither the direction nor the magnitude of the fiscal net impact on the State and affected local governments of selling certain State-owned properties to the New Jersey Performing Arts Center. On the one hand, the State will receive indeterminate proceeds from the sale that will be earned either in one or several fiscal years depending on the terms and conditions of the future sales contract. On the other hand, the State will forfeit any annual rental income the State receives or will receive from subleasing the properties to the center.

The property sale appears to relate to the proposed construction by Prudential Financial Inc. of a new office tower totaling 600,000 square feet along with a parking structure for 1,600 vehicles adjacent to the New Jersey Performing Arts Center. According to a November 9, 2011 memorandum by the Chief Executive Officer of the EDA to the members of the EDA Board, the project will cost Prudential Financial an estimated \$369 million and stands to receive an urban transit hub tax credit of \$250.8 million from the State.

Section: Revenue, Finance and Appropriations
Analyst: Thomas Koenig
Lead Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

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

Governor Chris Christie Takes Action to Create Jersey Jobs and Grow Economy with \$200 Million GrowNJ Incentive Program

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Bipartisan Bill Implements Christie Administration Initiative to Build on the Success of Job Creating, Business Growth and Retention Incentives

Trenton, NJ – Acting on an agenda to create jobs for New Jerseyans and spur economic development in areas across the state, Governor Chris Christie today signed S-3033, legislation creating the GrowNJ Assistance program to provide at least \$200 million in incentives to create and retain Jersey Jobs. The GrowNJ program will encourage business investment and expansion in New Jersey by providing tax credits to companies moving to or growing in the state based on capital investment and job creation or retention.

“Through the creation of GrowNJ, we are ensuring that critical economic development projects are moving forward and that businesses are staying, growing and creating jobs for New Jerseyans,” said Governor Christie. “Expanding the reach of these job-creating incentives will put people to work now in construction jobs and create long-term, permanent jobs for our families. This bipartisan bill puts into action an initiative of my Administration that recognizes and builds on the success of the Urban Transit Hub Tax Credit, while increasing the competitiveness of New Jersey as a business-friendly environment for job growth.”

The GrowNJ program, a Christie Administration initiative, duplicates and expands the success of existing incentive programs while embracing innovative ideas to spur job growth and economic expansion. The program provides areas of New Jersey not currently eligible for the Urban Transit Hub Tax Credit (UTHTC) with a comparable business incentive program, allowing them to compete for new development, the retention of jobs and reinvestment. Since the GrowNJ’s tax credit allocation of \$200 million falls under the \$1.5 billion total tax credit cap already provided for in the Urban Transit Hub Tax Credit Act, the program will not result in any new costs to the State.

Under GrowNJ, an eligible business will receive an annual tax credit of \$5,000 - \$8,000 for ten years for each full-time job created or retained. A business would be eligible for a GrowNJ tax credit if it retains 100 full-time jobs or creates at least 100 full-time jobs in an EDA-designated desirable industry and in addition to job creation/retention also makes a capital investment of at least \$20 million in a qualified incentive area.

S-3033 also makes changes to eligibility requirements for the Urban Transit Hub Tax Credit program to expand the program’s use in retaining and attracting jobs to New Jersey, including the addition of medical facility sites, vacant hospital sites, and federally designated CHOICE neighborhoods within 1 mile of a rail station in a UTHTC city.




Since Governor Christie took office, through the Partnership for Action, the Administration has continued to advance policies that will improve New Jersey’s business climate, which has led to the creation of nearly 50,000 private sector jobs. Governor Christie sunset the corporate business tax surcharge, signed new, robust business attraction legislation, and enacted \$2.35 billion in pro-growth, job creating tax cuts. These policies have positioned New Jersey for business expansion, economic growth and job creation as our economy recovers.

Sponsors of S-3033/A-4306 include Senators Joseph Kyrillos (R-Middlesex, Monmouth) and Raymond Lesniak (D-Union); and Assemblymembers Anthony Bucco (R-Morris), Gary Chiusano (R-Sussex, Hunterdon, Morris), Herb Conaway (D-Burlington, Camden), Albert Coutinho (D-Essex, Union), and Ruben Ramos (D-Hudson).

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