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ASSEMBLY, No. 4048

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED JUNE 11, 2009

Sponsored by:

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District 17 (Middlesex and Somerset)

Co-Sponsored by:

Assemblyman Ramos

SYNOPSIS

"New Jersey Economic Stimulus Act of 2009"; appropriates \$15 million to "New Jersey Affordable Housing Trust Fund."

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on June 15, 2009, with amendments.

(Sponsorship Updated As Of: 6/23/2009)

1 AN ACT concerning economic development, job creation, economic
2 growth, affordable housing, urban transit hub tax credits,
3 expanding capacity and facilities at our institutions of higher
4 education, '[and]'¹ bonding in certain planning areas ¹, and
5 exempting certain taxes and energy charges of certain
6 manufacturing facilities¹; authorizing certain taxes and fees to
7 fund redevelopment; amending and supplementing various
8 sections of the statutory law; and making an appropriation.

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

12
13 1. (New section) This act shall be known and may be cited as
14 the "New Jersey Economic Stimulus Act of 2009."

15
16 2. (New section) The Legislature finds and declares:

17 a. America has seen two economic changes since the birth of our
18 nation over two hundred years ago. The change from an agrarian
19 based economy to an industrial based economy in the mid 1800s
20 caused a realignment of our population and brought prosperity to
21 millions of our citizens. The rise of technology and financial
22 services towards the end of the 20th century was our second change
23 and increased that prosperity many fold.

24 b. That prosperity has now shrunk. Many of our citizens are
25 facing economic hardships not seen since the Great Depression.
26 The private sector is no longer able to create economic development
27 on its own. The worldwide drop in available capital along with a
28 self-fulfilling drop in consumer confidence has created a downward
29 spiral that only can be overcome by a partnership – a public-private
30 partnership that targets tax cuts to drive economic development and
31 job creation.

32 c. Bold action is necessary to create a third economic change
33 that will restore our prosperity and build confidence in our future.
34 That prosperity must be restored in all areas of New Jersey, urban,
35 suburban, and rural, and include all sectors of the State's economy.

36 d. Through the use of tax increment financing, tax credits,
37 development fee suspensions, and dedicated economic development
38 revenues, along with a more efficient redevelopment process, New
39 Jersey will be able to restore its economy to economic health and
40 create good-paying jobs for its residents; assist the private
41 development of affordable housing; assist institutions of higher
42 education to develop needed classrooms, laboratories, dormitory
43 rooms, and other educational facilities; and generate revenues for
44 necessary State and local governmental services.

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:

¹Assembly ABU committee amendments adopted June 15, 2009.

1 3. (New section) As used in sections 3 through ¹[12] 18¹ of
2 P.L. , c. (C.) (pending before the Legislature as this bill):

3 "Applicant" means a developer proposing to enter into a
4 redevelopment incentive grant agreement.

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

8 "Developer" means any person who enters or proposes to enter
9 into a redevelopment incentive grant agreement pursuant to the
10 provisions of section 9 of P.L. , c. (C.) (pending before the
11 Legislature as this bill). A developer also may be a municipal
12 government or a redevelopment agency as defined in section 3 of
13 P.L.1992, c.79 (C.40A:12A-3).

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

16 "Eligible revenue" means the property tax increment and any
17 other incremental revenues set forth in section 11 of P.L. , c.
18 (C.) (pending before the Legislature as this bill).

19 "Incentive grant" means reimbursement of all or a portion of
20 project financing gap of a redevelopment project through the State
21 or a local Economic Redevelopment and Growth Grant program
22 pursuant to section 4 or section 5 P.L. , c. (C.) (pending
23 before the Legislature as this bill).

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

27 "Project financing gap" means the part of the total
28 redevelopment project cost, including return on investment, that
29 remains to be financed after all other sources of capital have been
30 accounted for, including, but not limited to, developer contributed
31 capital, which shall not be less than 20 percent of the total project
32 cost, and investor or financial entity capital or loans for which the
33 developer, after making all good faith efforts to raise additional
34 capital, certifies that additional capital cannot be raised from other
35 sources.

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

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

39 (1) multiplying the general tax rate levied each year by the
40 taxable value of all the property assessed within a ¹[taxing district]
41 project area¹ in the same year, excluding any special assessments;
42 and

43 (2) multiplying that product by a fraction having a numerator
44 equal to the taxable value of all the property assessed within the
45 ¹[taxing district] project area¹, minus the property tax increment
46 base, and having a denominator equal to the taxable value of all
47 property assessed within the ¹[taxing district] project area¹.

1 'For the purpose of this definition, "property tax increment base"
2 means the aggregate taxable value of all property assessed which is
3 located within the redevelopment project area as of October 1st of
4 the year preceding the year in which the redevelopment incentive
5 grant agreement is authorized.'¹

6 "Qualifying economic redevelopment and growth grant incentive
7 area" means Planning Area 1 (Metropolitan), Planning Area 2
8 (Suburban), a transit village, ¹**['and']** a designated center under the
9 State Development and Redevelopment Plan adopted pursuant to
10 the "State Planning Act," sections 1 through 12 of P.L.1985, c.398
11 (C.52:18A-196 et seq.) ¹, and federally owned land approved for
12 closure under a federal Base Realignment Closing Commission
13 action'.

14 "Redevelopment incentive grant agreement" means an agreement
15 between, (1) the State and the New Jersey Economic Development
16 Authority and a developer, or (2) a municipality and a developer,
17 under which, in exchange for the proceeds of an incentive grant, the
18 developer agrees to perform any work or undertaking necessary for
19 a redevelopment project, including the clearance, development or
20 redevelopment, construction, or rehabilitation of any structure or
21 improvement of commercial, industrial, or public structures or
22 improvements within a qualifying economic redevelopment and
23 growth grant incentive area or a transit village.

24 "Redevelopment project" means a specific work or improvement,
25 including lands, buildings, improvements, real and personal
26 property or any interest therein, including lands under water,
27 riparian rights, space rights and air rights, acquired, owned,
28 developed or redeveloped, constructed, reconstructed, rehabilitated
29 or improved, undertaken by a developer within ¹**['an area of land**
30 **that is not an area of land under a redevelopment agreement with**
31 **the State pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27)**
32 **whereon a contaminated site is located']** a project area'.

33 "Redevelopment utility" means a self-liquidating fund created by
34 a municipality pursuant to section 12 of P.L. , c. (C.)
35 (pending before the Legislature as this bill) to account for revenues
36 collected and incentive grants paid pursuant to section 11 of P.L. ,
37 c. (C.) (pending before the Legislature as this bill), or other
38 revenues dedicated to a redevelopment project.

39 "Revenue increment base" means the amounts of all eligible
40 revenues from sources within the redevelopment project area in the
41 calendar year preceding the year in which the redevelopment
42 incentive grant agreement is executed, as certified by the State
43 Treasurer for State revenues, and the chief financial officer of the
44 municipality for municipal revenues.

45 "Transit village" means a community with a bus, train, light rail,
46 or ferry station that has developed a plan to achieve its economic
47 development and revitalization goals and has been designated by
48 the New Jersey Department of Transportation as a transit village.

1 4. (New section) a. A municipality wherein is located a
2 qualifying economic redevelopment and growth grant incentive area
3 may adopt an ordinance to establish a local Economic
4 Redevelopment and Growth Grant program for the purpose of
5 encouraging redevelopment projects in that area through the
6 provision of incentive grants to reimburse developers for all or a
7 portion of the project financing gap for such projects. No local
8 Economic Redevelopment and Growth Grant program shall take
9 effect until the Local Finance Board approves the ordinance.

10 b. A developer that submits an application for a local incentive
11 grant shall indicate on the application whether it is also applying for
12 a State incentive grant. 'An application by a developer applying for
13 a local incentive grant only shall not require approval by the
14 authority.'¹ A municipality or its redevelopment agency only may
15 apply for local incentive grants for: (1) the construction of
16 infrastructure improvements in the public right-of-way, or (2)
17 publicly owned facilities.

18 c. No local incentive grant shall be finally approved by a
19 municipality until approved by the Local Finance Board.

20 d. In deciding whether or not to approve a local incentive grant
21 agreement the Local Finance Board shall consider the following
22 factors:

23 (1) the economic feasibility of the redevelopment project;

24 (2) the extent of economic and related social distress in the
25 municipality and the area to be affected by the redevelopment
26 project;

27 (3) the degree to which the redevelopment project will advance
28 State, regional, and local development and planning strategies;

29 (4) the likelihood that the redevelopment project shall, upon
30 completion, be capable of generating new tax revenue in an amount
31 in excess of the amount necessary to reimburse the developer for
32 project costs incurred as provided in the redevelopment incentive
33 grant agreement;

34 (5) the relationship of the redevelopment project to a
35 comprehensive local development strategy, including other major
36 projects undertaken within the municipality;

37 (6) the need for the redevelopment incentive grant agreement to
38 the viability of the redevelopment project;

39 (7) compliance with the provisions of P.L. , c. (C.)
40 (pending before the Legislature as this bill); and

41 (8) the degree to which the redevelopment project enhances and
42 promotes job creation and economic development.

43
44 5. (New section) a. The New Jersey Economic Development
45 Authority, in consultation with the State Treasurer, shall establish
46 an Economic Redevelopment and Growth Grant program for the
47 purpose of encouraging redevelopment projects in qualifying
48 economic redevelopment and growth grant incentive areas that do
49 not qualify as such areas solely by virtue of being a transit village

1 '[, through the provision of incentive grants to reimburse
2 developers for certain project financing gap costs']¹.

3 b. (1) A developer that submits an application for a State
4 incentive grant shall indicate on the application whether it is also
5 applying for a local incentive grant.

6 (2) When an applicant indicates it is also applying for a local
7 incentive grant, the authority shall forward a copy of the application
8 to the municipality wherein the redevelopment project is to be
9 located '[, for approval]'¹.

10 c. An application for a State incentive grant shall be reviewed
11 and approved by the authority.

12

13 6. (New section) a. Up to the limits established in subsection b.
14 of this section and in accordance with a redevelopment incentive
15 grant agreement, the State Treasurer shall pay to the developer
16 incremental State revenues directly realized from businesses
17 operating on the redevelopment project premises from the following
18 taxes: the Corporation Business Tax Act (1945), P.L.1945, c.162
19 (C.54:10A-1 et seq.), "The Savings Institution Tax Act," P.L.1973,
20 c.31 (C.54:10D-1 et seq.), the tax imposed on marine insurance
21 companies pursuant to R.S.54:16-1 et seq., the tax imposed on fire
22 insurance companies pursuant to R.S.54:17-4 et al., the tax imposed
23 on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et
24 seq.), the public utility franchise tax, public utilities gross receipts
25 tax and public utility excise tax imposed pursuant to P.L.1940, c.4,
26 and P.L.1940, c.5 (C.54:30A-16 et seq. and C.54:30A-49 et seq.),
27 the tax derived from net profits from business, a distributive share
28 of partnership income, or a pro rata share of S corporation income
29 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
30 seq., the tax derived from a business at the site of a redevelopment
31 project that is required to collect the tax pursuant to the "Sales and
32 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), the tax imposed
33 pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) from the purchase
34 of materials used for the remediation, the construction of new
35 structures, or the construction of new residences at the site of a
36 redevelopment project, 'the hotel and motel occupancy fee imposed
37 pursuant to section 1 of P.L.2003, c.114 (C.54:32D-1),'¹ or the
38 portion of the fee imposed pursuant to section 3 of P.L.1968, c.49
39 (C.46:15-7) derived from the sale of real property at the site of the
40 redevelopment project and paid to the State Treasurer for use by the
41 State, that is not credited to the "Shore Protection Fund" or the
42 "Neighborhood Preservation Nonlapsing Revolving Fund" pursuant
43 to section 4 of P.L.1968, c.49 (C.46:15-8).

44 b. Up to 75 percent of the projected annual incremental revenues
45 may be pledged towards the State portion of an incentive grant.

46 c. All administrative costs associated with the incentive grant
47 shall be assessed to the applicant and be retained by the State
48 Treasurer from the annual incentive grant payments.

1 d. The incremental revenue for the revenues listed in subsection
2 a. of this section shall be calculated as the difference between the
3 amount collected in any fiscal year from any eligible revenue
4 source included in the local redevelopment incentive grant
5 agreement, less the revenue increment base for that eligible
6 revenue.

7
8 7. (New section) a. Up to the limits established in subsection b.
9 of this section, and in accordance with a redevelopment incentive
10 grant agreement, the municipality shall pay to the developer
11 incremental eligible revenues directly realized from activities or
12 business operations on the redevelopment project premises.

13 b. Up to 75 percent of the incremental local revenues collected
14 pursuant to subsection d. of section 11 of P.L. , c. (C.)
15 (pending before the Legislature as this bill) may be pledged towards
16 the municipal portion, if any, of an incentive grant.

17 c. All administrative costs associated with the local incentive
18 grant shall be assessed to the applicant and be retained by the
19 municipality from its annual payments to the developer.

20
21 8. (New section) a. (1) The New Jersey Economic Development
22 Authority, in consultation with the State Treasurer, shall promulgate
23 an incentive grant application form and procedure for the Economic
24 Redevelopment and Growth Grant program.

25 (2) The Local Finance Board, in consultation with the New
26 Jersey Economic Development Authority, shall develop a minimum
27 standard incentive grant application form for municipal Economic
28 Redevelopment and Growth Grant programs.

29 b. Within each incentive grant application, a developer shall
30 certify information concerning:

31 (1) the status of control of the entire redevelopment project site;

32 (2) all required State and federal government permits that have
33 been issued for the redevelopment project, or will be issued pending
34 resolution of financing issues;

35 (3) local planning and zoning board approvals, as required, for
36 the redevelopment project;

37 (4) estimates of the revenue increment base and project the
38 eligible revenues for the project, and the assumptions upon which
39 those estimates are made.

40 c. (1) With regard to State tax revenues proposed to be pledged
41 for an incentive grant the authority and the State Treasurer shall
42 review the redevelopment project costs, evaluate and validate the
43 project financing gap estimated by the developer, and conduct a
44 State fiscal impact analysis to ensure that the overall public
45 assistance provided to the project will result in net benefits to the
46 State.

47 (2) With regard to local incremental revenues proposed to be
48 pledged for an incentive grant the authority and the Local Finance
49 Board shall review the redevelopment project costs, evaluate and

1 validate the financing gap projected by the developer, and conduct a
2 local fiscal impact analysis to ensure that the overall public
3 assistance provided to the project will result in net benefits to the
4 municipality wherein the redevelopment project is located.

5 (3) The authority, State Treasurer, and Local Finance Board may
6 act cooperatively to administer and review applications.

7 (4) The costs of the aforementioned reviews shall be assessed to
8 the applicant as an application fee.

9
10 9. (New section) a. The authority is authorized to enter into a
11 redevelopment incentive grant agreement with a developer for any
12 redevelopment project located within a qualifying economic
13 redevelopment and growth grant incentive area 'that does not
14 qualify as such area solely by virtue of being a transit village'.

15 b. The decision whether or not to enter into a redevelopment
16 incentive grant agreement is solely within the discretion of the
17 authority and the State Treasurer, provided that they both agree to
18 enter into agreement.

19 c. The Chief Executive Officer of the New Jersey Economic
20 Development Authority, in consultation with the State Treasurer
21 shall negotiate the terms and conditions of any redevelopment
22 incentive grant agreement on behalf of the State.

23 d. The redevelopment incentive grant agreement shall specify
24 the amount of the incentive grant to be awarded the developer, the
25 frequency of payments, and the length of time, which shall not
26 exceed 20 years, during which that reimbursement shall be granted.
27 In no event shall the combined amount of the reimbursements under
28 redevelopment incentive grant agreements with the State or
29 municipality exceed 20 percent of the total cost of the project ¹,
30 exclusive of publicly-owned infrastructure¹.

31 e. The authority and the State Treasurer may enter into a
32 redevelopment incentive grant agreement only if they make a
33 finding that the State revenues to be realized from the
34 redevelopment project will be in excess of the amount necessary to
35 reimburse the developer for its project financing gap. This finding
36 may be made by an estimation based upon the professional
37 judgment of the Chief Executive Officer of the New Jersey
38 Economic Development Authority and the State Treasurer.

39 f. In deciding whether or not to recommend entering into a
40 redevelopment incentive grant agreement and in negotiating a
41 redevelopment agreement with a developer, the Chief Executive
42 Officer of the New Jersey Economic Development Authority shall
43 consider the following factors:

44 (1) the economic feasibility of the redevelopment project;

45 (2) the extent of economic and related social distress in the
46 municipality and the area to be affected by the redevelopment
47 project;

1 (3) the degree to which the redevelopment project will advance
2 State, regional and local development and planning strategies;

3 (4) the likelihood that the redevelopment project shall, upon
4 completion, be capable of generating new tax revenue in an amount
5 in excess of the amount necessary to reimburse the developer for
6 project costs incurred as provided in the redevelopment incentive
7 grant agreement;

8 (5) the relationship of the redevelopment project to a
9 comprehensive local development strategy, including other major
10 projects undertaken within the municipality;

11 (6) the need of the redevelopment incentive grant agreement to
12 the viability of the redevelopment project; and

13 (7) the degree to which the redevelopment project enhances and
14 promotes job creation and economic development.

15 'g. (1) A developer that has entered into a redevelopment
16 incentive grant agreement with the authority and the State Treasurer
17 pursuant to this section may, upon notice to and consent of the
18 authority and the State Treasurer, pledge and assign as security for
19 any loan, any or all of its right, title and interest in and to such
20 agreements and in the incentive grants payable thereunder, and the
21 right to receive same, along with the rights and remedies provided
22 to the developer under such agreement. Any such assignment shall
23 be an absolute assignment for all purposes, including the federal
24 bankruptcy code.

25 (2) Any pledge of incentive grants made by the developer shall
26 be valid and binding from the time when the pledge is made and
27 filed in the records of the authority. The incentive grants so
28 pledged and thereafter received by the developer shall immediately
29 be subject to the lien of the pledge without any physical delivery
30 thereof or further act, and the lien of any pledge shall be valid and
31 binding as against all parties having claims of any kind in tort,
32 contract, or otherwise against the developer irrespective of whether
33 the parties have notice thereof. Neither the redevelopment
34 incentive grant agreement nor any other instrument by which a
35 pledge under this section is created need be filed or recorded except
36 with the authority.'¹

37
38 10. (New section) The New Jersey Economic Development
39 Authority, or any other State agency, may provide assistance to a
40 developer in order to enhance its credit for the purpose of securing
41 private project financing on more favorable terms.

42
43 11. (New section) a. The governing body of a municipality is
44 authorized to enter into a redevelopment incentive grant agreement
45 with a developer for any redevelopment project located within a
46 qualifying economic redevelopment and growth grant incentive
47 area.

48 b. The redevelopment incentive grant agreement shall specify
49 the amount of the incentive grant to be awarded the developer, the

1 frequency of payments, and the length of time, which shall not
2 exceed 20 years, during which that reimbursement shall be granted.
3 In no event shall the combined amount of the reimbursements under
4 redevelopment incentive grant agreements with the State or
5 municipality exceed 20 percent of the total cost of the project.

6 c. The municipality may enter into a redevelopment incentive
7 grant agreement only if the chief financial officer of the
8 municipality makes a finding that the incremental revenues to be
9 realized from the redevelopment project will be in excess of the
10 amount necessary to reimburse the developer for its project
11 financing gap. Such finding shall be based upon appropriate
12 documentation and calculations supporting the decision.

13 d. Within a qualifying economic redevelopment and growth
14 grant incentive area a municipality that has entered into a local
15 redevelopment incentive grant agreement may pledge eligible
16 revenues its is authorized to collect as follows:

17 (1) incremental payments in lieu of taxes, with respect to
18 property located in the district, made pursuant to the "Five-Year
19 Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et
20 seq.), or the "Long Term Tax Exemption Law," P.L.1991, c.431
21 (C.40A:20-1 et al.);

22 (2) incremental revenues collected from payroll taxes, with
23 respect to business activities carried on within the area, pursuant to
24 section 15 of P.L.1970, c.326 (C.40:48C-15);

25 (3) incremental revenue from lease payments made to the
26 municipality, the developer, or the developer's successors with
27 respect to property located in the area;

28 (4) incremental revenue collected from parking taxes derived
29 from parking facilities located within the area pursuant to section 7
30 of P.L.1970, c.326 (C.40:48C-7);

31 (5) incremental admissions and sales taxes derived from the
32 operation of a public facility within the area pursuant to section 1 of
33 P.L.2007, c.302 (C.40:48G-1);

34 (6) (a) incremental sales and excise taxes which are derived from
35 activities within the area and which are rebated to or retained by the
36 municipality pursuant to the "New Jersey Urban Enterprise Zones
37 Act," P.L.1983, c.303 (C.52:27H-60 et seq.) or any other law
38 providing for such rebate or retention;

39 (b) within Planning Area 1 (Metropolitan) under the State
40 Development and Redevelopment Plan adopted pursuant to the
41 "State Planning Act," sections 1 through 12 of P.L.1985, c.398
42 (C.52:18A-196 et seq.), a municipality may impose the entire State
43 sales tax on business activities within a redevelopment project
44 located in an urban enterprise zone that would ordinarily be entitled
45 to collect reduced rate revenues under section 21 of P.L.1983, c.303
46 (C.52:27H-80), and pledge the excess revenues to a local
47 redevelopment incentive grant agreement;

48 (7) incremental parking revenue collected, pursuant to section 7
49 of P.L.1970, c.326 (C.40:48C-7), from public parking facilities built

1 as part of a redevelopment project, except for public parking
2 facilities owned by parking authorities pursuant to the "Parking
3 Authority Law," P.L.1948, c.198 (C.40:11A-1 et seq.);

4 (8) 'incremental revenues collected, pursuant to section 3 of
5 P.L.2003, c.114 (C.40:48F-1), P.L.1981, c.77 (C.40:48E-1 et seq.),
6 or P.L.1947, c.71 (C.40:48-8.15 et seq.), from hotel and motel
7 taxes;

8 (9)¹ upon approval by the Local Finance Board, other
9 incremental municipal revenues that may become available;

10 **'[(9)] (10)¹** the property tax increment.

11 The incremental revenue for the revenues listed in this
12 subsection, when applicable, shall be calculated as the difference
13 between the amount collected in any fiscal year from any eligible
14 revenue source included in the local redevelopment incentive grant
15 agreement, less the revenue increment base for that eligible
16 revenue.

17 e. '(1) In calculating the general and individual county and
18 taxing district tax rates each year, the aggregate amount of the
19 incremental ratable value over the property tax increment base in
20 the redevelopment project area that is pledged as part of a
21 redemption incentive grant agreement shall not be considered a
22 part of the net taxable value of land and improvements within the
23 municipality.

24 (2)¹ The amount of property tax increment not pledged toward a
25 redevelopment incentive grant agreement shall be allocated to the
26 county and the several taxing districts, including the municipality,
27 in the proportion that each represents of the total tax rate.

28 'f. In addition to the incremental revenues that may be pledged
29 in subsection d. of this section, any amount of tax proceeds
30 collected from the tax on the rental of motor vehicles pursuant to
31 section 20 of P.L. , c. (C.) (pending before the Legislature
32 as this bill), may be included in a redevelopment incentive grant
33 agreement with a developer, regardless of whether or not the
34 redemption project area is within or outside of the designated
35 industrial zone from which the tax on the rental of motor vehicles is
36 collected.

37 g. (1) A developer that has entered into a redevelopment
38 incentive grant agreement with a municipality pursuant to this
39 section may, upon notice to and consent of the municipality, pledge
40 and assign as security for any loan, any or all of its right, title and
41 interest in and to such agreements and in the incentive grants
42 payable thereunder, and the right to receive same, along with the
43 rights and remedies provided to the developer under such
44 agreement. Any such assignment shall be an absolute assignment
45 for all purposes, including the federal bankruptcy code.

46 (2) Any pledge of incentive grants made by the developer shall
47 be valid and binding from the time when the pledge is made and
48 filed in the office of the municipal clerk. The incentive grants so

1 pledged and thereafter received by the developer shall immediately
2 be subject to the lien of the pledge without any physical delivery
3 thereof or further act, and the lien of any pledge shall be valid and
4 binding as against all parties having claims of any kind in tort,
5 contract, or otherwise against the developer irrespective of whether
6 the parties have notice thereof. Neither the redevelopment
7 incentive grant agreement nor any other instrument by which a
8 pledge under this section is created need be filed or recorded except
9 with the municipality.¹

10
11 12. (New section) a. A municipality may adopt an ordinance
12 creating a municipal redevelopment utility under the name and style
13 of "the _____ redevelopment utility," with all or any
14 significant part of the name of the municipality inserted. The
15 redevelopment utility shall be a municipal public utility for the
16 purposes of Title 40A of the New Jersey Statutes.

17 b. The purpose of every redevelopment utility shall be to receive
18 revenues collected pursuant to section 11 of P.L. _____, c. _____ (C. _____)
19 (pending before the Legislature as this bill) and to use those
20 revenues as payment of incentive grants, and for other local
21 purposes that may be approved by the Local Finance Board, as that
22 board deems necessary or useful.

23 c. If a municipality does not create a municipal redevelopment
24 utility, then any revenues collected pursuant to section 11 of P.L. _____,
25 c. _____ (C. _____) (pending before the Legislature as this bill) and any
26 grants received to pay incentive grants shall be treated as riders in
27 the municipal budget pursuant to N.J.S.40A:4-36.

28
29 ¹[13. (New section) The Local Finance Board in the
30 Department of Community Affairs may adopt implementation
31 guidelines or directives, and adopt such administrative rules,
32 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
33 (C.52:14B-1 et seq.), as are necessary for the implementation of
34 sections 3 through 12 of P.L. _____, c. _____ (pending before the
35 Legislature as this bill).]¹

36
37 ¹13. (New section) Sections 11 through 41 of P.L.2001, c.310
38 (C.52:27D-459 through C.52:27D-489) shall be inoperative and
39 without effect for applications submitted after the effective date of
40 P.L. _____, c. _____ (pending before the Legislature as this bill); provided,
41 however, those sections shall remain in effect for revenue allocation
42 districts for which financing has been approved prior to the
43 effective date of P.L. _____, c. _____ (pending before the Legislature as this
44 bill). Any revenue allocation district that has been approved prior
45 to the effective date of P.L. _____, c. _____ (pending before the Legislature
46 as this bill), but for which financing has not been approved prior to
47 that date, shall fall under the provisions of sections 3 through 18 of
48 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this bill).¹

1 14. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read
2 as follows:

3 5. The authority shall have the following powers:

4 a. To adopt bylaws for the regulation of its affairs and the
5 conduct of its business;

6 b. To adopt and have a seal and to alter the same at pleasure;

7 c. To sue and be sued;

8 d. To acquire in the name of the authority by purchase or
9 otherwise, on such terms and conditions and such manner as it may
10 deem proper, or by the exercise of the power of eminent domain in
11 the manner provided by the "Eminent Domain Act of 1971,"
12 P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or
13 other property which it may determine is reasonably necessary for
14 any project; provided, however, that the authority in connection
15 with any project shall not take by exercise of the power of eminent
16 domain any real property except upon consent thereto given by
17 resolution of the governing body of the municipality in which such
18 real property is located; and provided further that the authority shall
19 be limited in its exercise of the power of eminent domain in
20 connection with any project to municipalities receiving State aid
21 under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to
22 municipalities which had a population, according to the latest
23 federal decennial census, in excess of 10,000;

24 e. To enter into contracts with a person upon such terms and
25 conditions as the authority shall determine to be reasonable,
26 including, but not limited to, reimbursement for the planning,
27 designing, financing, construction, reconstruction, improvement,
28 equipping, furnishing, operation and maintenance of the project and
29 to pay or compromise any claims arising therefrom;

30 f. To establish and maintain reserve and insurance funds with
31 respect to the financing of the project or the school facilities project
32 and any project financed pursuant to the "Municipal Rehabilitation
33 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et
34 al.);

35 g. To sell, convey or lease to any person all or any portion of a
36 project for such consideration and upon such terms as the authority
37 may determine to be reasonable;

38 h. To mortgage, pledge or assign or otherwise encumber all or
39 any portion of a project, or revenues, whenever it shall find such
40 action to be in furtherance of the purposes of this act, P.L.2000,
41 c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and
42 Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.),
43 **[and]** P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3
44 through '12] 18' of P.L. , c. (C.) (pending before the
45 Legislature as this bill);

46 i. To grant options to purchase or renew a lease for any of its
47 projects on such terms as the authority may determine to be
48 reasonable;

1 j. To contract for and to accept any gifts or grants or loans of
2 funds or property or financial or other aid in any form from the
3 United States of America or any agency or instrumentality thereof,
4 or from the State or any agency, instrumentality or political
5 subdivision thereof, or from any other source and to comply,
6 subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.),
7 section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72
8 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic
9 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), and
10 P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and
11 conditions thereof;

12 k. In connection with any application for assistance under
13 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401
14 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
15 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
16 (C.52:27BBB-1 et al.), or P.L.2007, c.137 (C.52:18A-235 et al.) or
17 commitments therefor, to require and collect such fees and charges
18 as the authority shall determine to be reasonable;

19 l. To adopt, amend and repeal regulations to carry out the
20 provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of
21 P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.),
22 the "Municipal Rehabilitation and Economic Recovery Act,"
23 P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007, c.137
24 (C.52:18A-235 et al.);

25 m. To acquire, purchase, manage and operate, hold and dispose
26 of real and personal property or interests therein, take assignments
27 of rentals and leases and make and enter into all contracts, leases,
28 agreements and arrangements necessary or incidental to the
29 performance of its duties;

30 n. To purchase, acquire and take assignments of notes,
31 mortgages and other forms of security and evidences of
32 indebtedness;

33 o. To purchase, acquire, attach, seize, accept or take title to any
34 project or school facilities project by conveyance or by foreclosure,
35 and sell, lease, manage or operate any project or school facilities
36 project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1
37 et al.), the "Municipal Rehabilitation and Economic Recovery Act,"
38 P.L.2002, c.43 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137
39 (C.52:18A-235 et al.), and sections 3 through '12] 18' of P.L. __,
40 c. (C. __) (pending before the Legislature as this bill);

41 p. To borrow money and to issue bonds of the **'[redevelopment**
42 **utility] authority'** and to provide for the rights of the holders
43 thereof, as provided in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6
44 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et
45 al.), the "Municipal Rehabilitation and Economic Recovery Act,"
46 P.L.2002, c.43 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137
47 (C.52:18A-235 et al.), and sections 3 through '12] 18' of P.L. __,
48 c. (C. __) (pending before the Legislature as this bill);

1 q. To extend credit or make loans to any person for the
2 planning, designing, acquiring, constructing, reconstructing,
3 improving, equipping and furnishing of a project or school facilities
4 project, which credits or loans may be secured by loan and security
5 agreements, mortgages, leases and any other instruments, upon such
6 terms and conditions as the authority shall deem reasonable,
7 including provision for the establishment and maintenance of
8 reserve and insurance funds, and to require the inclusion in any
9 mortgage, lease, contract, loan and security agreement or other
10 instrument, of such provisions for the construction, use, operation
11 and maintenance and financing of a project or school facilities
12 project as the authority may deem necessary or desirable;

13 r. To guarantee up to 90% of the amount of a loan to a person,
14 if the proceeds of the loan are to be applied to the purchase and
15 installation, in a building devoted to industrial or commercial
16 purposes, or in an office building, of an energy improvement
17 system;

18 s. To employ consulting engineers, architects, attorneys, real
19 estate counselors, appraisers, and such other consultants and
20 employees as may be required in the judgment of the redevelopment
21 utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et
22 seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72
23 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic
24 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) **[and]**
25 P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through
26 '[12] 18¹ of P.L. , c. (C.) (pending before the Legislature as
27 this bill), and to fix and pay their compensation from funds
28 available to the redevelopment utility therefor, all without regard to
29 the provisions of Title 11A of the New Jersey Statutes;

30 t. To do and perform any acts and things authorized by
31 P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401
32 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
33 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
34 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137 (C.52:18A-235 et
35 al.), and sections 3 through '[12] 18¹ of P.L. , c. (C.)
36 (pending before the Legislature as this bill), under, through or by
37 means of its own officers, agents and employees, or by contract
38 with any person;

39 u. To procure insurance against any losses in connection with
40 its property, operations or assets in such amounts and from such
41 insurers as it deems desirable;

42 v. To do any and all things necessary or convenient to carry out
43 its purposes and exercise the powers given and granted in P.L.1974,
44 c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-
45 4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal
46 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
47 (C.52:27BBB-1 et al.), **[and]** P.L.2007, c.137 (C.52:18A-235 et

- 1 al.), and sections 3 through '[12] 18' of P.L. , c. (C.)
2 (pending before the Legislature as this bill);
- 3 w. To construct, reconstruct, rehabilitate, improve, alter, equip,
4 maintain or repair or provide for the construction, reconstruction,
5 improvement, alteration, equipping or maintenance or repair of any
6 development property and lot, award and enter into construction
7 contracts, purchase orders and other contracts with respect thereto,
8 upon such terms and conditions as the authority shall determine to
9 be reasonable, including, but not limited to, reimbursement for the
10 planning, designing, financing, construction, reconstruction,
11 improvement, equipping, furnishing, operation and maintenance of
12 any such development property and the settlement of any claims
13 arising therefrom and the establishment and maintenance of reserve
14 funds with respect to the financing of such development property;
- 15 x. When authorized by the governing body of a municipality
16 exercising jurisdiction over an urban growth zone, to construct,
17 cause to be constructed or to provide financial assistance to projects
18 in an urban growth zone which shall be exempt from the terms and
19 requirements of the land use ordinances and regulations, including,
20 but not limited to, the master plan and zoning ordinances, of such
21 municipality;
- 22 y. To enter into business employment incentive agreements as
23 provided in the "Business Employment Incentive Program Act,"
24 P.L.1996, c.26 (C.34:1B-124 et al.);
- 25 z. To enter into agreements or contracts, execute instruments,
26 and do and perform all acts or things necessary, convenient or
27 desirable for the purposes of the redevelopment utility to carry out
28 any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-
29 1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007, c.137
30 (C.52:18A-235 et al.), including, but not limited to, entering into
31 contracts with the State Treasurer, the Commissioner of Education,
32 districts, the New Jersey Schools Development Authority, and any
33 other entity which may be required in order to carry out the
34 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), [and] P.L.2007,
35 c.137 (C.52:18A-235 et al.), and sections 3 through '[12] 18' of
36 P.L. , c. (C.) (pending before the Legislature as this bill);
- 37 aa. (Deleted by amendment, P.L.2007, c.137);
- 38 bb. To make and contract to make loans to local units to finance
39 the cost of school facilities projects and to acquire and contract to
40 acquire bonds, notes or other obligations issued or to be issued by
41 local units to evidence the loans, all in accordance with the
42 provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007,
43 c.137 (C.52:18A-235 et al.);
- 44 cc. Subject to any agreement with holders of its bonds issued to
45 finance a project or school facilities project, obtain as security or to
46 provide liquidity for payment of all or any part of the principal of
47 and interest and premium on the bonds of the authority or for the
48 purchase upon tender or otherwise of the bonds, lines of credit,
49 letters of credit, reimbursement agreements, interest rate exchange

1 agreements, currency exchange agreements, interest rate floors or
2 caps, options, puts or calls to hedge payment, currency, rate, spread
3 or similar exposure or similar agreements, float agreements,
4 forward agreements, insurance contract, surety bond, commitment
5 to purchase or sell bonds, purchase or sale agreement, or
6 commitments or other contracts or agreements, and other security
7 agreements or instruments in any amounts and upon any terms as
8 the authority may determine and pay any fees and expenses required
9 in connection therewith;

10 dd. To charge to and collect from local units, the State and any
11 other person, any fees and charges in connection with the
12 authority's actions undertaken with respect to school facilities
13 projects, including, but not limited to, fees and charges for the
14 authority's administrative, organization, insurance, operating and
15 other expenses incident to the financing of school facilities projects;

16 ee. To make loans to refinance solid waste facility bonds
17 through the issuance of bonds or other obligations and the execution
18 of any agreements with counties or public authorities to effect the
19 refunding or rescheduling of solid waste facility bonds, or otherwise
20 provide for the payment of all or a portion of any series of solid
21 waste facility bonds. Any county or public authority refunding or
22 rescheduling its solid waste facility bonds pursuant to this
23 subsection shall provide for the payment of not less than fifty
24 percent of the aggregate debt service for the refunded or
25 rescheduled debt of the particular county or public authority for the
26 duration of the loan; except that, whenever the solid waste facility
27 bonds to be refinanced were issued by a public authority and the
28 county solid waste facility was utilized as a regional county solid
29 waste facility, as designated in the respective adopted district solid
30 waste management plans of the participating counties as approved
31 by the department prior to November 10, 1997, and the utilization
32 of the facility was established pursuant to tonnage obligations set
33 forth in their respective interdistrict agreements, the public
34 authority refunding or rescheduling its solid waste facility bonds
35 pursuant to this subsection shall provide for the payment of a
36 percentage of the aggregate debt service for the refunded or
37 rescheduled debt of the public authority not to exceed the
38 percentage of the specified tonnage obligation of the host county for
39 the duration of the loan. Whenever the solid waste facility bonds
40 are the obligation of a public authority, the relevant county shall
41 execute a deficiency agreement with the authority, which shall
42 provide that the county pledges to cover any shortfall and to pay
43 deficiencies in scheduled repayment obligations of the public
44 authority. All costs associated with the issuance of bonds pursuant
45 to this subsection may be paid by the authority from the proceeds of
46 these bonds. Any county or public authority is hereby authorized to
47 enter into any agreement with the authority necessary, desirable or
48 convenient to effectuate the provisions of this subsection.

1 The authority shall not issue bonds or other obligations to effect
2 the refunding or rescheduling of solid waste facility bonds after
3 December 31, 2002. The authority may refund its own bonds issued
4 for the purposes herein at any time;

5 ff. To pool loans for any local government units that are
6 refunding bonds and do and perform any and all acts or things
7 necessary, convenient or desirable for the purpose of the authority
8 to achieve more favorable interest rates and terms for those local
9 governmental units;

10 gg. To finance projects approved by the board, provide staff
11 support to the board, oversee and monitor progress on the part of
12 the board in carrying out the revitalization, economic development
13 and restoration projects authorized pursuant to the "Municipal
14 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
15 (C.52:27BBB-1 et al.) and otherwise fulfilling its responsibilities
16 pursuant thereto;

17 hh. To offer financial assistance to qualified film production
18 companies as provided in the "New Jersey Film Production
19 Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.); and

20 ii. To finance or develop private or public parking facilities or
21 structures, which may include the use of solar photovoltaic
22 equipment, in municipalities qualified to receive State aid pursuant
23 to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and
24 municipalities that contain areas designated pursuant to P.L.1985,
25 c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan),
26 Planning Area 2 (Suburban), or a town center, and to provide
27 appropriate assistance, including but not limited to, extensions of
28 credit, loans, and guarantees, to municipalities qualified to receive
29 State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-
30 178 et seq.) and municipalities that contain areas designated
31 pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning
32 Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town
33 center, and their agencies and instrumentalities or to private entities
34 whose projects are located in those municipalities, in order to
35 facilitate the financing and development of parking facilities or
36 structures in such municipalities. The authority may serve as the
37 issuing agent of bonds to finance the undertaking of a project for
38 the purposes of this subsection.

39 (cf: P.L.2009, c.57, s.2)

40
41 15. N.J.S.40A:1-1 is amended to read as follows:

42 40A:1-1. The following words, as used in this title, shall have
43 the following meanings unless the context clearly indicates a
44 different meaning:

45 "budget" means the budget of a local unit;

46 "cash basis budget" means a budget prepared in accordance with
47 the "Local Budget Law";

48 "clerk" means the clerk of a municipality or of a board of chosen
49 freeholders;

1 "director" means the Director of the Division of Local
2 Government Services in the Department of Community Affairs;

3 "fiscal year" means the period for which a local unit adopts a
4 budget, as required pursuant to the "Local Budget Law,"
5 N.J.S.40A:4-1 et seq., and shall be the calendar year beginning on
6 January 1 and ending on December 31, unless the local unit is a
7 municipality in which the fiscal year has been changed to the State
8 fiscal year, pursuant to section 2 or 3 of P.L.1991, c.75 (C.40A:4-
9 3.1 or C.40A:4-3.2), in which case, "fiscal year" shall mean the
10 State fiscal year or the transition year, as appropriate;

11 "full membership of a governing body" means the number of
12 members of the body when all the seats are filled;

13 "local finance board" means the Local Finance Board in the
14 Division of Local Government Services in the Department of
15 Community Affairs;

16 "local unit" means a county or municipality;

17 "municipal public utility" means any water, sewer, electric power
18 or gas system, or any combination thereof, or any public parking
19 system, redevelopment, or any other utility, enterprise or purpose
20 authorized to be undertaken by a local unit from which it may
21 receive fees, rents, or other charges, and with respect to
22 redevelopment utilities, incremental revenues authorized pursuant
23 to section 11 of P.L. , c. (C.) (pending before the Legislature
24 as this bill);

25 "State fiscal year" means the period commencing on July 1 and
26 ending on June 30 in any municipality in which the fiscal year has
27 been changed pursuant to section 2 or 3 of P.L.1991, c.75 (C.40A:4-
28 3.1 or C.40A:4-3.2);

29 "transition year" means the period beginning on January 1 and
30 ending on June 30 in the calendar year during which the change in a
31 municipality's fiscal year takes effect, as authorized under the
32 provisions of section 2 or 3 of P.L.1991, c.75 (C.40A:4-3.1 or
33 C.40A:4-3.2).

34 (cf: P.L.1991, c.75, s.1)

35

36 16. N.J.S.40A:2-45 is amended to read as follows:

37 40A:2-45. Any municipal public utility shall be deemed to be a
38 self-liquidating purpose if the cash receipts from fees, rents or other
39 charges, and for redevelopment utilities, taxes other than taxes
40 assessed on real property, in a fiscal year are sufficient to meet
41 operating and maintenance costs (exclusive of depreciation and
42 obsolescence) and interest and debt redemption charges payable or
43 accruing in such year without recourse to general taxation or the
44 deficit, if any, anticipated in the dedicated utility assessment
45 budget. There may be included in such cash receipts any fees, rents
46 and other charges collected from other departments or utilities of
47 the local unit at a rate not in excess of the fees, rents or other
48 charges to other consumers, customers or users, or if there be no
49 other consumers, customers or users properly comparable, then not

1 in excess of the comparable fees, rents and other charges of
2 privately owned or operated utilities or enterprises. Any municipal
3 public utility may include interest on investments and deposits and
4 appropriated surplus as revenues, in addition to the other revenues
5 authorized by this section, in a determination of whether that
6 municipal public utility shall be deemed to be a self-liquidating
7 purpose.

8 (cf: P.L.1996, c.76, s.1)

9
10 17. Section 31 of P.L.2001, c.310 (C.52:27D-479) is amended to
11 read as follows:

12 31. a. In calculating the general tax rate levied each year, the
13 aggregate amount of the ratable increments of the revenue
14 allocation districts that have been pledged to bondholders or are
15 otherwise required by the district agent for the development of the
16 plan shall not be considered a part of the total taxable value of land
17 and improvements within the municipality.

18 b. In calculating the net valuation on which school district taxes
19 and county taxes are apportioned, the aggregate amount of the
20 ratable increments in the revenue allocation district shall be
21 excluded.

22 c. For purposes of this section, "ratable increment" means the
23 taxable value of all property assessed within a revenue allocation
24 district for the tax year, minus the property tax increment base.

25 (cf: P.L.2001, c.310, s.31)

26
27 ¹[18. (New section) Sections 11 through 41 of P.L.2001, c.310
28 (C.52:27D-459 through 489 shall be inoperative and without effect
29 for applications submitted after the effective date of P.L. , c.
30 (pending before the Legislature as this bill); provided, however,
31 those sections shall remain in effect for revenue allocation districts
32 for which financing has been approved prior to the effective date of
33 P.L. , c. (pending before the Legislature as this bill). Any
34 revenue allocation district that has been approved prior to the
35 effective date of P.L. , c. (pending before the Legislature as this
36 bill), but for which financing has not been approved prior to that
37 date, shall fall under the provisions of sections 3 through 12 of
38 P.L. , c. (C.) (pending before the Legislature as this bill).]¹

39
40 ¹18. (New section) The Local Finance Board in the Department
41 of Community Affairs, the State Treasurer, and the Economic
42 Development Authority may adopt implementation guidelines or
43 directives, and adopt such administrative rules, pursuant to the
44 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
45 seq.), as are necessary for the implementation of those agencies’
46 respective responsibilities under sections 3 through 18 of P.L. , c.
47 (C.) (pending before the Legislature as this bill), except that
48 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
49 seq.) to the contrary, the Local Finance Board, the State Treasurer,

1 and the Economic Development Authority may adopt, immediately
2 upon filing with the Office of Administrative Law, such rules and
3 regulations as deemed necessary to implement the provisions of
4 sections 3 through 18 of P.L. , c. (C.) (pending before the
5 Legislature as this bill) which shall be effective for a period not to
6 exceed 12 months and shall thereafter be amended, adopted, or re-
7 adopted in accordance with the provisions of P.L.1968, c.410
8 (C.52:14B-1 et seq.).¹
9

10 19. (New section) The Legislature finds that there exist in
11 certain municipalities certain industrial, port, and airport areas
12 which warrant redevelopment but do not presently generate
13 adequate funding sources with which to stimulate such activities.
14 As a result, municipal revenues derived from other areas in the
15 municipality have for many years been diverted to such areas in
16 order to induce redevelopment at such locations. In addition, the
17 worldwide financial credit crisis has created an environment in
18 which private financial activity in certain cities with waterfront
19 areas has been curtailed, resulting in decreased revenue collections
20 that have necessitated severe cuts in local budgets for services that
21 affect the State's most vulnerable populations, senior citizens and
22 impressionable youth. The Legislature declares that it is therefore
23 an appropriate and necessary public purpose to provide a new
24 source of funding, derived from certain rental and entertainment
25 activities occurring within such areas, to finance various
26 redevelopment activities occurring within those municipalities and
27 services targeted at senior and youth populations.
28

29 20. (New section) a. A municipality having a population in
30 excess of 100,000 and within which is located a commercial airport
31 which provides for a minimum of 10 regularly scheduled
32 commercial airplane flights per day, or a municipality in which any
33 portion of such an airport is located, by ordinance, may impose a
34 tax on the rental of motor vehicles on such rental transactions that
35 occur within a designated industrial zone of '[such] the'
36 municipality. Such tax shall be imposed on the person, corporation,
37 or other legal entity that is permitted the use of a motor vehicle that
38 it does not own for a period of time that is less than one year, in
39 exchange for the payment of a fee, and shall be collected on behalf
40 of the municipality by the person collecting such rental fee, in
41 accordance with such procedures as shall be established in the
42 ordinance imposing the tax.

43 The local motor vehicle rental tax rate imposed under an
44 ordinance adopted pursuant to this section shall not exceed five
45 percent of the total amount of the fee charged for the rental of the
46 motor vehicle ¹, excluding any taxes and surcharges¹. After the
47 adoption of an ordinance, a municipality may subsequently amend
48 the ordinance from time to time to adjust the boundaries of the
49 industrial zone or, subject to the provisions of section 26 of P.L. ,

1 c. (C.) (pending before the Legislature as this bill), to modify
2 the tax rate; however, the modified rate shall not exceed five
3 percent of the total amount of the fee charged for the rental of the
4 motor vehicle ¹, excluding any taxes and surcharges¹.

5 An ordinance establishing a local motor vehicle rental tax, or
6 modifying the rate of that tax, shall take effect on the first day of
7 the month immediately following the date on which the ordinance
8 becomes legally in force and effect.

9 b. As used in this section:

10 "Eligible purposes" means (1) the payment or reimbursement of
11 costs of any "redevelopment project" or other undertaking in
12 furtherance of a "redevelopment plan" in any "area in need of
13 redevelopment" or "area in need of rehabilitation" within the
14 municipality (including, but not limited to, redevelopment projects
15 and undertakings located within the industrial zone), as such terms
16 are defined in the "Local Redevelopment and Housing Law",
17 P.L.1992, c.79 (C.40A:12A-1 et al.), (2) the making of municipal
18 subsidies or contributions as authorized by P.L.1992, c.79, (3) the
19 payment or reimbursement, within or relating to any urban
20 enterprise zone located within the municipality, of such costs as are
21 enumerated in the definition of "project" as contained in subsection
22 c. of section 29 of P.L.1983, c.303 (C.52:27H-88), without
23 reference to the zone assistance fund or the zone development
24 corporation, (4) the payment of bonds issued for any of the
25 foregoing purposes, (5) planning, evaluation, negotiation, and other
26 preliminary expenses relating to any of the foregoing purposes, and
27 (6) costs of administration and enforcement, including costs and
28 expenses of the municipality incurred in collecting the tax.

29 "Industrial zone" means such portion or portions of the
30 municipality, which may be identified by reference to zoning
31 districts, census tracts, or both, not exceeding in the aggregate 50
32 percent of the territory of the municipality, as is determined by the
33 municipality to be an area having, or intended to have,
34 predominantly industrial, port, airport, and related uses.

35 "Motor vehicle" means any automobile, truck, van, bus, or
36 similar conveyance that is intended primarily for passenger (as
37 distinct from cargo) use, and meeting the requirements of the State
38 for operation on public roads.

39 "Rental of motor vehicle" means any contract or agreement by
40 which a person, corporation, or other legal entity is permitted the
41 use of a motor vehicle that it does not own for a period of time that
42 is less than one year in exchange for the payment of a fee. A rental
43 transaction is deemed to occur at the location at which such person,
44 corporation, or other legal entity takes possession of the motor
45 vehicle.

46 "Rental tax account" means the dedicated trust account
47 established by a municipality pursuant to subsection c. of this
48 section.

1 "Tax proceeds" means amounts collected pursuant to any tax
2 imposed pursuant to sections 19 through 27 of P.L. , c. (C.)
3 (pending before the Legislature as this bill).

4 c. The Director of the Division of Taxation in the Department of
5 the Treasury may require, by regulation, that all taxes collected
6 pursuant to sections 19 through 27 of P.L. , c. (C.) (pending
7 before the Legislature as this bill) be collected in the same manner
8 as surcharges are collected under section 28 of P.L. , c. (C.)
9 (pending before the Legislature as this bill). Revenues that are
10 collected and distributed back to the municipality shall be deposited
11 into a trust account established by the municipality and dedicated
12 exclusively to the purpose of funding one or more eligible purposes.
13 In the case of any assignment pursuant to section 23 of P.L. , c.
14 (C.) (pending before the Legislature as this bill), the terms of
15 such assignment shall include the agreement of the municipality to
16 enforce collection of the taxes in such manner as provided therein,
17 and may provide for direct payment of all or a portion of the tax
18 proceeds to a bond trustee. In addition to tax proceeds, there shall
19 be deposited into the rental tax account such other moneys as may,
20 from time to time, be directed by law to be deposited therein.

21
22 21. (New section) a. All tax proceeds required to be collected
23 by the municipality pursuant to sections 19 through 27 of P.L. , c.
24 (C.) (pending before the Legislature as this bill) shall be
25 anticipated as dedicated revenues and appropriated to such
26 dedicated purposes in the municipal budget pursuant to
27 N.J.S.40A:4-39.

28 b. Except to the extent tax proceeds are assigned to a bond
29 trustee pursuant to section 23 of P.L. , c. (C.) (pending
30 before the Legislature as this bill), all tax proceeds shall, promptly
31 upon receipt by the chief financial officer, be deposited into the
32 rental tax account. There may also be deposited into the rental tax
33 account, or with the bond trustee, such additional amounts as may
34 from time to time be appropriated for such purpose by the
35 municipality, and the proceeds of any bonds issued pursuant to
36 P.L. , c. (C.) (pending before the Legislature as this bill)
37 may also be deposited into the rental tax account.

38
39 22. (New section) a. Any person having the obligation to collect
40 any tax imposed under sections 19 through 27 of P.L. , c.
41 (C.) (pending before the Legislature as this bill) who fails,
42 neglects, or refuses to make any report required by the Director of
43 the Division of Taxation in the Department of the Treasury or by an
44 ordinance adopted pursuant to sections 19 through 27 of P.L. , c.
45 (C.) (pending before the Legislature as this bill), any such
46 person who refuses to permit an officer or agent designed by the
47 director or by the municipality to examine his books, records, and
48 paper, and any such person who knowingly makes any incomplete,
49 false, or fraudulent report, or who attempts to do anything

1 whatsoever to avoid the full disclosure of the amount due under the
2 ordinance to avoid the payment of the whole or any part hereof, is a
3 disorderly person.

4 b. The failure of any person to receive or procure the forms
5 required for making reports required by the director or by an
6 ordinance adopted pursuant to section 20 of P.L. , c. (C.)
7 (pending before the Legislature as this bill) shall not excuse him
8 from making those reports.

9
10 23. (New section) An ordinance imposing a tax may authorize
11 the municipality to assign all or any portion or percentage of the
12 proceeds thereof directly to the trustee for any bonds issued
13 pursuant to section 24 of P.L. , c. (C.) (pending before the
14 Legislature as this bill), as payment or security for the bonds.
15 Notwithstanding any law to the contrary, the assignment shall be an
16 absolute assignment of all of the municipality's right, title and
17 interest in the tax proceeds, or portion or percentage thereof. Tax
18 proceeds assigned to the trustee pursuant to this section shall be
19 paid directly by the municipality's chief financial officer to the
20 trustee, and accordingly such assigned tax proceeds shall not be
21 included in the general funds of the municipality, or shall they be
22 subject to any laws regarding the receipt, deposit, investment, or
23 appropriation of public funds; and they shall retain such status
24 notwithstanding enforcement of the payment by the municipality or
25 assignee.

26
27 24. (New section) a. The municipality may issue bonds to
28 finance eligible purposes, in the manner provided for pursuant to
29 the "Local Redevelopment and Housing Law," P.L.1992, c.79
30 (C.40A:12A-1 et al.). Any resolution or ordinance authorizing such
31 bonds may identify the particular eligible purposes toward which
32 such bond proceeds will be applied and the respective amounts
33 allocable to each such eligible purpose, or may provide that such
34 bond proceeds may be applied for any or all of the eligible purposes
35 described in subsection b. of section 20 of P.L. , c. (C.)
36 (pending before the Legislature as this bill), in which case such
37 proceeds shall be deposited in the rental tax account as provided in
38 subsection c. of section 20 of P.L. , c. (C.) (pending before
39 the Legislature as this bill).

40 b. Notwithstanding the provisions of subsection g. of section 37
41 of P.L.1992, c.79 (C.40A:12A-37), the bonds issued pursuant to this
42 section shall be issued as non-recourse obligations, and unless
43 otherwise provided for by separate action of the municipality to
44 guarantee such bonds or otherwise provide for a pledge of the
45 municipality's full faith and credit, shall not, except for such action,
46 be considered to be direct and general obligations of the
47 municipality, and, absent such action, the municipality shall not be
48 obligated to levy and collect a property tax sufficient in an amount
49 to pay the principal and interest on the bonds when the same

1 become due and payable. The provisions of the “Local Government
2 Supervision Act (1947),” P.L.1947, c.151 (C.52:27BB-1 et seq.)
3 shall not apply to any bonds issued or authorized pursuant to this
4 section and those bonds shall not be considered gross debt of the
5 municipality on any debt statement filed in accordance with the
6 “Local Bond Law,” N.J.S.40A:2-1 et seq., and the provisions of
7 chapter 27 of Title 52 of the Revised Statutes shall not apply to
8 such bonds.

9 c. The expenditure of the proceeds from the sale of the bonds
10 shall not require compliance with public bidding laws, including the
11 “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et
12 seq.), or any other statute under which an entity other than the
13 municipality, or any other public entity otherwise subject to such
14 law, shall undertake the economic development costs. The use of
15 these funds shall be subject to public accountability and oversight
16 by the municipality.

17 d. In order to provide additional security to bonds issued under
18 this section, the municipality may provide for an extension of the
19 municipality’s full faith and credit. To the extent that the
20 municipality provides for a full faith and credit guaranty of any
21 bonds, but determines not to authorize the issuance of bonds or
22 notes to provide the funding source thereof, it may do so by
23 resolution approved by a majority of the full governing body. To
24 the extent that bonds or notes are authorized to fund such guaranty,
25 such bonds or notes shall be authorized pursuant to the provisions
26 of the “Local Bond Law,” N.J.S.40A:2-1 et seq., and shall be
27 deductible from the gross debt of the municipality until such time as
28 bonds or notes are actually issued, and only up to the amount
29 actually issued, to fund such guaranty.

30
31 25. (New section) All bonds issued pursuant to section 24 of
32 P.L. , c. (C.) (pending before the Legislature as this bill) are
33 hereby declared to be issued by a political subdivision of this State
34 and for an essential public and governmental purpose and the
35 bonds, and the interest thereon and the income there from, and all
36 facility charges, funds, revenues, and other moneys pledged or
37 available to pay or secure the payment of the bonds, or interest
38 thereon, shall at all times be exempt from taxation except for
39 transfer inheritance and estate taxes.

40
41 26. (New section) The State of New Jersey does hereby pledge
42 to, and covenant and agree with, the holders of any bonds issued
43 pursuant to section 24 of P.L. , c. (C.) (pending before the
44 Legislature as this bill) that the State will not limit or alter the terms
45 of any agreement, ordinance, or resolution made in connection with
46 the security for, and the issuance and sale of, any bonds, so as to in
47 any way impair the rights or remedies of such holders, and will not
48 modify in any way the exemption from taxation provided for in
49 section 25 of P.L. , c. (C.) (pending before the Legislature

1 as this bill) until the bonds, together with interest thereon, with
2 interest on any unpaid installments of interest, and all costs and
3 expenses in connection with any action or proceeding by or on
4 behalf of such holders, are fully met and discharged.

5
6 27. (New section) After issuance, pursuant to sections 19
7 through 26 of P.L. , c. (C.) (pending before the Legislature
8 as this bill), all bonds, notes, or other obligations shall be
9 conclusively presumed to be fully authorized and issued by all
10 courts and officers of this State, and any person shall be estopped
11 from questioning their sale, execution, or delivery.

12
13 28. (New section) a. As used in this section:

14 "Admission charge" means the amount paid for admission,
15 including any service charge and any charge for entertainment at a
16 place of amusement, including but not limited to a dramatic or
17 musical arts admission charge as defined pursuant to subsection (r)
18 of section 2 of P.L.1966, c.30 (C.54:32B-2); and

19 "Major place of amusement" means a place of amusement as that
20 term is defined in subsection (t) of section 2 of P.L.1966, c.30
21 (C.54:32B-2), other than a motion picture theater, and other than an
22 amusement park as defined in section 1 of P.L.1992, c.118 (C.5:3-
23 55), at which admission charges are regularly paid, which place of
24 amusement is not owned by the State or an independent State
25 authority, or is not located on property that is owned by the State,
26 and which contains fixed seats for at least 7,000 patrons. For the
27 purposes of this definition, a county improvement authority is not
28 an independent State authority.

29 b. (1) The governing body of a municipality that is a city of the
30 second class and in which there is located a major place of
31 amusement ¹, except for a municipality subject to the "Municipal
32 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
33 (C.52:27BBB-1 et al.).¹ may adopt an ordinance imposing a
34 surcharge of an amount up to \$2 on each admission charge that is
35 subject to the New Jersey sales tax pursuant to paragraph (1) of
36 subsection (e) of section 3 of P.L.1966, c.30 (C.54:32B-3), and that
37 is not otherwise exempt from that tax, collected by each major place
38 of amusement in the municipality for admission thereto, which
39 surcharge shall be paid by the customer from whom the sales tax is
40 due pursuant to section 3 of P.L.1966, c.30 (C.54:32B-3). A
41 surcharge imposed under an ordinance adopted pursuant to this
42 paragraph shall be in addition to any other tax or fee imposed
43 pursuant to statute or local ordinance or resolution by any
44 governmental entity upon the admission charge. A surcharge
45 imposed under an ordinance adopted pursuant to this paragraph
46 shall be separately stated on any bill, receipt, invoice or similar
47 document provided to the patron, but shall not be considered part of
48 the sale price for purpose of determining tax pursuant to P.L.1966,
49 c.30 (C.54:32B-1 et seq.).

1 (2) The governing body of a municipality that is a city of the
2 second class in which there is located a major place of amusement
3 ¹, except for a municipality subject to the "Municipal Rehabilitation
4 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et
5 al.),¹ may adopt an ordinance imposing a surcharge of an amount up
6 to \$2 on parking for the major place of amusement. A parking
7 surcharge imposed under an ordinance adopted pursuant to this
8 paragraph shall be in addition to any other tax or fee imposed
9 pursuant to statute or local ordinance or resolution by any
10 governmental entity upon the parking charge. A surcharge imposed
11 under an ordinance adopted pursuant to this paragraph shall be
12 separately stated on any bill, receipt, invoice or similar document
13 provided to the patron, if any, but shall not be considered part of the
14 sale price for purpose of determining tax pursuant to P.L.1966, c.30
15 (C.54:32B-1 et seq.).

16 c. A copy of an ordinance adopted pursuant to this section shall
17 be transmitted upon adoption or amendment to the State Treasurer
18 along with a list of the names and locations of major places of
19 amusement in the municipality. An ordinance so adopted or any
20 amendment thereto shall provide that the surcharge provisions of
21 the ordinance or any amendment to the surcharge provisions shall
22 take effect on the first day of the first full month occurring 30 days
23 after the date of transmittal to the State Treasurer. Any ordinance
24 adopted pursuant to this section shall contain the following
25 provisions:

26 (1) A vendor shall not assume or absorb the surcharge imposed
27 by the ordinance;

28 (2) A vendor shall not in any manner advertise or hold out to any
29 person or to the public in general, in any manner, directly or
30 indirectly, that the surcharge will be assumed or absorbed by the
31 vendor, that the surcharge will not be separately charged and stated
32 to the customer, or that the surcharge will be refunded to the
33 customer;

34 (3) Each assumption or absorption by a vendor of the surcharge
35 shall be deemed a separate offense and each representation or
36 advertisement by a vendor for each day the representation or
37 advertisement continues shall be deemed a separate offense; and

38 (4) Penalties as fixed in the ordinance, for violation of the
39 foregoing provisions.

40 d. (1) A surcharge imposed pursuant to a municipal ordinance
41 adopted under the provisions of this section shall be collected on
42 behalf of the municipality by the person collecting the admission
43 charge or parking fee from the customer.

44 (2) Each person required to collect a surcharge imposed by the
45 ordinance shall be personally liable for the surcharge imposed,
46 collected or required to be collected hereunder. Any such person
47 shall have the same right in respect to collecting the surcharge from
48 a customer as if the surcharge were a part of the admission charge
49 and payable at the same time; provided, however, that the chief

1 fiscal officer of the municipality shall be joined as a party in any
2 action or proceeding brought to collect the surcharge.

3 e. (1) A person required to collect a surcharge imposed pursuant
4 to the provisions of this section shall, on or before the dates
5 required pursuant to section 17 of P.L.1966, c.30 (C.54:32B-17),
6 forward to the Director of the Division of Taxation in the
7 Department of the Treasury the surcharge collected in the preceding
8 month and make and file a return for the preceding month with the
9 director on any form and containing any information as the director
10 shall prescribe as necessary to determine liability for the surcharge
11 in the preceding month during which the person was required to
12 collect the surcharge.

13 (2) The director may permit or require returns to be made
14 covering other periods and upon any dates as the director may
15 specify. In addition, the director may require payments of
16 surcharge liability at any intervals and based upon any
17 classifications as the director may designate. In prescribing any
18 other periods to be covered by the return or intervals or
19 classifications for payment of surcharge liability, the director may
20 take into account the dollar volume of surcharge involved as well as
21 the need for ensuring the prompt and orderly collection of the
22 surcharge imposed.

23 (3) The director may require amended returns to be filed within
24 20 days after notice and to contain the information specified in the
25 notice.

26 f. (1) The Director of the Division of Taxation in the
27 Department of the Treasury shall collect and administer the
28 surcharges; in so doing, the director shall have all the powers
29 granted pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.).
30 Surcharges imposed pursuant to the provisions of this section shall
31 be governed by the provisions of the "State Uniform Tax Procedure
32 Law," R.S.54:48-1 et seq.

33 (2) The director shall determine and certify to the State Treasurer
34 on a quarterly or more frequent basis, as prescribed by the State
35 Treasurer, the amount of revenues collected in each municipality
36 pursuant to this section.

37 (3) The State Treasurer, upon the certification of the director and
38 upon the warrant of the State Comptroller, shall pay and distribute
39 on a quarterly or more frequent basis, as prescribed by the State
40 Treasurer, to each municipality the amount of revenues determined
41 and certified under this subsection.

42 (4) The revenue received by a municipality shall be appropriated
43 as a special item of local revenue subject to the prior written
44 approval by the Director of the Division of Local Government
45 Services in the Department of Community Affairs, and shall be
46 offset with a local unit appropriation of an equal amount for senior
47 citizen and youth health and recreational purposes.

48 g. The director may, pursuant to the provisions of the
49 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.), make, adopt, amend, or repeal such rules and regulations as
2 the director finds necessary to carry out the provisions of this
3 section.

4
5 '29. Section 1 of P.L.1997, c.334 (C.34:1B-7.42a) is amended to
6 read as follows:

7 1. a. The New Jersey Economic Development Authority shall
8 establish within the New Jersey Emerging Technology and
9 Biotechnology Financial Assistance Program established pursuant
10 to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business
11 tax benefit certificate transfer program to allow new or expanding
12 emerging technology and biotechnology companies in this State
13 with unused amounts of research and development tax credits
14 otherwise allowable which cannot be applied for the credit's tax
15 year due to the limitations of subsection b. of section 1 of P.L.1993,
16 c.175 (C.54:10A-5.24) and unused net operating loss carryover
17 pursuant to subparagraph (B) of paragraph (6) of subsection (k) of
18 section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax
19 benefits for use by other corporation business taxpayers in this
20 State, provided that the taxpayer receiving the surrendered tax
21 benefits is not affiliated with a corporation that is surrendering its
22 tax benefits under the program established under P.L.1997, c.334.
23 For the purposes of this section, the test of affiliation is whether the
24 same entity directly or indirectly owns or controls 5% or more of
25 the voting rights or 5% or more of the value of all classes of stock
26 of both the taxpayer receiving the benefits and a corporation that is
27 surrendering the benefits. The tax benefits may be used on the
28 corporation business tax returns to be filed by those taxpayers in
29 exchange for private financial assistance to be provided by the
30 corporation business taxpayer that is the recipient of the corporation
31 business tax benefit certificate to assist in the funding of costs
32 incurred by the new or expanding emerging technology and
33 biotechnology company.

34 b. The authority, in cooperation with the Division of Taxation
35 in the Department of the Treasury, shall review and approve
36 applications by new or expanding emerging technology and
37 biotechnology companies in this State with unused but otherwise
38 allowable carryover of research and development tax credits
39 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and
40 unused but otherwise allowable net operating loss carryover
41 pursuant to paragraph (6) of subsection (k) of section 4 of P.L.1945,
42 c.162 (C.54:10A-4), to surrender those tax benefits in exchange for
43 private financial assistance to be made by the corporation business
44 taxpayer that is the recipient of the corporation business tax benefit
45 certificate in an amount equal to at least ~~75%~~ 80 percent of the
46 amount of the surrendered tax benefit. Provided that the amount of
47 the surrendered tax benefit for a surrendered research and
48 development tax credit carryover is the amount of the credit, and
49 provided that the amount of the surrendered tax benefit for a

1 surrendered net operating loss carryover is the amount of the loss
2 multiplied by the new or expanding emerging technology or
3 biotechnology company's anticipated allocation factor, as
4 determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6)
5 for the tax year in which the benefit is transferred and subsequently
6 multiplied by the corporation business tax rate provided pursuant to
7 subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5). The
8 authority shall be authorized to approve the transfer of no more than
9 ~~[\$50,000,000 of tax benefits over State fiscal year 2000,~~
10 ~~\$40,000,000 of tax benefits over each State fiscal year 2001 through~~
11 ~~2004, and] \$60,000,000 [over] of tax benefits in a State fiscal year~~
12 ~~[2005 and each State fiscal year thereafter].~~ If the total amount of
13 transferable tax benefits requested to be surrendered by approved
14 applicants exceeds ~~[\$50,000,000 for State fiscal year 2000,~~
15 ~~\$40,000,000 for each State fiscal year 2001 through 2004, or~~
16 ~~\$60,000,00] \$60,000,000 for a State fiscal year [2005 and for each~~
17 ~~State fiscal year thereafter],~~ the authority, in cooperation with the
18 Division of Taxation in the Department of the Treasury, shall not be
19 authorized to approve the transfer of more than ~~[\$50,000,000 for~~
20 ~~State fiscal year 2000, more than \$40,000,000 for each State fiscal~~
21 ~~2001 through 2004, or \$60,000,00] \$60,000,000 for that State fiscal~~
22 ~~year [2005 and for each State fiscal year thereafter]~~ and shall
23 allocate the transfer of tax benefits by approved companies using
24 the following method:

25 (1) an eligible applicant with \$250,000 or less of transferable
26 tax benefits shall be authorized to surrender the entire amount of its
27 transferable tax benefits;

28 (2) an eligible applicant with more than \$250,000 of transferable
29 tax benefits shall be authorized to surrender a minimum of
30 \$250,000 of its transferable tax benefits;

31 (3) ~~[an eligible applicant with more than \$250,000 of~~
32 ~~transferable tax benefits that was approved to surrender tax benefits~~
33 ~~in the prior fiscal year shall be authorized to surrender a minimum~~
34 ~~of 50% of the transferable tax benefits surrendered in the prior~~
35 ~~fiscal year or \$250,000 whichever is greater, provided that the~~
36 ~~amount of transferable tax benefits authorized shall not exceed the~~
37 ~~applicant's transferable tax benefits for the current fiscal year;]~~
38 ~~(Deleted by amendment, P.L. , c. .) (pending before the~~
39 ~~Legislature as this bill)~~

40 (4) an eligible applicant with more than \$250,000 shall also be
41 authorized to surrender additional transferable tax benefits
42 determined by multiplying the applicant's transferable tax benefits
43 less the minimum transferable tax benefits that company is
44 authorized to surrender under paragraph (2) ~~[or (3)]~~ of this
45 subsection by a fraction, the numerator of which is the total amount
46 of transferable tax benefits that the authority is authorized to
47 approve less the total amount of transferable tax benefit approved
48 under paragraphs (1), (2), ~~[(3)]~~ and (5) of this subsection and the

1 denominator of which is the total amount of transferable tax
2 benefits requested to be surrendered by all eligible applicants less
3 the total amount of transferable tax benefits approved under
4 paragraphs (1), (2), ~~[(3)]~~ and (5) of this subsection;

5 (5) The authority shall establish the boundaries for three
6 innovation zones to be geographically distributed in the northern,
7 central, and southern portions of this State. Of the \$60,000,000 of
8 transferable tax benefits authorized for each State fiscal year,
9 ~~[\$5,000,000 shall be allocated for the surrender of transferable tax~~
10 ~~benefits exclusively by eligible companies that operate within the~~
11 ~~boundaries of the innovation zones during State fiscal year 2005,~~
12 ~~and] \$10,000,000 shall be [so] allocated [for State fiscal year 2006~~
13 ~~and for each State fiscal year thereafter] for the surrender of~~
14 ~~transferable tax benefits exclusively by new and expanding~~
15 ~~emerging technology and biotechnology companies that operate~~
16 ~~within the boundaries of the innovation zones, except that any~~
17 ~~portion of the \$10,000,000 that is not so approved shall be available~~
18 ~~for that State fiscal year for the surrender of transferable tax~~
19 ~~benefits by new and expanding emerging technology and~~
20 ~~biotechnology companies that do not operate within the boundaries~~
21 ~~of an innovation zone.~~

22 If the total amount of transferable tax benefits that would be
23 authorized using the above method exceeds ~~[\$50,000,000 for State~~
24 ~~fiscal year 2000, \$40,000,000 for each State fiscal year 2001~~
25 ~~through 2004, or \$60,000,00] \$60,000,000 for a State fiscal year~~
26 ~~[2005 and for each State fiscal year thereafter], then the authority,~~
27 in cooperation with the Division of Taxation in the Department of
28 the Treasury, shall limit the total amount of tax benefits authorized
29 to be transferred to ~~[\$50,000,000 for State fiscal year 2000,~~
30 ~~\$40,000,000 for each State fiscal year 2001 through 2004, or~~
31 ~~\$60,000,00] \$60,000,000 [for State fiscal year 2005 and for each~~
32 ~~State fiscal year thereafter] by applying the above method on an~~
33 apportioned basis.

34 For purposes of this section transferable tax benefits include an
35 eligible applicant's unused but otherwise allowable carryover of net
36 operating losses multiplied by the applicant's anticipated allocation
37 factor as determined pursuant to section 6 of P.L. 1945, c.162
38 (C.54:10A-6) for the tax year in which the benefit is transferred and
39 subsequently multiplied by the corporation business tax rate as
40 provided in subsection (c) of section 5 of P.L.1945, c.162
41 (C.54:10A-5) plus the total amount of the applicant's unused but
42 otherwise allowable carryover of research and development tax
43 credits. An eligible applicant's transferable tax benefits shall be
44 limited to net operating losses and research and development tax
45 credits that the applicant requests to surrender in its application to
46 the authority and shall not, in total, exceed the maximum amount of
47 tax benefits that the applicant is eligible to surrender.

1 No application for a corporation business tax benefit transfer
2 certificate shall be approved in which the new or expanding
3 emerging technology or biotechnology company (1) has
4 demonstrated positive net operating income in any of the two
5 previous full years of ongoing operations as determined on its
6 financial statements issued according to generally accepted
7 accounting standards endorsed by the Financial Accounting
8 Standards Board; or (2) is directly or indirectly at least 50 percent
9 owned or controlled by another corporation that has demonstrated
10 positive net operating income in any of the two previous full years
11 of ongoing operations as determined on its financial statements
12 issued according to generally accepted accounting standards
13 endorsed by the Financial Accounting Standards Board or is part of
14 a consolidated group of affiliated corporations, as filed for federal
15 income tax purposes, that in the aggregate has demonstrated
16 positive net operating income in any of the two previous full years
17 of ongoing operations as determined on its combined financial
18 statements issued according to generally accepted accounting
19 standards endorsed by the Financial Accounting Standards Board.

20 The maximum lifetime value of surrendered tax benefits that a
21 corporation shall be permitted to surrender pursuant to the program
22 is ~~[\$10,000,000]~~ \$15,000,000. Applications must be received
23 ~~[within 30 days from enactment of P.L.1999, c.140 (C.34:1B-7.42b~~
24 ~~et al.) for State fiscal year 2000 and]~~ on or before June 30 ~~[for]~~ of
25 each ~~[subsequent]~~ State fiscal year.

26 ~~[The private financial assistance shall be used to fund expenses~~
27 ~~incurred in connection with the operation of the new or expanding~~
28 ~~emerging technology or biotechnology company in the State,~~
29 ~~including but not limited to the expenses of fixed assets, such as the~~
30 ~~construction and acquisition and development of real estate,~~
31 ~~materials, start-up, tenant fit-out, working capital, salaries, research~~
32 ~~and development expenditures and any other expenses determined~~
33 ~~by the authority to be necessary to carry out the purposes of the~~
34 ~~New Jersey Emerging Technology and Biotechnology Financial~~
35 ~~Assistance Program.]~~

36 The authority, in consultation with the Division of Taxation,
37 shall establish rules for the recapture of all, or a portion of, the
38 amount of a grant of a corporation business tax benefit certificate
39 from the new or expanding emerging technology and biotechnology
40 company having surrendered tax benefits pursuant to this section in
41 the event the taxpayer fails to use the private financial assistance
42 received for the surrender of tax benefits as required by this
43 subsection or fails to maintain a headquarters or a base of operation
44 in this State during the five years following receipt of the private
45 financial assistance; except if the failure to maintain a headquarters
46 or a base of operation in this State is due to the liquidation of the
47 new or expanding emerging technology and biotechnology
48 company.

1 c. The authority, in cooperation with the Division of Taxation
2 in the Department of the Treasury, shall review and approve
3 applications by taxpayers under the Corporation Business Tax Act
4 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire
5 surrendered tax benefits approved pursuant to subsection b. of this
6 section which shall be issued in the form of corporation business
7 tax benefit transfer certificates, in exchange for private financial
8 assistance to be made by the taxpayer in an amount equal to at least
9 **[75%] 80 percent** of the amount of the surrendered tax benefit of an
10 emerging technology or biotechnology company in the State. A
11 corporation business tax benefit transfer certificate shall not be
12 issued unless the applicant certifies that as of the date of the
13 exchange of the corporation business tax benefit certificate it is
14 operating as a new or expanding emerging technology or
15 biotechnology company and has no current intention to cease
16 operating as a new or expanding emerging technology or
17 biotechnology company.

18 The private financial assistance shall assist in funding expenses
19 incurred in connection with the operation of the new or expanding
20 emerging technology or biotechnology company 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 the
26 New Jersey Emerging Technology and Biotechnology Financial
27 Assistance Program.

28 The authority shall require a corporation business taxpayer that
29 acquires a corporation business tax benefit certificate to enter into a
30 written agreement with the new or expanding emerging technology
31 or biotechnology company concerning the terms and conditions of
32 the private financial assistance made in exchange for the certificate.
33 The written agreement may contain terms concerning the
34 maintenance by the new or expanding emerging technology or
35 biotechnology company of a headquarters or a base of operation in
36 this State.

37 d. **[**The authority shall coordinate the applications for
38 surrender and acquisition of unused but otherwise allowable tax
39 benefits pursuant to this section in a manner that can best stimulate
40 and encourage the extension of private financial assistance to new
41 and expanding emerging technology and biotechnology companies
42 in this State. The applications shall be submitted and the authority
43 shall approve or disapprove the applications.

44 The authority shall, in consultation with the New Jersey
45 Commerce and Economic Growth Commission, the New Jersey
46 Commission on Science and Technology and any institution of
47 higher education in New Jersey, develop criteria for the approval or
48 disapproval of applications. Such criteria shall include, but need
49 not be limited to, an evaluation of the new or expanding emerging

1 technology or biotechnology company's actual or potential scientific
2 and technological viability, a determination that the new or
3 expanding emerging technology or biotechnology company's
4 principal products or services are sufficiently innovative to provide
5 a competitive advantage, a determination that the proposed financial
6 assistance will result in significant growth in permanent, full-time
7 employment in the State, a determination made by the authority that
8 the new or expanding emerging technology or biotechnology
9 company does not have sufficient resources to operate in the short
10 term or cannot secure financial assistance from venture capital,
11 stock issuance, product sales revenue, a parent corporation or other
12 affiliates, bank or any other method of obtaining capital, and a
13 determination that the financial assistance provided pursuant to this
14 act demonstrates the prospect of a significant positive change in the
15 applicant's net income. The authority shall establish the weight of
16 importance to be given each criterion utilized in its application
17 approval process. No application for surrender and acquisition of
18 unused but otherwise allowable tax benefits pursuant to this section
19 shall be approved in which the new or expanding technology or
20 biotechnology company (1) has demonstrated positive net income in
21 any of the two previous full years of ongoing operations as
22 determined on its financial statements; or (2) has demonstrated a
23 ratio in excess of 110% or greater of operating revenues divided by
24 operating expenses in any of the two previous full years of
25 operations as determined on its financial statements; or (3) is
26 directly or indirectly at least 50% owned or controlled by another
27 corporation that has demonstrated positive net income in any of the
28 two previous full years of ongoing operations as determined on its
29 financial statements or is part of a consolidated group of affiliated
30 corporations, as filed for federal income tax purposes, that in the
31 aggregate has demonstrated positive net income in any of the two
32 previous full years of ongoing operations as determined on its
33 combined financial statements.

34 Once an application has been approved, the applicant shall be
35 permitted to surrender, subject to the limitations set forth in
36 subsection b. of this section and the net operating loss carryover and
37 research and development tax credit carryover time periods
38 pursuant to subparagraph (B) of paragraph (6) of subsection (k) of
39 section 4 of P.L.1945, c.162 (C.54:10A-4) and subsection b. of
40 section 1 of P.L.1993, c.175 (C.54:10A-5.24), the surrendered tax
41 benefits that are requested in the application regardless of whether
42 the applicant continues to meet the eligibility criteria set forth in the
43 act in subsequent years.

44 The authority shall require a corporation business taxpayer that
45 acquires a corporation business tax benefit certificate to enter into a
46 written agreement with the new or expanding emerging technology
47 or biotechnology company concerning the terms and conditions of
48 the private financial assistance made in exchange for the certificate.
49 The written agreement may contain terms concerning the

1 maintenance by the new or expanding emerging technology or
2 biotechnology company of a headquarters or a base of operation in
3 this State.】 (Deleted by amendment, P.L. , c. .) (pending
4 before the Legislature as this bill)¹
5 (cf: P.L.2004, c.65, s.18)

6
7 ¹30. Section 1 of P.L.1999, c.140 (C.34:1B-7.42b) is amended
8 to read as follows:

9 1. As used in P.L.1997, c.334 (C.34:1B-7.42a et al.):

10 “Authority” means the New Jersey Economic Development
11 Authority established pursuant to section 4 of P.L.1974, c.80
12 (C.34:1B-4)【;】.

13 “Biotechnology” means the continually expanding body of
14 fundamental knowledge about the functioning of biological systems
15 from the macro level to the molecular and sub-atomic levels, as
16 well as novel products, services, technologies and sub-technologies
17 developed as a result of insights gained from research advances that
18 add to that body of fundamental knowledge【;】.

19 “Biotechnology company” means an emerging corporation that
20 has its headquarters or base of operations in this State; that owns,
21 has filed for, or has a valid license to use protected, proprietary
22 intellectual property; and that is engaged in the research,
23 development, production, or provision of biotechnology for the
24 purpose of developing or providing products or processes for the
25 specific commercial or public purposes, including but not limited
26 to, medical, pharmaceutical, nutritional, and other health-related
27 purposes, agricultural purposes, and environmental purposes, or a
28 person whose headquarters or base of operations is located in this
29 State, engaged in providing services or products necessary for such
30 research, development, production, or provision【;】.

31 “Full-time employee” means a person employed by a new or
32 expanding emerging technology or biotechnology company for
33 consideration for at least 35 hours a week, or who renders any other
34 standard of service generally accepted by custom or practice as full-
35 time employment and whose wages are subject to withholding as
36 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
37 et seq., or who is a partner of a new or expanding emerging
38 technology or biotechnology company who works for the
39 partnership for at least 35 hours a week, or who renders any other
40 standard of service generally accepted by custom or practice as full-
41 time employment, and whose distributive share of income, gain,
42 loss, or deduction, or whose guaranteed payments, or any
43 combination thereof, is subject to the payment of estimated taxes, as
44 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
45 et seq. To qualify as a “full-time employee,” an employee shall
46 also receive from the new or expanding emerging technology or
47 biotechnology company health benefits under a group health plan as
48 defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health

1 benefits plan as defined under section 1 of P.L.1992, c.162
2 (C.17B:27A-17), or a policy or contract of health insurance
3 covering more than one person issued pursuant to Article 2 of
4 chapter 27 of Title 17B of the New Jersey Statutes. “Full-time
5 employee” shall not include any person who works as an
6 independent contractor or on a consulting basis for the new or
7 expanding emerging technology or biotechnology company.

8 “New or expanding” means a technology or biotechnology
9 company that at the end of the calendar year prior to the year in
10 which the company files an application for surrender of unused but
11 otherwise allowable tax benefits under P.L.1997, c.334 (C.34:1B-
12 7.42a et al.), on the date on which the application is submitted, and
13 on the date on which the company receives the corporation business
14 tax benefit certificate, has fewer than 225 employees in the United
15 States of America [, of whom 75% are New Jersey-based
16 employees filling a position or job in this State]; [and] but that has
17 at least one full-time employee working in this State if the company
18 has been incorporated for less than three years, that has at least five
19 full-time employees working in this State if the company has been
20 incorporated for more than three years but less than five years, and
21 that has at least 10 full-time employees working in this State if the
22 company has been incorporated for more than five years.

23 “Technology company” means an emerging corporation that has
24 its headquarters or base of operations in this State; that owns, has
25 filed for, or has a valid license to use protected, proprietary
26 intellectual property; and that employs some combination of the
27 following: highly educated or trained managers and workers, or
28 both, employed in this State who use sophisticated scientific
29 research service or production equipment, processes or knowledge
30 to discover, develop, test, transfer or manufacture a product or
31 service.¹

32 (cf: P.L.1999, c.140, s.1)

33
34 ¹[29.] 31.¹ Section 2 of P.L.2007, c.346 (C.34:1B-208) is
35 amended to read as follows:

36 2. As used in this act:

37 “Affiliate” means an entity that directly or indirectly controls, is
38 under common control with, or is controlled by the business.
39 Control exists in all cases in which the entity is a member of a
40 controlled group of corporations as defined pursuant to section 1563
41 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the
42 entity is an organization in a group of organizations under common
43 control as defined pursuant to subsections (b) or (c) of section 414
44 of the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer
45 may establish by clear and convincing evidence, as determined by
46 the Director of the Division of Taxation in the Department of the
47 Treasury, that control exists in situations involving lesser
48 percentages of ownership than required by those statutes. An

1 affiliate of a business may contribute to meeting either the qualified
2 investment or full-time employee requirements of a business that
3 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-
4 209).

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

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

16 “Capital investment” in a qualified business facility means
17 expenses incurred after, but before the end of the eighth year after,
18 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for:
19 **[(i)]** a. the site preparation and construction, repair, renovation,
20 improvement, equipping, or furnishing of a building, structure,
21 facility or improvement to real property; and **[(ii)]** b. obtaining and
22 installing furnishings and machinery, apparatus or equipment for
23 the operation of a business in a building, structure, facility or
24 improvement to real property.

25 **【“Commission” means the New Jersey Commerce Commission.】**

26 “Eligible municipality” means a municipality: (1) which
27 qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et
28 seq.) or which was continued to be a qualified municipality
29 thereunder pursuant to P.L.2007, c.111; and (2) in which 30 percent
30 or more of the value of real property **【is】** was exempt from local
31 property taxation during tax year 2006. The percentage of exempt
32 property shall be calculated by dividing the total exempt value by
33 the sum of the net valuation which is taxable and that which is tax
34 exempt.

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

1 for the partnership for at least 35 hours a week, or who renders any
2 other standard of service generally accepted by custom or practice
3 as full-time employment, and whose distributive share of income,
4 gain, loss, or deduction, or whose guaranteed payments, or any
5 combination thereof, is subject to the payment of estimated taxes, as
6 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
7 et seq. “Full-time employee” shall not include any person who
8 works as an independent contractor or on a consulting basis for the
9 business.

10 “Partnership” means an entity classified as a partnership for
11 federal income tax purposes.

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

16 “Qualified business facility” means any building, complex of
17 buildings or structural components of buildings, and all machinery
18 and equipment located within a designated urban transit hub in an
19 eligible municipality, used in connection with the operation of a
20 business.

21 “Residential unit” means a residential dwelling unit such as a
22 rental apartment, a condominium or cooperative unit, a hotel room,
23 or a dormitory room.

24 “Urban transit hub” means:

25 a. property located within a 1/2 mile radius surrounding the mid
26 point of a New Jersey Transit Corporation, Port Authority Transit
27 Corporation or Port Authority Trans-Hudson Corporation rail
28 station platform area, including all light rail stations, and property
29 located within a one mile radius of the mid point of the platform
30 area of such a rail station if the property is in a qualified
31 municipality under the “Municipal Rehabilitation and Economic
32 Recovery Act,” P.L.2002, c.43 (C.52:27BBB-1 et seq.);

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

36 c. property adjacent to, or connected by rail spur to, a freight rail
37 line if the business utilizes that freight line for loading and
38 unloading freight cars on trains;

39 which property shall have been specifically delineated by the
40 【commission】 authority pursuant to subsection e. of section 3 of
41 P.L.2007, c.346 (C.34:1B-209).

42 A property which is partially included within the radius shall
43 only be considered part of the hub if over 50 percent of its land area
44 falls within the radius. “Rail station” shall not include any rail
45 station located at an international airport.

46 (cf: P.L.2007, c.346, s.2)

47
48 ¹[30.] 32.¹ Section 3 of P.L.2007, c.346 (C.34:1B-209) is
49 amended to read as follows:

1 3. a. (1) A business, upon application to and approval from the
2 **【New Jersey Commerce Commission】** authority, shall be allowed a
3 credit of 100 percent of its capital investment, made after the
4 effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) but prior to
5 its submission of documentation pursuant to subsection c. of this
6 section, in a qualified business facility within an eligible
7 municipality, pursuant to the restrictions and requirements of this
8 section. To be eligible for any tax credits authorized under this
9 section, a business shall demonstrate to the authority, at the time of
10 application, that the State's financial support of the proposed capital
11 investment in a qualified business facility will yield a net positive
12 benefit to both the State and the eligible municipality. The value of
13 all credits approved by the authority pursuant to P.L.2007, c.346
14 (C.34:1B-207 et seq.) shall not exceed \$1,500,000,000.

15 (2) A business, other than a tenant eligible pursuant to paragraph
16 (3) of this subsection, shall make or acquire capital investments
17 totaling not less than **【\$75,000,000】** \$50,000,000 in a qualified
18 business facility, at which the business shall employ not fewer than
19 250 full-time employees to be eligible for a credit under this
20 section. A business that acquires a qualified business facility shall
21 also be deemed to have acquired the capital investment made or
22 acquired by the seller.

23 (3) A business that is a tenant in a qualified business facility, the
24 owner of which has made or acquired capital investments in the
25 facility totaling not less than **【\$75,000,000】** \$50,000,000, shall
26 occupy a leased area of the qualified business facility that
27 represents at least **【\$25,000,000】** \$17,500,000 of the capital
28 investment in the facility at which the tenant business and up to two
29 other tenants in the qualified business facility shall employ not
30 fewer than 250 full-time employees in the aggregate to be eligible
31 for a credit under this section. The amount of capital investment in
32 a facility that a leased area represents shall be equal to that
33 percentage of the owner's total capital investment in the facility that
34 the percentage of net leasable area leased by the tenant is of the
35 total net leasable area of the qualified business facility. Capital
36 investments made by a tenant shall be deemed to be included in the
37 calculation of the capital investment made or acquired by the
38 owner, but only to the extent necessary to meet the owner's
39 minimum capital investment of \$50,000,000. Capital investments
40 made by a tenant and not allocated to meet the owner's minimum
41 capital investment threshold of \$50,000,000 shall be added to the
42 amount of capital investment represented by the tenant's leased area
43 in the qualified business facility.

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

1 is a '[licensee] licensed casino operation' as defined pursuant to
2 section [33] 32 of P.L.1977, c.110 [(C.5:12-33)] (C.5:12-32). A
3 business that is allowed a tax credit under this section shall not be
4 eligible for incentives authorized pursuant to P.L.2002, c.43
5 (C.52:27BBB-1 et al.). A business shall not qualify for a tax credit
6 under this section, based upon capital investment and employment
7 of full-time employees, if that capital investment or employment
8 was the basis for which a grant was provided to the business
9 pursuant to the "InvestNJ Business Grant Program Act," P.L.2008,
10 c.112 (C.34:1B-237 et seq.).

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

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

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

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

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

45 The amount of credit allowed for a tax period to a business that
46 is a tenant in a qualified business facility shall not exceed the
47 business' total lease payments for occupancy of the qualified
48 business facility for the tax period.

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

13 (3) The amount of credit allowed may be applied against the tax
14 liability otherwise due pursuant to section 5 of P.L.1945, c.162
15 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132
16 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950,
17 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5 **[**, or pursuant to
18 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.**]**.

19 d. (1) If, in any tax period, fewer than 200 full-time employees
20 of the business at the qualified business facility are employed in
21 new full-time positions, the amount of the credit otherwise
22 determined pursuant to final calculation of the award of tax credits
23 pursuant to subsection c. of this section shall be reduced by 20
24 percent for that tax period and each subsequent tax period until the
25 first period for which documentation demonstrating the restoration
26 of the 200 full-time employees employed in new full-time positions
27 at the qualified business facility has been reviewed and approved by
28 the **[**commission**]** authority, for which tax period and each
29 subsequent tax period the full amount of the credit shall be
30 allowed**]**; provided, however, that there shall be no reduction if a
31 business relocates to an urban transit hub from another location or
32 locations in the same municipality**]** ¹; provided, however, that for
33 businesses applying before January 1, 2010, there shall be no
34 reduction if a business relocates to an urban transit hub from
35 another location or other locations in the same municipality¹. For
36 the purposes of this paragraph, a "new full-time position" means a
37 position created by the business at the qualified business facility
38 that did not previously exist in this State.

39 (2) If, in any tax period, the business reduces the total number of
40 full-time employees in its Statewide workforce by more than **[10]**
41 20 percent from the number of full-time employees in its Statewide
42 workforce in the last tax accounting or privilege period **[**prior to the
43 effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), or in the
44 last tax accounting or privilege period**]** prior to the credit amount
45 approval under this section, **[**whichever is greater,**]** 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 **commission**
3 authority, for which tax period and each subsequent tax period the
4 full amount of the credit shall be allowed.

5 (3) If, in any tax period, 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 then the business shall forfeit its credit amount for that tax
9 period and each subsequent tax period, until the first tax period for
10 which documentation demonstrating the restoration of the number
11 of full-time employees employed by the business at the qualified
12 business facility to 250 has been reviewed and approved by the
13 **commission** authority, for which tax period and each subsequent
14 tax period the full amount of the credit shall be allowed.

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

21 (ii) If a tenant subleases its tenancy in whole or in part during the
22 10-year eligibility period the new tenant shall not acquire the credit
23 of the sublessor, and the sublessor tenant shall forfeit all credits for
24 the tax period of its sublease and all subsequent tax periods.

25 e. (1) The Executive Director of the New Jersey **Commerce**
26 **Commission** Economic Development Authority, in consultation
27 with the Director of the Division of Taxation in the Department of
28 the Treasury, shall adopt rules in accordance with the
29 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
30 seq.) as are necessary to implement this act, including but not
31 limited to: examples of and the determination of capital investment;
32 the enumeration of eligible municipalities; specific delineation of
33 urban transit hubs; the determination of the limits, if any, on the
34 expense or type of furnishings that may constitute capital
35 improvements; the promulgation of procedures and forms necessary
36 to apply for a credit; and provisions for credit applicants to be
37 charged an initial application fee, and ongoing service fees, to cover
38 the administrative costs related to the credit.

39 (2) Through regulation, the Economic Development Authority
40 shall establish standards regarding the use of renewable energy,
41 energy-efficient technology, and non-renewable resources in order
42 to reduce environmental degradation and encourage long-term cost
43 reduction.

44 (cf: P.L.2007, c.346, s.3)

45
46 ‘[31.] 33.’ (New section) A business may apply to the
47 Director of the Division of Taxation in the Department of the
48 Treasury and the executive director of the authority for a tax credit

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

¹[32.] 34.¹ (New section) As used in sections ¹[32] 34¹ and ¹[33] 35¹ of P.L. , c. (C.) (pending before the Legislature as this bill), the terms “affiliate,” “authority,” “capital investment,” “eligible municipality,” “partnership,” and “residential unit” shall have the same meanings as ascribed thereto in the “Urban Transit Hub Tax Credit Act,” P.L.2007, c.346 (C.34:1B-207 et seq.), as amended by P.L. , c. (C.) (pending before the Legislature as this bill), except that all references therein to “business” and “qualified business facility” shall be deemed to refer respectively to “developer” and “qualified residential ¹[facility] project.”¹[,]”¹ as such terms are defined in this section. In addition, as used in sections ¹[32] 34¹ and ¹[33] 35¹ of P.L. , c. (C.) (pending before the Legislature as this bill):

“Developer” shall have the same meaning as “business,” as such term is defined in the “Urban Transit Hub Tax Credit Act,” P.L.2007, c.346 (C.34:1B-207 et seq.), as amended by P.L. , c. (C.) (pending before the Legislature as this bill).

“Qualified residential project” means any building, complex of buildings or structural components of buildings ¹, including a mixed use project, consisting predominantly of residential units,¹ located within an eligible municipality ¹[, consisting predominantly of residential units]¹.

¹[33.] 35.¹ (New section) a. (1) A developer, upon application to and approval from the authority, shall be allowed a credit of up to 20 percent of its capital investment, made after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) but

1 prior to its submission of documentation pursuant to subsection c.
 2 of this section, in a qualified residential '**[facility] project**',
 3 pursuant to the restrictions and requirements of this section. To be
 4 eligible for any tax credits authorized under this section, a
 5 developer shall demonstrate to the authority, through a project pro
 6 forma analysis at the time of application, that the qualified
 7 residential project is likely to be realized with the provision of tax
 8 credits at the level requested but is not likely to be accomplished by
 9 private enterprise without the tax credits. The value of all credits
 10 approved by the authority pursuant to P.L. , c. (C.) (pending
 11 before the Legislature as this bill) may be up to \$150,000,000;
 12 provided, however, that the combined value of all credits approved
 13 by the authority pursuant to both P.L.2007, c.346 (C.34:1B-207 et
 14 seq.) and P.L. , c. (C.) (pending before the Legislature as
 15 this bill) shall not exceed \$1,500,000,000.

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

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

23 b. A developer shall apply for the credit within five years after
 24 the effective date of P.L. , c. (C.) (pending before the
 25 Legislature as this bill), and a developer shall submit its
 26 documentation for approval of its credit amount within eight years
 27 after the effective date of P.L. , c. (C.) (pending before the
 28 Legislature as this bill).

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

42
 43 '**[34.] 36.**' Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is
 44 amended to read as follows:

45 33. The Legislature finds and declares:

46 a. The collection of development fees from builders of
 47 residential and non-residential properties has been authorized by the
 48 court through the powers delegated to the Council on Affordable

1 Housing established pursuant to the "Fair Housing Act," P.L.1985,
2 c.222 (C.52:27D-301 et al.).

3 b. New Jersey's land resources are becoming more scarce,
4 while its redevelopment needs are increasing. In order to balance
5 the needs of developing and redeveloping communities, a
6 reasonable method of providing for the housing needs of low and
7 moderate income and middle income households, without
8 mandating the inclusion of housing in every non-residential project,
9 must be established.

10 c. A Statewide non-residential development fee program which
11 permits municipalities under the council's jurisdiction to retain
12 these fees for use in the municipality will provide a fair and
13 balanced funding method to address the State's affordable housing
14 needs, while providing an incentive to all municipalities to seek
15 substantive certification from the council.

16 d. Whereas pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),
17 organizations are directed to invest in the Casino Reinvestment
18 Development Authority to ensure that the development of housing
19 for families of low and moderate income shall be provided. The
20 Casino Reinvestment Development Authority, in consultation with
21 the council, shall work to effectuate the purpose and intent of
22 P.L.1985, c.222 (C.52:27D-301 et al.).

23 e. The "Statewide Non-Residential Development Fee Act,"
24 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through
25 C.40:55D-8.7), prohibits municipalities from imposing their own
26 fees to fund affordable housing on non-residential development, and
27 P.L. , c. (C.) (pending before the Legislature as this bill) is not
28 intended to alter this underlying policy.

29 f. The negative impact of a State policy that over-relies on a
30 municipal fee structure and of State programs that require a
31 municipality to impose fees and charges on developers must be
32 balanced against any public good expected from such regulation. It
33 is undisputable that the charging of fees at high levels dissuades
34 commerce from locating within a State or municipality or locality
35 and halts non-residential and residential development, and these ill
36 effects directly increase the overall costs of housing, and could
37 impede the constitutional obligation to provide for a realistic
38 opportunity for housing for families at all income levels.

39 (cf: P.L.2008, c.46, s.33)

40

41 ¹**[35.] 37.** Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is
42 amended to read as follows:

43 37. a. The provisions of **[sections 32 through 38 of]** P.L.2008,
44 c.46 **[(C.40:55D-8.1 through C.40:55D-8.7)]** that would permit the
45 imposition of a fee upon a developer of non-residential property
46 shall not apply to:

47 (1) Non-residential property for which a **[certificate of**
48 occupancy has been issued] site plan has received either

1 preliminary approval, pursuant to section 34 of P.L.1975, c.291
2 (C.40:55D-46), or final approval, pursuant to section 38 of
3 P.L.1975, c.291 (C.40:55D-50), prior to [the effective date of
4 P.L.2008, c.46 (C.52:27D-329.1 et al.)] July 1, 2010; provided that
5 a permit for the construction of the building has been issued by the
6 local enforcing agency having jurisdiction, in accordance with
7 section 13 of P.L.1975, c.217 (C.52:27D-131), prior to July 1, 2011;
8 or

9 (2) A non-residential planned development which has received
10 approval of a general development plan pursuant to section 5 of
11 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
12 for which the developer has entered into a developer's agreement
13 pursuant to a development approval granted pursuant to P.L.1975,
14 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
15 into a redevelopment agreement pursuant to P.L.1992, c.79
16 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
17 (C.52:27D-329.1 et al.); provided, however, that the general
18 development plan, developer's agreement, redevelopment
19 agreement, or any development agreement pursuant to the
20 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
21 provides that the developer or redeveloper pay a fee for affordable
22 housing of at least one percent of the equalized assessed value of
23 the improvements which are the subject of the development plan,
24 developer's agreement, or redevelopment agreement;

25 (3) A non-residential project that, prior to July 1, 2010, has been
26 referred to a planning board by the State, a governing body, or other
27 public agency for review pursuant to section 22 of P.L.1975, c.291
28 (C. 40:55D-31); provided that a permit for the construction of the
29 building has been issued by the local enforcing agency having
30 jurisdiction, in accordance with section 13 of P.L.1975, c.217
31 (C.52:27D-131), prior to July 1, 2011; or

32 (4) A non-residential property for which a site plan application
33 has received approval by the New Jersey Meadowlands
34 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
35 14) prior to July 1, 2010; provided that a permit for the construction
36 of the building has been issued by the local enforcing agency
37 having jurisdiction, in accordance with section 13 of P.L.1975,
38 c.217 (C.52:27D-131), prior to July 1, 2011.

39 b. A developer may challenge non-residential development fees
40 imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by
41 filing a challenge with the Director of the Division of Taxation.
42 Pending a review and determination by the director, which shall be
43 made within 45 days of receipt of the challenge, collected fees shall
44 be placed in an interest bearing escrow account by the municipality
45 or by the State, as the case may be. Appeals from a determination
46 of the director may be made to the tax court in accordance with the
47 provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et
48 seq., within 90 days after the date of such determination. Interest

1 earned on amounts escrowed shall be credited to the prevailing
2 party.

3 c. Whenever non-residential development is situated on real
4 property that has been previously developed with a building,
5 structure, or other improvement, the non-residential development
6 fee shall be equal to two and a half (2.5) percent of the equalized
7 assessed value of the land and improvements on the property where
8 the non-residential development is situated at the time the final
9 certificate of occupancy is issued, less the equalized assessed value
10 of the land and improvements on the property where the non-
11 residential development is situated, as determined by the tax
12 assessor of the municipality at the time the developer or owner,
13 including any previous owners, first sought approval for a
14 construction permit, including, but not limited to, demolition
15 permits, pursuant to the State Uniform Construction Code, or
16 approval under the "Municipal Land Use Law," P.L.1975, c.291
17 (C.40:55D-1 et seq.). If the calculation required under this section
18 results in a negative number, the non-residential development fee
19 shall be zero.

20 Whenever the developer of a non-residential development has
21 made or committed itself to make a financial or other contribution
22 relating to the provision of housing affordable to low and moderate
23 income households prior to the enactment of P.L.2008, c.46
24 (C.52:27D-329.1 et al.), the non-residential development fee shall
25 be reduced by the amount of the financial contribution and the fair
26 market value of any other contribution made by or committed to be
27 made by the developer. For purposes of this section, a developer is
28 considered to have made or committed itself to make a financial or
29 other contribution, if and only if: (1) the contribution has been
30 transferred, including but not limited to when the funds have
31 already been received by the municipality; (2) the developer has
32 obligated itself to make a contribution as set forth in a written
33 agreement with the municipality, such as a developer's agreement;
34 or (3) the developer's obligation to make a contribution is set forth
35 as a condition in a land use approval issued by a municipal land use
36 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
37 (C.40:55D-1 et seq.).

38 d. Unless otherwise provided for by law, no municipality shall
39 be required to return a financial or any other contribution made by
40 or committed to be made by the developer of a non-residential
41 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
42 329.1 et al.) relating to the provision of housing affordable to low
43 and moderate income households, provided that the developer does
44 not obtain an amended, modified, or new municipal land use
45 approval with a substantial change in the non-residential
46 development. If the developer obtains an amended, modified, or
47 new land use approval for non-residential development, the
48 municipality, person, or entity shall be required to return to the
49 developer any funds or other contribution provided by the developer

1 for the provision of housing affordable to low and moderate income
2 households and the developer shall not be entitled to a reduction in
3 the affordable housing development fee based upon that
4 contribution.

5 e. The provisions of sections 32 through 38 of P.L.2008, c.46
6 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any
7 manner as affecting the method or timing of assessing real property
8 for property taxation purposes. The payment of a non-residential
9 development fee shall not increase the equalized assessed value of
10 any property.

11 (cf: P.L.2008, c.46, s.37)

12
13 '[36.] 38.' Section 20 of P.L.1985, c.222 (C.52:27D-320) is
14 amended to read as follows:

15 20. There is established in the Department of Community
16 Affairs a separate trust fund, to be used for the exclusive purposes
17 as provided in this section, and which shall be known as the "New
18 Jersey Affordable Housing Trust Fund." The fund shall be a non-
19 lapsing, revolving trust fund, and all monies deposited or received
20 for purposes of the fund shall be accounted for separately, by source
21 and amount, and remain in the fund until appropriated for such
22 purposes. The fund shall be the repository of all State funds
23 appropriated for affordable housing purposes, including, but not
24 limited to, the proceeds from the receipts of the additional fee
25 collected pursuant to paragraph (2) of subsection a. of section 3 of
26 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the
27 Statewide non-residential development fees collected pursuant to
28 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or
29 reverting from municipal development trust funds, or other monies
30 as may be dedicated, earmarked, or appropriated by the Legislature
31 for the purposes of the fund. All references in any law, order, rule,
32 regulation, contract, loan, document, or otherwise, to the
33 "Neighborhood Preservation Nonlapsing Revolving Fund" shall
34 mean the "New Jersey Affordable Housing Trust Fund." The
35 department shall be permitted to utilize annually up to 7.5 percent
36 of the monies available in the fund for the payment of any
37 necessary administrative costs related to the administration of the
38 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), the
39 State Housing Commission, or any costs related to administration of
40 P.L.2008, c.46 (C.52:27D-329.1 et al.).

41 a. Except as permitted pursuant to subsection g. of this section,
42 and by section '[39] 41' of P.L. , c. (C.) (pending before
43 the Legislature as this bill), the commissioner shall award grants or
44 loans from this fund for housing projects and programs in
45 municipalities whose housing elements have received substantive
46 certification from the council, in municipalities receiving State aid
47 pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), in municipalities
48 subject to builder's remedy as defined in section 28 of P.L.1985,
49 c.222 (C.52:27D-328) or in receiving municipalities in cases where

1 the council has approved a regional contribution agreement and a
2 project plan developed by the receiving municipality.

3 Of those monies deposited into the "New Jersey Affordable
4 Housing Trust Fund" that are derived from municipal development
5 fee trust funds, or from available collections of Statewide non-
6 residential development fees, a priority for funding shall be
7 established for projects in municipalities that have petitioned the
8 council for substantive certification.

9 Programs and projects in any municipality shall be funded only
10 after receipt by the commissioner of a written statement in support
11 of the program or project from the municipal governing body.

12 b. The commissioner shall establish rules and regulations
13 governing the qualifications of applicants, the application
14 procedures, and the criteria for awarding grants and loans and the
15 standards for establishing the amount, terms and conditions of each
16 grant or loan.

17 c. For any period which the council may approve, the
18 commissioner may assist affordable housing programs which are
19 not located in municipalities whose housing elements have been
20 granted substantive certification or which are not in furtherance of a
21 regional contribution agreement; provided that the affordable
22 housing program will meet all or part of a municipal low and
23 moderate income housing obligation.

24 d. Amounts deposited in the "New Jersey Affordable Housing
25 Trust Fund" shall be targeted to regions based on the region's
26 percentage of the State's low and moderate income housing need as
27 determined by the council. Amounts in the fund shall be applied for
28 the following purposes in designated neighborhoods:

29 (1) Rehabilitation of substandard housing units occupied or to
30 be occupied by low and moderate income households;

31 (2) Creation of accessory apartments to be occupied by low and
32 moderate income households;

33 (3) Conversion of non-residential space to residential purposes;
34 provided a substantial percentage of the resulting housing units are
35 to be occupied by low and moderate income households;

36 (4) Acquisition of real property, demolition and removal of
37 buildings, or construction of new housing that will be occupied by
38 low and moderate income households, or any combination thereof;

39 (5) Grants of assistance to eligible municipalities for costs of
40 necessary studies, surveys, plans and permits; engineering,
41 architectural and other technical services; costs of land acquisition
42 and any buildings thereon; and costs of site preparation, demolition
43 and infrastructure development for projects undertaken pursuant to
44 an approved regional contribution agreement;

45 (6) Assistance to a local housing authority, nonprofit or limited
46 dividend housing corporation or association or a qualified entity
47 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for
48 rehabilitation or restoration of housing units which it administers
49 which: (a) are unusable or in a serious state of disrepair; (b) can be

1 restored in an economically feasible and sound manner; and (c) can
2 be retained in a safe, decent and sanitary manner, upon completion
3 of rehabilitation or restoration; and

4 (7) Other housing programs for low and moderate income
5 housing, including, without limitation, (a) infrastructure projects
6 directly facilitating the construction of low and moderate income
7 housing not to exceed a reasonable percentage of the construction
8 costs of the low and moderate income housing to be provided and
9 (b) alteration of dwelling units occupied or to be occupied by
10 households of low or moderate income and the common areas of the
11 premises in which they are located in order to make them accessible
12 to handicapped persons.

13 e. Any grant or loan agreement entered into pursuant to this
14 section shall incorporate contractual guarantees and procedures by
15 which the division will ensure that any unit of housing provided for
16 low and moderate income households shall continue to be occupied
17 by low and moderate income households for at least 20 years
18 following the award of the loan or grant, except that the division
19 may approve a guarantee for a period of less than 20 years where
20 necessary to ensure project feasibility.

21 f. Notwithstanding the provisions of any other law, rule or
22 regulation to the contrary, in making grants or loans under this
23 section, the department shall not require that tenants be certified as
24 low or moderate income or that contractual guarantees or deed
25 restrictions be in place to ensure continued low and moderate
26 income occupancy as a condition of providing housing assistance
27 from any program administered by the department, when that
28 assistance is provided for a project of moderate rehabilitation if the
29 project (1) contains 30 or fewer rental units and (2) is located in a
30 census tract in which the median household income is 60 percent or
31 less of the median income for the housing region in which the
32 census tract is located, as determined for a three person household
33 by the council in accordance with the latest federal decennial
34 census. A list of eligible census tracts shall be maintained by the
35 department and shall be adjusted upon publication of median
36 income figures by census tract after each federal decennial census.

37 g. In addition to other grants or loans awarded pursuant to this
38 section, and without regard to any limitations on such grants or
39 loans for any other purposes herein imposed, the commissioner
40 shall annually allocate such amounts as may be necessary in the
41 commissioner's discretion, and in accordance with section 3 of
42 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
43 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
44 287.1 et al.). Such rental assistance grants shall be deemed
45 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
46 301 et al.), in order to meet the housing needs of certain low income
47 households who may not be eligible to occupy other housing
48 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

h. The department and the State Treasurer shall submit the "New Jersey Affordable Housing Trust Fund" for an audit annually by the State Auditor or State Comptroller, at the discretion of the Treasurer. In addition, the department shall prepare an annual report for each fiscal year, and submit it by November 30th of each year to the Governor and the Legislature, and the Joint Committee on Housing Affordability, or its successor, and post the information to its web site, of all activity of the fund, including details of the grants and loans by number of units, number and income ranges of recipients of grants or loans, location of the housing renovated or constructed using monies from the fund, the number of units upon which affordability controls were placed, and the length of those controls. The report also shall include details pertaining to those monies allocated from the fund for use by the State rental assistance program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3) and subsection g. of this section.

i. The commissioner may award or grant the amount of any appropriation deposited in the "New Jersey Affordable Housing Trust Fund" pursuant to section '[39] 41' of P.L. , c. (C.) (pending before the Legislature as this bill) to municipalities pursuant to the provisions of section '[37] 39' of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.2008, c.46, s.17)

'[37.] 39.' (New section) The provisions of this section shall apply only to those developments for which a fee was imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), known as the "Statewide Non-residential Development Fee Act."

a. A developer of a property that received preliminary site plan approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46), or final approval, pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50) prior to July 1, 2010 and that was subject to the payment of a nonresidential development fee prior to the enactment of P.L. , c. (C.) (pending before the Legislature as this bill), shall be entitled to a return of any moneys paid.

b. A developer of a non-residential project that, prior to July 1, 2010, has been referred to a planning board by the State, a governing body, or other public agency for review pursuant to section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject to the payment of a nonresidential development fee prior to the enactment of P.L. , c. (C.) (pending before the Legislature as this bill), shall be entitled to a return of any moneys paid.

c. If moneys are required to be returned under subsection a. or b. of this section, a claim shall be submitted, in writing, to the same entity to which the moneys were paid, within 120 days of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). The entity to whom the funds were paid shall promptly review all requests for returns, and the fees paid

1 shall be returned to the claimant within 30 days of receipt of the
2 claim for return.

3 d. Notwithstanding the provisions of subsections a., b., and c. of
4 this section, if, on the effective date of P.L. , c. (C.)
5 (pending before the Legislature as this bill), a municipality has
6 already expended, or legally committed by binding contract to
7 spend, the fees collected pursuant to sections 32 through 38 of
8 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), the
9 municipality shall return the funds to the developer in accordance
10 with this section, but shall be reimbursed from the funds available
11 through the appropriation made into the "New Jersey Affordable
12 Housing Trust Fund" pursuant to section '[39] 41' of P.L. , c.
13 (C.) (pending before the Legislature as this bill); provided,
14 however, that the municipality has filed with the Council on
15 Affordable Housing a detailed description of the expenditure or a
16 copy of the binding contract.

17
18 '[38.] 40.' (New section) '[The] A municipality shall be
19 relieved of the' portion of '[the] its affordable housing' obligation
20 '[of a municipality]' attributable to a particular non-residential
21 development '[shall be suspended]' whenever:

22 a. the collection of fees under sections 32 through 38 of
23 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) is effectively
24 suspended for a period of time pursuant to that law; and

25 b. there are insufficient funds in the "New Jersey Affordable
26 Housing Trust Fund" 'and other State or federal housing subsidies'
27 available to a municipality to assist in the production of such
28 housing units.

29
30 '[39.] 41.' (New section) a. Notwithstanding any law to the
31 contrary, there is appropriated \$15 million to the "New Jersey
32 Affordable Housing Trust Fund," established pursuant to section 20
33 of P.L.1985, c.222 (C.52:27D-320), to replace the suspended non-
34 residential development fee established under the provisions of the
35 "Statewide Non-Residential Development Fee Act," sections 32
36 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

37 b. The Commissioner of Community Affairs may transfer any
38 portion of the appropriation described in subsection a. of this
39 section to the "Urban Housing Assistance Fund" established by
40 section 13 of P.L.2008, c.46 (C.52:27D-329.7) for housing
41 purposes.

42 c. (1) Municipalities authorized by the provisions of the
43 "Statewide Non-Residential Development Fee Act," sections 32
44 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7)
45 to directly receive and use development fees are permitted to
46 petition the commissioner for the award of a grant or loan of any
47 portion of the appropriation described in subsection a. of this
48 section. The commissioner shall award grants or loans from the

1 fund to municipalities that incorporated anticipated or existing
2 housing projects and programs funded by a municipal development
3 trust fund in a housing element submitted to the council pursuant to
4 section 7 of P.L.1985, c.222 (C.52:27D-307).

5 (2) The commissioner shall target the award of any grant or loan
6 to municipalities based on the extent that their housing plan relied
7 on housing projects or programs funded in part or in whole by
8 municipal development trust fund revenues.

9
10 '40. 42.' (New section) a. A public research university or a
11 State college shall submit a long-range facilities plan on projects to
12 be developed with State funds to the New Jersey Commission on
13 Higher Education for its review and recommendations. The long
14 range facilities plan shall be amended at least once every five years.
15 The plan shall detail the facilities needs of the institution and the
16 institution's plans to address those needs for the ensuing five years.

17 b. In developing its response to the plan, the commission shall
18 consider the overall facilities needs of the institution, long-term
19 fiscal implications of the plan including the debt burden of the
20 institution, the relation of the facilities plan to the academic and
21 student service programs of the institution, and the extent and cost
22 of any deferred maintenance of the institution. The commission
23 shall issue its response to the plan within one full semester of its
24 receipt.

25 c. An amendment to a long-range facilities plan may be
26 submitted at any time to the commission for its review and
27 recommendations.

28
29 '41. 43.' (New section) a. A State college or county college
30 may enter into a contract with a private entity that permits the
31 private entity to assume full financial and administrative
32 responsibility for the on-campus construction, reconstruction,
33 repair, alteration, improvement or extension of a building, structure,
34 or facility of the institution, provided that the project is financed in
35 whole by the private entity and that the State or institution of higher
36 education, as applicable, retains full ownership of the land upon
37 which the project is completed and of any building, structure, or
38 other property resulting from the project.

39 b. A private entity that assumes financial and administrative
40 responsibility for a project pursuant to subsection a. of this section
41 shall not be subject to the procurement and contracting
42 requirements of all statutes applicable to the institution of higher
43 education at which the project is completed, including, but not
44 limited to, the "State College Contracts Law," P.L.1986, c.43
45 (C.18A:64-52 et seq.), and the "County College Contracts Law,"
46 P.L.1982, c.189 (C.18A:64A-25.1 et seq.).

47 c. Each worker employed in the construction or rehabilitation of
48 facilities by a private entity that has entered into a contract with a
49 State or county college pursuant to subsection a. of this section

1 shall be paid not less than the prevailing wage rate for the worker's
2 craft or trade as determined by the Commissioner of Labor and
3 Workforce Development pursuant to P.L.1963, c.150 (C.34:11-
4 56.25 et seq.).

5 'd. All construction projects under a contract entered into
6 pursuant to this section shall contain a project labor agreement. The
7 agreements shall be subject to the provisions of P.L.2002, c.44
8 (C.52:38-1 et seq.), and shall be in a manner that to the greatest
9 extent possible enhances employment opportunities for individuals
10 residing in the county of the project's location.

11 e. A general contractor, construction manager, design-build
12 team, or subcontractor shall be registered pursuant to the provisions
13 of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified
14 by the Division of Property Management and Construction to
15 perform work on a public-private partnership higher education
16 project.

17 f. (1) On or before the first day of the nineteenth month next
18 following enactment of P.L. , c. (pending before the Legislature
19 as this bill), all projects proposed in accordance with this section
20 shall be submitted to the Economic Development Authority for its
21 review and approval. Any application that is deemed to be
22 incomplete on the first day of the nineteenth month next following
23 enactment of P.L. , c. (pending before the Legislature as this
24 bill) shall not be eligible for consideration.

25 (2) (a) In order for an application to be complete and considered
26 by the authority it shall include, but not limited to: (i) an agreement
27 between the State or county college and the private developer; (ii) a
28 full description of the project; (iii) the estimated costs and financial
29 documentation for the project; and (iv) any other requirements that
30 the authority deems appropriate or necessary.

31 (b) As part of the estimated costs and financial documentation
32 for the project the application shall contain a long-range
33 maintenance plan and shall specify the expenditures that qualify as
34 an appropriate investment in maintenance. This long-range
35 maintenance plan shall be approved by the authority pursuant to
36 regulations promulgated by the authority that reflect nation building
37 maintenance standards and other appropriate building maintenance
38 benchmarks.

39 (3) The authority shall review all completed applications, request
40 additional information as is needed to make a complete assessment
41 of the project, and make a recommendation to the college board of
42 trustees regarding the viability of the project.

43 (4) The authority may promulgate any rules and regulations
44 necessary to implement this subsection.¹

45
46 ¹44. Section 28 of P.L.1986, c.43 (C.18A:64-79) is amended to
47 read as follows:

48 28. A State college may only enter a contract exceeding 36
49 consecutive months for the:

- 1 a. Supplying of fuel and oil for heating and other purposes and
- 2 utilities for any term not exceeding in the aggregate five years; or
- 3 b. Plowing and removal of snow and ice for any term not
- 4 exceeding in the aggregate five years; or
- 5 c. Collection and disposal of garbage and refuse for any term
- 6 not exceeding in the aggregate five years; or
- 7 d. Purchase, lease or servicing of information technology for
- 8 any term of not more than five years; or
- 9 e. Insurance for any term of not more than five years; or
- 10 f. Leasing or service of automobiles, motor vehicles,
- 11 machinery and equipment of every nature and kind for any term not
- 12 exceeding in the aggregate five years; or
- 13 g. (Deleted by amendment, P.L.2005, c.369).
- 14 h. Providing of food supplies and services, including food
- 15 supplies and management contracts for student centers, dining
- 16 rooms, vending operations, and cafeterias, for a term not exceeding
- 17 **[five]** 30 years; or
- 18 i. Performance of work or services or the furnishing of
- 19 materials or supplies for the purpose of conserving energy in
- 20 buildings owned by, or operations conducted by, the contracting
- 21 unit, the entire price of which is to be established as a percentage of
- 22 the resultant savings in energy costs, for a term not exceeding 10
- 23 years; provided that a contract is entered into only subject to and in
- 24 accordance with rules and regulations adopted and guidelines
- 25 promulgated by the Board of Public Utilities establishing a
- 26 methodology for computing energy cost savings; or
- 27 j. Any single project for the construction, reconstruction or
- 28 rehabilitation of a public building, structure or facility, or a public
- 29 works project, including the retention of the services of an architect,
- 30 engineer, construction manager, or other consultant in connection
- 31 with the project, for the length of time necessary for the completion
- 32 of the actual construction; or
- 33 k. The management and operation of bookstores, performing
- 34 arts centers, residence halls, parking facilities and building
- 35 operations for a term not exceeding **[five]** 30 years; or
- 36 l. The provision of banking, financial services, and e-
- 37 commerce services for a term not exceeding five years; or
- 38 m. The provision of services for maintenance and repair of
- 39 building systems, including, but not limited to, fire alarms, fire
- 40 suppression systems, security systems, and heating, ventilation, and
- 41 air conditioning systems for a term not exceeding five years; or
- 42 n. Purchase of alternative energy or the purchase or lease of
- 43 alternative energy services or equipment for conservation or cost
- 44 saving purposes for a term not exceeding 10 years.
- 45 All multiyear leases and contracts entered into pursuant to this
- 46 section, except contracts and agreements for the provision of work
- 47 or the supplying of equipment to promote energy conservation and
- 48 authorized pursuant to subsection i. of this section, shall contain a
- 49 clause making them subject to the availability and appropriation

1 annually of sufficient funds to meet the extended obligation or
2 contain an annual cancellation clause.¹

3 (cf: P.L.2005, c.369, s.16)

4
5 ¹45. Section 28 of P.L.1982, c.189 (C.18A:64A-25.28) is
6 amended to read as follows:

7 28. Duration of certain contracts. A county college may only
8 enter into a contract exceeding 24 consecutive months for the:

9 a. Supplying of:

10 (1) Fuel for heating purposes for any term not exceeding in the
11 aggregate three years; or

12 (2) Fuel or oil for use in automobiles, autobuses, motor vehicles
13 or equipment for any term not exceeding in the aggregate three
14 years; or

15 b. Plowing and removal of snow and ice for any term not
16 exceeding in the aggregate three years; or

17 c. Collection and disposal of garbage and refuse for any term
18 not exceeding in the aggregate three years; or

19 d. Providing goods or services for the use, support or
20 maintenance of proprietary computer hardware, software
21 peripherals and system development for the hardware for any term
22 of not more than five years; or

23 e. Insurance, including the purchase of insurance coverages,
24 insurance consultant or administrative services, and including
25 participation in a joint self-insurance fund, risk management
26 programs or related services provided by a county college insurance
27 group, or participation in an insurance fund established by a county
28 pursuant to N.J.S.40A:10-6, for any term of not more than three
29 years; or

30 f. Leasing or service of automobiles, motor vehicles, electronic
31 communications equipment, machinery and equipment of every
32 nature and kind for any term not exceeding in the aggregate five
33 years; or

34 g. Supplying of any product or rendering of any service by a
35 company providing voice, data, transmission or switching services,
36 for a term not exceeding five years; or

37 h. The providing of food supplies and services, including food
38 supplies and management contracts for student centers, dining
39 rooms and cafeterias, for a term not exceeding **[three]** 30 years; or

40 i. (Deleted by amendment, P.L.2009, c.4).

41 j. Any single project for the construction, reconstruction or
42 rehabilitation of a public building, structure or facility, or a public
43 works project including the retention of the services of an architect
44 or engineer in connection with the project, for the length of time
45 necessary for the completion of the actual construction; or

46 k. The management and operation of bookstores for a term not
47 exceeding **[five]** 30 years; or

1 l. Custodial or janitorial services for any term not exceeding in
2 the aggregate three years; or

3 m. Child care services for a term not exceeding three years; or

4 n. Security services for a term not exceeding three years; or

5 o. Ground maintenance services for a term not exceeding three
6 years; or

7 p. Laundering, dry-cleaning or rental of uniforms for a term not
8 exceeding three years; or

9 q. The performance of work or services or the furnishing of
10 materials and supplies for the purpose of producing class I
11 renewable energy, as that term is defined in section 3 of P.L.1999,
12 c.23 (C.48:3-51), at, or adjacent to, buildings owned by, or
13 operations conducted by, the contracting unit, the entire price of
14 which is to be established as a percentage of the resultant savings in
15 energy costs, for a term not to exceed 15 years; provided, however,
16 that these contracts shall be entered into only subject to and in
17 accordance with guidelines promulgated by the Board of Public
18 Utilities establishing a methodology for computing energy cost
19 savings and energy generation costs.

20 All multi-year leases and contracts entered into pursuant to this
21 section, except contracts and agreements for the provision of work
22 or the supplying of equipment to promote energy conservation
23 through the production of class I renewable energy and authorized
24 pursuant to subsection q. of this section, and except contracts for
25 insurance coverages, insurance consultant or administrative
26 services, participation or membership in a joint self-insurance fund,
27 risk management programs or related services of a county college
28 insurance group, and participation in an insurance fund established
29 by a county pursuant to N.J.S.40A:10-6 or a joint insurance fund
30 established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), shall
31 contain a clause making them subject to the availability and
32 appropriation annually of sufficient funds to meet the extended
33 obligation or contain an annual cancellation clause.¹

34 (cf: P.L.2009, c.4, s.5)

35
36 ¹[42.] 46.¹ (New section) a. When the governing board of a
37 public research university or a State college, after study and
38 investigation, determines that it is advisable for the institution to
39 establish a branch campus out-of-State or out-of-country that will
40 serve at least 500 students of the institution, the board shall submit
41 the plan for the branch campus to the New Jersey Commission on
42 Higher Education for its review and recommendations. The plan
43 shall include: a description of the higher educational needs of the
44 country or region in which the branch campus shall be located; a
45 description of the proposed branch campus and its proposed
46 programs and curriculum; and an estimate of the cost of
47 establishing and maintaining the branch campus including the cost
48 of any planned acquisition or construction of facilities; and any
49 other information or data deemed necessary by the commission.

1 b. In developing its response to the plan, the commission shall
2 consider whether there is a need for the institution to acquire a
3 branch campus and whether the institution has the financial capacity
4 to support the campus.

5
6 '【43.】 47.' (New section) The New Jersey Commission on
7 Higher Education shall appoint and convene a network of
8 academics and researchers from New Jersey's public and
9 independent institutions of higher education to propose and develop
10 economic development policies and programs for the higher
11 education community.

12
13 '【44.】 48.' (New section) Whenever, in any law, rule,
14 regulation, order, contract, document, judicial or administrative
15 proceeding or otherwise, reference is made to the executive director
16 of the New Jersey Commission on Higher Education, the same shall
17 mean and refer to the Secretary of Higher Education.

18
19 '【45.】 49.' (New section) As required pursuant to the
20 provisions of sections 5 through 8 of P.L.2004, c.127 (C.18A:72A-
21 5.1 through 18A:72A-5.4), each worker employed in the
22 construction or rehabilitation of facilities that are constructed or
23 rehabilitated pursuant to an arrangement in which an affiliate
24 participates with the New Jersey Educational Facilities Authority in
25 undertaking the financing and construction of a project, shall be
26 paid not less than the prevailing wage rate for the worker's craft or
27 trade as determined by the Commissioner of Labor and Workforce
28 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

29
30 '【46.】 50.' (New section) a. An affiliate that borrows funds
31 from the New Jersey Educational Facilities Authority shall comply
32 with the procurement and contracting requirements of all statutes
33 applicable to the institution of higher education which the affiliate
34 is controlled by, or is under common control with, including, but
35 not limited to, the "State College Contracts Law," P.L.1986, c.43
36 (C.18A:64-52 et seq.), and the "County College Contracts Law,"
37 P.L.1982, c. 189 (C.18A:64A-25.1 et seq.).

38 b. The tenant of an affiliate that borrows funds from the New
39 Jersey Educational Facilities Authority may, in order to improve or
40 adapt an affiliate property for its purposes, enter into construction
41 contracts, purchase orders, and other contracts with respect to the
42 commercial interior fit-out of the affiliate property and such
43 contracts and purchase orders shall be subject to the procurement
44 and contracting requirements of all statutes applicable to the
45 institution of higher education which the affiliate is controlled by,
46 or is under common control with, including, but not limited to, the
47 "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et

1 seq.), and the "County College Contracts Law," P.L.1982, c.189
2 (C.18A:64A-25.1 et seq.).

3 c. Each worker employed in the fit-out of an affiliate property
4 pursuant to this section shall be paid not less than the prevailing
5 wage rate for the worker's craft or trade as determined by the
6 Commissioner of Labor and Workforce Development pursuant to
7 P.L.1963, c.150 (C.34:11-56.25 et seq.).

8 d. As used in this section, "commercial interior fit out" means
9 the interior design and installation by tenants of new or existing
10 office, commercial, residential, or other space, typically exclusive
11 of structural components and core and shell elements.
12

13 '[47.] 51.' (New section) A public institution of higher
14 education and the New Jersey Educational Facilities Authority may
15 enter into a loan agreement in connection with a project which
16 includes the provision of working capital to such institution. In no
17 event shall working capital be considered to be a non-revenue
18 producing facility under chapter 72A of Title 18A of the New
19 Jersey Statutes. Any loan agreement entered into under the
20 provisions of this section may contain such provisions as may be
21 agreeable to the public institution of higher education and the
22 authority and as may be necessary or desirable to secure such loan
23 including, without limitation, provisions for the granting of a
24 security interest in personal property or receivables or a mortgage
25 on all or any portion of the real property of the public institution.
26

27 '[48.] 52.' (New section) The Commission on Higher
28 Education shall adopt regulations pursuant to the provisions of the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.), to implement the provisions of sections '[40] 42' through
31 '[47] 51' of P.L. , c. (C.) (pending before the Legislature
32 as this bill).
33

34 '[49.] 53.' (New section) Sections '[49] 53' through '[51]
35 55' of P.L. , c. (C.) (pending before the Legislature as this
36 bill) shall be known and may be cited as the "Higher Education
37 Partnership Agreements Act."
38

39 '[50.] 54.' (New section) As used in sections '[50] 54' and
40 '[51] 55' of P.L. , c. (C.) (pending before the Legislature as
41 this bill):

42 "Board" means the Local Finance Board established in the
43 Division of Local Government Services in the Department of
44 Community Affairs.

45 "Bonds" mean bonds, notes or other obligations issued to finance
46 or refinance higher education projects by a municipality, or on
47 behalf of a municipality by a county improvement authority created

1 pursuant to the "county improvement authorities law," P.L.1960,
2 c.183 (C.40:37A-44 et seq.).

3 "Higher education partnership agreement" means an agreement
4 between a municipality and an institution of higher education
5 providing for the issuance of bonds by the municipality, a county
6 improvement authority or a redevelopment entity, and the pledge of
7 payments by the institution of higher education to secure those
8 bonds to finance a higher education project, or part thereof.

9 "Higher education project" means the establishment and
10 construction of higher education buildings and the expansion and
11 construction of additional facilities at, and the acquisition of
12 additional and upgraded equipment for existing higher education
13 buildings, including but not limited to the planning, erecting,
14 purchasing, improving, developing, constructing, reconstructing,
15 extending, rehabilitating, renovating, upgrading, demolishing and
16 equipping of facilities at institutions of higher education.

17 "Institution of higher education" means: Rutgers, The State
18 University; a State college or university established pursuant to
19 chapter 64 of Title 18A of the New Jersey Statutes; the New Jersey
20 Institute of Technology; the University of Medicine and Dentistry
21 of New Jersey; a county college and any other public university or
22 college now or hereafter established or authorized by State law; and
23 any college or university incorporated and located in New Jersey,
24 which by virtue of law or character or license is a nonprofit
25 educational institution authorized to grant academic degrees and
26 which provides a level of education which is equivalent to the
27 education provided by the State's public institutions of higher
28 education, as attested by the receipt of and continuation of regional
29 accreditation by the Middle States Association of Colleges and
30 Schools, and which is eligible to receive State aid under the
31 provisions of the Constitution of the United States and the
32 Constitution of the State of New Jersey, but does not include any
33 educational institution dedicated primarily to the education or
34 training of ministers, priests, rabbis or other professional persons in
35 the field of religion.

36 "Municipality" means the municipal governing body or an entity
37 acting on behalf of the municipality if permitted by the federal
38 Internal Revenue Code of 1986, or, if a redevelopment agency or
39 redevelopment entity is established in the municipality pursuant to
40 P.L.1992, c.79 (C.40A:12A-1 et seq.) and the municipality so
41 provides, the redevelopment agency or entity so established.

42
43 ¹[51.] 55.¹ (New section) A municipality and an institution of
44 higher education may enter into a higher education partnership
45 agreement for the development of a higher education project. The
46 board shall promulgate rules and regulations, modeled after the
47 procedures and protections set forth in the "Redevelopment Area
48 Bond Financing Law," sections 1 through 10 of P.L.2001, c.310
49 (C.40A:12A-64 et seq.), within 120 days following the enactment of

1 sections '[49] 53' through '[51] 55' of P.L. , c. (C.)
2 (pending before the Legislature as this bill) in order to effectuate
3 the purposes of this section.

4
5 '56. (New section.) a. Receipts from the sale or use of energy
6 and utility service to or by a postconsumer material manufacturing
7 facility for use or consumption directly and primarily in the
8 production of tangible personal property, other than energy, shall be
9 exempt from the tax imposed under the "Sales and Use Tax Act,"
10 P.L.1966, c.30 (C.54:32B-1 et seq.), during the tax exemption
11 period.

12 b. Notwithstanding the provisions of subsection a. of this
13 section, a seller of energy and utility service shall charge and
14 collect from the purchaser that is a postconsumer material
15 manufacturing facility the tax at the rate then in effect, and the tax
16 shall be refunded to the purchaser by the filing, within 30 days of
17 the close of the calendar quarter in which the sale or use is made or
18 rendered, of a claim with the director for a refund of sales and use
19 taxes paid for energy and utility service, which refund shall be paid
20 within 60 days of the filing of a claim for refund. Proof of claim
21 for refund shall be made by the submission of auditable receipts and
22 such other documentation as the director may require.

23 c. If the owner of a postconsumer material manufacturing
24 facility relocates the facility to a location outside this State during
25 the tax exemption period, the owner of the facility shall pay the
26 director the amount of tax for which an exemption shall have been
27 allowed and refunded in accordance with subsection b. of this
28 section. The State Treasurer shall notify the director of the
29 relocation of a postconsumer material manufacturing facility to a
30 location outside this State, and the director shall issue a tax
31 assessment for the recapture of tax, equal to the amount of tax for
32 which an exemption shall have been allowed and refunded in
33 accordance with subsection b. of this section. The recapture of tax
34 shall be a State tax subject to the State Uniform Tax Procedure
35 Law, R.S.54:48-1 et seq., and shall be deposited in the General
36 Fund.

37 d. For purposes of this section,

38 "Postconsumer material manufacturing facility," means a facility
39 that:

40 (1) received service under an electric public utility rate schedule
41 that applied only to the owner of the facility on January 1, 2004;

42 (2) manufactures products made from "postconsumer material,"
43 as that term is defined in 40 C.F.R. s.247.3; provided however, that
44 not less than 75 percent of the facility's total annual sales dollar
45 volume of such products produced in this State meet the definition
46 of "postconsumer material";

47 (3) completed a "comprehensive energy audit," as that term is
48 defined pursuant to section 2 of P.L.1995, c.180 (C.48:2-21.25), not
49 more than 48 months before but not later than 90 days after the

1 effective date of P.L. , c. (C.) (pending before the
2 Legislature as this bill); and

3 (4) employed, individually or collectively with an affiliated
4 facility, not less than 150 employees in this State on April 1, 2009.

5 “Tax exemption period” means the period on or after January 1,
6 2010 but before January 1, 2017.¹

7
8 ¹57. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
9 read as follows:

10 67. a. As used in this section:

11 "Base rates" means the rates, including minimum bills, charged
12 for utility commodities or service subject to the board's jurisdiction,
13 other than the rates charged under a utility's levelized energy
14 adjustment clause, hereinafter "LEAC," or levelized gas adjustment
15 clause, hereinafter "LGAC," or equivalent rate provision;

16 "Base year" means the calendar year 1996;

17 "Board" means the Board of Public Utilities;

18 "Manufacturing facility" means a facility:

19 (1) with respect to which the owner of the facility shall have
20 entered into an off-tariff rate agreement with an electric public
21 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24
22 et seq.);

23 (2) that manufactures products made from using "postconsumer
24 material," as that term is defined in section 247.3 of title 40, Code
25 of Federal Regulations, and other recovered material feedstocks that
26 meet the requirements of the Comprehensive Procurement
27 Guideline For Products Containing Recovered Materials as
28 promulgated by the United States Environmental Protection Agency
29 in section 247.1 et seq. of title 40, Code of Federal Regulations,
30 pursuant to the "Resource Conservation and Recovery Act,"
31 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.
32 13101, issued by the President of the United States on September
33 14, 1998, provided that at least 75 percent of the manufacturing
34 facility's total annual sales dollar volume of such products that are
35 produced in New Jersey meet the recycled content standards within
36 such guidelines;

37 (3) for which a "comprehensive energy audit," as that term is
38 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have
39 been undertaken within 90 days after the effective date of P.L.2007,
40 c.94 (C.48:2-21.36 et al.), which audit shall have evaluated cost-
41 effective energy efficiency and conservation measures as part of the
42 efforts to reduce energy costs;

43 (4) that has been in operation in this State for at least 25 years as
44 of the effective date of P.L.2007, c.94 (C.48:2-21.36 et al.); and

45 (5) at which at least 800 employees are employed on the first
46 business or work day after the expiration of such off-tariff rate
47 agreement **[.]** ;

48 “Postconsumer material manufacturing facility” means a facility
49 that:

1 (1) received service under an electric public utility rate schedule
2 that applied only to the owner of the facility on January 1, 2004;

3 (2) manufactures products made from "postconsumer material,"
4 as that term is defined in 40 C.F.R. s.247.3; provided however, that
5 not less than 75 percent of the facility's total annual sales dollar
6 volume of such products produced in this State meet the definition
7 of "postconsumer material";

8 (3) completed a "comprehensive energy audit," as that term is
9 defined pursuant to section 2 of P.L.1995, c.180 (C.48:2-21.25), not
10 more than 48 months before but not later than 90 days after the
11 effective date of P.L. , c. (C.) (pending before the
12 Legislature as this bill); and

13 (4) employed, individually or collectively with affiliated
14 facilities, not less than 150 employees in this State on April 1,
15 2009;

16 "Sales and use tax" means the sales and use tax liability
17 computed on sales and use of energy and utility service as defined
18 in section 2 of P.L.1966, c.30 (C.54:32B-2);

19 "Utility" means a public utility subject to regulation by the board
20 pursuant to Title 48 of the Revised Statutes; and

21 "Utility service" means the supply, transmission, distribution or
22 transportation of electricity, natural gas or telecommunications
23 services or any combination of such commodities, processes or
24 services.

25 b. No later than 60 days after the date this act is enacted, each
26 electric, gas and telecommunications utility subject to the
27 provisions of this act shall file with the board, and shall
28 simultaneously provide copies to the Director of the Division of the
29 Ratepayer Advocate, revised tariffs and such other supporting
30 schedules, narrative and documentation required by this act, as set
31 forth in this section, to reflect in the utility's rates the changes in tax
32 liability effected pursuant to this act. No later than 90 days after the
33 date of the utility's filing, and after determining that the filing and
34 the rate changes provided for therein are in compliance with the
35 provisions of this act, the board shall approve the utility's filing and
36 associated rates for billing to the utility's customers, effective for
37 utility service rendered on and after January 1, 1998. If the board
38 determines that the utility's filing and the associated rate changes
39 provided for therein are not in compliance with the provisions of
40 this act, the board shall require the utility to amend or otherwise
41 modify its filing to render it in compliance. The board may also
42 permit the rates provided for in the utility's filing to be implemented
43 on an interim basis pending the board's final determination in the
44 event the board, in its discretion, determines that due to the filing's
45 complexity, or for other valid reasons, including but not limited to
46 the enactment of this act after June 30, 1997, additional time is
47 needed for the board to complete its review of the filing. If the
48 rates approved by the board upon its final determination are less
49 than the rates implemented on an interim basis, the difference shall

1 be refunded to the utility's customers with interest computed in
2 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
3 implemented pursuant to this act shall not constitute a fixing of
4 rates pursuant to R.S.48:2-21 and shall not be subject to the hearing
5 requirements set forth in that section.

6 c. As of the effective date of the rate changes implemented
7 pursuant to this act, and except for rates applicable to sales that
8 were or are currently exempt from the unit-based energy taxes
9 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.)
10 and rates applicable to sales to which section 59 of P.L.1997, c.162
11 (C.48:2-21.31) applies, the board shall remove from the base rates
12 of each electric public utility and gas public utility the unit tax rates
13 included therein for the recovery of those unit-based energy taxes,
14 and include therein provision for the recovery of corporation
15 business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
16 seq.), and additionally shall authorize the collection of the sales and
17 use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as
18 follows:

19 (1) The base rates of each gas and electric utility shall be
20 reduced by the amount of the unit-based energy taxes per
21 kilowatthour or per therm included therein.

22 (2) The provision for corporation business tax initially included
23 in the base rates of each gas and electric utility shall be based on the
24 utility's after-tax net income earned in the base year as booked,
25 unless the board determines, in its discretion, that such income as
26 booked is unusually high or low or otherwise unrepresentative of
27 the utility's prospective net income, in which case the utility's base
28 year net income shall be adjusted as determined by the board.

29 To permit the board to make this determination, in addition to
30 including in its filing schedules showing its net income earned in
31 the base year as booked, the utility shall include adjustments to such
32 booked income to eliminate the effect of revenues, expenses and
33 extraordinary or other charges that are non-recurring, atypical, or
34 both, including, but not limited to an adjustment to eliminate the
35 effect of unusually hot or cold weather, and that would otherwise
36 make the utility's base year net income unusually high or low or
37 otherwise unrepresentative of the utility's prospective net income.
38 If the adjustment is being made to eliminate the effect of unusually
39 hot or cold weather, associated revenue and expense adjustments
40 shall also be made. Subject to the board's approval, such adjusted
41 income shall be the basis for the calculation of the initial provision
42 for corporation business tax to be included in the utility's base rates.

43 The utility shall also include a calculation of its rate of return on
44 common equity achieved in the base year, both as booked and as
45 adjusted in accordance with the foregoing. The calculation shall be
46 made employing the methodology set forth in N.J.A.C.14:12-
47 4.2(b)1, and shall separately show the effect of reflecting
48 adjustments to the calculation, if any, that may have been employed
49 historically in establishing the utility's rate of return on common

1 or both, as determined both upon the effective date of the rate
2 changes authorized by this act and as revised prospectively in
3 accordance with the utility's tariff filed with and approved by the
4 board, and the transitional energy facility assessment unit rate
5 surcharges, hereinafter, "TEFA unit rate surcharges," determined in
6 accordance with subsection d. of this section, shall be increased by
7 an amount determined by multiplying such charges by the sales and
8 use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In
9 addition to the utility's rates for service included in its tariff, for
10 informational purposes the tariff shall include such rates after
11 application of the sales and use tax authorized by this section.

12 (4) The utility's filing with the board to implement the rate
13 changes provided for by this act shall include an analysis,
14 description, and quantification of the effect of the changes in rates
15 and tax payments implemented pursuant to this act on the utility's
16 requirement for cash working capital, and if such requirement is
17 less than the cash working capital allowed for the collection and
18 payment of unit-based energy taxes formerly imposed pursuant to
19 P.L.1940, c.5 (C.54:30A-49 et seq.) in determining the utility's base
20 rates in effect prior to the rate changes implemented pursuant to this
21 act, and to the extent the working capital reduction is not offset by a
22 reduction in net deferred taxes as provided for below, such base
23 rates shall be reduced by the reduction in the utility's revenue
24 requirement associated with the remaining reduction in the working
25 capital requirement not so offset, if any. The reduction in working
26 capital shall be determined by using the same methodology
27 employed in establishing the working capital allowance related to
28 unit-based energy taxes reflected in the utility's base rates in effect
29 prior to the rate changes implemented pursuant to this act. The
30 reduction in the utility's revenue requirement associated with the
31 reduced working capital requirement shall be calculated using the
32 utility's last overall rate of return allowed by the board, including
33 provision for federal income taxes and the corporation business tax
34 implemented pursuant to this act payable on the equity portion of
35 the return, and shall be implemented on the effective date of the rate
36 changes provided for, and in the manner set forth in paragraph (2)
37 of this subsection.

38 If the utility's requirement for cash working capital is increased
39 as a result of the changes in rates and tax payments implemented
40 pursuant to this act, the utility may accrue carrying costs, calculated
41 at its last overall rate of return allowed by the board and applied on
42 a simple annual interest basis without compounding, on the
43 increased working capital requirement and request recovery of such
44 carrying costs in a rate proceeding before the board.

45 The working capital-related base rate changes and carrying cost
46 accruals shall be subject to the board's approval, and shall not be
47 included in the determination of the TEFA unit tax surcharges
48 provided for in subsection d. of this section.

1 The utility's filing with the board to implement the rate changes
2 provided for by this act shall also include an analysis, description
3 and quantification of net deferred taxes. For the purposes of this
4 section, "net deferred taxes" means deferred corporation business
5 taxes, net of federal deferred income taxes, associated with the tax
6 and rate changes implemented pursuant to this act, including
7 deferred corporation business tax recorded in accordance with
8 section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the
9 calendar year in which this act takes effect and for each year of the
10 tax life of the asset giving rise to the deferred corporation business
11 taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

12 If the change in such net deferred taxes projected for the calendar
13 year in which the rate changes implemented pursuant to this act take
14 effect is negative and if the utility's requirement for working capital
15 is reduced as a result of the changes in rates and tax payments
16 implemented pursuant to this act, the working capital-related rate
17 reduction that otherwise would have been implemented pursuant to
18 this subsection shall be treated as set forth in subparagraph (a) or
19 (b) of this paragraph. For the purposes of this act, a change in net
20 deferred taxes is considered negative when it reduces an existing
21 deferred tax liability or creates a deferred tax asset on the utility's
22 balance sheet. An appropriate rate adjustment for the working
23 capital impacts of this act, reflecting all relevant facts and
24 circumstances at the time of the adjustment, shall be made in the
25 year when the earlier of the following events occur:

26 (a) The year in which the reduction in carrying costs assumed
27 for the rate reduction for working capital that would have been
28 made but for this paragraph is no longer required to offset, on a
29 present value basis, the annual carrying costs calculated on the
30 accumulated balance of negative net deferred taxes projected to be
31 recorded by the utility, its successors and assigns, over the tax life
32 of the single asset account giving rise to such net deferred taxes
33 pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4). For the
34 purposes of this subparagraph (a):

35 (i) Carrying costs and present values are to be computed using
36 the weighted average after-tax rate of return approved by the board
37 in the utility's last base rate proceeding.

38 (ii) The accumulated balance of such negative net deferred taxes
39 shall include net deferred taxes associated with all assets and
40 liabilities originally placed in service by the utility and held by the
41 utility or a company affiliated with the utility regardless of whether
42 or not such assets continue to be subject to regulation by the New
43 Jersey Board of Public Utilities.

44 (b) The year in which both an appropriate working capital
45 adjustment and the accumulated balance of negative deferred taxes,
46 as described in (ii) of subparagraph (a) of this paragraph (4), are
47 reflected in the utility's rate base in a rate proceeding before the
48 board. It is the intent of this section to fully compensate utilities on
49 a present value basis, for the carrying costs associated with negative

1 net deferred taxes arising as a result of this act, and to remit to
2 ratepayers any credit due them as a result of any overcompensation
3 as may have occurred due to the treatment of working capital and
4 deferred taxes as set forth herein or in subparagraph (a) of this
5 paragraph (4). At the time the above base rate adjustment is made,
6 an analysis shall be made to determine if such carrying costs have
7 been or will be fully recovered pursuant to the intent of this
8 provision and any additional credit or charge to ratepayers to adjust
9 for ratepayer overpayments or underpayments, if any shall be
10 addressed.

11 If the change in net deferred taxes is positive, the increase shall
12 be added to, or increase, the reduction in the utility's requirement
13 for working capital if the requirement is reduced as a result of the
14 rate and tax payment changes implemented pursuant to this act, or
15 subtracted from the working capital requirement if it is increased,
16 and the resultant net working capital requirement shall be reflected
17 in rates or accrue carrying costs in the same manner as prescribed
18 for changes in the utility's requirement for working capital above.

19 The deferred tax-related rate changes or carrying cost accruals
20 shall be subject to the board's approval and shall not be included in
21 the determination of the TEFA unit rate surcharges provided for in
22 subsection d. of this section.

23 d. (1) Electric and gas utilities shall file, for the board's review
24 and approval, initial TEFA unit rate surcharges determined by
25 deducting from each unit-based energy tax unit tax rate effective
26 January 1, 1997 the following:

27 (a) An amount per kilowatthour or per therm determined by
28 multiplying the total revenue received in the base year from sales to
29 which that unit tax rate would have been applicable by the factor
30 $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed under
31 P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
32 dividing the result by the kilowatthours or therms billed in that unit
33 tax rate class in the base year; and

34 (b) An amount per kilowatthour or per therm determined by
35 dividing the revenue that would have been received in the base year
36 from the inclusion, in the manner prescribed in paragraph (2) of
37 subsection c. of this section, of the corporation business tax in the
38 rates applicable to sales billed in that unit tax rate class by the
39 kilowatthours or therms billed in that rate class. In each case, the
40 determination shall reflect the effect of adjustments that affect the
41 level of sales and revenue, if any, as provided in subsection c. of
42 this section. Of the resultant rate per kilowatthour or per therm, the
43 portion for recovery of the utility's transitional energy facilities
44 assessment liability shall be determined by multiplying such rate by
45 the factor $(1 - R_s)$, where R_s is the corporation business tax rate
46 expressed as a decimal.

47 The TEFA unit rate surcharges shall constitute non-bypassable
48 wires and/or mains charges of the utility, and shall be applied to all
49 sales within the customer classes to which they apply, regardless of

1 whether such customers are purchasing bundled or unbundled
2 services from the utility, but shall not be applied to sales:

3 (i) that were or are currently exempt from unit-based energy
4 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
5 seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31)
6 applies, **[and]**

7 (ii) for a period of seven years commencing on the first day after
8 the expiration of an off-tariff rate agreement, entered into or
9 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-
10 21.24 et seq.), to a manufacturing facility for use or consumption
11 directly and primarily in the production of tangible personal
12 property, other than energy~~].~~ and

13 (iii) for a period of seven years beginning on January 1, 2010, to
14 a postconsumer material manufacturing facility for use or
15 consumption directly and primarily in the production of tangible
16 personal property, other than energy.

17 Notwithstanding the provisions of the exemption provided in
18 **[this]** sub-subparagraph (ii) and sub-subparagraph (iii) of
19 subparagraph (b) of paragraph (1) of subsection d. of this section,
20 the TEFA unit rate surcharge shall be applied to the sales to the
21 owner of the manufacturing facility or the postconsumer material
22 manufacturing facility and the owner shall be refunded an amount
23 equal to the TEFA unit rate surcharge paid by the filing, within 30
24 days following the close of a calendar quarter in which the
25 exemption applies, of a claim with the **[New Jersey]** Director of the
26 Division of Taxation in the Department of the Treasury for a refund
27 of the TEFA unit rate surcharge paid, which refund shall be paid
28 within **[30]** 60 days of the refund claim being filed. Proof of claim
29 for refund shall be made by the submission of such records and
30 other documentation as the **[Director of the Division of Taxation]**
31 director may require. If the owner of the manufacturing facility or
32 the postconsumer material manufacturing facility at any time during
33 the exemption period provided in sub-subparagraph (ii) or sub-
34 subparagraph (iii) of subparagraph (b) of paragraph (1) of
35 subsection d. of this section relocates the manufacturing facility to a
36 location outside of this State, the owner shall pay to the **[Director**
37 **of the Division of Taxation]** director the amount of TEFA unit rate
38 surcharge for which an exemption shall have been allowed and
39 refund obtained under this section. The State Treasurer shall notify
40 the director of the relocation of a manufacturing facility or a
41 postconsumer material manufacturing facility to a location outside
42 of this State, and the director shall issue a tax assessment for the
43 recapture of tax, equal to the amount of TEFA unit rate surcharge
44 for which an exemption shall have been allowed and refund
45 obtained under this section. The recapture of tax shall be a State
46 tax subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et
47 seq., and shall be deposited in the General Fund.

1 If, following the effective date of this act, a customer taking
2 bundled service from the utility shall elect to obtain its
3 requirements from another supplier and take transportation or
4 wheeling service from the utility, the TEFA unit rate surcharge
5 applicable to the bundled service shall continue to apply to the
6 transportation or wheeling service. The TEFA components of the
7 unit rate surcharges determined pursuant to this subsection (the
8 components of the surcharges remaining after deducting the
9 provision for corporation business tax included therein) shall be
10 used to determine the transitional energy facility assessment
11 liability pursuant to sections 36 through 49 of P.L.1997, c.162
12 (C.54:30A-100 through C.54:30A-113).

13 (2) Unless reduced pursuant to paragraphs (3) and (4) of this
14 subsection, the initial TEFA unit rate surcharges are to be reduced
15 annually on January 1, 1999 through January 1, 2001 by the
16 following percentages:

17	January 1, 1999,	20%
18	January 1, 2000,	40%
19	January 1, 2001,	60%

20 (3) For each year beginning with calendar year 1998 and ending
21 with calendar year 2001, the TEFA surcharge adjustment shall be
22 determined as the difference between:

23 (a) The sum of the estimated, or actual when known, (i) TEFA
24 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-
25 107), and sales and use taxes collected and corporation business
26 taxes booked for the year 1998 by the gas and electric utilities and
27 other entities subject to the TEFA provisions of this act (the year
28 1998 liability), and (ii) the TEFA liabilities of those utilities and
29 entities in all years following the year 1998 through the year in
30 which a determination is being made pursuant to this subsection
31 (the determination year); and

32 (b) The sum of (i) the total of each remitter's base year liability,
33 as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii)
34 the cumulative TEFA obligation, defined as the sum through the
35 determination year of the amounts calculated by multiplying, for the
36 applicable year, the percentage in the second column of the
37 following table:

38	Determination Year	% of
39		Year 1998
40		TEFA
41	-----	-----
42	1999	80%
43	2000	60%

44 by the Year 1998 TEFA,
45 where the Year 1998 TEFA is calculated as the total of each
46 remitter's base year liability less the sales and use taxes collected
47 and the corporation business taxes booked for the privilege period
48 ending in calendar year 1998 by the gas and electric utilities and
49 other entities subject to the TEFA provisions of this act. For

1 purposes of this subsection, the amounts assumed for the
2 determination year, including the year 1998 liability when first
3 determined for the purposes of this subsection, shall be estimates
4 based on nine months of actual data through and including the
5 month of September, and three months of data forecast for the
6 months of October through December.

7 (4) If the TEFA surcharge adjustment determined for the
8 determination year is positive (that is, if the amount determined
9 pursuant to subparagraph (a) of paragraph (3) of this subsection is
10 greater than the amount determined pursuant to subparagraph (b) of
11 paragraph (3) of this subsection), no reduction shall be made in the
12 reduction in the TEFA unit rate surcharges provided for in
13 paragraph (2) of this subsection for the year following the
14 determination year. If the TEFA surcharge adjustment is negative,
15 the reduction in the TEFA unit rate surcharges that otherwise would
16 have been implemented on January 1 of the year following the
17 determination year pursuant to paragraph (2) of this subsection shall
18 be reduced by an amount (by percentage points) equal to the
19 percentage the TEFA surcharge adjustment is of the total of the
20 base year transitional energy facility assessment of all remitters, as
21 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided
22 however, that such reduction in the reduction in the TEFA unit rate
23 surcharges shall not exceed the percentage shown in paragraph (2)
24 of this subsection for that year; and provided further that in the first
25 two years, that such reduction shall not exceed 10 percentage points
26 for each year.

27 (5) (a) The TEFA unit rate surcharges for calendar years 2002
28 through 2011 shall be the same as the TEFA unit rate surcharges in
29 effect for calendar year 2001.

30 (b) The TEFA unit rate surcharges in effect for calendar year
31 2011 shall be reduced on January 1, 2012 and January 1, 2013 by
32 the following percentages:

33	January 1, 2012	25%
34	January 1, 2013	50%

35 e. The utility's filing with the board to implement the rate
36 changes provided for by this act shall include proof of revenue
37 schedules that show for each rate schedule included in the utility's
38 tariff, aggregated by unit-based energy tax unit tax classes, the
39 number of customers billed under the rate schedule, the billing
40 determinants of such customers (i.e. the kilowatts of billing demand
41 and kilowatthours of electric energy consumed, and the million
42 cubic feet/decatherm subject to gas capacity-related charges and
43 decatherm of gas consumed) and the associated revenue, both as
44 booked in the base year and on a pro forma basis reflecting the rate
45 changes implemented pursuant to this act. The proof of revenue
46 shall additionally show the amount of unit-based energy taxes
47 included in the base year revenue as booked, the unit-based energy
48 taxes that would have been collected at the unit-based energy tax
49 unit tax rates effective January 1, 1997, if different, as well as the

1 corporation business tax, sales and use tax and transitional energy
2 facility assessment revenue that would have been collected or
3 received on a pro forma basis if the rates implemented pursuant to
4 this act had been in effect in the base year.

5 f. The board may, in its discretion, permit the rate changes
6 provided for in this act to be implemented as part of a pending base
7 rate case or other proceeding in which the utility's rates are to be
8 changed, provided that the effective date of the changes is not
9 delayed beyond the date on which the changes would have been
10 implemented under subsection c. of this section. The board may
11 also, pursuant to its powers provided by law, permit or require
12 further modifications in the implementation of this section to
13 address unforeseen consequences arising out of the implementation
14 of this act.

15 g. Customers of the utility who are exempt from the sales and
16 use tax imposed on sales of gas and/or electricity or as a result of
17 rate changes occurring prior to the effective date of this act or for
18 other valid reasons are due a refund of sales or use tax inadvertently
19 imposed on such customers as a result of implementing the rate
20 changes provided for by this act shall file with the State Treasurer
21 to obtain such refunds. The State Treasurer shall promptly notify
22 the utility of customers granted refunds under this provision in
23 order to prevent additional collections of the sales and use tax from
24 such customers.

25 h. Public utilities providing telecommunications service
26 regulated by the board shall file for the board's review and approval
27 revised tariffs that eliminate from the rates applicable to such
28 service the excise tax liability included therein pursuant to
29 P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the
30 corporation business tax calculated using the methodology used in
31 calculating the adjustment factor set forth in paragraph (2) of
32 subsection c. of this section. Subsection d. of this section shall not
33 apply to telecommunication utilities, and telecommunication
34 utilities subject to a plan of regulation other than rate base/rate of
35 return shall additionally not be required to file the rate of return
36 information required by paragraph (2) of subsection c. Such
37 utilities shall, however, include a narrative and/or other
38 documentation as required by the board to support the
39 reasonableness of the after-tax income, which may be adjusted to
40 eliminate the effect of non-recurring or other atypical events, on
41 which the corporate business tax inclusion in rates is based.
42 Telecommunications utilities shall comply with all other applicable
43 provisions of this section.

44 i. (1) The board shall not adjust the rates of a public utility, as
45 provided in subsections c. and d. of this section, for a purchase by a
46 cogenerator of natural gas and the transportation of that gas, that is
47 exempt from sales and use tax pursuant to paragraph (2) of
48 subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46).
49 The board shall not allocate, in any future rate case, any sales and

1 use tax, corporation business tax, or transitional energy facility
2 assessment to rates for this purpose.

3 (2) The board shall adjust the rates, as provided in subsection c.
4 of this section, for a purchase by a cogenerator of any quantity of
5 natural gas and the transportation of that gas that is not exempt from
6 sales and use tax pursuant to paragraph (2) of subsection b. of
7 section 26 of P.L.1997, c.162 (C.54:32B-8.46).

8 (3) For the purposes of this section, "cogenerator" means a
9 person or business entity that owns or operates a cogeneration
10 facility in the State of New Jersey, which facility is a plant,
11 installation or other structure whose primary purpose is the
12 sequential production of electricity and steam or other forms of
13 useful energy which are used for industrial, commercial, heating or
14 cooling purposes, and which is designated by the Federal Energy
15 Regulatory Commission, or its successor, as a "qualifying facility"
16 pursuant to the provisions of the "Public Utility Regulatory Policies
17 Act of 1978," Pub.L.95-617.¹
18 (cf: P.L.2008, c.32, s.1)
19

20 ¹[52.] 58.¹ This act shall take effect immediately, however,
21 sections 9 and 11 shall remain inoperative until the first day of the
22 third month next following enactment unless the Local Finance
23 Board determines an earlier operative date.