

[First Reprint]

## **ASSEMBLY, No. 3389**

# **STATE OF NEW JERSEY**

## **214th LEGISLATURE**

INTRODUCED OCTOBER 14, 2010

**Sponsored by:**

**Assemblywoman SHEILA Y. OLIVER**

**District 34 (Essex and Passaic)**

**Assemblyman ALBERT COUTINHO**

**District 29 (Essex and Union)**

**Assemblyman ANTHONY M. BUCCO**

**District 25 (Morris)**

**Assemblyman JON M. BRAMNICK**

**District 21 (Essex, Morris, Somerset and Union)**

**Co-Sponsored by:**

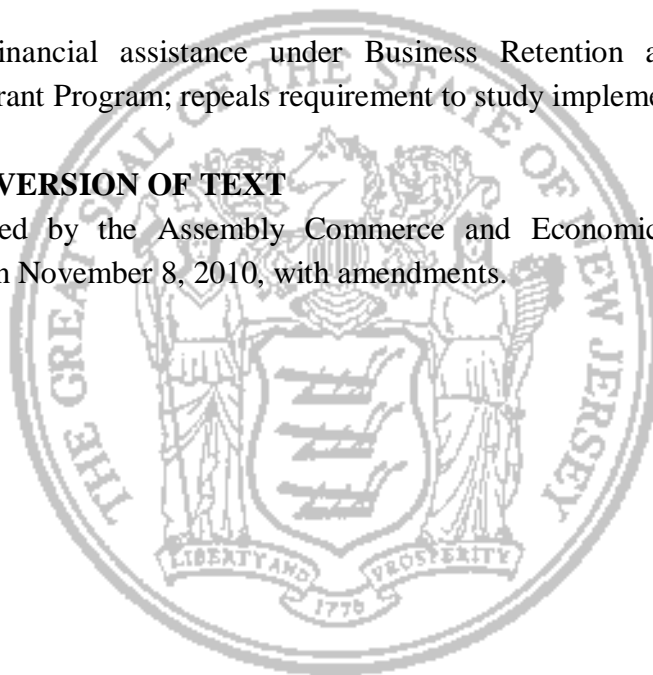
**Assemblywoman Watson Coleman, Assemblyman Coughlin and  
Assemblywoman Pou**

### **SYNOPSIS**

Revises financial assistance under Business Retention and Relocation Assistance Grant Program; repeals requirement to study implementation.

### **CURRENT VERSION OF TEXT**

As reported by the Assembly Commerce and Economic Development Committee on November 8, 2010, with amendments.



**(Sponsorship Updated As Of: 12/14/2010)**

1 AN ACT concerning the Business Retention and Relocation  
2 Assistance Grant Program, amending P.L.1996, c.25 and  
3 P.L.2004, c.65, and repealing section 11 of P.L.1996, c.25.

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

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

10 2. As used in this act:

11 **["Advanced computing"** means a technology used in the  
12 designing and developing of computing hardware and software,  
13 including innovations in designing the full spectrum of hardware  
14 from hand-held calculators to super computers, and peripheral  
15 equipment;

16 "Advanced computing company" means a person with  
17 headquarters or base of operations located in New Jersey and  
18 engaged in the research, development, production, or provision of  
19 advanced computing for the purpose of developing or providing  
20 products or processes for specific commercial or public purposes;

21 "Advanced materials" means materials with engineered  
22 properties created through the development of specialized  
23 processing and synthesis technology, including ceramics, high  
24 value-added metals, electronic materials, composites, polymers, and  
25 biomaterials;

26 "Advanced materials company" means a person with  
27 headquarters or base of operations located in New Jersey and  
28 engaged in the research, development, production, or provision of  
29 advanced materials for the purpose of developing or providing  
30 products or processes for specific commercial or public purposes;]

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

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

**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:

<sup>1</sup>Assembly ACE committee amendments adopted November 8, 2010.

1       ["Biotechnology" means the continually expanding body of  
2 fundamental knowledge about the functioning of biological systems  
3 from the macro level to the molecular and sub-atomic levels, as  
4 well as novel products, services, technologies and sub-technologies  
5 developed as a result of insights gained from research advances  
6 which add to that body of fundamental knowledge;

7       "Biotechnology company" means a person with headquarters or  
8 base of operations located in New Jersey and engaged in the  
9 research, development, production, or provision of biotechnology  
10 for the purpose of developing or providing products or processes for  
11 specific commercial or public purposes, including, but not limited  
12 to, medical, pharmaceutical, nutritional, and other health-related  
13 purposes, agricultural purposes, and environmental purposes, or a  
14 person with headquarters or base of operations located in New  
15 Jersey and engaged in providing services or products necessary for  
16 such research, development, production, or provision;】

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

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

27       ["Commissioner" means the Executive Director of the New  
28 Jersey Commerce Commission;

29       "Department" means the New Jersey Commerce Commission;】

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

45       "Capital investment" means expenses that the business incurs  
46 following its submission of an application to the authority pursuant  
47 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the

1 Capital Investment Completion Date, as shall be defined in the  
2 project agreement, for: a. the site preparation and construction,  
3 repair, renovation, improvement, equipping, or furnishing of a  
4 building, structure, facility, or improvement to real property; and b.  
5 obtaining and installing furnishings and machinery, apparatus or  
6 equipment for the operation of a business in a building, structure,  
7 facility or improvement to real property;

8 “Chief executive officer” means the chief executive officer of the  
9 New Jersey Economic Development Authority;

10 “Commitment duration” means the tax credit term and five years  
11 from the [date] end of the tax credit term specified in the project  
12 agreement entered into pursuant to section 5 of P.L.1996, c.25  
13 (C.34:1B-116);

14 “Designated industry” means [a business engaged in the field of  
15 biotechnology, pharmaceuticals, manufacturing, financial services  
16 or transportation and logistics, advanced computing, advanced  
17 materials, electronic device technology, environmental technology  
18 or medical device technology] an industry identified by the  
19 authority as desirable for the State to maintain, which may be  
20 designated and amended via the promulgation of rules by the  
21 authority to reflect changing market conditions;

22 “Designated urban center” means an urban center designated in  
23 the State Development and Redevelopment Plan adopted by the  
24 State Planning Commission;

25 ["Electronic device technology" means a technology involving  
26 microelectronics, semiconductors, electronic equipment, and  
27 instrumentation, radio frequency, microwave, and millimeter  
28 electronics, and optical and optic-related electrical devices, or data  
29 and digital communications and imaging devices;

30 “Electronic device technology company” means a person with  
31 headquarters or base of operations located in New Jersey and  
32 engaged in the research, development, production, or provision of  
33 electronic device technology for the purpose of developing or  
34 providing products or processes for specific commercial or public  
35 purposes;]

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

43 “Full-time employee” means a person [who is employed for  
44 consideration for at least thirty-five hours a week, or who renders  
45 any other standard of service generally accepted by custom or  
46 practice as full-time employment, whose wages are subject to  
47 withholding as provided in the "New Jersey Gross Income Tax

1 Act," N.J.S.54A:1-1 et seq., and who is determined by the  
2 commissioner to be employed in a permanent position according to  
3 criteria as the Board of Directors of the New Jersey Commerce  
4 Commission may prescribe. "Full-time employee" shall not include  
5 any person who works as an independent contractor or on a  
6 consulting basis for the business. "Full-time employee" shall not  
7 include a child, grandchild, parent, or spouse of an individual who  
8 has direct or indirect ownership of at least 5% of the profits, capital,  
9 or value of the business] employed by the business for  
10 consideration for at least 35 hours a week, or who renders any other  
11 standard of service generally accepted by custom or practice, as  
12 determined by the authority, as full-time employment, or a person  
13 who is employed by a professional employer organization pursuant  
14 to an employee leasing agreement between the business and the  
15 professional employer organization, in accordance with P.L.2001,  
16 c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who  
17 renders any other standard of service generally accepted by custom  
18 or practice, as determined by the authority, as full-time  
19 employment, and whose wages are subject to withholding as  
20 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
21 et seq. or an employee who is a resident of another State but whose  
22 income is not subject to the "New Jersey Gross Income Tax Act,"  
23 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
24 for the partnership for at least 35 hours a week, or who renders any  
25 other standard of service generally accepted by custom or practice,  
26 as determined by the authority, as full-time employment, and whose  
27 distributive share of income, gain, loss, or deduction, or whose  
28 guaranteed payments, or any combination thereof, is subject to the  
29 payment of estimated taxes, as provided in the "New Jersey Gross  
30 Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall  
31 not include any person who works as an independent contractor or  
32 on a consulting basis for the business;

33 ["Headquarters" of a business means the single location that  
34 serves as the national administrative center of the business, at which  
35 the primary office of the chief executive officer or chief operating  
36 officer of the business, as well as the offices of the management  
37 officials responsible for key businesswide functions such as  
38 finance, legal, marketing, and human resources, are located;

39 "High-technology business" means an advanced computing  
40 company, advanced materials company, electronic device  
41 technology company, environmental technology company or  
42 medical device technology company;

43 "Medical device technology" means a technology involving any  
44 medical equipment or product (other than a pharmaceutical product)  
45 that has therapeutic value, diagnostic value, or both, and is  
46 regulated by the federal Food and Drug Administration;

47 "Medical device technology company" means a person with  
48 headquarters or base of operations located in New Jersey and

1 engaged in the research, development, production, or provision of  
2 medical device technology for the purpose of developing or  
3 providing products or processes for specific commercial or public  
4 purposes;】

5 "New business location" means the premises to which a business  
6 will relocate that the business has either purchased or built or for  
7 which the business has entered into a purchase agreement or a  
8 written lease for a period of no less than the commitment duration  
9 or eight years, whichever is greater, from the date of relocation. A  
10 "new business location" also means the business's current location  
11 or locations if the business makes a capital investment equal to the  
12 total value of the business retention or relocation grant of tax credits  
13 to the business at that location or locations;

14 【"Manufacturing facility" means a business location at which  
15 more than 50% of the business personal property that is housed in  
16 the facility is eligible for the sales tax exemption pursuant to  
17 subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13) for  
18 machinery, apparatus or equipment used in the production of  
19 tangible personal property;】

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

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

29 "Qualifying capital investment" means a capital investment in an  
30 amount that is at least twice that of the total value of the business  
31 retention or relocation grant of tax credits to a business;

32 【"Research and development facility" means a business location  
33 at which more than 50% of the business personal property that is  
34 purchased for the facility is eligible for the sales tax exemption  
35 pursuant to section 26 of P.L.1980, c.105 (C.54:32B-8.14) for  
36 property used in research and development;】

37 "Retained full-time job" means an eligible position that currently  
38 exists in New Jersey and is filled by a full-time employee but  
39 which, because of a potential relocation by the business, is at risk of  
40 being lost to another state or country. For the purposes of  
41 determining a number of retained full-time jobs, the eligible  
42 positions of the members of a "controlled group of corporations" as  
43 defined pursuant to section 1563 of the federal Internal Revenue  
44 Code of 1986, 26 U.S.C. s.1563, shall be considered the eligible  
45 positions of a single employer; 【and】

46 "Tax credit term" means the period of time commencing with the  
47 first issuance of tax credits and continuing during the period in

1 which the recipient of a grant of tax credits is eligible to apply the  
2 tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3):

3 ["Total allowable relocation costs" means \$1,500 times the  
4 number of retained full-time jobs. "Total allowable relocation  
5 costs" does not include the amount of any bonus award authorized  
6 pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1).] ; and

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

11 (cf: P.L.2007, c.253, s.14)

12  
13 2. Section 3 of P.L.1996, c.25 (C.34:1B-114) is amended to  
14 read as follows:

15 3. The Business Retention and Relocation Assistance Grant  
16 Program is hereby established as a program under the jurisdiction of  
17 the New Jersey **[Commerce Commission]** Economic Development  
18 Authority and shall be administered by the **[New Jersey Commerce**  
19 **Commission]** authority. The purpose of the program is to  
20 encourage economic development and job creation and to preserve  
21 jobs that currently exist in New Jersey but which are in danger of  
22 being relocated to premises outside of the State. To implement that  
23 purpose, and to the extent that funding for the program is available,  
24 the program may provide grants of tax credits **[but in no case shall**  
25 **the amount of an individual grant of tax credits exceed 80% of the**  
26 **projected State tax revenues from the retained full-time jobs**  
27 **covered by the project agreement of an applicant for a grant of tax**  
28 **credits]**. To be eligible for any 'grant of' tax credits pursuant to  
29 P.L.1996, c.25 (C.34:1B-112 et seq.), a business shall demonstrate  
30 to the authority, at the time of application, that the grant of tax  
31 credits and resultant retention of full-time jobs and any capital  
32 investment will yield a net positive benefit to the State. 'The net  
33 benefit resulting from the retention of full-time jobs and any capital  
34 investment by any company that has had grant pre-application  
35 meetings with the authority and has executed contracts relating to  
36 the new business location during the period commencing May 1,  
37 2010 until the adoption of P.L. , c. (C. ) (pending before the  
38 Legislature as this bill), shall be calculated from the date of the  
39 initial grant pre-application meeting.<sup>1</sup>

40 (cf: P.L.2007, c.253, s.15)

41  
42 3. Section 4 of P.L.1996, c.25 (C.34:1B-115) is amended to  
43 read as follows:

44 4. a. To qualify for a grant of tax credits, a business shall enter  
45 into an agreement to undertake a project to:

1 (1) relocate or maintain a minimum of 50 retained full-time jobs  
2 from one or more locations within this State to a new business  
3 location or locations in this State; and

4 (2) maintain the retained full-time jobs pursuant to the project  
5 agreement for the commitment duration.

6 b. A project that consists solely of point-of-final-purchase  
7 retail facilities shall not be eligible for a grant of tax credits. If a  
8 project consists of both point-of-final-purchase retail facilities and  
9 non-retail facilities, only the portion of the project consisting of  
10 non-retail facilities shall be eligible for a grant of tax credits. If a  
11 warehouse facility is part of a point-of-final-purchase retail facility  
12 and supplies only that facility, the warehouse facility shall not be  
13 eligible for a grant of tax credits. For the purposes of this section,  
14 catalog distribution centers shall not be considered point-of-final-  
15 purchase retail facilities.

16 (cf: P.L.2007, c.310, s.1)

17

18 4. Section 5 of P.L.2004, c.65 (C.34:1B-115.1) is amended to  
19 read as follows:

20 5. a. In addition to any grant of tax credits determined  
21 pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3), a bonus  
22 award equivalent to 50% of the amount of the original grant of tax  
23 credits shall be made to any business that relocates more than 2,000  
24 full-time employees covered by the project agreement from one or  
25 more locations outside of a designated urban center into a  
26 designated urban center, provided that all other applicable  
27 requirements of P.L.1996, c. 25 (C.34:1B-112 et seq.) are satisfied;  
28 and provided further that no grant of tax credits shall be awarded  
29 pursuant to this section for any job that is moved from its current  
30 location in an urban enterprise zone designated pursuant to the  
31 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303  
32 (C.52:27H-60 et seq.) to a location that is not within an urban  
33 enterprise zone; however, that if the move from the urban enterprise  
34 zone is to a facility already owned or leased by the same business  
35 and that business already employs at least the same number of  
36 persons as those being relocated from the urban enterprise zone a  
37 grant of tax credits may still be awarded pursuant to this section.

38 b. In addition to any grant of tax credits determined pursuant to  
39 section 7 of P.L.2004, c.65 (C.34:1B-115.3), and in addition to any  
40 bonus award pursuant to subsection a. of this section, a bonus award  
41 equivalent to 50% of the amount of the original grant of tax credits  
42 shall be made to any business that makes a qualifying capital  
43 investment. If a bonus award under this section would result in a  
44 business's capital investment no longer being a qualifying capital  
45 investment, then the bonus award shall equal the largest bonus  
46 amount that would still result in the capital investment being a  
47 qualifying capital investment.

48 (cf: P.L.2004, c.65, s.5)



1       '5. Section 6 of P.L. 2004, c.65 (C.34:1B-115.2) is amended to  
2 read as follows:

3       6. To qualify for a grant of tax credits pursuant to P.L.1996,  
4 c.25 (C.34:1B-112 et seq.), a business shall demonstrate that the  
5 receipt of assistance pursuant to P.L.1996, c.25, will be a material  
6 factor in the business' decision not to relocate outside of New  
7 Jersey; provided however, that a business that relocates 1,500 or  
8 more retained full-time jobs covered by a project agreement from  
9 outside of a designated urban center to one or more new locations  
10 within a designated urban center shall not be required to make such  
11 a demonstration if the business applies for a grant of tax credits  
12 within six months of signing its lease or purchase agreement. Any  
13 company that has had grant pre-application meetings with the  
14 authority and has executed contracts relating to the new business  
15 location during the period commencing May 1, 2010 until the  
16 adoption of P.L. , c. (C. ) (pending before the Legislature as  
17 this bill) shall not be deemed ineligible for the grant due to the  
18 material factor requirement.<sup>1</sup>

19 (cf: P.L.2004, c.65, s.6)

20

21       '**[5.] 6.**<sup>1</sup> Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is  
22 amended to read as follows:

23       7. a. The total value of the grants of tax credits **[issued],**  
24 approved by the authority pursuant to P.L.1996, c.25 (C.34:1B-112  
25 et seq.), that may be applied against tax liability in a fiscal year  
26 shall not exceed an aggregate annual limit of \$20,000,000 [for a  
27 fiscal year]. The total value of the grants of tax credits, issued  
28 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that a single  
29 business may apply against its tax liability shall not exceed an  
30 aggregate annual limit of \$10,000,000 for a fiscal year. A tax credit  
31 issued pursuant to P.L.1996, c.25 may be applied against liability  
32 **[arising in the tax period in which the tax credit is issued and the**  
33 **tax period next following,]** as set forth in subsection b. of this  
34 section and shall expire thereafter.

35       b. **[Grants]** Subject to the limitation set forth in subsection a.  
36 of this section <sup>1</sup>,<sup>1</sup> grants of tax credits shall be [awarded and issued  
37 to] approved for qualifying businesses [as follows, subject to the  
38 limitations of subsection c. of this section] according to the  
39 following schedule, and shall be issued upon the execution and  
40 satisfaction of the requirements of the project agreement between  
41 the authority and the business with an approved project <sup>1</sup>**[, and**  
42 **annually thereafter]**<sup>1</sup> :

43       **[(1)** for a project that covers a business relocating a minimum of  
44 500 full-time employees, a grant of tax credits made pursuant to  
45 P.L.1996, c.25 (C.34:1B-112 et seq.) shall equal total allowable  
46 relocation costs plus any applicable bonus award determined

1 pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and, shall  
2 be issued immediately upon the entry of the project agreement  
3 between the commissioner and the business with an approved  
4 project, up to the aggregate annual limit; and

5 (2) for a project that covers a business relocating between 50  
6 and 499 full-time employees, a grant of tax credits shall not be  
7 issued until the end of the fiscal year in which the application is  
8 approved.】

9 (1) for a project that covers a business relocating or retaining 50  
10 to 250 full-time employees, a grant of tax credits shall be for the  
11 yearly tax credit amount plus any applicable bonus award  
12 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1),  
13 and may be applied against liability in the '【tax period】 fiscal year'  
14 in which the tax credit is issued;

15 (2) for a project that covers a business relocating or retaining 251  
16 to 400 full-time employees, a grant of tax credits shall be for two  
17 times the yearly tax credit amount plus any applicable bonus award  
18 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1),  
19 and may be applied against liability in the '【tax period】 fiscal year'  
20 in which the tax credit is issued and the following '【tax period】  
21 fiscal year', for one-half of the total grant award per '【tax period】  
22 fiscal year', provided that the use of the credit must be  
23 accompanied by a certificate of compliance;

24 (3) for a project that covers a business relocating or retaining 401  
25 to 600 full-time employees, a grant of tax credits shall be for three  
26 times the yearly tax credit amount plus any applicable bonus award  
27 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1)  
28 and may be applied against liability in the '【tax period】 fiscal year'  
29 in which the tax credit is issued and the following two '【tax  
30 periods】 fiscal years', for one-third of the total grant award per  
31 '【tax period】 fiscal year', provided that the use of the credit must  
32 be accompanied by a certificate of compliance;

33 (4) for a project that covers a business relocating or retaining 601  
34 to 800 full-time employees, a grant of tax credits shall be for four  
35 times the yearly tax credit amount plus any applicable bonus award  
36 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1)  
37 and may be applied against liability in the '【tax period】 fiscal year'  
38 in which the tax credit is issued and the following three '【tax  
39 periods】 fiscal years', for one-fourth of the total grant award per  
40 '【tax period】 fiscal year', provided that the use of the credit must  
41 be accompanied by a certificate of compliance;

42 (5) for a project that covers a business relocating or retaining 801  
43 to 1,000 full-time employees, a grant of tax credits shall be for five  
44 times the yearly tax credit amount plus any applicable bonus award  
45 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1)  
46 and may be applied against liability in the '【tax period】 fiscal year'

1 in which the tax credit is issued and the following four <sup>1</sup>['tax  
2 periods'] fiscal years<sup>1</sup>, for one-fifth of the total grant award per  
3 '['tax period'] fiscal year<sup>1</sup>, provided that the use of the credit must  
4 be accompanied by a certificate of compliance; and

5 (6) for a project that covers a business relocating or retaining  
6 1,001 or more full-time employees, a grant of tax credits shall be  
7 for six times the yearly tax credit amount plus any applicable bonus  
8 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
9 115.1) and may be applied against liability in the <sup>1</sup>['tax period]  
10 fiscal year<sup>1</sup> in which the tax credit is issued and the following five  
11 '['tax periods'] fiscal years<sup>1</sup>, for one-sixth of the total grant award  
12 per <sup>1</sup>['tax period'] fiscal year<sup>1</sup>, provided that the use of the credit  
13 must be accompanied by a certificate of compliance.

14 c. ['If the sum of the amount of tax credits issued pursuant to  
15 paragraph (1) of subsection b. of this section in a fiscal year, plus  
16 the amount of tax credits approved pursuant to paragraph (2) of  
17 subsection b. of this section exceeds] If the <sup>1</sup>['issuance] approval<sup>1</sup>  
18 of a grant of tax credits pursuant to this section would exceed the  
19 \$20,000,000 aggregate annual limit, [the commissioner shall  
20 reduce, on a pro rata basis, the award to each business receiving a  
21 grant of tax credits pursuant to paragraph (2) of subsection b.] the  
22 authority may award a smaller grant of tax credits or no <sup>1</sup>'grants of'  
23 tax credits, as necessary to comply with the aggregate annual limit.  
24 (cf: P.L.2007, c.310, s.2)

25  
26 <sup>1</sup>['6.] 7.<sup>1</sup> Section 5 of P.L.1996, c.25 (C.34:1B-116) is  
27 amended to read as follows:

28 5. Each business seeking a grant of tax credits for a project  
29 shall submit an application for approval of the project to the  
30 ['commissioner] authority in a form and manner prescribed in  
31 regulations adopted by the [commissioner] authority. The  
32 application must be submitted to the [commissioner] authority for  
33 approval at least 45 days prior to moving to the new business  
34 location; provided however, a business relocating 1,500 or more  
35 retained full-time jobs to one or more new locations within a  
36 designated urban center shall, if relocating to a leased location,  
37 submit an application within six months of executing its lease. <sup>1</sup>Any  
38 company that has had grant pre-application meetings with the  
39 authority and has executed contracts relating to the new business  
40 location during the period commencing May 1, 2010 until the  
41 adoption of P.L. , c. (C. ) (pending before the Legislature as  
42 this bill) shall not be deemed ineligible for the grant due to the  
43 requirement to apply 45 days before moving to the new business  
44 location.<sup>1</sup> The application for approval of a project shall include:

45 a. A schedule of short-term and long-term employment  
46 projections of the business in the State based upon the relocation;

- 1       b. (Deleted by amendment, P.L.2004, c.65.)
- 2       c. Terms of any lease agreements, either existing or proposed,
- 3 or details of the purchase or building of the new business location,
- 4 if applicable;
- 5       d. An estimate of the projected retained State tax revenues
- 6 resulting from the relocation;
- 7       e. A description of the type of contribution the business can
- 8 make to the long-term growth of the State's economy and a
- 9 description of the potential impact on the State's economy if the
- 10 jobs are not retained;
- 11       f. Evidence that the business or a predecessor entity has been
- 12 operating, in whole or in part, in this State for at least 10 years prior
- 13 to the filing of the application;
- 14       g. Evidence of alternative relocation plans, such as an analysis
- 15 of the cost effectiveness of remaining in this State versus relocation
- 16 under the alternative plans;
- 17       h. A written commitment by the business to maintain 95% of
- 18 the retained full-time jobs for at least the first two years of the
- 19 commitment duration, and to maintain a minimum of 90% of the
- 20 retained full-time jobs for the commitment duration; and
- 21       i. Any other necessary and relevant information as determined
- 22 by the **【commissioner】** authority.

23       The **【commissioner】** authority staff may provide whatever

24 assistance the **【commissioner】** authority deems appropriate in the

25 preparation of an application for approval of a project and may

26 issue grants of tax credits pursuant to the project agreement entered

27 between the **【commissioner】** authority and the business **【with an**

28 approved project at the commissioner's discretion subject to the

29 provisions of P.L.1996, c.25 (C.34:1B-112 et seq.)**】**.

30       The project agreement shall include terms establishing the

31 starting date, or event that will determine the starting date, of the

32 commitment duration and any other terms or conditions as

33 determined by the **【commissioner】** authority.

34 (cf: P.L.2004, c.65, s.8)

35

36       '**【7.】** 8.<sup>1</sup> Section 6 of P.L.1996, c.25 (C.34:1B-117) is

37 amended to read as follows:

38       6. No tax credits **【shall be】** issued as a grant of tax credits

39 under P.L.1996, c.25 (C.34:1B-112 et seq.) may be applied by the

40 business against liability in any year until the State Treasurer has

41 certified that the amount of retained State tax revenue received in

42 the most recently completed State '**【tax periods】** fiscal years<sup>1</sup>' by

43 the Director of the Division of Taxation from the business equals or

44 exceeds the amount of the grant of tax credits.

45 (cf: P.L.2004, c.65, s.9)

1       '【8.】 9.' Section 7 of P.L.1996, c.25 (C.34:1B-118) is  
2 amended to read as follows:

3       7. a. A business that is receiving a business employment  
4 incentive grant pursuant to the provisions of P.L.1996, c.26  
5 (C.34:1B-124 et al.) shall not be eligible to receive a grant of tax  
6 credits under P.L.1996, c.25 (C.34:1B-112 et seq.) with respect to a  
7 job which is included in the calculation of a grant pursuant to  
8 P.L.1996, c.26.

9       b. A business that is receiving any other grant by operation of  
10 State law shall be eligible to receive a grant of tax credits under  
11 P.L.1996, c.25 (C.34:1B-112 et seq.); provided, however, that a  
12 business that is receiving another State grant shall not be eligible to  
13 receive assistance with respect to any job that is currently the  
14 subject of any other State grant, except for grants from the Office of  
15 Customized Training pursuant to the "1992 New Jersey  
16 Employment and Workforce Development Act," P.L.1992, c.43  
17 (C.34:15D-1 et seq.), and provided further that a business shall not  
18 receive an amount as a grant of tax credits pursuant to P.L.1996,  
19 c.25 (C.34:1B-112 et seq.) **【which,】** unless the State will realize a  
20 net positive benefit from the grant of tax credits and resultant  
21 retention of full-time jobs and any capital investment when  
22 combined with such other grants, **【exceeds 80% of the retained**  
23 **State tax revenue,】** except upon the approval of the State Treasurer.  
24 Amounts received as grants from the Office of Customized Training  
25 pursuant to the "1992 New Jersey Employment and Workforce  
26 Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.), shall be  
27 excluded from the calculation of the total amount permitted under  
28 this subsection.  
29 (cf: P.L.2004, c.65, s.10)

30

31       '【9.】 10.' Section 11 of P.L.2004, c.65 (C.34:1B-118.1) is  
32 amended to read as follows:

33       11. In **【determining the】** considering the award and the amount  
34 of any grant of tax credits made pursuant to P.L.1996, c.25  
35 (C.34:1B-112 et seq.), the **【commissioner shall】** authority may  
36 consider, as part of the **【commissioner's】** authority's overall  
37 **【calculation】** review process, the following factors:

38       a. The number of full-time jobs retained;

39       b. The quality of the full-time jobs retained, including but not  
40 limited to the salaries and benefits provided to retained full-time  
41 employees;

42       c. Any capital investments made by the business at the new  
43 business location;

44       d. The nature of the business' operations, including but not  
45 limited to whether the business is a designated industry;

46       e. The potential impact on the State if the business were to  
47 relocate to another state;

1 f. The site of the new business location and its consistency  
2 with the smart growth goals, strategies and policies of the State  
3 Development and Redevelopment Plan established pursuant to  
4 section 5 of P.L.1985, c.398 (C.52:18A-200);

5 g. Whether positions average at least 1.5 times the minimum  
6 hourly wage during the commitment duration; and

7 h. The duration and extent of past operations by the business in  
8 New Jersey and any other information indicating the business' level  
9 of commitment to the State and the likelihood that the business will  
10 continue to operate in this State in the future.

11 (cf: P.L.2004, c.65, s.11)

12  
13 '【10.】 11.' Section 8 of P.L.1996, c.25 (C.34:1B-119) is  
14 amended to read as follows:

15 8. The 【commissioner】 authority shall, after consultation with  
16 the Director of the Division of Taxation, pursuant to the  
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
18 seq.), adopt rules and regulations necessary to govern the proper  
19 conduct and operation of the program consistent with the provisions  
20 of P.L.1996, c.25 (C.34:1B-112 et seq.) including, but not limited  
21 to, a procedure for recapturing relocation grants of tax credits  
22 awarded pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) in those  
23 cases in which the 【commissioner】 authority determines that the  
24 business receiving the grant of tax credits fails to meet or comply  
25 with any condition or requirement attached by the 【commissioner】  
26 authority to the receipt of the grant of tax credits or included in  
27 rules and regulations adopted by the 【commissioner】 authority  
28 governing the implementation of the program. The Director of the  
29 Division of Taxation, after consultation with the authority, is  
30 authorized to promulgate such rules and regulations as may be  
31 necessary to effect the tax-related provisions of the program.

32 (cf: P.L.2004, c.65, s.12)

33  
34 '【11.】 12.' Section 9 of P.L.1996, c.25 (C.34:1B-120) is  
35 amended to read as follows:

36 9. '【a.】' As determined by the authority, a business which is  
37 awarded a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et  
38 seq.) shall submit annually, no later than March 1st of each year,  
39 commencing in the year in which the grant of tax credits is issued  
40 and for the remainder of the '【tax credit term】 commitment  
41 duration' , a certification of compliance that indicates that the  
42 business continues to maintain the number of retained full-time jobs  
43 as specified in the project agreement. Upon receipt and review  
44 thereof 'during the tax credit term' , the authority shall issue a  
45 certificate of compliance indicating the amount of tax credits that  
46 the business may apply against liability in that '【tax period】 fiscal  
47 year' . Any reduction in the number of retained full-time jobs below

1 the number prescribed under the terms of the project agreement  
2 shall proportionately reduce the amount of tax credits the business  
3 may apply against liability in that '[tax period] fiscal year' and the  
4 unused credits for that '[tax period] fiscal year' shall be forfeited.  
5 If, in any '[tax period] fiscal year', the number of retained full-  
6 time jobs drops below the minimum number of retained full-time  
7 jobs indicated in the applicable paragraph of subsection b. of  
8 section 7 of P.L.2004, c.65 (C.34:1B-115.3) such that the business  
9 would no longer be eligible to apply the credits for the number of  
10 years for which it was approved, '[then the business shall forfeit its  
11 credit amount for that tax period and each subsequent tax period,  
12 until the first tax period for which documentation demonstrating the  
13 restoration of the number of retained full-time jobs has been  
14 reviewed and approved by the authority, for which tax period and  
15 each subsequent tax period the full amount of the credit shall be  
16 allowed] then the authority shall reduce the amount of tax credits  
17 the business may apply against liability and the number of years in  
18 which the business may apply the tax credits and the grant shall be  
19 subject to recapture provisions pursuant to the project agreement' .

20 '[b. As determined by the [commissioner] authority, a business  
21 which is awarded a grant of tax credits under P.L.1996, c.25  
22 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st  
23 of each year, commencing the year following the calendar year in  
24 which the business was approved for the grant of tax credits and for  
25 the remainder of the commitment duration, a copy of the State tax  
26 return for the business showing business income or activity,  
27 appropriate to its form of ownership together with an annual report  
28 listing the full-time employees in eligible positions employed at the  
29 location or locations approved for the grant of tax credits, to the  
30 [commissioner] authority. Failure to submit a copy of its annual  
31 report or submission of the annual report without the information  
32 required above, may result in the forfeiture of any grant of tax  
33 credits to be received by the business and the recapture of any tax  
34 credits issued to the business unless the [commissioner] authority  
35 determines that there are extenuating circumstances excusing the  
36 business from the timely filing required.]'

37 (cf: P.L.2004, c.65, s.13)

38

39 '[12.] 13.' Section 14 of P.L.2004, c.65 (C.34:1B-120.1) is  
40 amended to read as follows:

41 14. The [commissioner] authority is authorized to pursue, and  
42 shall adopt rules for, the recapture of all, or a portion of, the grant  
43 of tax credits, based on criteria established by the [commissioner]  
44 authority pursuant to regulation or under the terms of the project  
45 agreement [if the business fails to maintain the retained full-time  
46 jobs at the location or locations approved for the grant of tax credits  
47 for the commitment duration or fails to meet or comply with any

1 condition or requirement under the terms of the project agreement  
2 or included in rules and regulations adopted by the commissioner  
3 governing the implementation of the program]. The rules shall  
4 allow for the [commissioner] authority to pursue the full or partial  
5 recapture or, in its discretion, to notify the Director of the Division  
6 of Taxation in the Department of the Treasury, who shall issue a  
7 recapture assessment which shall be based upon the proportionate  
8 value of the grant of tax credits that corresponds to the amount and  
9 period of noncompliance[. The] , in which case, the recapture of  
10 funds shall be subject to the State Uniform Tax Procedure Law,  
11 R.S.54:48-1 et seq. Recaptured funds shall be deposited in the  
12 General Fund of the State.

13 (cf: P.L.2004, c.65, s.14)

14  
15 '13.] 14.' Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is  
16 amended to read as follows:

17 17. a. The [commissioner] authority shall establish a  
18 corporation business tax credit and insurance premiums tax credit  
19 certificate transfer program to allow businesses in this State with  
20 unused amounts of tax credits issued under P.L.1996, c.25  
21 (C.34:1B-112 et seq.), and otherwise allowable, that cannot be  
22 applied by the business to which originally issued before the  
23 expiration of the credit, to surrender those tax credits for use by  
24 other corporation business and insurance premiums taxpayers in this  
25 State [, provided that the taxpayer receiving the surrendered tax  
26 credits is not affiliated with the business that is surrendering its tax  
27 credits. For the purposes of this section, the test of affiliation is  
28 whether the same entity directly or indirectly owns or controls 5%  
29 or more of the voting rights or 5% or more of the value of all  
30 classes of stock of both the taxpayer receiving the tax credits and  
31 the business that is surrendering the tax credits]. The tax credits  
32 may be used on the corporation business tax and insurance  
33 premiums tax returns to be filed by those taxpayers in exchange for  
34 private financial assistance to be provided by the corporation  
35 business taxpayer or insurance premiums taxpayer that is the  
36 recipient of the corporation business tax credit certificate or  
37 insurance premiums tax credit certificate to assist in the funding of  
38 costs incurred by the relocating business.

39 b. [The commissioner, in cooperation with the Director of the  
40 Division of Taxation in the Department of the Treasury, shall  
41 review and approve applications by taxpayers under the Corporation  
42 Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and  
43 by taxpayers under the taxes imposed on insurers pursuant to  
44 P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231  
45 (C.17:32-15) and N.J.S.17B:23-5 to acquire surrendered tax  
46 benefits, which shall be issued in the form of corporation business  
47 tax credit and insurance premiums tax credit transfer certificates,]



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

16 c. The **【commissioner】 authority** shall **【coordinate】** establish  
17 procedures to facilitate such transfers and encourage liquidity and  
18 simplicity in the market for the purchase and sale of such  
19 certificates, including, in the authority's discretion, coordinating the  
20 applications for surrender and acquisition of unused but otherwise  
21 allowable tax credits pursuant to this section in a manner that can  
22 best stimulate and encourage the extension of private financial  
23 assistance to businesses in this State. The authority also shall have  
24 the discretion, in consultation with the 'State' Treasurer, to  
25 purchase and retire unused certificates under circumstances where it  
26 may determine that such purchase and retirement is in the  
27 furtherance of the purposes of this act and in the overall interest of  
28 the State in cost-effective promotion of economic development.

29 d. The **【commissioner】 authority** shall, in consultation with the  
30 Director of the Division of Taxation, develop criteria for the  
31 approval or disapproval of applications.  
32 (cf: P.L.2004, c.65, s.17)

33  
34 <sup>1</sup>['14.] 15. Section 10 of P.L.1996, c.25 (C.34:1B-121) is  
35 amended to read as follows:

36 10. The **【commissioner】 authority** shall prepare and transmit to  
37 the Governor and the Legislature on or before November 1st of  
38 each year, a report concerning the impact of the program on job  
39 retention in the State.  
40 (cf: P.L.2004, c.65, s.15)

41  
42 <sup>1</sup>['15.] 16. Section 12 of P.L.1996, c.25 (C.34:1B-123) is  
43 amended to read as follows:

44 12. There is appropriated to the **【New Jersey Commerce and**  
45 **Economic Growth Commission】 authority** from the General Fund  
46 such sums as may be necessary, as certified by the **【commissioner】**  
47 chief executive officer of the authority and the Director of the

1 Division of Budget and Accounting, to fund business retention and  
2 relocation grants of tax credits made under P.L.1996, c.25  
3 (C.34:1B-112 et seq.), the amount of which shall not exceed the  
4 retained State tax revenues as defined in section 2 of P.L.1996, c.25  
5 (C.34:1B-113).  
6 (cf: P.L.2004, c.65, s.16)  
7

8 '【16.】 17.' Section 11 of P.L.1996, c.25 (C.34:1B-122) is  
9 repealed.  
10

11 '【17.】 18.' This act shall take effect immediately and apply to  
12 tax periods beginning on or after the date of enactment.