

[First Reprint]

SENATE, No. 2370

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED OCTOBER 18, 2010

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

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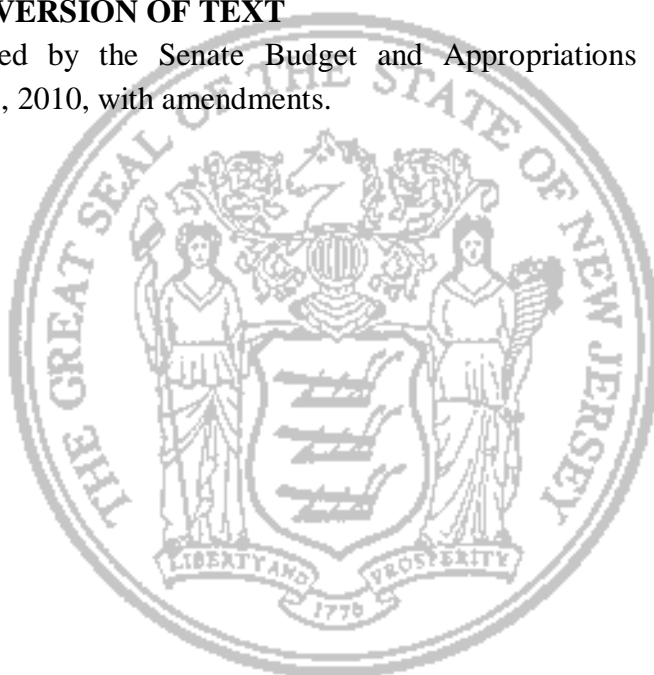
Senators T.Kean, A.R.Bucco, Goodwin, Oroho, Sweeney, Sarlo and Whelan

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 Senate Budget and Appropriations Committee on November 15, 2010, with amendments.



(Sponsorship Updated As Of: 12/7/2010)

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:

¹Senate SBA committee amendments adopted November 15, 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" means a certificate issued by the**
26 **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 an
44 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] (1) the site preparation
8 and construction, renovation, improvement, equipping of, or
9 obtaining and installing fixtures and machinery, apparatus or
10 equipment in, a newly constructed, renovated or improved building,
11 structure, facility, or improvement to real property in this State; and
12 (2) obtaining and installing fixtures and machinery, apparatus or
13 equipment in a building, structure, or facility in this State. Provided
14 however, that "capital investment" shall not include soft costs such
15 as financing and design, furniture or decorative items such as
16 artwork or plants, or office equipment if the office equipment is
17 property with a recovery period of less than five years. The
18 recovery period of any property, for purposes of this section, shall
19 be determined as of the date such property is first placed in service
20 or use in this State by the business, determined in accordance with
21 section 168 of the federal Internal Revenue Code of 1986 (26
22 U.S.C. s.168)'¹ ;

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

25 "Chief executive officer" means the chief executive officer of the
26 New Jersey Economic Development Authority;

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

31 "Designated industry" means [a business engaged in the field of
32 biotechnology, pharmaceuticals, manufacturing, financial services
33 or transportation and logistics, advanced computing, advanced
34 materials, electronic device technology, environmental technology
35 or medical device technology] an industry identified by the
36 authority as desirable for the State to maintain, which may be
37 designated and amended via the promulgation of rules by the
38 authority to reflect changing market conditions;

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

42 ["Electronic device technology" means a technology involving
43 microelectronics, semiconductors, electronic equipment, and
44 instrumentation, radio frequency, microwave, and millimeter
45 electronics, and optical and optic-related electrical devices, or data
46 and digital communications and imaging devices;

1 "Electronic device technology company" means a person with
2 headquarters or base of operations located in New Jersey and
3 engaged in the research, development, production, or provision of
4 electronic device technology for the purpose of developing or
5 providing products or processes for specific commercial or public
6 purposes;】

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

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

1 not include any person who works as an independent contractor or
2 on a consulting basis for the business;

3 **["Headquarters"** of a business means the single location that
4 serves as the national administrative center of the business, at which
5 the primary office of the chief executive officer or chief operating
6 officer of the business, as well as the offices of the management
7 officials responsible for key businesswide functions such as
8 finance, legal, marketing, and human resources, are located;

9 "High-technology business" means an advanced computing
10 company, advanced materials company, electronic device
11 technology company, environmental technology company or
12 medical device technology company;

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

17 "Medical device technology company" means a person with
18 headquarters or base of operations located in New Jersey and
19 engaged in the research, development, production, or provision of
20 medical device technology for the purpose of developing or
21 providing products or processes for specific commercial or public
22 purposes;】

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

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

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

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

1 '["Qualifying capital investment" means a capital investment in
 2 an amount that is at least twice that of the total value of the business
 3 retention or relocation grant of tax credits to a business;]'

4 ["Research and development facility" means a business location
 5 at which more than 50% of the business personal property that is
 6 purchased for the facility is eligible for the sales tax exemption
 7 pursuant to section 26 of P.L.1980, c.105 (C.54:32B-8.14) for
 8 property used in research and development;]

9 "Retained full-time job" means an eligible position that currently
 10 exists in New Jersey and is filled by a full-time employee but
 11 which, because of a potential relocation by the business, is at risk of
 12 being lost to another state or country. For the purposes of
 13 determining a number of retained full-time jobs, the eligible
 14 positions of '[the members of a "controlled group of corporations"
 15 as defined pursuant to section 1563 of the federal Internal Revenue
 16 Code of 1986, 26 U.S.C. s.1563,] an affiliate'¹ shall be considered
 17 the eligible positions of '[a single employer] the business'¹; [and]

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

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

26 "Yearly tax credit amount" means \$1,500 times the number of
 27 retained full-time jobs. "Yearly tax credit amount" does not include
 28 the amount of any bonus award authorized pursuant to section 5 of
 29 P.L.2004, c.65 (C.34:1B-115.1).
 30 (cf: P.L.2007, c.253, s.14)

31
 32 2. Section 3 of P.L.1996, c.25 (C.34:1B-114) is amended to
 33 read as follows:

34 3. The Business Retention and Relocation Assistance Grant
 35 Program is hereby established as a program under the jurisdiction of
 36 the New Jersey **[Commerce Commission]** Economic Development
 37 Authority and shall be administered by the **[New Jersey Commerce**
 38 **Commission]** authority. The purpose of the program is to
 39 encourage economic development and job creation and to preserve
 40 jobs that currently exist in New Jersey but which are in danger of
 41 being relocated to premises outside of the State. To implement that
 42 purpose, and to the extent that funding for the program is available,
 43 the program may provide grants of tax credits **[but in no case shall**
 44 **the amount of an individual grant of tax credits exceed 80% of the**
 45 **projected State tax revenues from the retained full-time jobs**
 46 **covered by the project agreement of an applicant for a grant of tax**
 47 **credits].** To be eligible for any grant of tax credits pursuant to

1 P.L.1996, c.25 (C.34:1B-112 et seq.), a business shall demonstrate
2 to the authority, at the time of application, that the grant of tax
3 credits and resultant retention of full-time jobs and any capital
4 investment will yield a net positive benefit to the State. 'The net
5 benefit resulting from the retention of full-time jobs and any capital
6 investment by a business that has had grant pre-application
7 meetings with the authority and has executed contracts relating to
8 the new business location during the period commencing May 1,
9 2010 until the enactment of P.L. , c. (C.) (pending before the
10 Legislature as this bill), shall be calculated from the date of the
11 initial grant pre-application meeting.¹
12 (cf: P.L.2007, c.253, s.15)

13
14 3. Section 4 of P.L.1996, c.25 (C.34:1B-115) is amended to
15 read as follows:

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

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

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

23 b. A project that consists solely of point-of-final-purchase
24 retail facilities shall not be eligible for a grant of tax credits. If a
25 project consists of both point-of-final-purchase retail facilities and
26 non-retail facilities, only the portion of the project consisting of
27 non-retail facilities shall be eligible for a grant of tax credits. If a
28 warehouse facility is part of a point-of-final-purchase retail facility
29 and supplies only that facility, the warehouse facility shall not be
30 eligible for a grant of tax credits. For the purposes of this section,
31 catalog distribution centers shall not be considered point-of-final-
32 purchase retail facilities.

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

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

37 5. a. In addition to any grant of tax credits determined
38 pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3), a bonus
39 award equivalent to 50% of the amount of the original grant of tax
40 credits shall be made to any business that relocates more than 2,000
41 full-time employees covered by the project agreement from one or
42 more locations outside of a designated urban center into a
43 designated urban center, provided that all other applicable
44 requirements of P.L.1996, c. 25 (C.34:1B-112 et seq.) are satisfied;
45 and provided further that no grant of tax credits shall be awarded
46 pursuant to this section for any job that is moved from its current
47 location in an urban enterprise zone designated pursuant to the
48 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303

(C.52:27H-60 et seq.) to a location that is not within an urban enterprise zone; however, that if the move from the urban enterprise zone is to a facility already owned or leased by the same business and that business already employs at least the same number of persons as those being relocated from the urban enterprise zone a grant of tax credits may still be awarded pursuant to this section.

b. In addition to any grant of tax credits determined pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3), and in addition to any bonus award pursuant to subsection a. of this section, a bonus award equivalent to 50% of the amount of the '[original]' grant of tax credits 'pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3)' shall be made to any business that makes a '[qualifying]' capital investment 'in an amount that is at least twice that of the total value of the grant of tax credits granted pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3) and the grant of tax credits pursuant to this subsection' . '[If a bonus award under this section would result in a business's capital investment no longer being a qualifying capital investment, then the bonus award shall equal the largest bonus amount that would still result in the capital investment being a qualifying capital investment.] A bonus award made pursuant to this subsection may be limited, so that when added to the tax credits granted pursuant to section 7 of P.L.2004, c. 65 (C.34:1B-115.3), the total amount shall not exceed 50% of the amount of the capital investment in this State.'¹

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

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

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

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

1 '[5.] 6.' Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is
2 amended to read as follows:

3 7. a. The total value of the grants of tax credits **[issued]**,
4 approved by the authority pursuant to P.L.1996, c.25 (C.34:1B-112
5 et seq.), that may be applied against tax liability in a fiscal year
6 shall not exceed an aggregate annual limit of \$20,000,000 **[for a**
7 **fiscal year]**. The total value of the grants of tax credits, issued
8 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that a single
9 business may apply against its tax liability shall not exceed an
10 aggregate annual limit of \$10,000,000 '[for] in' a fiscal year. A
11 tax credit issued pursuant to P.L.1996, c.25 may be applied against
12 liability **[arising in the tax period in which the tax credit is issued**
13 **and the tax period next following,]** 'in the single fiscal year in
14 which the tax credit or portion of the tax credit may be applied' as
15 set forth in subsection b. of this section and shall expire thereafter.
16 'The fiscal year in which a credit is applied is the fiscal year in
17 which the original due date of the tax return falls for the liability
18 against which the credit is applied.'

19 b. **[Grants]** Subject to the limitation set forth in subsection a.
20 of this section ', ' grants of tax credits shall be [awarded and issued
21 to] approved for qualifying businesses [as follows, subject to the
22 limitations of subsection c. of this section] according to the
23 following schedule, and shall be issued upon the execution and
24 satisfaction of the requirements of the project agreement between
25 the authority and the business with an approved project '[, and
26 annually thereafter]' :

27 **[(1) for a project that covers a business relocating a minimum of**
28 **500 full-time employees, a grant of tax credits made pursuant to**
29 **P.L.1996, c.25 (C.34:1B-112 et seq.) shall equal total allowable**
30 **relocation costs plus any applicable bonus award determined**
31 **pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and, shall**
32 **be issued immediately upon the entry of the project agreement**
33 **between the commissioner and the business with an approved**
34 **project, up to the aggregate annual limit; and**

35 **(2) for a project that covers a business relocating between 50**
36 **and 499 full-time employees, a grant of tax credits shall not be**
37 **issued until the end of the fiscal year in which the application is**
38 **approved.]**

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

45 (2) for a project that covers a business relocating or retaining
46 251 to 400 full-time employees, a grant of tax credits shall be for

1 two times the yearly tax credit amount plus any applicable bonus
2 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
3 115.1), and may be applied against liability in the '[tax period]
4 fiscal year' in which the tax credit is issued and the following '[tax
5 period] fiscal year', for one-half of the total grant award per '[tax
6 period] fiscal year', provided that the use of the credit must be
7 accompanied by a certificate of compliance;

8 (3) for a project that covers a business relocating or retaining
9 401 to 600 full-time employees, a grant of tax credits shall be for
10 three times the yearly tax credit amount plus any applicable bonus
11 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
12 115.1) and may be applied against liability in the '[tax period]
13 fiscal year' in which the tax credit is issued and the following two
14 '[tax periods] fiscal years', for one-third of the total grant award
15 per '[tax period] fiscal year', provided that the use of the credit
16 must be accompanied by a certificate of compliance;

17 (4) for a project that covers a business relocating or retaining
18 601 to 800 full-time employees, a grant of tax credits shall be for
19 four times the yearly tax credit amount plus any applicable bonus
20 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
21 115.1) and may be applied against liability in the '[tax period]
22 fiscal year' in which the tax credit is issued and the following three
23 '[tax periods] fiscal years', for one-fourth of the total grant award
24 per '[tax period] fiscal year', provided that the use of the credit
25 must be accompanied by a certificate of compliance;

26 (5) for a project that covers a business relocating or retaining
27 801 to 1,000 full-time employees, a grant of tax credits shall be for
28 five times the yearly tax credit amount plus any applicable bonus
29 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
30 115.1) and may be applied against liability in the '[tax period]
31 fiscal year' in which the tax credit is issued and the following four
32 '[tax periods] fiscal years', for one-fifth of the total grant award
33 per '[tax period] fiscal year', provided that the use of the credit
34 must be accompanied by a certificate of compliance; and

35 (6) for a project that covers a business relocating or retaining
36 1,001 or more full-time employees, a grant of tax credits shall be
37 for six times the yearly tax credit amount plus any applicable bonus
38 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-
39 115.1) and may be applied against liability in the '[tax period]
40 fiscal year' in which the tax credit is issued and the following five
41 '[tax periods] fiscal years', for one-sixth of the total grant award
42 per '[tax period] fiscal year', provided that the use of the credit
43 must be accompanied by a certificate of compliance.

44 c. 【If the sum of the amount of tax credits issued pursuant to
45 paragraph (1) of subsection b. of this section in a fiscal year, plus
46 the amount of tax credits approved pursuant to paragraph (2) of

1 subsection b. of this section exceeds] If the '[issuance] approval'
2 of a grant of tax credits pursuant to this section would exceed the
3 \$20,000,000 aggregate annual limit, [the commissioner shall
4 reduce, on a pro rata basis, the award to each business receiving a
5 grant of tax credits pursuant to paragraph (2) of subsection b.] the
6 authority may award a smaller grant of tax credits or no 'grants of'
7 tax credits, as necessary to comply with the aggregate annual limit.
8 (cf: P.L.2007, c.310, s.2)

9
10 '[6.] 7.' Section 5 of P.L.1996, c.25 (C.34:1B-116) is
11 amended to read as follows:

12 5. Each business seeking a grant of tax credits for a project
13 shall submit an application for approval of the project to the
14 [commissioner] authority in a form and manner prescribed in
15 regulations adopted by the [commissioner] authority. The
16 application must be submitted to the [commissioner] authority for
17 approval at least 45 days prior to moving to the new business
18 location; provided however, a business relocating 1,500 or more
19 retained full-time jobs to one or more new locations within a
20 designated urban center shall, if relocating to a leased location,
21 submit an application within six months of executing its lease. 'A
22 company that has had grant pre-application meetings with the
23 authority and has executed contracts relating to the new business
24 location during the period commencing May 1, 2010 until the
25 enactment of P.L. , c. (C.) (pending before the Legislature as
26 this bill) shall not be deemed ineligible for the grant due to the
27 requirement to apply 45 days before moving to the new business
28 location.' The application for approval of a project shall include:

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

31 b. (Deleted by amendment, P.L.2004, c.65.)

32 c. Terms of any lease agreements, either existing or proposed,
33 or details of the purchase or building of the new business location,
34 if applicable;

35 d. An estimate of the projected retained State tax revenues
36 resulting from the relocation;

37 e. A description of the type of contribution the business can
38 make to the long-term growth of the State's economy and a
39 description of the potential impact on the State's economy if the
40 jobs are not retained;

41 f. Evidence that the business or a predecessor entity has been
42 operating, in whole or in part, in this State for at least 10 years prior
43 to the filing of the application;

44 g. Evidence of alternative relocation plans, such as an analysis
45 of the cost effectiveness of remaining in this State versus relocation
46 under the alternative plans;

1 h. ¹ **["A written commitment by the business to maintain 95% of**
2 **the retained full-time jobs for at least the first two years of the**
3 **commitment duration, and to maintain a minimum of 90% of the**
4 **retained full-time jobs for the commitment duration]** (Deleted by
5 amendment, P.L. , c.) (pending before the Legislature as this
6 bill)¹ ; and

7 i. Any other necessary and relevant information as determined
8 by the **[commissioner]** authority.

9 The **[commissioner]** authority staff may provide whatever
10 assistance the **[commissioner]** authority deems appropriate in the
11 preparation of an application for approval of a project and may
12 issue grants of tax credits pursuant to the project agreement entered
13 between the **[commissioner]** authority and the business **[with an**
14 **approved project at the commissioner's discretion subject to the**
15 **provisions of P.L.1996, c.25 (C.34:1B-112 et seq.)]**.

16 The project agreement shall include terms establishing the
17 starting date, or event that will determine the starting date, of the
18 commitment duration and any other terms or conditions as
19 determined by the **[commissioner]** authority ¹, which shall include
20 the number of full-time jobs that must be maintained in the State by
21 the business over the commitment duration¹ .

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

23
24 ¹**[7.] 8.**¹ Section 6 of P.L.1996, c.25 (C.34:1B-117) is
25 amended to read as follows:

26 6. No tax credits **[shall be]** issued as a grant of tax credits
27 under P.L.1996, c.25 (C.34:1B-112 et seq.) may be applied by the
28 business against liability in any year until the State Treasurer has
29 certified that the amount of retained State tax revenue received in
30 the most recently completed State ¹**["tax periods"]** fiscal years¹ by
31 the Director of the Division of Taxation from the business equals or
32 exceeds the amount of the grant of tax credits.

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

34
35 ¹**[8.] 9.**¹ Section 7 of P.L.1996, c.25 (C.34:1B-118) is
36 amended to read as follows:

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

43 b. A business that is receiving any other grant by operation of
44 State law shall be eligible to receive a grant of tax credits under
45 P.L.1996, c.25 (C.34:1B-112 et seq.); provided, however, that a
46 business that is receiving another State grant shall not be eligible to
47 receive assistance with respect to any job that is currently the

1 subject of any other State grant, except for grants from the Office of
2 Customized Training pursuant to the "1992 New Jersey
3 Employment and Workforce Development Act," P.L.1992, c.43
4 (C.34:15D-1 et seq.), and provided further that a business shall not
5 receive an amount as a grant of tax credits pursuant to P.L.1996,
6 c.25 (C.34:1B-112 et seq.) **[which,]** unless the State will realize a
7 net positive benefit from the grant of tax credits and resultant
8 retention of full-time jobs and any capital investment when
9 combined with such other grants, **[exceeds 80% of the retained**
10 **State tax revenue,]** except upon the approval of the State Treasurer.
11 Amounts received as grants from the Office of Customized Training
12 pursuant to the "1992 New Jersey Employment and Workforce
13 Development Act," P.L.1992, c.43 (C.34:15D-1 et seq.), shall be
14 excluded from the calculation of the total amount permitted under
15 this subsection.

16 (cf: P.L.2004, c.65, s.10)

17

18 **'[9.] 10.'** Section 11 of P.L.2004, c.65 (C.34:1B-118.1) is
19 amended to read as follows:

20 11. In **[determining the]** considering the award and the amount
21 of any grant of tax credits made pursuant to P.L.1996, c.25
22 (C.34:1B-112 et seq.), the **[commissioner shall]** authority may
23 consider, as part of the **[commissioner's]** authority's overall
24 **[calculation]** review process, the following factors:

- 25 a. The number of full-time jobs retained;
- 26 b. The quality of the full-time jobs retained, including but not
27 limited to the salaries and benefits provided to retained full-time
28 employees;
- 29 c. Any capital investments made by the business at the new
30 business location;
- 31 d. The nature of the business' operations, including but not
32 limited to whether the business is a designated industry;
- 33 e. The potential impact on the State if the business were to
34 relocate to another state;
- 35 f. The site of the new business location and its consistency
36 with the smart growth goals, strategies and policies of the State
37 Development and Redevelopment Plan established pursuant to
38 section 5 of P.L.1985, c.398 (C.52:18A-200);
- 39 g. Whether positions average at least 1.5 times the minimum
40 hourly wage during the commitment duration; and
- 41 h. The duration and extent of past operations by the business in
42 New Jersey and any other information indicating the business' level
43 of commitment to the State and the likelihood that the business will
44 continue to operate in this State in the future.

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

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

3 8. The 【commissioner】 authority shall, after consultation with
4 the Director of the Division of Taxation, pursuant to the
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
6 seq.), adopt rules and regulations necessary to govern the proper
7 conduct and operation of the program consistent with the provisions
8 of P.L.1996, c.25 (C.34:1B-112 et seq.) including, but not limited
9 to, a procedure for recapturing relocation grants of tax credits
10 awarded pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) in those
11 cases in which the 【commissioner】 authority determines that the
12 business receiving the grant of tax credits fails to meet or comply
13 with any condition or requirement attached by the 【commissioner】
14 authority to the receipt of the grant of tax credits or included in
15 rules and regulations adopted by the 【commissioner】 authority
16 governing the implementation of the program. The Director of the
17 Division of Taxation, after consultation with the authority, is
18 authorized to promulgate such rules and regulations as may be
19 necessary to effect the tax-related provisions of the program.
20 (cf: P.L.2004, c.65, s.12)

21
22 '【11.】 12.' Section 9 of P.L.1996, c.25 (C.34:1B-120) is
23 amended to read as follows:

24 9. '【a.】' As determined by the authority, a business which is
25 awarded a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et
26 seq.) shall submit annually, no later than March 1st of each 'fiscal'
27 year, commencing in the 'fiscal' year in which the grant of tax
28 credits is issued and for the remainder of the '【tax credit term】
29 commitment duration' , a certification of compliance that indicates
30 that the business continues to maintain the number of retained full-
31 time jobs 'during the business' tax period ending in that fiscal year'
32 as specified in the project agreement. Upon receipt and review
33 thereof 'during the tax credit term' , the authority shall issue a
34 certificate of compliance indicating the amount of tax credits that
35 the business may apply against liability in that '【tax period】 fiscal
36 year'. Any reduction in the number of retained full-time jobs below
37 the number prescribed under the terms of the project agreement
38 shall proportionately reduce the amount of tax credits the business
39 may apply against liability in that '【tax period】 fiscal year' and the
40 '【unused】' credits 'that may no longer be applied' for that '【tax
41 period】 fiscal year' shall be forfeited. '【If.】 However, if' in any
42 '【tax period】 fiscal year', the number of retained full-time jobs
43 drops below the minimum number of retained full-time jobs
44 indicated in the '【applicable】' paragraph of subsection b. of section
45 7 of P.L.2004, c.65 (C.34:1B-115.3) 'pursuant to which the project
46 agreement was executed' such that the business would no longer be

1 eligible to apply the credits for the number of years for which it was
2 approved. '【then the business shall forfeit its credit amount for that
3 tax period and each subsequent tax period, until the first tax period
4 for which documentation demonstrating the restoration of the
5 number of retained full-time jobs has been reviewed and approved
6 by the authority, for which tax period and each subsequent tax
7 period the full amount of the credit shall be allowed】 then the
8 authority shall reduce the amount of tax credits the business may
9 apply against liability and the number of years in which the
10 business may apply the tax credits. The grant shall be subject to
11 recapture provisions pursuant to the project agreement¹ .

12 ¹【b. As determined by the 【commissioner】 authority, a business
13 which is awarded a grant of tax credits under P.L.1996, c.25
14 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st
15 of each year, commencing the year following the calendar year in
16 which the business was approved for the grant of tax credits and for
17 the remainder of the commitment duration, a copy of the State tax
18 return for the business showing business income or activity,
19 appropriate to its form of ownership together with an annual report
20 listing the full-time employees in eligible positions employed at the
21 location or locations approved for the grant of tax credits, to the
22 【commissioner】 authority. Failure to submit a copy of its annual
23 report or submission of the annual report without the information
24 required above, may result in the forfeiture of any grant of tax
25 credits to be received by the business and the recapture of any tax
26 credits issued to the business unless the 【commissioner】 authority
27 determines that there are extenuating circumstances excusing the
28 business from the timely filing required.】¹
29 (cf: P.L.2004, c.65, s.13)

30
31 ¹【12.】 13. Section 14 of P.L.2004, c.65 (C.34:1B-120.1) is
32 amended to read as follows:

33 14. The 【commissioner】 authority is authorized to pursue, and
34 shall adopt rules for, the recapture of all, or a portion of, the grant
35 of tax credits, based on criteria established by the 【commissioner】
36 authority pursuant to regulation or under the terms of the project
37 agreement 【if the business fails to maintain the retained full-time
38 jobs at the location or locations approved for the grant of tax credits
39 for the commitment duration or fails to meet or comply with any
40 condition or requirement under the terms of the project agreement
41 or included in rules and regulations adopted by the commissioner
42 governing the implementation of the program】. The rules shall
43 allow for the 【commissioner】 authority to pursue the full or partial
44 recapture or, in its discretion, to notify the Director of the Division
45 of Taxation in the Department of the Treasury, who shall issue a
46 recapture assessment which shall be based upon the proportionate
47 value of the grant of tax credits that corresponds to the amount and

1 period of noncompliance[. The] , in which case, the recapture of
2 funds shall be subject to the State Uniform Tax Procedure Law,
3 R.S.54:48-1 et seq. Recaptured funds shall be deposited in the
4 General Fund of the State.
5 (cf: P.L.2004, c.65, s.14)

6
7 '13.] 14.' Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is
8 amended to read as follows:

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

30 b. [The commissioner, in cooperation with the Director of the
31 Division of Taxation in the Department of the Treasury, shall
32 review and approve applications by taxpayers under the Corporation
33 Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and
34 by taxpayers under the taxes imposed on insurers pursuant to
35 P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231
36 (C.17:32-15) and N.J.S.17B:23-5 to acquire surrendered tax
37 benefits, which shall be issued in the form of corporation business
38 tax credit and insurance premiums tax credit transfer certificates,]
39 Businesses may apply to the authority and the Director of the
40 Division of Taxation for a tax credit transfer certificate, covering
41 one or more years. Upon receipt thereof, the business may sell or
42 assign the tax credit certificate in exchange for private financial
43 assistance to be made by the [taxpayer] purchaser in an amount
44 equal to at least 75% of the amount of the surrendered tax credit of
45 a business relocating in the State. The private financial assistance
46 shall assist in funding expenses incurred in connection with the
47 operation of the business in the State, including but not limited to

1 the expenses of fixed assets, such as the construction and
2 acquisition and development of real estate, materials, start-up,
3 tenant fit-out, working capital, salaries, research and development
4 expenditures and any other expenses determined by the
5 **【commissioner】 authority** to be necessary to carry out the purposes
6 of P.L.1996, c.25 (C.34:1B-112 et seq.).

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

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

24
25 '【14.】 15.' Section 10 of P.L.1996, c.25 (C.34:1B-121) is
26 amended to read as follows:

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

32
33 '【15. Section 12 of P.L.1996, c.25 (C.34:1B-123) is
34 amended to read as follows:

35 12. There is appropriated to the **【New Jersey Commerce and**
36 **Economic Growth Commission】 authority** from the General Fund
37 such sums as may be necessary, as certified by the **【commissioner】**
38 chief executive officer of the authority and the Director of the
39 Division of Budget and Accounting, to fund business retention and
40 relocation grants of tax credits made under P.L.1996, c.25
41 (C.34:1B-112 et seq.), the amount of which shall not exceed the
42 retained State tax revenues as defined in section 2 of P.L.1996, c.25
43 (C.34:1B-113).
44 (cf: P.L.2004, c.65, s.16)】'

45
46 16. Section 11 of P.L.1996, c.25 (C.34:1B-122) is repealed.

1 17. This act shall take effect immediately ¹【and apply to tax
2 periods beginning on or after the date of enactment】¹.