

ASSEMBLY, No. 5486

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 17, 2021

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Co-Sponsored by:

Assemblywoman Stanfield

SYNOPSIS

Increases remote work flexibility for EDA tax credit award recipients.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/5/2021)

1 **AN ACT** concerning remote work flexibility for New Jersey
2 Economic Development Authority tax credit award recipients
3 and amending P.L.2011, c.149 and P.L.2020, c.156.

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

7
8 1. Section 6 of P.L.2011, c.149 (C.34:1B-247) is amended to
9 read as follows:

10 6. a. (1) The combined value of all credits approved by the
11 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and
12 P.L.2011, c.149 (C.34:1B-242 et al.) prior to December 31, 2013
13 shall not exceed \$1,750,000,000, except as may be increased by the
14 authority as set forth in paragraph (5) of subsection a. of section 35
15 of P.L.2009, c.90 (C.34:1B-209.3). Following the enactment of the
16 "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161
17 (C.52:27D-489p et al.), there shall be no monetary cap on the value
18 of credits approved by the authority attributable to the program
19 pursuant to the "New Jersey Economic Opportunity Act of 2013,"
20 P.L.2013, c.161 (C.52:27D-489p et al.).

21 (2) (Deleted by amendment, P.L.2013, c.161)

22 (3) (Deleted by amendment, P.L.2013, c.161)

23 (4) (Deleted by amendment, P.L.2013, c.161)

24 (5) (Deleted by amendment, P.L.2013, c.161)

25 b. (1) A business shall submit an application for tax credits
26 prior to July 1, 2019. The authority shall not approve an application
27 for tax credits unless the application was submitted prior to July 1,
28 2019.

29 (2) (a) A business shall submit its documentation indicating
30 that it has met the capital investment and employment requirements
31 and all conditions of approvals specified in the incentive agreement
32 for certification of its tax credit amount, to the authority's
33 satisfaction within three years following the date of approval of its
34 application by the authority. The authority shall have the discretion
35 to grant two six-month extensions of this deadline. If the authority
36 accepts the documentation, the authority shall request that the
37 Division of Taxation in the Department of the Treasury issue a tax
38 credit based on the approved documentation to be used by the
39 business during the eligibility period. Except as provided in
40 subparagraphs (b) and (c) of this paragraph, in no event shall the
41 incentive effective date occur later than four years following the
42 date of approval of an application by the authority.

43 (b) As of the effective date of P.L.2017, c.314, a business which
44 applied for the tax credit prior to July 1, 2014 under P.L.2011,
45 c.149 (C.34:1B-242 et al.), shall submit its documentation to the

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

Matter underlined thus is new matter.

1 authority no later than July 28, 2019, indicating that it has met the
2 capital investment and employment requirements specified in the
3 incentive agreement for certification of its tax credit amount.

4 (c) If the Governor declares an emergency, then the chief
5 executive officer of the authority shall have the discretion to grant
6 an extension for the duration of the emergency and the board of the
7 authority, upon recommendation of the chief executive officer, may
8 grant two additional six-month extensions; provided that (i) the
9 extensions are due to the economic disruption caused by the
10 emergency; (ii) the project is delayed due to unforeseeable acts
11 related to the project beyond the eligible business's control and
12 without its fault or negligence; (iii) the eligible business is using
13 best efforts, with all due diligence, to proceed with the completion
14 of the project and the submission of the certification; and (iv) the
15 eligible business has made, and continues to make, all reasonable
16 efforts to prevent, avoid, mitigate, and overcome the delay.

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

20 (4) A business seeking a credit for a mega project shall apply for
21 the credit within four years after the effective date of the "New
22 Jersey Economic Opportunity Act of 2013," P.L.2013, c.161
23 (C.52:27D-489p et al.).

24 c. (1) In conducting its annual review, the authority may
25 require a business to submit any information determined by the
26 authority to be necessary and relevant to its review.

27 The credit amount for any tax period for which the
28 documentation of a business's credit amount remains uncertified as
29 of a date three years after the closing date of that period shall be
30 forfeited, although credit amounts for the remainder of the years of
31 the eligibility period shall remain available to it.

32 The credit amount may be taken by the tax certificate holder for
33 the tax period for which it was issued or may be carried forward for
34 use by the tax certificate holder in any of the next 20 successive tax
35 periods, and shall expire thereafter. The tax certificate holder may
36 transfer the tax credit amount on or after the date of issuance or at
37 any time within three years of the date of issuance for use by the
38 transferee in the tax period for which it was issued or in any of the
39 next 20 successive tax periods. Notwithstanding the foregoing, no
40 more than the amount of tax credits equal to the total credit amount
41 divided by the duration of the eligibility period in years may be
42 taken in any tax period.

43 A business may elect to suspend its obligations for the 2020 tax
44 period and, if the public health emergency or state of emergency
45 declared due to the COVID-19 pandemic extends past March 2021,
46 the 2021 tax period, provided that the business shall make such
47 election in writing to the authority before the date the annual report
48 is due and such suspension shall extend the term of the eligibility

1 period by a corresponding amount of time. The authority shall
2 amend the incentive agreement, and the business shall execute the
3 amended incentive agreement within the time period provided by
4 the authority. The amended incentive agreement shall provide that
5 the failure to submit the annual report due to the suspension shall
6 not be a forfeiture or an uncertified tax period.

7 (2) Credits granted to a partnership shall be passed through to
8 the partners, members, or owners, respectively, pro-rata or pursuant
9 to an executed agreement among the partners, members, or owners
10 documenting an alternate distribution method provided to the
11 Director of the Division of Taxation in the Department of the
12 Treasury accompanied by any additional information as the director
13 may require.

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

19 (4) In order to respond to the profoundly negative impact of the
20 COVID-19 pandemic on the State's economy and finances, the
21 authority may request a tax certificate holder, at the tax certificate
22 holder's discretion, to defer the application of a credit amount
23 allowed pursuant to this section to a later tax period. Upon request,
24 the authority and the tax certificate holder shall negotiate the terms
25 of the deferral, which shall hold the certificate holder harmless,
26 which will be made in the incentive agreement or as an addendum
27 to the incentive agreement.

28 d. (1) If, in any tax period, the business reduces the total
29 number of full-time employees in its Statewide workforce by more
30 than 20 percent from the number of full-time employees in its
31 Statewide workforce in the last tax period prior to the credit amount
32 approval under section 3 of P.L.2011, c.149 (C.34:1B-244), then the
33 business shall forfeit its credit amount for that tax period and each
34 subsequent tax period, until the first tax period for which
35 documentation demonstrating the restoration of the business's
36 Statewide workforce to the threshold levels required by the
37 incentive agreement has been reviewed and approved by the
38 authority, for which tax period and each subsequent tax period the
39 full amount of the credit shall be allowed.

40 (2) If, in any tax period, the number of full-time employees
41 employed by the business and working at the qualified business
42 facility located within a qualified incentive area or any other
43 location approved by the authority within the State including, but
44 not limited to, a full-time employee's primary residence during a
45 Statewide state of emergency drops below 80 percent of the number
46 of new and retained full-time jobs specified in the incentive
47 agreement, then the business shall forfeit its credit amount for that
48 tax period and each subsequent tax period, until the first tax period

1 for which documentation demonstrating the restoration of the
2 number of full-time employees employed by the business at the
3 qualified business facility or any other location approved by the
4 authority within the State including, but not limited to, a full-time
5 employee's primary residence during a Statewide state of
6 emergency to 80 percent of the number of jobs specified in the
7 incentive agreement.

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

14 (b) In connection with a regional distribution facility of
15 foodstuffs, the business entity or entities which own or lease the
16 facility shall qualify as a business regardless of: (i) the type of the
17 business entity or entities which own or lease the facility; (ii) the
18 ownership or leasing of the facility by more than one business
19 entity; or (iii) the ownership of the business entity or entities which
20 own or lease the facility. The ownership or leasing, whether by
21 members, shareholders, partners, or other owners of the business
22 entity or entities, shall be treated as ownership or leasing by
23 affiliates. The members, shareholders, partners, or other ownership
24 or leasing participants and others that are tenants in the facility shall
25 be treated as affiliates for the purpose of counting the full-time
26 employees and capital investments in the facility. The business
27 entity or entities may distribute credits to members, shareholders,
28 partners, or other ownership or leasing participants in accordance
29 with their respective interests. If the business entity or entities or
30 their members, shareholders, partners, or other ownership or leasing
31 participants lease space in the facility to members, shareholders,
32 partners, or other ownership or leasing participants or others as
33 tenants in the facility, the leases shall be treated as a lease to an
34 affiliate, and the business entity or entities shall not be subject to
35 forfeiture of the credits. For the purposes of this section, leasing
36 shall include subleasing and tenants shall include subtenants.

37 (4) (a) For a project located within a Garden State Growth
38 Zone, if, in any tax period, the number of full-time employees
39 employed by the business at the qualified business facility located
40 within a qualified incentive area increases above the number of full-
41 time employees specified in the incentive agreement, then the
42 business shall be entitled to an increased base credit amount for that
43 tax period and each subsequent tax period, for each additional full-
44 time employee added above the number of full-time employees
45 specified in the incentive agreement, until the first tax period for
46 which documentation demonstrating a reduction of the number of
47 full-time employees employed by the business at the qualified

1 business facility, at which time the tax credit amount will be
2 adjusted accordingly pursuant to this section.

3 (b) For a project located within a Garden State Growth Zone
4 which qualifies under the "Municipal Rehabilitation and Economic
5 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or which
6 contains a Tourism District as established pursuant to section 5 of
7 P.L.2011, c.18 (C.5:12-219) and regulated by the Casino
8 Reinvestment Development Authority, and which qualifies for a tax
9 credit pursuant to subsubparagraph (ii) of subparagraphs (a) through
10 (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149
11 (C.34:1B-246), if, in any tax period the number of full-time
12 employees employed by the business at the qualified business
13 facility located within a qualified incentive area increases above the
14 number of full-time employees specified in the incentive agreement
15 such that the business shall then meet the minimum number of
16 employees required in subparagraph (b), (c), (d), or (e) of paragraph
17 (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246),
18 then the authority shall recalculate the total tax credit amount per
19 full-time job by using the certified capital investment of the project
20 allowable under the applicable subsubparagraph and the number of
21 full-time jobs certified on the date of the recalculation and applying
22 those numbers to subparagraph (b), (c), (d), or (e) of paragraph (6)
23 of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246),
24 until the first tax period for which documentation demonstrating a
25 reduction of the number of full-time employees employed by the
26 business at the qualified business facility, at which time the tax
27 credit amount shall be adjusted accordingly pursuant to this section.

28 e. The authority shall not enter into an incentive agreement
29 with a business that has previously received incentives pursuant to
30 the "Business Retention and Relocation Assistance Act," P.L.1996,
31 c.25 (C.34:1B-112 et seq.), the "Business Employment Incentive
32 Program Act," P.L.1996, c.26 (C.34:1B-124 et al.), or any other
33 program administered by the authority unless:

34 (1) the business has satisfied all of its obligations underlying the
35 previous award of incentives or is compliant with section 4 of
36 P.L.2011, c.149 (C.34:1B-245); or

37 (2) the capital investment incurred and new or retained full-time
38 jobs pledged by the business in the new incentive agreement are
39 separate and apart from any capital investment or jobs underlying
40 the previous award of incentives.

41 f. A business which has already applied for a tax credit
42 incentive award prior to the effective date of the "New Jersey
43 Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-
44 489p et al.), but who has not yet been approved for the tax credits,
45 or has not executed an agreement with the authority, may proceed
46 under that application or seek to amend the application or reapply
47 for a tax credit incentive award for the same project or any part

1 thereof for the purpose of availing itself of any more favorable
2 provisions of the program.

3 g. A business that has entered into an incentive agreement may
4 request before December 31, 2022 to terminate the incentive
5 agreement due to the COVID-19 public health emergency; provided
6 that the business shall submit a certification from the business's
7 chief executive officer or equivalent officer stating that the
8 termination is due to the public health emergency and describing
9 the impact of the public health emergency on the business. All
10 credits for the tax period in which the termination occurs and all
11 subsequent tax periods shall be forfeited, provided however that any
12 credits of the business shall remain unaffected.

13 h. A business that has entered into an incentive agreement may
14 request to reduce the number of new or retained full-time jobs
15 specified in the incentive agreement based on a certification of the
16 business of the eligible positions at the qualified business facility or
17 any other location approved by the authority within the State
18 including, but not limited to, a full-time employee's primary
19 residence during a Statewide state of emergency commencing with
20 the 2020 tax period and each subsequent tax period remaining in the
21 eligibility period, provided that the business maintains the minimum
22 number of new or retained full-time jobs required to be eligible
23 pursuant to subsection c. of section 3 of P.L. 2011, c. 149 (C.34:1B-
24 244). The reduction in employment shall first apply to the number
25 of new full-time employees, and then shall apply to the number of
26 retained full-time employees.

27 The authority shall calculate a new tax credit total amount for the
28 2020 tax period and the remainder of the eligibility period based on
29 the reduced employment and shall amend the incentive agreement
30 to reflect the recalculated award amount. In no event shall the
31 modification result in an increase in employment or tax credit
32 amount.

33 (cf: P.L.2020, c.156, s.108)

34

35 2. Section 76 of P.L.2020, c.156 (C.34:1B-344) is amended to
36 read as follows:

37 76. a. (1) If, in any tax period, an eligible business reduces the
38 total number of full-time employees in its Statewide workforce by
39 more than 20 percent from the number of full-time employees in its
40 Statewide workforce in the last tax period prior to the credit amount
41 approval under the program, then the eligible business shall forfeit
42 its credit amount for that tax period and each subsequent tax period,
43 until the first tax period for which documentation demonstrating the
44 restoration of the eligible business's Statewide workforce to the
45 threshold levels required by this subsection has been reviewed and
46 approved by the authority, for which tax period and each
47 subsequent tax period the full amount of the credit shall be allowed.

1 (2) If the annual report filed by an eligible business pursuant to
2 section 77 of P.L.2020, c.156 (C.34:1B-345) provides that the
3 number of new full-time employees employed by the eligible
4 business at the qualified business facility, or the salaries thereof,
5 was reduced by more than 10 percent of the number of new full-
6 time employees, or salaries thereof, in the annual report of the prior
7 year, or the project agreement if the annual report is the first such
8 report filed, then the authority may reevaluate the net positive
9 economic benefit of the project and reduce the size of the award
10 accordingly. This reduction shall not affect any recapture under
11 subsection f. of this section.

12 b. If, in any tax period, the number of full-time employees
13 employed by the eligible business at the qualified business facility
14 and working at the qualified facility or any other location approved
15 by the authority within the State including, but not limited to, a full-
16 time employee's primary residence during a Statewide state of
17 emergency, or the salaries thereof, drops below 80 percent of the
18 number of new and retained full-time jobs, and the salaries thereof,
19 specified in the project agreement or the incentive phase agreement,
20 then the eligible business shall forfeit its tax credit amount for that
21 tax period and each subsequent tax period, until the first tax period
22 for which documentation demonstrating the restoration of the
23 number of full-time employees employed by the eligible business at
24 the qualified business facility and working at the qualified facility
25 or any other location approved by the authority within the State
26 including, but not limited to, a full-time employee's primary
27 residence during a Statewide state of emergency to 80 percent of the
28 number of jobs specified in the project agreement or incentive
29 phase agreement or the restoration of 80 percent of the salaries
30 specified in the project agreement is reviewed and approved by the
31 authority.

32 c. Except for an eligible business engaged primarily in a
33 targeted industry with less than 50 employees at application:

34 (1) If the qualified business facility is sold in whole or in part
35 during the eligibility period, the new owner shall not acquire the
36 capital investment of the seller, provided, however, that any tax
37 credits of tenants shall remain unaffected. The seller shall forfeit all
38 tax credits for the tax period in which the sale occurs and all
39 subsequent tax periods, provided, however, that an eligible business
40 may change the location of the qualified business facility if:

41 (a) the new facility:

42 (i) meets all applicable location qualifying criteria and has gross
43 leasable area not less than the gross leasable area of the qualified
44 business facility initially approved by the authority and the alternate
45 qualified business facility meets the minimum capital investment
46 and sustainability requirements of the program; or

47 (ii) does not meet all applicable location qualifying criteria or
48 has less gross leasable area than the gross leasable area of the

1 qualified business facility initially approved by the authority, if the
2 alternate qualified business facility meets the minimum capital
3 investment and sustainability requirements of the program, provided
4 that the authority shall require a new cost benefit analysis
5 illustrating the economics of the project which reflect occupancy at
6 the alternate proposed qualified business facility location for the
7 remaining duration of the commitment period and shall re-calculate
8 the net economic benefit of the project to reflect the economics of
9 occupancy at the alternate proposed location for the remaining
10 duration of the net benefit test period in lieu of the economics of
11 continuing occupancy at the qualified business facility proposed to
12 be vacated, and provided further that the award of tax credits shall
13 be reduced consistent with the variations in qualifying criteria for
14 the alternate qualified business facility location as well as in a
15 manner consistent with the revised net economic benefit
16 calculation.

17 (b) in the event that the modified project economics materially
18 deviate from the economics of the initial approval in a manner that
19 undermines the recommendation of approval made by the staff of
20 the authority at the time of the initial approval, then the business
21 requesting to re-locate a qualified business facility shall be required
22 to obtain the approval of the members of the authority.

23 (2) If a tenant subleases its tenancy in whole or in part during the
24 eligibility period, the new tenant shall not acquire the tax credits of
25 the sublessor, and the sublessor shall forfeit all tax credits for any
26 tax period of its sublease in which the sublessor, in continued
27 occupation of a portion of the qualified business facility, fails to
28 maintain the number of jobs required for the sublessor to earn tax
29 credits for the tax period or fails to independently satisfy the
30 minimum capital investment or sustainability requirements for the
31 program as set forth in section 71 of P.L.2020, c. 156 (C:34-1B-
32 339). Provided, however, if the capital investment of the sublessor
33 in the occupied portion of the qualified business facility is below the
34 project minimum capital investment as set forth in section 71 of
35 P.L.2020, c. 156 (C:34-1B-339), the sublessor may include capital
36 investment made by or on behalf of the new tenant in the subleased
37 portion of the qualified business facility, so long as that capital
38 investment is not the subject of an independent application under an
39 incentive program with the authority.

40 d. A small business may move its qualified business facility
41 provided that the business remains in New Jersey during the
42 commitment period.

43 e. The authority may require a small business to submit a
44 growth plan, which specifies the number of new full-time
45 employees at the qualified business facility that the eligible
46 business will hire each year of the eligibility period; provided that
47 by the end of the eligibility period, the eligible business shall have a
48 minimum of 25 percent growth of its workforce with new full-time

1 jobs. If the eligible business meets the number of new full-time
2 employees specified in the growth plan each year of the eligibility
3 period, then the eligible business shall be entitled to an increased
4 credit amount for that tax period, and each subsequent tax period,
5 for each additional full-time employee added above the number of
6 full-time employees certified, until the full-time employees number
7 the maximum number projected for the final year of the eligibility
8 period. Failure to meet the projections in any year shall not
9 constitute a default but shall cause the authority to reduce the award
10 in accordance with a schedule attached to the project agreement.

11 f. (1) The authority may recapture all or part of a tax credit
12 awarded if an eligible business does not remain in compliance with
13 the requirements of a project agreement for the duration of the
14 commitment period. A recapture pursuant to this subsection may
15 include interest on the recapture amount, at a rate equal to the
16 statutory rate for corporate business or insurance premiums tax
17 deficiencies, plus any statutory penalties, and all costs incurred by
18 the authority and the Division of Taxation in the Department of the
19 Treasury in connection with the pursuit of the recapture, including,
20 but not limited to, counsel fees, court costs, and other costs of
21 collection. Failure of the eligible business to meet any program
22 criteria shall constitute a default and shall result in the recapture of
23 all or part of the tax credit awarded.

24 (2) If all or part of a tax credit sold or assigned pursuant to
25 section 78 of P.L.2020, c.156 (C:34:1B-346) is subject to recapture,
26 then the authority shall pursue recapture from the eligible business
27 and not from the purchaser or assignee of the tax credit transfer
28 certificate. The purchaser or assignee of a tax credit transfer
29 certificate shall be subject to any limitations and conditions that
30 apply to the use of the tax credits by the eligible business.

31 (3) Any funds recaptured pursuant to this subsection, including
32 penalties and interest, shall be deposited into the General Fund of
33 the State.

34 g. A business may include an affiliate for any period, provided
35 that the business provides a valid tax clearance certificate for the
36 affiliate and a verification of the nature of the affiliate relationship
37 during the relevant period, and provided further that the affiliate
38 provides acceptable responses to the authority's legal disclosures
39 inquiries, as determined by the authority. A formal modification of
40 the authority's approval of the incentive agreement shall not be
41 necessary to add or remove an affiliate after approval or execution
42 of the incentive agreement.

43 h. A business may change its name filed with the authority by
44 providing a copy of the filed amendment to the certificate of
45 incorporation or formation, as the case may be, of the business and
46 a valid tax clearance certificate with the business's new name. A
47 formal modification of the authority's approval shall not be

1 necessary to change a business's name after approval or execution
2 of the incentive agreement.
3 (cf: P.L.2020, c.156, s.76)
4

5 3. This act shall take effect immediately.
6
7

8 STATEMENT
9

10 This bill increases the remote work flexibility for current New
11 Jersey Economic Development Authority (EDA) tax credit
12 awardees.

13 Businesses that received certain tax credit awards under the
14 "New Jersey Economic Opportunity Act of 2013" prior to the
15 coronavirus 2019 (COVID-19) pandemic agreed, as a condition of
16 receiving the award, that 80 percent of the business's employees are
17 to be on-site for at least 80 percent of their worktime, known as
18 the "80/80 policy." Due to the COVID-19 pandemic and the
19 subsequent Executive Orders issued by the Governor in response to
20 the unprecedented public health and economic impact it posed and
21 still continues to pose, many businesses have been forced to allow
22 their employees to work remotely. This situation has negatively
23 affected EDA tax credit awardees, who, under current law, must
24 forfeit tax credit amounts until the business can demonstrate the
25 restoration of the number of full-time employees employed by the
26 eligible business at its qualified business facility under the 80/80
27 policy. This bill allows businesses to retain and continue to be
28 eligible for tax credit awards by letting employees work at any
29 location, not just those deemed to be qualified business facilities.