

SENATE, No. 3578

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MARCH 22, 2021

Sponsored by:

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

SYNOPSIS

Increases remote work flexibility for EDA tax credit award recipients.

CURRENT VERSION OF TEXT

As introduced.



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 prior
26 to July 1, 2019. The authority shall not approve an application for
27 tax credits unless the application was submitted prior to July 1,
28 2019.

29 (2) (a) A business shall submit its documentation indicating that
30 it has met the capital investment and employment requirements and
31 all conditions of approvals specified in the incentive agreement for
32 certification of its tax credit amount, to the authority's satisfaction
33 within three years following the date of approval of its application
34 by the authority. The authority shall have the discretion to grant
35 two six-month extensions of this deadline. If the authority accepts
36 the documentation, the authority shall request that the Division of
37 Taxation in the Department of the Treasury issue a tax credit based
38 on the approved documentation to be used by the business during
39 the eligibility period. Except as provided in subparagraphs (b) and
40 (c) of this paragraph, in no event shall the incentive effective date
41 occur later than four years following the date of approval of an
42 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
46 authority no later than July 28, 2019, indicating that it has met 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 capital investment and employment requirements specified in the
2 incentive agreement for certification of its tax credit amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The authority shall calculate a new tax credit total amount for the
26 2020 tax period and the remainder of the eligibility period based on
27 the reduced employment and shall amend the incentive agreement
28 to reflect the recalculated award amount. In no event shall the
29 modification result in an increase in employment or tax credit
30 amount.

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

32

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

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

46 (2) If the annual report filed by an eligible business pursuant to
47 section 77 of P.L.2020, c.156 (C.34:1B-345) provides that the
48 number of new full-time employees employed by the eligible

1 business at the qualified business facility, or the salaries thereof,
2 was reduced by more than 10 percent of the number of new full-
3 time employees, or salaries thereof, in the annual report of the prior
4 year, or the project agreement if the annual report is the first such
5 report filed, then the authority may reevaluate the net positive
6 economic benefit of the project and reduce the size of the award
7 accordingly. This reduction shall not affect any recapture under
8 subsection f. of this section.

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

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

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

38 (a) the new facility:

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

44 (ii) does not meet all applicable location qualifying criteria or
45 has less gross leasable area than the gross leasable area of the
46 qualified business facility initially approved by the authority, if the
47 alternate qualified business facility meets the minimum capital
48 investment and sustainability requirements of the program, provided

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

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

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

37 d. A small business may move its qualified business facility
38 provided that the business remains in New Jersey during the
39 commitment period.

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

1 credit amount for that tax period, and each subsequent tax period,
2 for each additional full-time employee added above the number of
3 full-time employees certified, until the full-time employees number
4 the maximum number projected for the final year of the eligibility
5 period. Failure to meet the projections in any year shall not
6 constitute a default but shall cause the authority to reduce the award
7 in accordance with a schedule attached to the project agreement.

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

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

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

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

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

47 (cf: P.L.2020, c.156, s.76)

1 3. This act shall take effect immediately.

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STATEMENT

5

6 This bill increases the remote work flexibility for current New
7 Jersey Economic Development Authority (EDA) tax credit
8 awardees.

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