ASSEMBLY, No. 2572

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED OCTOBER 29, 1998

Sponsored by:
Assemblyman PAUL DIGAETANO
District 36 (Bergen, Essex and Passaic)
Assemblyman JOSEPH V. DORIA, JR.
District 31 (Hudson)

Co-Sponsored by:
Assemblyman Conaway

SYNOPSIS

"New Jersey Economic Competitiveness, Opportunity and Jobs Act."

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 5/4/1999)

AN ACT authorizing the Governor to provide certain tax, grant and other incentives to certain businesses, and supplementing Title 34 of the Revised Statutes and P.L.1945, c.162 (C.54:10A-1 et seq.).

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

1. This act shall be known and may be cited as the "New Jersey Economic Competitiveness, Opportunity and Jobs Act."

2. The Legislature finds and declares that over the past two decades, states have significantly expanded their economic development activities through the use of a variety of tax, grant and other financial programs designed to attract and retain businesses and jobs. Many of these states and foreign countries have utilized customized, company-specific incentive packages to encourage businesses to relocate from other states and other foreign countries. As other states and foreign countries persuade New Jersey-based businesses to relocate through the use of incentives not readily available in this State, businesses may leave the State to build modern facilities elsewhere, often taking high-wage or unionized jobs with them. In order to compete in this environment, New Jersey must be equipped with the tools necessary to counter incentive offers made by other states and countries. It is the purpose of this act to promote economic growth in this State by providing the Governor with the authority to offer economic and regulatory incentives specific to the needs of individual businesses, in order to maintain and attract to New Jersey the jobs, revenue, and economic prosperity associated with those businesses.

3. As used in this act:

"Business" means a sole proprietorship; partnership; corporation; corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, hereinafter referred to as a Subchapter S-Corporation, or any other business entity through which income flows as a distributive share to its owners; limited liability company; nonprofit corporation; or any other form of business organization located either within or outside this State, including a cooperative association.

"Cooperative association" means financial, stock, or commodities exchanges.

"Designee" means a cabinet-level official designated by the Governor as authorized to enter into an incentive program agreement with a targeted business as authorized by this act.

"Incentive program" means tax credits, tax rebates, tax reimbursements, utility rebates, infrastructure grants, and memoranda of understanding provided under authority of this act to a targeted business, pursuant to a written agreement with the Governor or the Governor's designee. An incentive program may also include grants and tax credits otherwise authorized by law.

"Infrastructure" means any structure, facility, equipment, or real or personal property necessary for the functioning of a business.

"Targeted business" means a business the Governor or Governor's designee attempts to attract to, or maintain within, this State, through the use of an incentive program provided pursuant to this act.

4. In order to foster economic development in this State through the attraction and retention of business and jobs, the Governor or a designee may, through a written agreement pursuant to section 7 of this act, offer an incentive program to a targeted business, but only if the Governor or designee first determines that:

a. As shown by a documented cost-benefit analysis, which analysis considers the full cost of the incentive program to the State as compared to the anticipated State and local tax revenues generated directly by the targeted business and its employees:

(1) In the case of a targeted business seeking to relocate to this State, the full cost of the incentive program to the State will be less than the anticipated future State and local tax revenues generated directly by the targeted business and its employees; or

(2) In the case of a targeted business seeking to relocate to another state or country, the cost of the incentive program to the State will be less than the anticipated loss of future State and local tax revenues due to the movement of the targeted business out of this State;

b. The targeted business can demonstrate its ability to receive and take advantage of incentives consisting of grants, tax credits, rebates or abatements, utility rebates or regulatory flexibility from the government of another state or country, or political subdivision thereof, offered to encourage the targeted business to relocate to that state or country or remain within that state or country or political subdivision thereof; and

c. The receipt of the incentive program will be a material factor in the business' decision either to relocate to this State or to remain within this State.

5. The Governor or the Governor's designee is authorized to provide an incentive program consisting of any or all of the following to a targeted business, pursuant to a written agreement:

a. Grants for the acquisition, construction, improvement, repair or reconstruction of infrastructure;

b. Grants to reimburse the targeted business for documented expenditures on utility costs;

c. Grants to reimburse the targeted business for documented expenditures on local property taxes assessed pursuant to R.S.54:4-1;

d. A full or partial credit against the corporation business tax imposed pursuant to the "Corporation Business Tax Act," P.L.1945, c.162 (C.54:10A-1 et seq.) in an amount and for a period of time determined at the discretion of the Governor or the Governor's designee, pursuant to section 11 of this act;

e. A rebate of the sales and use taxes on receipts, rents and charges paid pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), in an amount determined at the discretion of the Governor or the Governor's designee;

f. A memorandum of understanding regarding compliance with rules or regulations adopted pursuant to State law, pursuant to section 9 of this act; and

g. Any grant, tax credit, or tax exemption otherwise authorized by law.

6. A grant received under this act by a partnership, Subchapter S-Corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S-Corporation, or other entity is distributed.

7. An incentive program may only be provided to a targeted business through a written agreement between the Governor, or the Governor's designee, and the targeted business. The agreement shall include, but shall not be limited to, the following:

a. The term of any grant, tax credit, tax rebate, or memorandum of understanding provided through the incentive program, and the first year for which the grant, tax credit, tax rebate or memorandum of understanding may be claimed or executed;

b. A requirement that the targeted business remain at a location in New Jersey for the length of the incentive program;

c. A provision which permits the Governor or the Governor's designee to amend an agreement pursuant to section 8 of this act;

d. A provision establishing the conditions under which an incentive program agreement may be terminated and grant funds and forgone tax revenue may be recaptured by the State.

8. If a targeted business receiving an incentive program fails to comply with any condition or requirement set forth in the written agreement, the Governor or the Governor's designee may amend the agreement to reduce the amount or terms of any grants or tax credits or exemptions, or may terminate the agreement.

9. As part of an incentive program provided pursuant to this act, the Governor or the Governor's designee may allow for certain regulatory flexibility to counter more flexible regulatory arrangements offered to a targeted business by another state or foreign country. To provide for this regulatory flexibility, the Governor or the designee may enter into a memorandum of understanding with a targeted business regarding compliance with rules or regulations adopted pursuant to State law. The memorandum of understanding shall recognize that the targeted business requires additional time to be in full compliance with certain rules or regulations adopted pursuant to State law, and may provide the targeted business with a period of time, determined at the discretion of the Governor or the designee, but not to exceed five years, in which the targeted business shall comply with those rules or regulations, and the State may accordingly agree that during this specified period of time the business shall not be assessed all or a portion of the penalties that would otherwise be assessed pursuant to those rules or regulations. No memorandum of understanding entered into pursuant to this section shall reduce or alter any standard of environmental law.

10. One year from the effective date of this act, and annually thereafter, the Governor shall provide a report to the Legislature detailing each incentive program provided or agreed to under this act to date, including, but not limited to, the recipient of each incentive program, the amount, duration and form of each incentive offered to each targeted business, and the results of each cost-benefit analysis required pursuant to section 4 of this act. The Governor or the Governor's designee shall monitor the competitive and incentive practices utilized by other states and foreign countries to attract, maintain and relocate businesses and jobs and shall report on such practices and programs to the Legislature annually.

11. A taxpayer designated as a targeted business by the Governor or the Governor's designee pursuant to P.L. , c. (C.) (now pending before the Legislature as this bill) may be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax credit shall be a percentage of the tax liability of the taxpayer determined at the discretion of the Governor or the Governor's designee pursuant to a written agreement with the targeted business, except that the amount of credit applied under this section for a privilege period shall not, in combination with any other tax credits allowed against the tax imposed by P.L.1945, c.162 (C.54:10A-1 et seq.), reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The tax credit shall be provided for a number of privilege periods to be determined at the discretion of the

Governor or the Governor's designee pursuant to the written agreement.

12. This act shall take effect immediately.

STATEMENT

This bill authorizes the Governor, or a cabinet-level designee of the Governor, to offer an incentive program to a targeted business in order to encourage that business to relocate to this State or remain within this State. The incentive program, which only may be offered to a business that can demonstrate the ability to receive and take advantage of incentives from another state or country, or political subdivision thereof, may consist of any of the following: infrastructure grants; grants to reimburse the business for utility costs; grants to reimburse the business for property tax expenses; a full or partial credit against the corporation business tax; a rebate of sales and use taxes; or a memorandum of understanding regarding compliance with State regulations.

This bill is intended to respond to the use by other states and countries of incentive programs designed to attract and retain businesses, by providing the Governor with the authority to counter offers made by those states and countries, and thus maintain and attract to New Jersey the jobs and revenue associated with those businesses.