

[First Reprint]  
**SENATE, No. 3054**

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**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

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INTRODUCED SEPTEMBER 19, 2011

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Camden)**

**Co-Sponsored by:**

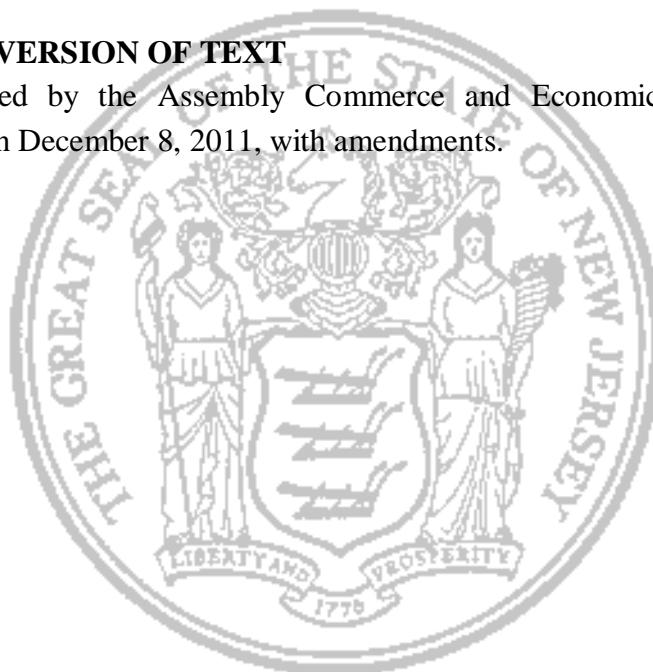
**Senators Stack, Sarlo, Cunningham, Van Drew, Beach, Oroho, Ruiz,  
Turner and Assemblyman Fuentes**

**SYNOPSIS**

Extends certain business tax credit programs to the gross income tax.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Commerce and Economic Development Committee on December 8, 2011, with amendments.



(Sponsorship Updated As Of: 1/10/2012)

1   **AN ACT** extending certain business tax credit programs to the gross  
2   income tax, amending various parts of the statutory law and  
3   supplementing Title 54A of the New Jersey Statutes.

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 read  
9   as follows:

10   2. As used in this act:

11   “Affiliate” means an entity that directly or indirectly controls, is  
12   under common control with, or is controlled by the business.  
13   Control exists in all cases in which the entity is a member of a  
14   controlled group of corporations as defined pursuant to section 1563  
15   of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the  
16   entity is an organization in a group of organizations under common  
17   control as defined pursuant to subsection (b) or (c) of section 414 of  
18   the Internal Revenue Code of 1986 (26 U.S.C. s.414). An entity  
19   may establish by clear and convincing evidence, as determined by  
20   the Director of the Division of Taxation in the Department of the  
21   Treasury, that control exists in situations involving lesser  
22   percentages of ownership than required by those statutes;

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

25   “Business retention or relocation grant of tax credits” or “grant  
26   of tax credits” means a grant which consists of the value of  
27   corporation business tax credits against the liability imposed  
28   pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or credits  
29   against liability imposed pursuant to the "New Jersey Gross Income  
30   Tax Act," N.J.S.54A:1-1 et seq., or credits against the taxes  
31   imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et  
32   al.), section 1 of P.L.1950, c.231 (C.17:32-15), and N.J.S.17B:23-5,  
33   provided to fund a portion of retention and relocation costs pursuant  
34   to P.L.1996, c.25 (C.34:1B-112 et seq.);

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

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Assembly ACE committee amendments adopted December 8, 2011.

1 the State. A business shall include an affiliate of the business if that  
2 business applies for a credit based upon any capital investment  
3 made by an affiliate or based upon retained full-time jobs of an  
4 affiliate;

5 “Capital investment” means expenses that the business incurs  
6 following its submission of an application to the authority pursuant  
7 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the  
8 Capital Investment Completion Date, as shall be defined in the  
9 project agreement, for: (1) the site preparation and construction,  
10 renovation, improvement, equipping of, or obtaining and installing  
11 fixtures and machinery, apparatus or equipment in, a newly  
12 constructed, renovated or improved building, structure, facility, or  
13 improvement to real property in this State; and (2) obtaining and  
14 installing fixtures and machinery, apparatus or equipment in a  
15 building, structure, or facility in this State. Provided however, that  
16 “capital investment” shall not include soft costs such as financing  
17 and design, furniture or decorative items such as artwork or plants,  
18 or office equipment if the office equipment is property with a  
19 recovery period of less than five years. The recovery period of any  
20 property, for purposes of this section, shall be determined as of the  
21 date such property is first placed in service or use in this State by  
22 the business, determined in accordance with section 168 of the  
23 federal Internal Revenue Code of 1986 (26 U.S.C. s.168);

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

26 “Chief executive officer” means the chief executive officer of the  
27 New Jersey Economic Development Authority;

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

32 “Designated industry” means an industry identified by the  
33 authority as desirable for the State to maintain, which may be  
34 designated and amended via the promulgation of rules by the  
35 authority to reflect changing market conditions;

36 “Designated urban center” means an urban center designated in  
37 the State Development and Redevelopment Plan adopted by the  
38 State Planning Commission;

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

47 “Full-time employee” means a person employed by the business  
48 for consideration for at least 35 hours a week, or who renders any

1 other standard of service generally accepted by custom or practice,  
2 as determined by the authority, as full-time employment, or a  
3 person who is employed by a professional employer organization  
4 pursuant to an employee leasing agreement between the business  
5 and the professional employer organization, in accordance with  
6 P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or  
7 who renders any other standard of service generally accepted by  
8 custom or practice, as determined by the authority, as full-time  
9 employment, and whose wages are subject to withholding as  
10 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1  
11 et seq. or an employee who is a resident of another State but whose  
12 income is not subject to the “New Jersey Gross Income Tax Act,”  
13 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
14 for the partnership for at least 35 hours a week, or who renders any  
15 other standard of service generally accepted by custom or practice,  
16 as determined by the authority, as full-time employment, and whose  
17 distributive share of income, gain, loss, or deduction, or whose  
18 guaranteed payments, or any combination thereof, is subject to the  
19 payment of estimated taxes, as provided in the “New Jersey Gross  
20 Income Tax Act,” N.J.S.54A:1-1 et seq. “Fulltime employee” shall  
21 not include any person who works as an independent contractor or  
22 on a consulting basis for the business;

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

35 “Project agreement” means an agreement between a business and  
36 the authority that sets the forecasted schedule for completion and  
37 occupancy of the project, the date the commitment duration shall  
38 commence, the amount and tax credit term of the applicable grant of  
39 tax credits, and other such provisions which further the purposes of  
40 P.L.1996, c.25 (C.34:1B-112 et seq.);

41 “Retained full-time job” means an eligible position that currently  
42 exists in New Jersey and is filled by a full-time employee but  
43 which, because of a potential relocation by the business, is at risk of  
44 being lost to another state or country. For the purposes of  
45 determining a number of retained full-time jobs, the eligible  
46 positions of an affiliate shall be considered the eligible positions of  
47 the business;

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

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

10      (cf: P.L.2010, c.123, s.1)

11

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

14      14. The authority is authorized to pursue, and shall adopt rules  
15      for, the recapture of all, or a portion of, the grant of tax credits,  
16      based on criteria established by the authority pursuant to regulation  
17      or under the terms of the project agreement. The rules shall allow  
18      for the authority to pursue the full or partial recapture or, in its  
19      discretion, to notify the Director of the Division of Taxation in the  
20      Department of the Treasury, who shall issue a recapture assessment  
21      which shall be based upon the proportionate value of the grant of  
22      tax credits that corresponds to the amount and period of  
23      noncompliance, in which case, the recapture of funds shall be  
24      subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et  
25      seq. Recaptured funds shall be deposited in the General Fund of the  
26      State, except that recaptured funds from the grant of a tax credit  
27      against the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et  
28      seq., shall be deposited into the Property Tax Relief Fund.

29      (cf: P.L.2010, c.123, s.13)

30

31      3. Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is amended to  
32      read as follows:

33      17. a. The authority shall establish a corporation business tax  
34      credit, gross income tax credit, and insurance premiums tax credit  
35      certificate transfer program to allow businesses in this State with  
36      unused amounts of tax credits issued under P.L.1996, c.25  
37      (C.34:1B-112 et seq.), and otherwise allowable, that cannot be  
38      applied by the business to which originally issued before the  
39      expiration of the credit, to surrender those tax credits for use by  
40      other corporation business, gross income tax, and insurance  
41      premiums taxpayers in this State. The tax credits may be used on  
42      the corporation business tax, gross income tax, and insurance  
43      premiums tax returns to be filed by those taxpayers in exchange for  
44      private financial assistance to be provided by the corporation  
45      business taxpayer, gross income taxpayer, or insurance premiums  
46      taxpayer that is the recipient of the corporation business tax credit  
47      certificate or insurance premiums] tax credit certificate to assist in  
48      the funding of costs incurred by the relocating business.

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

16       c. The authority shall establish procedures to facilitate such  
17 transfers and encourage liquidity and simplicity in the market for  
18 the purchase and sale of such certificates, including, in the  
19 authority's discretion, coordinating the applications for surrender  
20 and acquisition of unused but otherwise allowable tax credits  
21 pursuant to this section in a manner that can best stimulate and  
22 encourage the extension of private financial assistance to businesses  
23 in this State.

24       d. The authority shall, in consultation with the Director of the  
25 Division of Taxation, develop criteria for the approval or  
26 disapproval of applications.

27 (cf: P.L.2010, c.123, s.14)

28

29       4. Section 2 of P.L.2007, c.346 (C.34:1B-208) is amended to  
30 read as follows:

31       2. As used in this act:

32       "Affiliate" means an entity that directly or indirectly controls, is  
33 under common control with, or is controlled by the business.  
34 Control exists in all cases in which the entity is a member of a  
35 controlled group of corporations as defined pursuant to section 1563  
36 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the  
37 entity is an organization in a group of organizations under common  
38 control as defined pursuant to subsection (b) or (c) of section 414 of  
39 the Internal Revenue Code of 1986 (26 U.S.C. s.414). A taxpayer  
40 may establish by clear and convincing evidence, as determined by  
41 the Director of the Division of Taxation in the Department of the  
42 Treasury, that control exists in situations involving lesser  
43 percentages of ownership than required by those statutes. An  
44 affiliate of a business may contribute to meeting either the qualified  
45 investment or full-time employee requirements of a business that  
46 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-  
47 209).

1        "Authority" means the New Jersey Economic Development  
2 Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

3        "Business" means a corporation that is subject to the tax imposed  
4 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a  
5 corporation that is subject to the tax imposed pursuant to sections 2  
6 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of  
7 P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a sole  
8 proprietorship, partnership, an S corporation, or a limited liability  
9 '[corporation] company'<sup>1</sup>. A business shall include an affiliate of  
10 the business if that business applies for a credit based upon any  
11 capital investment made by or full-time employees of an affiliate.  
12 A business shall also include an entity whose owners' income in  
13 respect of the entity is, or may be, subject to the "New Jersey Gross  
14 Income Tax Act," N.J.S.54A:1-1 et seq.

15        "Capital investment" in a qualified business facility means  
16 expenses incurred after, but before the end of the eighth year after,  
17 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a.  
18 the site preparation and construction, repair, renovation,  
19 improvement, equipping, or furnishing of a building, structure,  
20 facility or improvement to real property; and b. obtaining and  
21 installing furnishings and machinery, apparatus or equipment for  
22 the operation of a business in a building, structure, facility or  
23 improvement to real property.

24        "Eligible municipality" means a municipality: (1) which qualifies  
25 for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or  
26 which was continued to be a qualified municipality thereunder  
27 pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of  
28 the value of real property was exempt from local property taxation  
29 during tax year 2006. The percentage of exempt property shall be  
30 calculated by dividing the total exempt value by the sum of the net  
31 valuation which is taxable and that which is tax exempt.

32        "Full-time employee" means a person employed by the business  
33 for consideration for at least 35 hours a week, or who renders any  
34 other standard of service generally accepted by custom or practice  
35 as full-time employment, or a person who is employed by a  
36 professional employer organization pursuant to an employee leasing  
37 agreement between the business and the professional employer  
38 organization, in accordance with P.L.2001, c.260 (C.34:8-67 et  
39 seq.) for at least 35 hours a week, or who renders any other standard  
40 of service generally accepted by custom or practice as full-time  
41 employment, and whose wages are subject to withholding as  
42 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
43 et seq. or an employee who is a resident of another State but whose  
44 income is not subject to the "New Jersey Gross Income Tax Act,"  
45 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
46 for the partnership for at least 35 hours a week, or who renders any  
47 other standard of service generally accepted by custom or practice  
48 as full-time employment, and whose distributive share of income,

1 gain, loss, or deduction, or whose guaranteed payments, or any  
2 combination thereof, is subject to the payment of estimated taxes, as  
3 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
4 et seq. "Full-time employee" shall not include any person who  
5 works as an independent contractor or on a consulting basis for the  
6 business.

7 "Mixed use project" means a project comprising both a qualified  
8 business facility and a qualified residential project.

9 "Partnership" means an entity classified as a partnership for  
10 federal income tax purposes.

11 "Professional employer organization" means an employee leasing  
12 company registered with the Department of Labor and Workforce  
13 Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

14 "Qualified business facility" means any building, complex of  
15 buildings or structural components of buildings, and all machinery  
16 and equipment located within a designated urban transit hub in an  
17 eligible municipality, used in connection with the operation of a  
18 business.

19 "Qualified residential project" shall have the meaning ascribed to  
20 that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).

21 "Residential unit" means a residential dwelling unit such as a  
22 rental apartment, a condominium or cooperative unit, a hotel room,  
23 or a dormitory room.

24 "Urban transit hub" means:

25 a. property located within a 1/2 mile radius surrounding the  
26 mid point of a New Jersey Transit Corporation, Port Authority  
27 Transit Corporation or Port Authority Trans-Hudson Corporation  
28 rail station platform area, including all light rail stations, and  
29 property located within a one mile radius of the mid point of the  
30 platform area of such a rail station if the property is in a qualified  
31 municipality under the "Municipal Rehabilitation and Economic  
32 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et seq.);

33 b. property located within a 1/2 mile radius surrounding the  
34 mid point of one of up to two underground light rail stations'  
35 platform areas that are most proximate to an interstate rail station;

36 c. property adjacent to, or connected by rail spur to, a freight  
37 rail line if the business utilizes that freight line at any rail spur  
38 located adjacent to or within a one mile radius surrounding the  
39 entrance to the property for loading and unloading freight cars on  
40 trains;

41 which property shall have been specifically delineated by the  
42 authority pursuant to subsection e. of section 3 of P.L.2007, c.346  
43 (C.34:1B-209).

44 A property which is partially included within the radius shall  
45 only be considered part of the urban transit hub if over 50 percent  
46 of its land area falls within the radius.

1        “Rail station” shall not include any rail station located at an  
2        international airport.

3        (cf: ‘P.L.2009’ P.L.2011’, c.89, s.1)

4

5        5. Section 3 of P.L.2007, c.346 (C.34:1B-209) is amended to  
6        read as follows:

7        3. a. (1) A business, upon application to and approval from the  
8        authority, shall be allowed a credit of 100 percent of its capital  
9        investment, made after the effective date of P.L.2007, c.346  
10       (C.34:1B-207 et seq.) but prior to its submission of documentation  
11       pursuant to subsection c. of this section, in a qualified business  
12       facility within an eligible municipality, pursuant to the restrictions  
13       and requirements of this section. To be eligible for any tax credits  
14       authorized under this section, a business shall demonstrate to the  
15       authority, at the time of application, that the State's financial  
16       support of the proposed capital investment in a qualified business  
17       facility will yield a net positive benefit to both the State and the  
18       eligible municipality. The value of all credits approved by the  
19       authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall  
20       not exceed \$1,500,000,000.

21        (2) A business, other than a tenant eligible pursuant to paragraph  
22       (3) of this subsection, shall make or acquire capital investments  
23       totaling not less than \$50,000,000 in a qualified business facility, at  
24       which the business shall employ not fewer than 250 full-time  
25       employees to be eligible for a credit under this section. A business  
26       that acquires a qualified business facility shall also be deemed to  
27       have acquired the capital investment made or acquired by the seller.

28        (3) A business that is a tenant in a qualified business facility, the  
29       owner of which has made or acquired capital investments in the  
30       facility totaling not less than \$50,000,000, shall occupy a leased  
31       area of the qualified business facility that represents at least  
32       \$17,500,000 of the capital investment in the facility at which the  
33       tenant business and up to two other tenants in the qualified business  
34       facility shall employ not fewer than 250 full-time employees in the  
35       aggregate to be eligible for a credit under this section. The amount  
36       of capital investment in a facility that a leased area represents shall  
37       be equal to that percentage of the owner's total capital investment in  
38       the facility that the percentage of net leasable area leased by the  
39       tenant is of the total net leasable area of the qualified business  
40       facility. Capital investments made by a tenant shall be deemed to be  
41       included in the calculation of the capital investment made or  
42       acquired by the owner, but only to the extent necessary to meet the  
43       owner's minimum capital investment of \$50,000,000. Capital  
44       investments made by a tenant and not allocated to meet the owner's  
45       minimum capital investment threshold of \$50,000,000 shall be  
46       added to the amount of capital investment represented by the  
47       tenant's leased area in the qualified business facility.

1       (4) A business shall not be allowed tax credits under this section  
2 if the business participates in a business employment incentive  
3 grant relating to the same capital and employees that qualify the  
4 business for this credit, or if the business receives assistance  
5 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is  
6 allowed a tax credit under this section shall not be eligible for  
7 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et  
8 al.). A business shall not qualify for a tax credit under this section,  
9 based upon capital investment and employment of full-time  
10 employees, if that capital investment or employment was the basis  
11 for which a grant was provided to the business pursuant to the  
12 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-  
13 237 et seq.).

14       (5) Full-time employment for an accounting or privilege period  
15 shall be determined as the average of the monthly full-time  
16 employment for the period.

17       (6) The capital investment of the owner of a qualified business  
18 facility is that percentage of the capital investment made or  
19 acquired by the owner of the building that the percentage of net  
20 leasable area of the qualified business facility not leased to tenants  
21 is of the total net leasable area of the qualified business facility.

22       (7) A business shall be allowed a tax credit of 100 percent of its  
23 capital investment, made after the effective date of P.L.2011, c.89  
24 but prior to its submission of documentation pursuant to subsection  
25 c. of this section, in a qualified business facility that is part of a  
26 mixed use project, provided that (a) the qualified business facility  
27 represents at least \$17,500,000 of the total capital investment in the  
28 mixed use project, (b) the business employs not fewer than 250 full-  
29 time employees in the qualified business facility, and (c) the total  
30 capital investment in the mixed use project of which the qualified  
31 business facility is a part is not less than \$50,000,000. The  
32 allowance of credits under this paragraph shall be subject to the  
33 restrictions and requirements, to the extent that those are not  
34 inconsistent with the provisions of this paragraph, set forth in  
35 paragraphs (1) through (6) of this subsection, including but not  
36 limited to the requirement that the business shall demonstrate to the  
37 authority, at the time of application, that the State's financial  
38 support of the proposed capital investment in a qualified business  
39 facility will yield a net positive benefit to both the State and the  
40 eligible municipality.

41       (8) In determining whether a proposed capital investment will  
42 yield a net positive benefit, the authority shall not consider the  
43 transfer of an existing job from one location in the State to another  
44 location in the State as the creation of a new job, unless (a) the  
45 business proposes to transfer existing jobs to a municipality in the  
46 State as part of a consolidation of business operations from two or  
47 more other locations that are not in the same municipality whether  
48 in-State or out-of-State, or (b) the business's chief executive officer,

1 or equivalent officer, submits a certification to the authority  
2 indicating that the existing jobs are at risk of leaving the State and  
3 that the business's chief executive officer, or equivalent officer, has  
4 reviewed the information submitted to the authority and that the  
5 representations contained therein are accurate, and the business  
6 intends to employ not fewer than 500 full-time employees in the  
7 qualified business facility. In the event that this certification by the  
8 business's chief executive officer, or equivalent officer, is found to  
9 be willfully false, the authority may revoke any award of tax credits  
10 in their entirety, which revocation shall be in addition to any other  
11 criminal or civil penalties that the business and the officer may be  
12 subject to. When considering an application involving intra-State  
13 job transfers, the authority shall require the company to submit the  
14 following information as part of its application: a full economic  
15 analysis of all locations under consideration by the company; all  
16 lease agreements, ownership documents, or substantially similar  
17 documentation for the business's current in-State locations; and all  
18 lease agreements, ownership documents, or substantially similar  
19 documentation for the potential out-of-State location alternatives, to  
20 the extent they exist. Based on this information, and any other  
21 information deemed relevant by the authority, the authority shall  
22 independently verify and confirm, by way of making a factual  
23 finding by separate vote of the authority's board, the business's  
24 assertion that the jobs are actually at risk of leaving the State,  
25 before a business may be awarded any tax credits under this section.

26 b. A business shall apply for the credit within five years after  
27 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and  
28 shall submit its documentation for approval of its credit amount  
29 within eight years after the effective date of P.L.2007, c.346  
30 (C.34:1B-207 et seq.).

31 c. (1) The amount of credit allowed shall, except as otherwise  
32 provided, be equal to the capital investment made by the business,  
33 or the capital investment represented by the business' leased area, or  
34 area owned by the business as a condominium, and shall be taken  
35 over a 10-year period, at the rate of one-tenth of the total amount of  
36 the business' credit for each tax accounting or privilege period of  
37 the business, beginning with the tax period in which the business is  
38 first approved by the authority as having met the investment capital  
39 and employment qualifications, subject to any reduction or  
40 disqualification as provided by subsection d. of this section as  
41 determined by annual review by the authority. In conducting its  
42 annual review, the authority may require a business to submit any  
43 information determined by the authority to be necessary and  
44 relevant to its review.

45 The credit amount for any tax period ending after the date eight  
46 years after the effective date of P.L.2007, c.346 (C.34:1B-207 et  
47 seq.) during which the documentation of a business' credit amount  
48 remains unapproved shall be forfeited, although credit amounts for

1 the remainder of the years of the 10-year credit period shall remain  
2 available to it. The credit amount that may be taken for a tax period  
3 of the business that exceeds the final liabilities of the business for  
4 the tax period may be carried forward for use by the business in the  
5 next 20 successive tax periods, and shall expire thereafter, provided  
6 that the value of all credits approved by the authority against tax  
7 liabilities pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any  
8 fiscal year shall not exceed \$150,000,000. The amount of credit  
9 allowed for a tax period to a business that is a tenant in a qualified  
10 business facility shall not exceed the business' total lease payments  
11 for occupancy of the qualified business facility for the tax period.

12 (2) A business that is a partnership shall not be allowed a credit  
13 under this section directly, but the amount of credit of an owner of a  
14 business shall be determined by allocating to each owner of the  
15 partnership that proportion of the credit of the business that is equal  
16 to the owner of the partnership's share, whether or not distributed,  
17 of the total distributive income or gain of the partnership for its tax  
18 period ending within or with the owner's tax period, or that  
19 proportion that is allocated by an agreement, if any, among the  
20 owners of the partnership that has been provided to the Director of  
21 the Division of Taxation in the Department of the Treasury by such  
22 time and accompanied by such additional information as the  
23 director may require.

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

30 d. (1) If, in any tax period, fewer than 200 full-time employees  
31 of the business at the qualified business facility are employed in  
32 new full-time positions, the amount of the credit otherwise  
33 determined pursuant to final calculation of the award of tax credits  
34 pursuant to subsection c. of this section shall be reduced by 20  
35 percent for that tax period and each subsequent tax period until the  
36 first period for which documentation demonstrating the restoration  
37 of the 200 full-time employees employed in new full-time positions  
38 at the qualified business facility has been reviewed and approved by  
39 the authority, for which tax period and each subsequent tax period  
40 the full amount of the credit shall be allowed; provided, however,  
41 that for businesses applying before January 1, 2010, there shall be  
42 no reduction if a business relocates to an urban transit hub from  
43 another location or other locations in the same municipality. For the  
44 purposes of this paragraph, a "new full-time position" means a  
45 position created by the business at the qualified business facility  
46 that did not previously exist in this State.

47 (2) If, in any tax period, the business reduces the total number of  
48 full-time employees in its Statewide workforce by more than 20

1 percent from the number of full-time employees in its Statewide  
2 workforce in the last tax accounting or privilege period prior to the  
3 credit amount approval under this section, then the business shall  
4 forfeit its credit amount for that tax period and each subsequent tax  
5 period, until the first tax period for which documentation  
6 demonstrating the restoration of the business' Statewide workforce  
7 to the threshold levels required by this paragraph has been reviewed  
8 and approved by the authority, for which tax period and each  
9 subsequent tax period the full amount of the credit shall be allowed.

10 (3) If, in any tax period, (a) the number of full-time employees  
11 employed by the business at the qualified business facility located  
12 in an urban transit hub within an eligible municipality drops below  
13 250, or (b) the number of full-time employees, who are not the  
14 subject of intra-State job transfers, pursuant to paragraph (8) of  
15 subsection a. of this section, employed by the business at any other  
16 business facility in the State, whether or not located in an urban  
17 transit hub within an eligible municipality, drops by more than 20  
18 percent from the number of full-time employees in its workforce in  
19 the last tax accounting or privilege period prior to the credit amount  
20 approval under this section, then the business shall forfeit its credit  
21 amount for that tax period and each subsequent tax period, until the  
22 first tax period for which documentation demonstrating the  
23 restoration of the number of full-time employees employed by the  
24 business at the qualified business facility to 250 or an increase  
25 above the 20 percent reduction has been reviewed and approved by  
26 the authority, for which tax period and each subsequent tax period  
27 the full amount of the credit shall be allowed.

28 (4) (i) If the qualified business facility is sold in whole or in part  
29 during the 10-year eligibility period the new owner shall not acquire  
30 the capital investment of the seller and the seller shall forfeit all  
31 credits for the tax period in which the sale occurs and all subsequent  
32 tax periods, provided however that any credits of tenants shall  
33 remain unaffected.

34 (ii) If a tenant subleases its tenancy in whole or in part during the  
35 10-year eligibility period the new tenant shall not acquire the credit  
36 of the sublessor, and the sublessor tenant shall forfeit all credits for  
37 the tax period of its sublease and all subsequent tax periods.

38 e. (1) The Executive Director of the New Jersey Economic  
39 Development Authority, in consultation with the Director of the  
40 Division of Taxation in the Department of the Treasury, shall adopt  
41 rules in accordance with the "Administrative Procedure Act,"  
42 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement  
43 this act, including but not limited to: examples of and the  
44 determination of capital investment; the enumeration of eligible  
45 municipalities; specific delineation of urban transit hubs; the  
46 determination of the limits, if any, on the expense or type of  
47 furnishings that may constitute capital improvements; the  
48 promulgation of procedures and forms necessary to apply for a

1 credit, including the enumeration of the certification procedures and  
2 allocation of tax credits for different phases of a qualified business  
3 facility or mixed use project; and provisions for credit applicants to  
4 be charged an initial application fee, and ongoing service fees, to  
5 cover the administrative costs related to the credit.

6 (2) Through regulation, the Economic Development Authority  
7 shall establish standards based on the green building manual  
8 prepared by the Commissioner of Community Affairs pursuant to  
9 section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of  
10 renewable energy, energy-efficient technology, and non-renewable  
11 resources in order to reduce environmental degradation and  
12 encourage long-term cost reduction.

13 (cf: P.L.2011, c.89, s.2)

14

15 6. Section 33 of P.L.2009, c.90 (C.34:1B-209.1) is amended to  
16 read as follows:

17 33. A business may apply to the Director of the Division of  
18 Taxation in the Department of the Treasury and the executive  
19 director of the authority for a tax credit transfer certificate, covering  
20 one or more years, in lieu of the business being allowed any amount  
21 of the credit against the tax liability of the business. The tax credit  
22 transfer certificate, upon receipt thereof by the business from the  
23 director and the executive director of the authority, may be sold or  
24 assigned, in full or in part, to any other person that may have a tax  
25 liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),  
26 pursuant to N.J.S.54A:1-1 et seq., pursuant to sections 2 and 3 of  
27 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1  
28 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.  
29 The certificate provided to the business shall include a statement  
30 waiving the business's right to claim that amount of the credit  
31 against the taxes that the business has elected to sell or assign. The  
32 sale or assignment of any amount of a tax credit transfer certificate  
33 allowed under this section shall not be exchanged for consideration  
34 received by the business of less than 75 percent of the transferred  
35 credit amount. Any amount of a tax credit transfer certificate used  
36 by a purchaser or assignee against a tax liability shall be subject to  
37 the same limitations and conditions that apply to the use of the  
38 credit by the business that originally applied for and was allowed  
39 the credit.

40 (cf: P.L.2009, c.90, s.33)

41

42 7. Section 54 of P.L.2002, c.43 (C.52:27BBB-53) is amended  
43 to read as follows:

44 54. As used in this section and section 55 of P.L.2002, c.43  
45 (C.52:27BBB-54):

46 a. "Business facility" means any factory, mill, plant, refinery,  
47 warehouse, building, complex of buildings or structural components  
48 of buildings, and all machinery, equipment and personal property

1 located within a qualified municipality, used in connection with the  
2 operation of the business of a taxpayer subject to the "New Jersey  
3 Gross Income Tax Act," N.J.S.54A:1-1 et seq., or corporation that  
4 is subject to the tax imposed pursuant to section 5 of P.L.1945,  
5 c.162 (C.54:10A-5) or the tax imposed pursuant to sections 2 and 3  
6 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of  
7 P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5, 'or an entity  
8 whose owners are subject to one or more of those taxes'<sup>1</sup> and all  
9 facility preparation and start-up costs of the taxpayer for the  
10 business facility which it capitalizes for federal income tax  
11 purposes.

12 b. "Business relocation or business expansion property" means  
13 improvements to real property and tangible personal property, but  
14 only if that improvement or personal property is constructed or  
15 purchased and placed in service or use by the taxpayer, for use as a  
16 component part of a new business facility or expanded business  
17 facility located in a qualified municipality.

18 (1) Business relocation or business expansion property shall  
19 include only:

20 (a) improvements to real property placed in service or use as a  
21 business facility by the taxpayer on or after the notification of the  
22 Governor by the commissioner pursuant to section 4 of P.L.2002,  
23 c.43 (C.52:27BBB-4) that the municipality in which the property is  
24 situated fulfills the definition of a qualified municipality;

25 (b) tangible personal property placed in service or use by the  
26 taxpayer on or after the notification of the Governor by the  
27 commissioner pursuant to section 4 of P.L.2002, c.43  
28 (C.52:27BBB-4) that the municipality in which the property is  
29 situated fulfills the definition of a qualified municipality, with  
30 respect to which depreciation, or amortization in lieu of  
31 depreciation, is allowable for federal income tax purposes and  
32 which has a remaining recovery period of three or more years at the  
33 time the property is placed in service or use in a qualified  
34 municipality; or

35 (c) tangible personal property owned and used by the taxpayer at  
36 a business location outside a qualified municipality which is moved  
37 into a qualified municipality on or after the notification of the  
38 Governor by the commissioner pursuant to section 4 of P.L.2002,  
39 c.43 (C.52:27BBB-4) that the municipality in which the property is  
40 situated fulfills the definition of a qualified municipality, for use as  
41 a component part of a new or expanded business facility located in  
42 the qualified municipality; provided that the property is depreciable  
43 or amortizable personal property for income tax purposes, and has a  
44 remaining recovery period of three or more years at the time the  
45 property is placed in service or use in a qualified municipality.

46 (2) Property purchased for business relocation or expansion shall  
47 not include:

1       (a) repair costs, including materials used in the repair, unless for  
2 federal income tax purposes, the cost of the repair must be  
3 capitalized and not expensed;

4       (b) airplanes;

5       (c) property which is primarily used outside a qualified  
6 municipality with that use being determined based upon the amount  
7 of time the property is actually used both within and without the  
8 qualified municipality;

9       (d) property which is acquired incident to the purchase of the  
10 stock or assets of the seller.

11       (3) Property shall be deemed to have been purchased prior to a  
12 specified date only if:

13       (a) the physical construction, reconstruction or erection of the  
14 property was begun prior to the specified date, or such property was  
15 constructed, reconstructed, erected or acquired pursuant to a written  
16 contract as existing and binding on the purchase prior to the  
17 specified date; or

18       (b) the machinery or equipment was owned by the taxpayer prior  
19 to the specified date, or was acquired by the taxpayer pursuant to a  
20 binding purchase contract which was in effect prior to the specified  
21 date.

22       c. "Business relocation or business expansion" means capital  
23 investment in a new or expanded business facility in a qualified  
24 municipality.

25       d. "Controlled group" means one or more chains of  
26 corporations connected through stock ownership with a common  
27 parent corporation if stock possessing at least 50% of the voting  
28 power of all classes of stock of each of the corporations is owned  
29 directly or indirectly by one or more of the corporations; and the  
30 common parent owns directly stock possessing at least 50% of the  
31 voting power of all classes of stock of at least one of the other  
32 corporations.

33       e. "Director" means the Director of the Division of Taxation in  
34 the Department of the Treasury.

35       f. "Expanded business facility" means any business facility,  
36 other than a new business facility, resulting from acquisition,  
37 construction, reconstruction, installation or erection of  
38 improvements or additions to existing property if such  
39 improvements or additions are purchased on or after the effective  
40 date of rehabilitation and economic recovery.

41       g. "Incentive payment" means: the amount of tax owed by a  
42 taxpayer for a privilege period or reporting period, as computed  
43 pursuant to N.J.S.54A:1-1 et seq., section 5 of P.L.1945, c.162  
44 (C.54:10A-5) or section 7 of P.L.2002, c.40 (C.54:10A-5a), or  
45 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), or  
46 section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5,  
47 multiplied for each privilege period or reporting period by a  
48 fraction, the numerator of which is the average value of the

1 taxpayer's business relocation or business expansion property  
2 within a qualified municipality during the period covered by its  
3 report, and the denominator of which is the average value of all the  
4 taxpayer's real and tangible personal property, excluding  
5 improvements made after the date of a taxpayer's first acquisition of  
6 business relocation or business expansion property in the qualified  
7 municipality to business facilities in existence on that date outside  
8 of the qualified municipality, in New Jersey during such period  
9 which result is multiplied by 96 percent; provided, however, that for  
10 the purpose of determining average value for a taxpayer that is a  
11 corporation, the provisions with respect to depreciation as set forth  
12 in subparagraph (F) of paragraph (2) of subsection (k) of section 4  
13 of P.L.1945, c.162 (C.54:10A-4) shall be taken into account for  
14 arriving at such value whether the corporation is subject to the tax  
15 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), the  
16 tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132  
17 (C.54:18A-2 and 54:18A-3), the tax imposed pursuant to section 1  
18 of P.L.1950, c.231 (C.17:32-15) or the tax imposed pursuant to  
19 N.J.S.17B:23-5; and provided further that the value of a leasehold  
20 interest in realty located within a qualified municipality shall be  
21 based on no less than the fair market value of its rent; and provided  
22 further that incentive payments shall be made for a period not to  
23 exceed 10 years, commencing on the date of a taxpayer's first  
24 acquisition of business relocation or business expansion property in  
25 the qualified municipality following the notification of the  
26 Governor by the commissioner pursuant to section 4 of P.L.2002,  
27 c.43 (C.52:27BBB-4) that the municipality in which the property is  
28 situated fulfills the definition of a qualified municipality.

29       h. "New business facility" means a business facility which:

30           (1) is employed by a taxpayer in the conduct of a business which  
31 is or will be taxable under N.J.S.54A:1-1 et seq., P.L.1945, c.162  
32 (C.54:10A-1 et seq.) or pursuant to sections 2 and 3 of P.L.1945,  
33 c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231  
34 (C.17:32-15) or N.J.S.17B:23-5. A business facility shall not be  
35 considered a new business facility in the hands of a taxpayer if the  
36 taxpayer's only activity with respect to the facility is to lease it to  
37 another person;

38           (2) is purchased by a taxpayer and is placed in service or use on  
39 or after the effective date of rehabilitation and economic recovery;

40           (3) was not purchased by a taxpayer from a related person; and

41           (4) was not in service or use during the 90-day period  
42 immediately prior to transfer of the title to the facility.

43       i. "Partnership" means a syndicate, group, pool, joint venture or  
44 other unincorporated organization through or by means of which  
45 any business, financial operation or venture is carried on, and which  
46 is not a trust or estate, a corporation or a sole proprietorship. The  
47 term "partner" includes a member in such a syndicate, group, pool,  
48 joint venture or organization.

1       j. "Purchase" means, with respect to the determination of  
2 whether business relocation or business expansion property was  
3 purchased, any acquisition of property, including an acquisition  
4 pursuant to a lease, and an acquisition pursuant to a lease under  
5 which the lessee or affiliates of the lessee are the primary occupants  
6 under a lease of ten years or more, but only if:

7       (1) the property is not acquired from a person whose relationship  
8 to the person acquiring it would result in the disallowance of  
9 deductions under section 267 or subsection (b) of section 707 of the  
10 federal Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

11       (2) the property is not acquired by one member of a controlled  
12 group from another member of the same controlled group; and

13       (3) the basis of the property for federal income tax purposes, in  
14 the hands of the person acquiring it, is not determined:

15       (a) in whole or in part by reference to the federal adjusted basis  
16 of such property in the hands of the person from whom it was  
17 acquired; or

18       (b) under subsection (e) of section 1014 of the federal Internal  
19 Revenue Code of 1986, 26 U.S.C. s.1014.

20       k. "Related person" means:

21       (1) a corporation, partnership, association or trust controlled by  
22 the taxpayer;

23       (2) an individual, corporation, partnership, association or trust  
24 that is in control of the taxpayer;

25       (3) a corporation, partnership, association or trust controlled by  
26 an individual, corporation, partnership, association or trust that is in  
27 control of the taxpayer; or

28       (4) a member of the same controlled group as the taxpayer.

29 (cf: P.L.2003, c.194, s.1)

30

31       8. Section 55 of P.L.2002, c.43 (C.52:27BBB-54) is amended  
32 to read as follows:

33       55. a. There is established in the authority the "Qualified  
34 Municipality Open for Business Incentive Program," the purpose of  
35 which is to foster business investment in qualified municipalities.  
36 Businesses that locate or expand in a qualified municipality during  
37 the period that the municipality is under rehabilitation and  
38 economic recovery shall be eligible to receive a rebate from the  
39 New Jersey Gross Income Tax Act, N.J.S.54A:1-1 et seq.,  
40 "Corporation Business Tax Act (1945)," P.L.1945, c.162  
41 (C.54:10A-1 et seq.), or the tax imposed on insurers pursuant to  
42 P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231  
43 (C.17:32-15) and N.J.S.17B:23-5 as provided herein.

44       b. For each year in which a taxpayer is eligible for a rebate of a  
45 portion of the incentive payment, the Director of the Division of  
46 Taxation shall certify to the State Treasurer (1) that the taxpayer's  
47 corporation business tax return, gross income tax return, or  
48 insurance premiums tax return has been filed; (2) that the taxpayer's

1 entire corporation business tax obligation, gross income tax, or  
2 insurance premiums tax obligation has been satisfied; and (3) the  
3 amount of the taxpayer's incentive payment entitlement. Upon such  
4 certification, the treasurer shall certify to the executive director of  
5 the authority the amount of the taxpayer's incentive payment and,  
6 subject to the approval of the Director of the Division of Budget  
7 and Accounting, transfer that incentive payment to the fund  
8 established with the proceeds of those funds appropriated pursuant  
9 to subsection b. of section 73 of P.L.2002, c.43.

10 c. The executive director of the authority shall rebate to the  
11 taxpayer up to 75% of the incentive payment paid by the taxpayer  
12 and placed by the treasurer into a fund established using those funds  
13 appropriated pursuant to subsection b. of section 73 of P.L.2002,  
14 c.43 if the taxpayer applies for a rebate within two years of deposit  
15 of the incentive payment into the fund and establishes to the  
16 satisfaction of the executive director of the authority that the  
17 taxpayer will utilize those monies for business relocation or  
18 business expansion property that will be placed in service or use by  
19 the taxpayer after the date of the rebate application. The authority  
20 may rebate to the taxpayer up to 100% of the incentive payment  
21 paid by the taxpayer and placed by the treasurer into a fund  
22 established using those funds appropriated pursuant to subsection b.  
23 of section 73 of P.L.2002, c.43 if the taxpayer applies for a rebate  
24 and the authority determines that a particular business relocation or  
25 business expansion will more effectively contribute to the  
26 municipal rehabilitation and economic recovery in a qualified  
27 municipality as sought by the Legislature through the enactment of  
28 P.L.2002, c.43. In making this determination the authority shall  
29 consider: 1) the amount of private investment, 2) the number of jobs  
30 concerned, 3) the projected average salary of the employees, 4)  
31 whether the investment has the potential to attract additional  
32 investment, 5) the impact to the State Treasury, and 6) any other  
33 factors that uniquely contribute to the municipal rehabilitation and  
34 economic recovery of the qualified municipality. The taxpayer may  
35 apply for this incentive prior to its undertaking of the business  
36 relocation or business expansion and upon approval the authority  
37 may establish a rebate schedule for the incentive payment for a  
38 period not to exceed ten years, subject to the taxpayer's continued  
39 satisfaction of the criteria of this act and to annual appropriation.  
40 The cumulative amount of monies distributed to the taxpayer  
41 pursuant to this section shall not exceed the amount paid or to be  
42 paid by the taxpayer for the business relocation or business  
43 expansion property. In the event that the taxpayer does not  
44 establish its eligibility for a rebate of a portion of the incentive  
45 payment within two years of its deposit into the fund, the fund shall  
46 retain any remaining amount of the incentive payment <sup>1</sup>, except that  
47 incentive payment deposits of a gross income taxpayer that failed to

1 establish eligibility for a rebate shall be remitted to the Property  
2 Tax Relief Fund<sup>1</sup>.

3 (cf: P.L.2003, c.194, s.2)

4

5 9. Section 56 of P.L.2002, c.43 (C.52:27BBB-55) is amended  
6 to read as follows:

7 56. a. A taxpayer engaged in the conduct of business within a  
8 qualified municipality and who is not receiving a benefit under the  
9 "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303  
10 (C.52:27H-60 et seq.), may apply to receive a tax credit against the  
11 amount of tax otherwise imposed under the "New Jersey Gross  
12 Income Tax Act," N.J.S.54A:1-1 et seq., "Corporation Business Tax  
13 Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the tax  
14 imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et  
15 seq.), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-  
16 5, equal to: \$2,500 for each new full-time position at that location  
17 in credit year one and \$1,250 for each new full-time position at that  
18 location in credit year two.

19 b. (1) The credit pursuant to subsection a. of this section for  
20 credit year one shall be allowed for the privilege period or reporting  
21 period in which or with which credit year one ends; the credit  
22 pursuant to subsection a. of this section for credit year two shall be  
23 allowed for the privilege period or reporting period in which or with  
24 which credit year two ends.

25 (2) An unused credit may be carried forward, if necessary, for  
26 use in the privilege periods or reporting periods following the  
27 privilege period or reporting period for which the credit is allowed.

28 (3) The order of priority of the application of the credit allowed  
29 under this section and any other credits allowed by law shall be as  
30 prescribed by the Director of the Division of Taxation. The amount  
31 of the credit applied under this section against the tax imposed  
32 pursuant to N.J.S.54A:1-1 et seq. for a reporting period and section  
33 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period, together  
34 with any other credits allowed by law, shall not exceed 50% of the  
35 tax liability otherwise due 【and】. The amount of the credit applied  
36 under this section against the tax imposed pursuant to section 5 of  
37 P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with  
38 any other credits allowed by law, shall not reduce the tax liability to  
39 an amount less than the statutory minimum provided in subsection  
40 (e) of section 5 of P.L.1945, c.162.

41 c. (1) Notwithstanding the provisions of subsection b. of this  
42 section to the contrary, the credit allowed for credit year one may  
43 be refundable at the close of the privilege period or reporting period  
44 in which or with which credit year two ends, pursuant to the  
45 requirements and limitations of this subsection.

46 (2) That amount of the credit received for credit year one  
47 remaining, if any, after the liabilities for the privilege period or  
48 reporting period in which or with which credit year two ends and

1 for any prior period have been satisfied, multiplied by the sustained  
2 effort ratio, shall be an overpayment for the purposes of section  
3 R.S.54:49-15 or N.J.S.54A:9-7 for the period in which or with  
4 which credit year two ends; that amount of the credit received for  
5 credit year one remaining, if any, that is not an overpayment  
6 pursuant to this paragraph may be carried forward pursuant to  
7 subsection b. of this section.

8 d. The burden of proof shall be on the taxpayer to establish by  
9 clear and convincing evidence that the taxpayer is entitled to the  
10 credits or refund allowed pursuant to this section. The director  
11 shall by regulation establish criteria for the determination of when  
12 new or expanded operations have begun at a location. No taxpayer  
13 shall be allowed more than a single 24-month continuous period in  
14 which credits shall be allowed for activity at a location within a  
15 qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et  
16 al.).

17 e. For the purposes of this section:

18 "Credit year one" means the first twelve calendar months  
19 following initial or expanded operations at a location within a  
20 qualified municipality pursuant to P.L.2002, c.43 (C.52:27BBB-1 et  
21 al.).

22 "Credit year two" means the twelve calendar months following  
23 credit year one.

24 "Employee of the taxpayer" does not include an individual with  
25 an ownership interest in the business, that individual's spouse or  
26 dependants, or that individual's ancestors or descendants.

27 "Full time position" means a position filled by an employee of  
28 the taxpayer for at least 140 hours per month on a permanent basis,  
29 which does not include employment that is temporary or seasonal.

30 "New full time position" means a position that did not exist prior  
31 to credit year one. New full time positions shall be measured by the  
32 increase, from the twelve-month period preceding credit year one to  
33 the measured credit year, in the average number of full-time  
34 positions and full-time position equivalents employed by the  
35 taxpayer at the location within a qualified municipality pursuant to  
36 P.L.2002, c.43 (C.52:27BBB-1 et al.). The hours of employees  
37 filling part-time positions shall be aggregated to determine the  
38 number of full-time position equivalents.

39 "Part-time position" means a position filled by an employee of  
40 the taxpayer for at least 20 hours per week for at least three months  
41 during the credit year.

42 "Sustained effort ratio" means the proportion that the credit year  
43 two new full-time positions bears to the credit year one new full-  
44 time positions, not to exceed one.

45 (cf: P.L.2003, c.194, s.3)

46

47 10. Section 3 of P.L.2001, c.415 (C.52:27D-492) is amended to  
48 read as follows:

1       3. A business entity shall be eligible for a certificate for  
2 neighborhood revitalization State tax credits if it has provided  
3 funding for a qualified project that has been approved in accordance  
4 with sections 4 and 5 of P.L.2001, c.415 (C.52:27D-493 and  
5 C.52:27D-494).

6       a. Credits may be granted in an amount up to 100 percent of  
7 the approved assistance provided to a nonprofit organization to  
8 implement a qualified neighborhood preservation and revitalization  
9 project.

10      b. The credit may be applied by the business entity receiving  
11 the certificate as credit against tax imposed on business related  
12 income[, other than tax imposed under the New Jersey Gross  
13 Income Tax,] including, but not limited to, business income subject  
14 to the provisions of the Corporation Business Tax Act (1945),  
15 P.L.1945, c.162 (C.54:10A-1 et al.), "New Jersey Gross Income  
16 Tax Act," N.J.S.54A:1-1 et seq., <sup>1</sup>["The Savings Institution Tax  
17 Act," P.L.1973, c.31 (C.54:10D-1 et seq.),]<sup>1</sup> the tax imposed on  
18 marine insurance companies pursuant to R.S.54:16-1 et seq., the tax  
19 imposed on insurers generally, pursuant to P.L.1945, c.132  
20 (C.54:18A-1 et seq.), the sewer and water utility excise tax imposed  
21 pursuant to section 6 of P.L.1940, c.5 (C.54:30A-54) and the  
22 petroleum products gross receipts tax imposed pursuant to section 3  
23 of P.L.1990, c.42 (C.54:15B-3).

24      c. The credit allowed to a business entity under this section  
25 may not exceed for any taxable year \$1,000,000 or the total amount  
26 of tax otherwise payable by the business entity for the taxable year  
27 and, in addition, shall not exceed limitations placed on the amounts  
28 of credits or carryforward credits allowed, if any, under the relevant  
29 statute as enumerated in subsection b. of this section concerning the  
30 tax for which a credit is being claimed.

31      d. Credit shall not be allowed for activities for which the  
32 business entity is receiving credit under any other provision against  
33 any tax on business related income [other than the New Jersey  
34 Gross Income Tax,] including, but not limited to, the <sup>1</sup>[corporate]  
35 corporation<sup>1</sup> business tax, New Jersey gross income tax, corporate  
36 income tax, insurance premiums tax, petroleum products gross  
37 receipts tax, public utilities franchise tax, public utilities gross  
38 receipts tax, public utility excise tax, <sup>1</sup>and the<sup>1</sup> railroad franchise  
39 tax<sup>1</sup>[, and the saving institution tax]<sup>1</sup>.

40      e. The tax credit shall be awarded only for assistance provided  
41 within the same year in which the commissioner issued the  
42 certificate, or if the commissioner approved assistance for more  
43 than one year, within the year in which payment was scheduled and  
44 made. The provisions of this subsection may be waived for good  
45 cause shown.

46      f. The total tax credits certified for all qualified projects

1 proposed in a fiscal year shall not exceed \$10,000,000.  
2 (cf: P.L.2007, c.89, s.1)

3

4 11. Section 18 of P.L.1983, c.303 (C.52:27H-77) is amended to  
5 read as follows:

6 18. Enterprise zone employee tax credits or enterprise zone  
7 investment tax credits provided under section 19 of **[this act]**  
8 P.L.1983, c.303 (C.52:27H-78) shall not reduce a taxpayer's tax  
9 liability under the "New Jersey Gross Income Tax Act,"  
10 N.J.S.54A:1-1 et seq., or the "Corporation Business Tax Act  
11 (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) in any tax year by  
12 more than 50% of the amount otherwise due, but either employee  
13 tax credits or investment tax credits remaining and unused in a tax  
14 year may be carried forward by the taxpayer to the next succeeding  
15 tax year and applied against 50% of the amount of tax otherwise  
16 due in that succeeding tax year.

17 (cf: P.L.1988, c.93, s.8)

18

19 12. Section 19 of P.L.1983, c.303 (C.52:27H-78) is amended to  
20 read as follows:

21 19. Any qualified business subject to the provisions of the "New  
22 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or the  
23 "Corporation Business Tax Act (1945)," P.L.1945, c.162  
24 (C.54:10A-1 et seq.), as actively engaged in the conduct of business  
25 from a location within an enterprise zone designated pursuant to  
26 **[this act]** the "New Jersey Urban Enterprise Zones Act,"  
27 P.L.1983, c.303 (C.52:27H-60 et seq.)<sup>1</sup>, which business at that  
28 location consists primarily of manufacturing or other business  
29 which is not retail sales or warehousing oriented, shall receive an  
30 enterprise zone employee tax credit against the amount of tax  
31 imposed under the "New Jersey Gross Income Tax Act,"  
32 N.J.S.54A:1-1 et seq., or "Corporation Business Tax Act (1945),"  
33 P.L.1945, c.162 (C.54:10A-1 et seq.), as hereinafter provided:

34 a. A one-time credit of \$1,500.00 for each new full-time,  
35 permanent employee employed at that location who is a resident of  
36 the qualifying municipality in which the designated enterprise zone  
37 is located, or any other qualifying municipality in which an urban  
38 enterprise zone is located, and who immediately prior to  
39 employment by the taxpayer was unemployed for at least 90 days,  
40 or was dependent upon public assistance as the primary source of  
41 income;

42 b. A one-time credit of \$500.00 for each new full-time,  
43 permanent employee employed at that location who is a resident of  
44 a qualifying municipality in which a designated enterprise zone is  
45 located, or any other qualifying municipality in which an urban  
46 enterprise zone is located, who does not meet the requirements of  
47 subsection a. of this section, and who was not, immediately prior to

1 employment by the taxpayer, employed at a location within the  
2 qualifying municipality;

3 c. A qualified business which is not entitled to an employee tax  
4 credit under this section, but meets the eligibility criteria pursuant  
5 to the provisions of subsection c. of section 27 of P.L.1983, c.303  
6 (C.52:27H-86), shall receive a one-time credit in an amount equal  
7 to 8% of each new investment made by the qualified business in the  
8 enterprise zone under an agreement approved by the authority.

9 This credit shall be applied against the taxpayer's gross income  
10 tax or corporation business tax liability subject to the limitations  
11 and carry forward provisions set forth in section 18 of P.L.1983,  
12 c.303 (C.52:27H-77); provided, however, that a qualified business  
13 shall not claim an employee tax credit and an investment tax credit  
14 authorized pursuant to this subsection in the same year regardless of  
15 whether those credits were earned for the tax year or carried  
16 forward from a previous year.

17 d. The enterprise zone employee tax credit shall be allowed in  
18 the tax year immediately following the tax year in which the new  
19 full-time, permanent employee was first employed by the taxpayer,  
20 and shall be permitted in any tax year of a 20 year period from the  
21 date of designation of the enterprise zone, or of a period of 20 tax  
22 years from the date within that designation period upon which the  
23 taxpayer is first subject to the provisions of the "New Jersey Gross  
24 Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation  
25 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.),  
26 whichever date is later and the termination of the designation of an  
27 enterprise zone at the end of a 20 year designation period shall not  
28 terminate the eligibility period provided under this section;

29 e. A tax credit shall be permitted under this section only for  
30 those new full-time, permanent employees who have been  
31 employed for at least six continuous months by the taxpayer during  
32 the tax year for which the tax credit is claimed.

33 f. A newly employed employee shall not be deemed a new full-  
34 time, permanent employee for the purposes of this section unless  
35 the total number of full-time, permanent employees, including the  
36 newly employed employee, employed by the employer in the zone  
37 during the calendar year exceeds the greatest number of full-time,  
38 permanent employees employed in the zone by the employer during  
39 any prior calendar year during the period commencing with the date  
40 of zone designation.

41 (cf: P.L.1988, c.93, s.4)

42

43 13. Section 6 of P.L.1993, c.171 (C.54:10A-5.21) is amended to  
44 read as follows:

45 6. The Director of the Division of Taxation shall prepare and  
46 transmit to the Governor[,] and the Legislature[, and the State

47 Revenue Forecasting Advisory Commission]

48 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1) on or before the September 1

1 next following the January 1 next following enactment of this  
2 section and annually on or before each September 1 thereafter, a  
3 report concerning the revenue cost and distributional impact of  
4 ~~【this act】 sections 2 through '16] 5' of P.L.1993, c.171 (C.54:10A-~~  
5 ~~5.17 through 54:10A-5.20) and sections 14 through 17 of P.L. , c.~~  
6 ~~(C. ) (pending before the Legislature as this bill)~~ in such a  
7 manner as to facilitate an evaluation of its costs in State tax revenue  
8 forgone and its benefits in new job creation. To facilitate an  
9 understanding of the gross amount and percentage of credits  
10 claimed in relation to the size, number and income of corporations  
11 and the number of new employees, the report shall include  
12 statistical analyses of the number and value of credits granted and  
13 anticipated to be granted, and the number of new employees. To  
14 facilitate an understanding of the distinction between the number of  
15 new employees resulting from the availability of the credits and the  
16 number of new employees not resulting from availability of the  
17 credits, the report shall include statistics concerning the mean cost,  
18 in State tax revenue forgone, of providing the credits resulting in  
19 employment of a single full-time employee in specific industries,  
20 the relative rate of increase in the number of new employees  
21 between ~~【corporations】~~ taxpayers using the credit and those not  
22 using the credit, and increases in employment in the State and the  
23 region. The director shall include in the report such further  
24 observations and recommendations about the use or administration  
25 of the credit as the director deems appropriate.

26 ~~【The State Revenue Forecasting Advisory Commission shall~~  
27 ~~prepare and transmit to the Governor and Legislature, on or before~~  
28 ~~the November 1 next following the January 1 next following the~~  
29 ~~enactment of this section and biennially on or before each second~~  
30 ~~November 1 thereafter, a report providing a cost-benefit analysis of~~  
31 ~~the credits provided under this act and the retention and stimulation~~  
32 ~~of employment in the manufacturing sector, together with its~~  
33 ~~recommendations as to whether the credits provided under this act~~  
34 ~~should remain permanent.】~~

35 (cf: P.L.1993, c.171, s.6)

36

37 14. (New section) As used in sections 14 through 17 of P.L. , c.  
38 ~~(C. ) (pending before the Legislature as this bill):~~

39 "Control," with respect to a corporation, means ownership,  
40 directly or indirectly, of stock possessing 50% or more of the total  
41 combined voting power of all classes of the stock of the corporation  
42 entitled to vote; "control," with respect to a trust, means ownership,  
43 directly or indirectly, of 50% or more of the beneficial interest in  
44 the principal or income of the trust. The ownership of stock in a  
45 corporation, of a capital or profits interest in a partnership or  
46 association or of a beneficial interest in a trust shall be determined  
47 in accordance with the rules for constructive ownership of stock  
48 provided in subsection (c) of section 267 of the federal Internal

1 Revenue Code of 1986 (26 U.S.C. s.267(c)), other than paragraph  
2 (3) of subsection (c) of that section.

3 "Controlled group" means one or more chains of corporations  
4 connected through stock ownership with a common parent  
5 corporation if stock possessing at least 50% of the voting power of  
6 all classes of stock of each of the corporations is owned directly or  
7 indirectly by one or more of the corporations; and the common  
8 parent owns directly stock possessing at least 50% of the voting  
9 power of all classes of stock of at least one of the other  
10 corporations.

11 "Full-time employee" means an employee working for the  
12 taxpayer for at least 140 hours per month at a wage not less than the  
13 State or federal minimum wage, if either minimum wage provision  
14 is applicable to the business, on a permanent basis, which does not  
15 include employment that is temporary or seasonal.

16 "Investment credit base" means the cost of qualified equipment.  
17 The cost of qualified equipment shall not include the value of  
18 equipment given in trade or exchange for the equipment purchased  
19 for business relocation or expansion. If equipment is damaged or  
20 destroyed by fire, flood, storm or other casualty, or is stolen, the  
21 cost of replacement equipment shall not include any insurance  
22 proceeds received in compensation for the loss. In the case of self-  
23 constructed equipment, the cost thereof shall be the amount  
24 properly charged to the capital account for depreciation in  
25 accordance with federal income tax law. The cost of equipment  
26 acquired by written lease is the minimum amount required by the  
27 agreement, agreements, contract or contracts to be paid over the  
28 term of the lease, provided however, that the minimum amount shall  
29 not include any amount required to be paid, as determined by the  
30 director, after the expiration of the useful life of the equipment.

31 "Number of new employees" means the increase in the average  
32 number of full-time employees and full-time employee equivalents  
33 residing and domiciled in this State employed at work locations in  
34 this State from the employment base year to the employment  
35 measurement year. The employment base year is the taxable year  
36 immediately preceding the taxable year for which the credit  
37 pursuant to sections 14 through 17 of P.L. , c. (C. ) (pending  
38 before the Legislature as this bill), is allowed, provided that if the  
39 taxpayer was not subject to tax and did not have a taxable year  
40 immediately precede the taxable year for which a credit pursuant to  
41 sections 14 through 17 <sup>1</sup>of<sup>1</sup> P.L. , c. (C. ) (pending before  
42 the Legislature as this bill), was allowed the employment base year  
43 is the taxable year in which the credit pursuant to sections 14  
44 through 17 of P.L. , c. (C. ) (pending before the Legislature  
45 as this bill), was allowed. The measurement year is the taxable year  
46 immediately following the taxable year in which the credit pursuant  
47 to sections 14 through 17 of P.L. , c. (C. ) (pending before  
48 the Legislature as this bill), was allowed. The hours of part-time

1 employees shall be aggregated to determine the number of full-time  
2 employee equivalents.

3 "Part-time employee" means an employee working for the  
4 taxpayer for at least 20 hours per week for at least six months  
5 during the taxable year.

6 "Purchase" means any acquisition of property, including an  
7 acquisition pursuant to a lease, but only if:

8 a. the property is not acquired from a person whose relationship  
9 to the person acquiring it would result in the disallowance of  
10 deductions under section 267 or subsection (b) of section 707 of the  
11 federal Internal Revenue Code of 1986 (26 U.S.C. s.267 or s.707);

12 b. the property is not acquired by one member of a controlled  
13 group from another member of the same controlled group. The  
14 director may waive this requirement if the property was acquired  
15 from a related person for its then fair market value; and

16 c. the basis of the property for federal income tax purposes, in  
17 the hands of the person acquiring it, is not determined:

18 (1) in whole or in part by reference to the federal adjusted basis  
19 of such property in the hands of the person from whom it was  
20 acquired; or

21 (2) under subsection (e) of section 1014 of the federal Internal  
22 Revenue Code of 1986 (26 U.S.C. s.1014(e)).

23 "Qualified equipment" means machinery, apparatus or equipment  
24 acquired by purchase for use or consumption by the taxpayer  
25 directly and primarily in the production of tangible personal  
26 property by manufacturing, processing, assembling or refining, as  
27 defined pursuant to subsection a. of section 25 of P.L.1980, c.105  
28 (C.54:32B-8.13), having a useful life of four or more years, placed  
29 in service in this State and machinery, apparatus or equipment  
30 acquired by purchase for use or consumption directly and primarily  
31 in the generation of electricity as defined pursuant to subsection b.  
32 of section 25 of P.L.1980, c.105 (C.54:32B-8.13) to the point of  
33 connection to the grid, or in the generation of thermal energy,  
34 having a useful life of four or more years, placed in service in this  
35 State. Qualified equipment does not include tangible personal  
36 property which the taxpayer contracts or agrees to lease or rent to  
37 another person or licenses another person to use.

38 "Related person" means:

39 a. a corporation, partnership, association or trust controlled by  
40 the taxpayer;

41 b. an individual, corporation, partnership, association or trust  
42 that is in control of the taxpayer;

43 c. a corporation, partnership, association or trust controlled by an  
44 individual, corporation, partnership, association or trust that is in  
45 control of the taxpayer; or

46 d. a member of the same controlled group as the taxpayer.

1       15. (New section) a. A taxpayer shall be allowed a credit  
2 against the tax otherwise due for the taxable year under the "New  
3 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount  
4 equal to 2% of the investment credit base of qualified equipment  
5 placed in service in the taxable year, up to a maximum allowed  
6 credit for the taxable year of \$1,000,000; provided however, that if  
7 a taxpayer has 50 or fewer employees (an average number of full-  
8 time employees and full-time employee equivalents of 50 or less)  
9 and taxable income of less than \$5,000,000 for the taxable year, the  
10 taxpayer shall be allowed a credit against the tax otherwise due for  
11 the taxable year under the "New Jersey Gross Income Tax Act,"  
12 N.J.S.54A:1-1 et seq., in an amount equal to 4% of the investment  
13 credit base of qualified equipment placed in service in the taxable  
14 year, up to a maximum allowed credit for the taxable year of  
15 \$1,000,000.

16       b. The tax imposed for the taxable year pursuant to  
17 N.J.S.54A:1-1 et seq., shall first be reduced by the amount of any  
18 credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-  
19 78), then by any credit allowed pursuant to section 12 of P.L.1985,  
20 c.227 (C.55:19-13), prior to applying any credits allowable pursuant  
21 to this section. Credits allowable pursuant to this section shall be  
22 applied in the order of the credits' taxable years. The amount of the  
23 credits applied under this section and section 16 of P.L. , c.  
24 (C. ) (pending before the Legislature as this bill), against the  
25 tax imposed pursuant to N.J.S.54A:1-1 et seq., for a taxable year  
26 shall not exceed 50% of the tax liability otherwise due.

27       c. The amount of taxable year credit otherwise allowable under  
28 subsection a. of this section which cannot be applied for the taxable  
29 year due to the limitations of subsection b. of this section may be  
30 carried over, if necessary, to the seven taxable years following a  
31 credit's taxable year.

32       d. (1) With respect to equipment that is three-year property, as  
33 described in subsection (e) of section 168 of the federal Internal  
34 Revenue Code of 1986 (26 U.S.C. s.168), which is disposed of or  
35 ceases to be qualified equipment prior to the end of the 36-month  
36 period following being placed in service in this State, the amount of  
37 credit allowed shall be that portion of the credit provided for in  
38 subsection a. of this section which represents the ratio which the  
39 months of qualified use bear to 36, and the difference between the  
40 credit taken and the credit allowed for actual use shall be forfeited.  
41 Additionally, except when the property is damaged or destroyed by  
42 fire, flood, storm or other casualty, or is stolen, the taxpayer shall  
43 redetermine the amount of credit allowed for the taxable year of the  
44 credit by reducing the investment credit base by the cost of the  
45 amount of the disposed or disqualified equipment. If the  
46 redetermination of the credit results in an increase in final liability  
47 for any taxable year in which the credit was applied, then,  
48 notwithstanding the three year limitation of N.J.S.54A:9-4, the

1 amount of unpaid liability, if any, shall be considered a deficiency.  
2 The amount of credit allowed for actual use shall be determined by  
3 multiplying the original credit by the ratio which the months of  
4 qualified use bear to 36.

5 (2) With respect to property other than that described in  
6 subparagraph (1) of this subsection which is disposed of or ceases  
7 to be qualified equipment prior to the end of the 60-month period  
8 following being placed in service in this State, the amount of credit  
9 allowed shall be that portion of the credit provided for in subsection  
10 a. of this section which represents the ratio which the months of  
11 qualified use bear to 60, and the difference between the credit taken  
12 and the credit allowed for actual use shall be forfeited.  
13 Additionally, except when the property is damaged or destroyed by  
14 fire, flood, storm or other casualty, or is stolen, the taxpayer shall  
15 redetermine the amount of credit allowed for the taxable year of the  
16 credit by reducing the investment credit base by the cost of the  
17 amount of the disposed or disqualified equipment. If the  
18 redetermination of the credit results in an increase in final liability  
19 for any taxable year in which the credit was applied, then,  
20 notwithstanding the three year limitation of N.J.S.54A:9-4, the  
21 amount of unpaid liability, if any, shall be considered a deficiency.  
22 The amount of credit allowed for actual use shall be determined by  
23 multiplying the original credit by the ratio which the months of  
24 qualified use bear to 60.

25

26 16. (New section) a. A taxpayer allowed a credit under section  
27 15 of P.L. , c. (C. ) (pending before the Legislature as this  
28 bill), with respect to the investment credit base, shall be allowed a  
29 credit for the increase in employment by the taxpayer determined by  
30 the number of new employees for each of the two taxable years next  
31 succeeding the taxable year for which the credit under section 15 of  
32 P.L. , c. (C. ) (pending before the Legislature as this bill), is  
33 allowed, in an amount equal to 3% of the investment credit base,  
34 not to exceed a maximum allowed amount for each of the two  
35 taxable years of \$1,000 multiplied by the number of new  
36 employees.

37 b. The tax imposed for the taxable year pursuant to  
38 N.J.S.54A:1-1 et seq., shall first be reduced by the amount of any  
39 credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-  
40 78), then by any credit allowed pursuant to section 12 of P.L.1985,  
41 c.227 (C.55:19-13), and then by any credit allowed pursuant to  
42 section 15 of P.L. , c. (C. ) (pending before the Legislature  
43 as this bill), prior to applying any credits allowable pursuant to this  
44 section. Credits allowable pursuant to this section shall be applied  
45 in the order of the taxable year of the credit allowed pursuant to  
46 section 15 of P.L. , c. (C. ) (pending before the Legislature  
47 as this bill), to which the credit under this section relates and then  
48 by the order of the credits' taxable years. The amount of the credits

1 applied under this section and section 15 of P.L. , c. (C. )  
2 (pending before the Legislature as this bill), against the tax imposed  
3 pursuant to N.J.S.54A:1-1 et seq., for a taxable year shall not  
4 exceed 50% of the tax liability otherwise due.

5 c. The amount of taxable year credit otherwise allowable under  
6 subsection a. of this section which cannot be applied for the taxable  
7 year due to the limitations of subsection b. of this section may be  
8 carried over, if necessary, to the seven taxable years following a  
9 credit's taxable year.

10 d. (1) With respect to equipment that is three-year property, as  
11 described in subsection (e) of section 168 of the federal Internal  
12 Revenue Code of 1986 (26 U.S.C. s.168), which is disposed of or  
13 ceases to be qualified equipment prior to the end of the  $36\frac{1}{2}$  month  
14 period following being placed in service in this State, the amount of  
15 credit allowed shall be that portion of the credit provided for in  
16 subsection a. of this section which represents the ratio which the  
17 months of qualified use bear to 36, and the difference between the  
18 credit taken and the credit allowed for actual use shall be forfeited.  
19 Additionally, except when the property is damaged or destroyed by  
20 fire, flood, storm or other casualty, or is stolen, the taxpayer shall  
21 redetermine the amount of credit allowed for the taxable year of the  
22 credit by reducing the investment credit base by the cost of the  
23 amount of the disposed or disqualified equipment. If the  
24 redetermination of the credit results in an increase in final liability  
25 for any taxable year in which the credit was applied, then,  
26 notwithstanding the three year limitation of N.J.S.54A:9-4, the  
27 amount of unpaid liability, if any, shall be considered a deficiency.  
28 The amount of credit allowed for actual use shall be determined by  
29 multiplying the original credit by the ratio which the months of  
30 qualified use bear to 36.

31 (2) With respect to property other than that described in  
32 subparagraph (1) of this subsection which is disposed of or ceases  
33 to be qualified equipment prior to the end of the  $60\frac{1}{2}$  month period  
34 following being placed in service in this State, the amount of credit  
35 allowed shall be that portion of the credit provided for in subsection  
36 a. of this section which represents the ratio which the months of  
37 qualified use bear to 60, and the difference between the credit taken  
38 and the credit allowed for actual use shall be forfeited.  
39 Additionally, except when the property is damaged or destroyed by  
40 fire, flood, storm or other casualty, or is stolen, the taxpayer shall  
41 redetermine the amount of credit allowed for the taxable year of the  
42 credit by reducing the investment credit base by the cost of the  
43 amount of the disposed or disqualified equipment. If the  
44 redetermination of the credit results in an increase in final liability  
45 for any taxable year in which the credit was applied, then,  
46 notwithstanding the three year limitation of N.J.S.54A:9-4, the  
47 amount of unpaid liability, if any, shall be considered a deficiency.  
48 The amount of credit allowed for actual use shall be determined by

1 multiplying the original credit by the ratio which the months of  
2 qualified use bear to 60.

3 **'[(cf: P.L.1993, c.171, s.4)]'**

4

5 17. (New section) a. A taxpayer that claims credit under  
6 sections 14 through 16 of P.L. , c. (C. ) (pending before the  
7 Legislature as this bill) shall maintain sufficient records to establish  
8 the following facts for each item of qualified equipment:

9 (1) its identity;

10 (2) its actual or reasonably determined cost;

11 (3) its useful depreciation life;

12 (4) the month and taxable year in which it was placed in service;

13 (5) the amount of credit taken; and

14 (6) the date it was disposed of or otherwise ceased to be  
15 qualified equipment.

16 b. A taxpayer that does not keep records required for  
17 identification of qualified equipment shall be treated as having  
18 disposed of, during the taxable year, any qualified equipment which  
19 the taxpayer cannot establish was still on hand in this State at the  
20 end of that year.

21 c. If a taxpayer cannot establish when qualified equipment  
22 reported for purposes of claiming this credit during a taxable year  
23 was placed in service, the taxpayer shall be treated as having placed  
24 it in service in the most recent prior taxable year in which similar  
25 property was placed in service unless the taxpayer can establish that  
26 the property placed in service in the most recent taxable year is still  
27 on hand. In that event, the taxpayer shall be treated as having  
28 placed the property in service in the next most recent taxable year.

29 d. The burden of proof shall be on a taxpayer to establish by a  
30 preponderance of the evidence that the taxpayer is entitled to the  
31 credit allowed pursuant to sections 14 through 16 of P.L. , c.  
32 (C. ) (pending before the Legislature as this bill).

33 **'[(cf: P.L.1993, c.171, s.5)]'**

34

35 18. Section 1 of P.L.2001, c.321 (C.54:10A-5.31) is amended to  
36 read as follows:

37 1. a. (1) A taxpayer who in a privilege period purchases  
38 treatment equipment or conveyance equipment for use exclusively  
39 within this State, shall be allowed a credit as provided herein  
40 against the tax imposed for that privilege period pursuant to section  
41 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 50% of  
42 the cost of the treatment equipment or conveyance equipment less  
43 the amount of any loan received pursuant to section 5 of P.L.1981,  
44 c.278 (C.13:1E-96) and excluding the amount of any sales and use  
45 tax paid pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), provided  
46 that the Commissioner of the Department of Environmental  
47 Protection has issued a determination under subsection b. of this  
48 section that the operation of the system of equipment and the reuse

1 of wastewater effluent that results therefrom are or will be  
2 beneficial to the environment. The amount of the credit claimed for  
3 the privilege period in which the purchase of treatment equipment  
4 or conveyance equipment is made, and the amount of credit claimed  
5 therefor in each privilege period thereafter, shall not exceed 20% of  
6 the amount of the total credit allowable, shall not, together with any  
7 other credits allowed by law, exceed 50% of the tax liability which  
8 would be otherwise due, and shall not reduce the amount of tax  
9 liability to less than the statutory minimum provided in subsection  
10 (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). An unused credit  
11 amount may be carried forward, if necessary, for use in future  
12 privilege periods. Notwithstanding any other provision of law, the  
13 order of priority in which the credit allowed under this section and  
14 any other credits allowed by law may be taken shall be as  
15 prescribed by the director.

16 A taxpayer who, in a privilege period, purchased treatment  
17 equipment or conveyance equipment, but who did not receive  
18 approval of an application for determination pursuant to subsection  
19 b. of this section before filing a return for that privilege period,  
20 may, in accordance with the provisions of the State Tax Uniform  
21 Procedure Law, R.S.54:48-1 et seq., and subject to the provisions of  
22 this section, file with the director a claim for the credit for that  
23 privilege period and any subsequent privilege period, as  
24 appropriate.

25 For the purposes of this section, "treatment equipment" means  
26 any equipment that is used exclusively to treat effluent from a  
27 primary wastewater treatment facility, which effluent would  
28 otherwise have been discharged into the waters of the State, for  
29 purposes of reuse in an industrial process thereafter, and  
30 "conveyance equipment" means any equipment that is used  
31 exclusively to transport that effluent to the facility in which the  
32 treatment equipment has been or is to be installed and to transport  
33 the product of that further treatment to the site of that reuse.

34 (2) ~~If a person who purchases treatment equipment or  
35 conveyance equipment for which the Commissioner of the  
36 Department of Environmental Protection has issued a determination  
37 of environmentally beneficial operation pursuant to subsection b. of  
38 this section is a partnership, limited liability company, or other  
39 person classified as a partnership for federal tax purposes and not  
40 subject to the tax imposed pursuant to section 5 of P.L.1945, c.162  
41 (C.54:10A-5), a portion of the amount of the credit otherwise  
42 allowed to the purchaser pursuant to paragraph (1) of this  
43 subsection shall be allowed to each owner of that purchaser that is  
44 subject to the tax in proportion to the owner's share of the income of  
45 the purchaser. The purchaser shall be treated as the taxpayer for the  
46 purpose of administering the provisions of this section]~~ Deleted by  
47 amendment, P.L. , c. ) (pending before the Legislature as this  
48 bill).

1       b. In order to qualify for the tax credit pursuant to subsection a.  
2 of this section, the taxpayer shall apply for a determination from the  
3 Commissioner of the Department of Environmental Protection that  
4 the equipment with respect to which the credit is sought (1) is  
5 qualifies as treatment equipment or conveyance equipment as  
6 defined in subsection a. of this section, and (2) is or will be in its  
7 operation, considered in conjunction with the reuse of the further  
8 treated wastewater effluent that results from that operation,  
9 beneficial to the environment. The application shall be submitted in  
10 writing in a form as the commissioner shall prescribe and shall  
11 specifically include; the date or anticipated date of purchase of the  
12 equipment, a physical and functional description of the equipment,  
13 the cost, the name and address or location of each primary  
14 wastewater treatment facility from which effluent is or is to be  
15 received for further treatment, the name and address or location of  
16 each facility to which the effluent is or is to be conveyed after the  
17 further treatment for reuse, the nature of the reuse, the location of  
18 any site at which the wastewater that has been or is to be further  
19 treated is being or is to be discharged either prior to or after reuse,  
20 the volume of such wastewater that is or is to be reused, the portion  
21 of that volume that is or is to be consumed in that reuse and the  
22 portion thereof that is or is to be discharged thereafter, and the  
23 taxpayer's explanation of how the operation of the system and the  
24 reuse of the wastewater effluent that has been further treated are or  
25 will be beneficial to the environment. The application shall also  
26 include the taxpayer's affidavit that, to the best of the taxpayer's  
27 knowledge, the equipment has not previously qualified for a credit  
28 pursuant to this section either for the taxpayer or other owner or for  
29 a previous owner.

30       Upon approval of the application, the Commissioner of the  
31 Department of Environmental Protection shall submit a copy of the  
32 determination of equipment qualification and environmentally  
33 beneficial operation to the taxpayer and the Director of the Division  
34 of Taxation. When filing a tax return that includes a claim for a  
35 credit pursuant to this section, the taxpayer shall include a copy of  
36 the determination and the taxpayer's affidavit that the treatment  
37 equipment or conveyance equipment is or will be used exclusively  
38 in New Jersey. Any credit shall be initially allowed for the  
39 privilege period in which the equipment is purchased, and any  
40 unused portion thereof may be carried forward into subsequent  
41 privilege periods as provided in subsection a. of this section.

42       The Commissioner of the Department of Environmental  
43 Protection, in consultation with the Director of the Division of  
44 Taxation, shall adopt rules and regulations establishing technical  
45 and administrative requirements for the qualification of treatment  
46 equipment and conveyance equipment, and for the determination  
47 that the operation of a system of such equipment and the reuse of  
48 wastewater effluent that has been treated thereby are beneficial to

1 the environment, for the purpose of establishing a taxpayer's  
2 eligibility for a credit pursuant to this section. In the development  
3 and adoption of the rules and regulations prescribed under this act  
4 and of any procedure for making application for a credit under  
5 subsection a. of this section, the commissioner, in consultation with  
6 the director, shall to the greatest extent possible ensure that they are  
7 consolidated or consistent with any corresponding rules,  
8 regulations, and procedures established under [P.L. , c. (C. ) (now  
9 pending before the Legislature as Senate Bill No. 1210 (1R) and  
10 Assembly Bill No. 2695 of 2000) and] P.L.2001, c.322.

11 c. No amount of cost included in calculation of the credit  
12 allowed under this section shall be included in the costs for  
13 calculation of any other credit against the tax imposed pursuant to  
14 section 5 of P.L.1945, c.162 (C.54:10A-5).

15 d. On or before January 31 of each year, the Commissioner of  
16 the Department of Environmental Protection shall submit a report to  
17 the Governor, the State Treasurer, and the Legislature, in  
18 accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1),  
19 setting forth the number of taxpayer applications under subsection  
20 b. of this section and subsection b. of section 19 of P.L. , c.  
21 (C. ) (pending before the Legislature as this bill) that were  
22 approved during the preceding calendar year and the cost of each  
23 type of equipment which has been determined to qualify for the  
24 credit.

25 (cf: P.L.2001, c.321, s.1)

26

27 19. (New section) a. A taxpayer who in a taxable year purchases  
28 treatment equipment or conveyance equipment for use exclusively  
29 within this State, shall be allowed a credit as provided herein  
30 against the tax imposed for that taxable year pursuant to  
31 N.J.S.54A:1-1 et seq., in an amount equal to 50% of the cost of the  
32 treatment equipment or conveyance equipment less the amount of  
33 any loan received pursuant to section 5 of P.L.1981, c.278  
34 (C.13:1E-96) and excluding the amount of any sales and use tax  
35 paid pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), provided that  
36 the Commissioner of the Department of Environmental Protection  
37 has issued a determination under subsection b. of this section that  
38 the operation of the system of equipment and the reuse of  
39 wastewater effluent that results therefrom are or will be beneficial  
40 to the environment. The amount of the credit claimed for the  
41 taxable year in which the purchase of treatment equipment or  
42 conveyance equipment is made, and the amount of credit claimed  
43 therefor in each taxable year thereafter, shall not exceed 20% of the  
44 amount of the total credit allowable, shall not, together with any  
45 other credits allowed by law, exceed 50% of the tax liability which  
46 would be otherwise due. An unused credit amount may be carried  
47 forward, if necessary, for use in future taxable years.  
48 Notwithstanding any other provision of law, the order of priority in

1 which the credit allowed under this section and any other credits  
2 allowed by law may be taken shall be as prescribed by the director.

3 A taxpayer who, in a taxable year, purchased treatment  
4 equipment or conveyance equipment, but who did not receive  
5 approval of an application for determination pursuant to subsection  
6 b. of this section before filing a return for that taxable year, may, in  
7 accordance 'with' this section, file with the director a claim for the  
8 credit for that taxable year and any subsequent taxable year, as  
9 appropriate.

10 For the purposes of this section, "treatment equipment" means  
11 any equipment that is used exclusively to treat effluent from a  
12 primary wastewater treatment facility, which effluent would  
13 otherwise have been discharged into the waters of the State, for  
14 purposes of reuse in an industrial process thereafter, and  
15 "conveyance equipment" means any equipment that is used  
16 exclusively to transport that effluent to the facility in which the  
17 treatment equipment has been or is to be installed and to transport  
18 the product of that further treatment to the site of that reuse.

19 b. In order to qualify for the tax credit pursuant to subsection a.  
20 of this section, the taxpayer shall apply for a determination from the  
21 Commissioner of the Department of Environmental Protection that  
22 the equipment with respect to which the credit is sought (1) qualifies  
23 as treatment equipment or conveyance equipment as defined in subsection a. of this section, and (2) is or will be in its operation,  
24 considered in conjunction with the reuse of the further treated  
25 wastewater effluent that results from that operation, beneficial  
26 to the environment. The application shall be submitted in writing  
27 in a form as the commissioner shall prescribe and shall specifically  
28 include; the date or anticipated date of purchase of the equipment,  
29 a physical and functional description of the equipment, the cost,  
30 the name and address or location of each primary wastewater  
31 treatment facility from which effluent is or is to be received for  
32 further treatment, the name and address or location of each facility  
33 to which the effluent is or is to be conveyed after the further  
34 treatment for reuse, the nature of the reuse, the location of any site  
35 at which the wastewater that has been or is to be further treated  
36 is being or is to be discharged either prior to or after reuse, the  
37 volume of such wastewater that is or is to be reused, the portion  
38 of that volume that is or is to be consumed in that reuse and the  
39 portion thereof that is or is to be discharged thereafter, and the  
40 taxpayer's explanation of how the operation of the system and the  
41 reuse of the wastewater effluent that has been further treated are or  
42 will be beneficial to the environment. The application shall also  
43 include the taxpayer's affidavit that, to the best of the taxpayer's  
44 knowledge, the equipment has not previously qualified for a credit  
45 pursuant to this section either for the taxpayer or other owner or for  
46 a previous owner.

1       Upon approval of the application, the Commissioner of the  
2       Department of Environmental Protection shall submit a copy of the  
3       determination of equipment qualification and environmentally  
4       beneficial operation to the taxpayer and the Director of the Division  
5       of Taxation. When filing a tax return that includes a claim for a  
6       credit pursuant to this section, the taxpayer shall include a copy of  
7       the determination and the taxpayer's affidavit that the treatment  
8       equipment or conveyance equipment is or will be used exclusively  
9       in New Jersey. Any credit shall be initially allowed for the privilege  
10      period in which the equipment is purchased, and any unused portion  
11      thereof may be carried forward into subsequent privilege periods as  
12      provided in subsection a. of this section.

13      The Commissioner of the Department of Environmental  
14      Protection, in consultation with the Director of the Division of  
15      Taxation, shall adopt rules and regulations establishing technical  
16      and administrative requirements for the qualification of treatment  
17      equipment and conveyance equipment, and for the determination  
18      that the operation of a system of such equipment and the reuse of  
19      wastewater effluent that has been treated thereby are beneficial to  
20      the environment, for the purpose of establishing a taxpayer's  
21      eligibility for a credit pursuant to this section. In the development  
22      and adoption of the rules and regulations prescribed under this  
23      section and of any procedure for making application for a credit  
24      under subsection a. of this section, the commissioner, in  
25      consultation with the director, shall to the greatest extent possible  
26      ensure that they are consolidated or consistent with any  
27      corresponding rules, regulations, and procedures established under  
28      P.L.2001, c.321 and P.L.2001, c.322.

29      c. No amount of cost included in calculation of the credit  
30      allowed under this section shall be included in the costs for  
31      calculation of any other tax credit.

32

33      20. (New section) a. A taxpayer, upon application to the  
34      Director of the Division of Taxation in the Department of the  
35      Treasury and the New Jersey Economic Development Authority,  
36      shall be allowed a credit against the tax imposed pursuant to section  
37      N.J.S.54A:1-1 et seq., in an amount up to 20 percent, as determined  
38      by the authority<sup>1,1</sup> of the qualified digital media content production  
39      expenses of the taxpayer during a taxable year commencing after  
40      the effective date of P.L. , c. (C. ) (pending before the  
41      Legislature as this bill), provided that at least \$2,000,000 of the  
42      total digital media content production expenses of the taxpayer will  
43      be incurred for services performed and goods used or consumed in  
44      New Jersey and at least a significant percentage, as determined by  
45      the authority, of the qualified digital media content production  
46      expenses of the taxpayer will include wages and salaries paid to one  
47      or more new full-time employees in New Jersey. For purposes of  
48      this subsection, "new full-time employee" means a person

1 employed by the taxpayer for consideration for at least 35 hours a  
2 week, or who renders any other standard of service generally  
3 accepted by custom or practice as full-time employment, whose  
4 wages are subject to withholding as provided in the “New Jersey  
5 Gross Income Tax Act,” N.J.S.54A:1-1 et seq., or who is a partner  
6 of a taxpayer that is an eligible partnership, who works for the  
7 partnership for at least 35 hours a week, or who renders any other  
8 standard of service generally accepted by custom or practice as full-  
9 time employment, and whose distributive share of income, gain,  
10 loss, or deduction, or whose guaranteed payments, or any  
11 combination thereof, is subject to the payment of estimated taxes, as  
12 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1  
13 et seq., and who is determined by the authority to work in a newly  
14 created permanent position according to criteria it develops.

15 “New full-time employee” shall not include any person who  
16 works as an independent contractor or on a consulting basis for the  
17 taxpayer. In determining the amount of any grant of tax credits  
18 made pursuant to this subsection, the authority shall consider the  
19 number of new full-time positions created by the taxpayer as well as  
20 the quality of the full-time positions created, including but not  
21 limited to the salaries and benefits provided to new full<sup>1-1</sup>time  
22 employees. The authority, in consultation with the Division of  
23 Taxation, shall establish rules for the recapture of all, or a portion  
24 of, the grant of tax credits pursuant to this subsection in the event  
25 the taxpayer fails to maintain the new full-time positions that were  
26 included in calculating the qualified digital media content  
27 production expenses of the taxpayer.

28 b. The amount of the credit applied under this section against the  
29 tax imposed pursuant to N.J.S.54A:1-1 et seq., for a taxable year,  
30 when taken together with any other credits allowed against the tax  
31 imposed pursuant to N.J.S.54A:1-1 et seq., shall not exceed 50  
32 percent of the tax liability otherwise due. The priority in which  
33 credits allowed pursuant to this section and any other credits shall  
34 be taken shall be as determined by the Director of the Division of  
35 Taxation. The amount of the credit otherwise allowable under this  
36 section which cannot be applied for the taxable year due to the  
37 limitations of this subsection or under other provisions of  
38 N.J.S.54A:1-1 et seq. may be carried over, if necessary, to the seven  
39 taxable years following the taxable year for which the credit was  
40 allowed.

41 c. A taxpayer may, with an application for a credit provided for  
42 in subsection a. of this section, apply to the director and the  
43 executive director of the authority for a tax credit transfer certificate  
44 in lieu of the taxpayer being allowed any amount of the credit  
45 against the tax liability of the taxpayer. The director and the  
46 executive director of the authority may consult with the New Jersey  
47 Motion Picture and Television Development Commission in  
48 consideration of any application for approval of a tax credit or tax

1 credit transfer certificate under this section. The tax credit transfer  
2 certificate, upon receipt thereof by the taxpayer from the director  
3 and the authority, may be sold or assigned, in full or in part, to any  
4 other taxpayer that may have a tax liability under P.L.1945, c.162  
5 or N.J.S.54A:1-1 et seq., in exchange for private financial  
6 assistance to be provided by the purchaser or assignee to the  
7 taxpayer that has applied for and been granted the credit. The  
8 certificate provided to the taxpayer shall include a statement  
9 waiving the taxpayer's right to claim that amount of the credit  
10 against the tax imposed pursuant to N.J.S.54A:1-1 et seq., that the  
11 taxpayer has elected to sell or assign. The sale or assignment of any  
12 amount of a tax credit transfer certificate allowed under this section  
13 shall not be exchanged for consideration received by the taxpayer of  
14 less than 75% of the transferred credit amount. Any amount of a tax  
15 credit transfer certificate used by a purchaser or assignee against a  
16 tax liability under N.J.S.54A:1-1 et seq., shall be subject to the  
17 same limitations and conditions that apply to the use of a credit  
18 pursuant to subsection b. of this section. Any amount of a tax credit  
19 transfer certificate obtained by a purchaser or assignee under  
20 subsection a. of this section may be applied against the purchaser's  
21 or assignee's tax liability under P.L.1945, c.162 and shall be subject  
22 to the same limitations and conditions that apply to the use of a  
23 credit pursuant to section 1 of P.L.2005, c.345, (C.54:10A-5.39).

24 d. As used in this section:

25 "Digital media content" means any data or information that is  
26 produced in digital form, including data or information created in  
27 analog form but reformatted in digital form, text, graphics,  
28 photographs, animation, sound and video content. "Digital media  
29 content" does not mean content offerings generated by the end user  
30 (including postings on electronic bulletin boards and chat rooms);  
31 content offerings comprised primarily of local news, events,  
32 weather or local market reports; public service content; electronic  
33 commerce platforms (such as retail and wholesale websites);  
34 websites or content offerings that contain obscene material as  
35 defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or  
36 content that are produced or maintained primarily for private,  
37 industrial, corporate or institutional purposes; or digital media  
38 content acquired or licensed by the taxpayer for distribution or  
39 incorporation into the taxpayer's digital media content.

40 "Qualified digital media content production expenses" means an  
41 expense incurred in New Jersey for the production of digital media  
42 content. Qualified digital media content production expenses shall  
43 include but shall not be limited to wages and salaries of individuals  
44 employed in the production of digital media content on which the  
45 tax imposed by the "New Jersey Gross Income Tax Act,"  
46 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of computer  
47 software and hardware, data processing, visualization technologies,  
48 sound synchronization, editing, and the rental of facilities and

1 equipment. Qualified digital media content production expenses  
2 shall not include expenses incurred in marketing, promotion or  
3 advertising digital media or other costs not directly related to the  
4 production of digital media content. Costs related to the acquisition  
5 or licensing of digital media content by the taxpayer for distribution  
6 or incorporation into the taxpayer's digital media content shall not  
7 be qualified digital media content production expenses.

8 "Total digital media content production expenses" means costs  
9 for services performed and property used or consumed in the  
10 production of digital media content.

11 e. The Director of the Division of Taxation in the Department of  
12 the Treasury, in consultation with the New Jersey Motion Picture  
13 and Television Development Commission and the New Jersey  
14 Economic Development Authority, shall adopt rules in accordance  
15 with the "Administrative Procedure Act," P.L.1968, c.410  
16 (C.52:14B-1 et seq.), as are necessary to implement this section  
17 including examples of digital media content production expenses  
18 and the procedures and forms to apply for a credit and for a tax  
19 credit transfer certificate necessary for a taxpayer to sell or assign  
20 an amount of tax credit under this section. The tax credit transfer  
21 certificate program shall be administered pursuant to the rules and  
22 limitations of subsection f. of section 1 of P.L.2005, c.345  
23 (C.54:10A-5.39) and subsection f. of section 2 of P.L.2005, c.345  
24 (C.54A:4-12).

25 f. For the purpose of determining eligibility for or the amount of  
26 any grant of tax credits pursuant to this section, the authority shall  
27 not include any job that is included in the calculation of a business  
28 employment incentive grant pursuant to the provisions of P.L.1996,  
29 c.26 (C.34:1B-124 et al.) or a business retention and relocation  
30 grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.).

31  
32 21. (New section) a. A taxpayer shall be allowed a credit, subject  
33 to the provisions of subsection b. of this section, against the tax  
34 imposed pursuant to 'the' "New Jersey Gross Income Tax Act,"  
35 N.J.S.54A:1-1 et seq., in an amount equal to

36 (1) 10% of the excess of the qualified research expenses for the  
37 taxable year over the base amount; and

38 (2) 10% of the basic research payments for the taxable year  
39 determined in accordance with section 41 of the federal Internal  
40 Revenue Code of 1986 (26 U.S.C. s.41), as in effect on June 30,  
41 1992, and provided that subsection (h) of 26 U.S.C. s.41 relating to  
42 termination shall not apply. Provided however, that the terms  
43 "qualified research expenses," "base amount," "qualified  
44 organization base amount period," "basic research" and any other  
45 terms determined by the Director of the Division of Taxation to  
46 affect the calculation of the credit shall include only expenditures  
47 for research conducted in this State.

1       b. No credit shall be allowed under this section for property or  
2 expenditures for which another credit is allowed under any other  
3 section of N.J.S.54A:1-1 et seq.

4       The order of priority of the application of the credit allowed  
5 pursuant to this section and any other credits allowed by law shall  
6 be as prescribed by the director. Credits allowable pursuant to this  
7 section shall be applied in the order of the taxable years for which  
8 the credits were allowed.

9       The amount of credit otherwise allowable under this section  
10 which cannot be applied for the taxable year due to the limitations  
11 of this subsection may be carried over, if necessary, to the seven  
12 taxable years following a credit's taxable year.

13       c. Notwithstanding the provisions of subsections a. and b. of this  
14 section to the contrary, a taxpayer that has acquired a gross income  
15 tax benefit certificate pursuant to the provisions of section 1 of  
16 P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a  
17 research and development tax credit carryover shall attach that  
18 certificate to any return the taxpayer is required to file under  
19 N.J.S.54A:1-1 et seq., and shall otherwise apply the credit carryover  
20 as evidenced by the certificate according to the provisions of  
21 subsections a. and b. of this section and any rules or regulations the  
22 director may adopt to carry out the provisions of this section.

23       A new or expanding emerging technology or biotechnology  
24 business that has surrendered an unused research and development  
25 tax credit carryover pursuant to the provisions of section 1 of  
26 P.L.1997, c.334 (C.34:1B-7.42a), shall not be allowed a research  
27 and development tax credit carryover based upon the right to such a  
28 credit carryover as evidenced by the gross income tax benefit  
29 certificate and shall attach a copy of the certificate to any return the  
30 taxpayer is required to file under N.J.S.54A:1-1 et seq.

31       d. Notwithstanding the provisions of subsections a. and b. of this  
32 section to the contrary, a taxpayer that has been allowed a credit  
33 pursuant to subsections a. and b. of this section for the taxable year  
34 in which the qualified research expenses have been incurred, and  
35 basic research payments have been made, for research conducted in  
36 this State in the fields of advanced computing, advanced materials,  
37 biotechnology, electronic device technology, environmental  
38 technology, and medical device technology, shall be allowed to  
39 carry over the amount of the taxable year credit which cannot be  
40 applied for the taxable year to each of the 15 taxable years  
41 following the credit's taxable year.

42       e. As used in this section:

43       "Advanced computing" means a technology used in the  
44 designing and developing of computing hardware and software,  
45 including innovations in designing the full spectrum of hardware  
46 from hand-held calculators to super computers, and peripheral  
47 equipment;

1        "Advanced materials" means materials with engineered  
2 properties created through the development of specialized  
3 processing and synthesis technology, including ceramics, high  
4 value-added metals, electronic materials, composites, polymers, and  
5 biomaterials;

6        "Biotechnology" means the continually expanding body of  
7 fundamental knowledge about the functioning of biological systems  
8 from the macro level to the molecular and sub-atomic levels, as  
9 well as novel products, services, technologies and sub-technologies  
10 developed as a result of insights gained from research advances  
11 which add to that body of fundamental knowledge;

12        "Electronic device technology" means a technology involving  
13 microelectronics, semiconductors, electronic equipment, and  
14 instrumentation, radio frequency, microwave, and millimeter  
15 electronics, and optical and optic-electrical devices, or data and  
16 digital communications and imaging devices;

17        "Environmental technology" means assessment and prevention of  
18 threats or damage to human health or the environment,  
19 environmental cleanup, or the development of alternative energy  
20 sources; and

21        "Medical device technology" means a technology involving any  
22 medical equipment or product (other than a pharmaceutical product)  
23 that has therapeutic value, diagnostic value, or both, and is  
24 regulated by the federal Food and Drug Administration.

25

26        22. Section 1 of P.L.1997, c.334 (C.34:1B-7.42a) is amended to  
27 read as follows:

28        1. a. The New Jersey Economic Development Authority shall  
29 establish within the New Jersey Emerging Technology and  
30 Biotechnology Financial Assistance Program established pursuant  
31 to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a **【corporation business】**  
32 tax benefit certificate transfer program to allow new or expanding  
33 emerging technology and biotechnology **【companies】** **businesses** in  
34 this State with unused amounts of research and development tax  
35 credits otherwise allowable which cannot be applied for the credit's  
36 tax year due to the limitations of subsection b. of section 1 of  
37 P.L.1993, c.175 (C.54:10A-5.24) or subsection b. of section 21 of  
38 P.L. , c. (C. ) (pending before the Legislature as this bill)  
39 and unused net operating loss carryover pursuant to subparagraph  
40 (B) of paragraph (6) of subsection (k) of section 4 of P.L.1945,  
41 c.162 (C.54:10A-4), to surrender those tax benefits for use by other  
42 **【corporation business】** taxpayers in this State, provided that the  
43 taxpayer receiving the surrendered tax benefits is not affiliated with  
44 **【a corporation】** **the taxpayer** that is surrendering its tax benefits  
45 under the program established under P.L.1997, c.334. For the  
46 purposes of this section, the test of affiliation is whether the same  
47 entity directly or indirectly owns or controls 5% or more of the  
48 voting rights or 5% or more of the value of all classes of stock of

1 both the taxpayer receiving the benefits and a corporation that is  
2 surrendering the benefits or a related taxpayer pursuant to section  
3 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. 267).  
4 The tax benefits may be used on the corporation business tax or  
5 gross income tax returns to be filed by those taxpayers in exchange  
6 for private financial assistance to be provided by the corporation  
7 business taxpayer or gross income taxpayer that is the recipient of  
8 the **[corporation business]** tax benefit certificate to assist in the  
9 funding of costs incurred by the new or expanding emerging  
10 technology and biotechnology **[company]** business.

11 b. The authority, in cooperation with the Division of Taxation in  
12 the Department of the Treasury, shall review and approve  
13 applications by new or expanding emerging technology and  
14 biotechnology **[companies]** businesses in this State with unused but  
15 otherwise allowable carryover of research and development tax  
16 credits pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) or  
17 section 21 of P.L. , c. (C. ) (pending before the Legislature  
18 as this bill), and unused but otherwise allowable net operating loss  
19 carryover pursuant to paragraph (6) of subsection (k) of section 4 of  
20 P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits in  
21 exchange for private financial assistance to be made by the  
22 corporation business taxpayer or gross income taxpayer that is the  
23 recipient of the **[corporation business]** tax benefit certificate in an  
24 amount equal to at least 80% of the amount of the surrendered tax  
25 benefit. Provided that the amount of the surrendered tax benefit for  
26 a surrendered research and development tax credit carryover is the  
27 amount of the credit, and provided that the amount of the  
28 surrendered tax benefit for a surrendered net operating loss  
29 carryover is the amount of the loss multiplied by the new or  
30 expanding emerging technology or biotechnology **[company's]**  
31 business' anticipated allocation factor, as determined pursuant to  
32 section 6 of P.L.1945, c.162 (C.54:10A-6) or the regulations  
33 adopted pursuant to N.J.S.54A:5-7, as appropriate, for the tax year  
34 in which the benefit is transferred and subsequently multiplied by  
35 the maximum corporation business tax rate provided pursuant to  
36 subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) or the  
37 maximum tax rate provided by N.J.S.54A:2-1, as appropriate. The  
38 authority shall be authorized to approve the transfer of no more than  
39 \$60,000,000 of tax benefits in a State fiscal year. If the total amount  
40 of transferable tax benefits requested to be surrendered by approved  
41 applicants exceeds \$60,000,000 for a State fiscal year, the authority,  
42 in cooperation with the Division of Taxation in the Department of  
43 the Treasury, shall not be authorized to approve the transfer of more  
44 than \$60,000,000 for that State fiscal year and shall allocate the  
45 transfer of tax benefits by approved companies using the following  
46 method:

1       (1) an eligible applicant with \$250,000 or less of transferable tax  
2       benefits shall be authorized to surrender the entire amount of its  
3       transferable tax benefits;

4       (2) an eligible applicant with more than \$250,000 of transferable  
5       tax benefits shall be authorized to surrender a minimum of  
6       \$250,000 of its transferable tax benefits;

7       (3) (Deleted by amendment, P.L.2009, c.90.)

8       (4) an eligible applicant with more than \$250,000 shall also be  
9       authorized to surrender additional transferable tax benefits  
10      determined by multiplying the applicant's transferable tax benefits  
11      less the minimum transferable tax benefits that 【company】 business  
12      is authorized to surrender under paragraph (2) of this subsection by  
13      a fraction, the numerator of which is the total amount of  
14      transferable tax benefits that the authority is authorized to approve  
15      less the total amount of transferable tax benefits approved under  
16      paragraphs (1), (2), and (5) of this subsection and the denominator  
17      of which is the total amount of transferable tax benefits requested to  
18      be surrendered by all eligible applicants less the total amount of  
19      transferable tax benefits approved under paragraphs (1), (2), and (5)  
20      of this subsection;

21      (5) The authority shall establish the boundaries for three  
22      innovation zones to be geographically distributed in the northern,  
23      central, and southern portions of this State. Of the \$60,000,000 of  
24      transferable tax benefits authorized for each State fiscal year,  
25      \$10,000,000 shall be allocated for the surrender of transferable tax  
26      benefits exclusively by new and expanding emerging technology  
27      and biotechnology companies that operate within the boundaries of  
28      the innovation zones, except that any portion of the \$10,000,000  
29      that is not so approved shall be available for that State fiscal year  
30      for the surrender of transferable tax benefits by new and expanding  
31      emerging technology and biotechnology 【companies】 businesses  
32      that do not operate within the boundaries of an innovation zone.

33      If the total amount of transferable tax benefits that would be  
34      authorized using the above method exceeds \$60,000,000 for a State  
35      fiscal year, then the authority, in cooperation with the Division of  
36      Taxation in the Department of the Treasury, shall limit the total  
37      amount of tax benefits authorized to be transferred to \$60,000,000  
38      by applying the above method on an apportioned basis.

39      For purposes of this section transferable tax benefits include an  
40      eligible applicant's unused but otherwise allowable carryover of net  
41      operating losses multiplied by the applicant's anticipated allocation  
42      factor as determined pursuant to section 6 of P.L.1945, c.162  
43      (C.54:10A-6) 'or the regulations adopted pursuant to N.J.S.54A:5-  
44      7, as appropriate,' for the tax year in which the benefit is  
45      transferred and subsequently multiplied by the 'maximum'  
46      corporation business tax rate as provided in subsection (c) of  
47      section 5 of P.L.1945, c.162 (C.54:10A-5) 'or the maximum tax

1     rate provided by N.J.S.54A:2-1, as appropriate.<sup>1</sup> plus the total  
2     amount of the applicant's unused but otherwise allowable carryover  
3     of research and development tax credits. An eligible applicant's  
4     transferable tax benefits shall be limited to net operating losses and  
5     research and development tax credits that the applicant requests to  
6     surrender in its application to the authority and shall not, in total,  
7     exceed the maximum amount of tax benefits that the applicant is  
8     eligible to surrender.

9         No application for a **【corporation business】** tax benefit transfer  
10      certificate shall be approved in which the new or expanding  
11      emerging technology or biotechnology company (1) has  
12      demonstrated positive net operating income in any of the two  
13      previous full years of ongoing operations as determined on its  
14      financial statements issued according to generally accepted  
15      accounting standards endorsed by the Financial Accounting  
16      Standards Board; or (2) is directly or indirectly at least 50 percent  
17      owned or controlled by another corporation that has demonstrated  
18      positive net operating income in any of the two previous full years  
19      of ongoing operations as determined on its financial statements  
20      issued according to generally accepted accounting standards  
21      endorsed by the Financial Accounting Standards Board or is part of  
22      a consolidated group of affiliated corporations, as filed for federal  
23      income tax purposes, that in the aggregate has demonstrated  
24      positive net operating income in any of the two previous full years  
25      of ongoing operations as determined on its combined financial  
26      statements issued according to generally accepted accounting  
27      standards endorsed by the Financial Accounting Standards Board.

28         The maximum lifetime value of surrendered tax benefits that a  
29      corporation shall be permitted to surrender pursuant to the program  
30      is \$15,000,000. Applications must be received on or before June 30  
31      of each State fiscal year. The authority, in consultation with the  
32      Division of Taxation, shall establish rules for the recapture of all, or  
33      a portion of, the amount of a grant of a **【corporation business】** tax  
34      benefit certificate from the new or expanding emerging technology  
35      and biotechnology **【company】 business** having surrendered tax  
36      benefits pursuant to this section in the event the taxpayer fails to  
37      use the private financial assistance received for the surrender of tax  
38      benefits as required by this section or fails to maintain a  
39      headquarters or a base of operation in this State during the five  
40      years following receipt of the private financial assistance; except if  
41      the failure to maintain a headquarters or a base of operation in this  
42      State is due to the liquidation of the new or expanding emerging  
43      technology and biotechnology **【company】 business**.

44         c. The authority, in cooperation with the Division of Taxation  
45      in the Department of the Treasury, shall review and approve  
46      applications by taxpayers under the Corporation Business Tax Act  
47      (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and "New Jersey

1   Gross Income Tax Act," N.J.S.54A:1-1 et seq., to acquire  
2   surrendered tax benefits approved pursuant to subsection b. of this  
3   section which shall be issued in the form of **[corporation business]**  
4   tax benefit transfer certificates, in exchange for private financial  
5   assistance to be made by the taxpayer in an amount equal to at least  
6   80% of the amount of the surrendered tax benefit of an emerging  
7   technology or biotechnology **[company]** business in the State. A  
8   **[corporation business]** tax benefit transfer certificate shall not be  
9   issued unless the applicant certifies that as of the date of the  
10   exchange of the **[corporation business]** tax benefit certificate it is  
11   operating as a new or expanding emerging technology or  
12   biotechnology **[company]** business and has no current intention to  
13   cease operating as a new or expanding emerging technology or  
14   biotechnology **[company]** business.

15   The private financial assistance shall assist in funding expenses  
16   incurred in connection with the operation of the new or expanding  
17   emerging technology or biotechnology **[company]** business in the  
18   State, including but not limited to the expenses of fixed assets, such  
19   as the construction and acquisition and development of real estate,  
20   materials, start-up, tenant fit-out, working capital, salaries, research  
21   and development expenditures and any other expenses determined  
22   by the authority to be necessary to carry out the purposes of the  
23   New Jersey Emerging Technology and Biotechnology Financial  
24   Assistance Program.

25   The authority shall require a corporation business taxpayer or  
26   gross income taxpayer that acquires a **[corporation business]** tax  
27   benefit certificate to enter into a written agreement with the new or  
28   expanding emerging technology or biotechnology **[company]**  
29   business concerning the terms and conditions of the private  
30   financial assistance made in exchange for the certificate. The  
31   written agreement may contain terms concerning the maintenance  
32   by the new or expanding emerging technology or biotechnology  
33   **[company]** business of a headquarters or a base of operation in this  
34   State.

35   d. (Deleted by amendment, P.L.2009, c.90.)  
36   (cf: P.L.2009, c.90, s.29)

37

38   23. Section 1 of P.L.1999, c.140 (C.34:1B-7.42b) is amended to  
39   read as follows:

40   1. As used in P.L.1997, c.334 (C.34:1B-7.42a et al.):

41   "Authority" means the New Jersey Economic Development  
42   Authority established pursuant to section 4 of P.L.1974, c.80  
43   (C.34:1B-4).

44   "Biotechnology" means the continually expanding body of  
45   fundamental knowledge about the functioning of biological systems  
46   from the macro level to the molecular and sub-atomic levels, as  
47   well as novel products, services, technologies and sub-technologies

1 developed as a result of insights gained from research advances that  
2 add to that body of fundamental knowledge.

3       **“Biotechnology business” means a biotechnology company, sole**  
4 **proprietorship, limited liability company, partnership, or any other**  
5 **business entity that is emerging and that has its headquarters or base**  
6 **of operations in this State; that owns, has filed for, or has a valid**  
7 **license to use protected, proprietary intellectual property; and that is**  
8 **engaged in the research, development, production, or provision of**  
9 **biotechnology for the purpose of developing or providing products**  
10 **or processes for specific commercial or public purposes, including**  
11 **but not limited to, medical, pharmaceutical, nutritional, and other**  
12 **health-related purposes, agricultural purposes, and environmental**  
13 **purposes.**

14       “Biotechnology company” means an emerging corporation that  
15 has its headquarters or base of operations in this State; that owns,  
16 has filed for, or has a valid license to use protected, proprietary  
17 intellectual property; and that is engaged in the research,  
18 development, production, or provision of biotechnology for the  
19 purpose of developing or providing products or processes for  
20 specific commercial or public purposes, including but not limited  
21 to, medical, pharmaceutical, nutritional, and other health-related  
22 purposes, agricultural purposes, and environmental purposes.

23       “Full-time employee” means a person employed by a new or  
24 expanding emerging technology or biotechnology **【company】**  
25 **business** for consideration for at least 35 hours a week, or who  
26 renders any other standard of service generally accepted by custom  
27 or practice as full-time employment and whose wages are subject to  
28 withholding as provided in the “New Jersey Gross Income Tax  
29 Act,” N.J.S.54A:1-1 et seq., or who is a partner of a new or  
30 expanding emerging technology or biotechnology **【company】**  
31 **business** who works for the partnership for at least 35 hours a week,  
32 or who renders any other standard of service generally accepted by  
33 custom or practice as full-time employment, and whose distributive  
34 share of income, gain, loss, or deduction, or whose guaranteed  
35 payments, or any combination thereof, is subject to the payment of  
36 estimated taxes, as provided in the “New Jersey Gross Income Tax  
37 Act,” N.J.S.54A:1-1 et seq. To qualify as a “full-time employee,” an  
38 employee shall also receive from the new or expanding emerging  
39 technology or biotechnology **【company】** **business** health benefits  
40 under a group health plan as defined under section 14 of P.L.1997,  
41 c.146 (C.17B:27-54), a health benefits plan as defined under section  
42 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of  
43 health insurance covering more than one person issued pursuant to  
44 Article 2 of chapter 27 of Title 17B of the New Jersey Statutes.

45       “Full-time employee” shall not include any person who works as  
46 an independent contractor or on a consulting basis for the new or  
47 expanding emerging technology or biotechnology **【company】**  
48 **business.**

1        "New or expanding" means a technology or biotechnology  
2        【company】 business that (1) on June 30 of the year in which the  
3        company files an application for surrender of unused but otherwise  
4        allowable tax benefits under P.L.1997, c.334 (C.34:1B-7.42a et al.)  
5        and on the date of the exchange of the 【corporation business】 tax  
6        benefit certificate, has fewer than 225 employees in the United  
7        States of America; (2) on June 30 of the year in which the  
8        【company】 business files such an application, has at least one full-  
9        time employee working in this State if the 【company】 business has  
10        been incorporated, or for unincorporated business has been operated  
11        for commercial purposes in its present form, for less than three  
12        years, has at least five full-time employees working in this State if  
13        the 【company】 business has been incorporated, or for  
14        unincorporated business has been operated for commercial purposes  
15        in its present form, for more than three years but less than five  
16        years, and has at least 10 full-time employees working in this State  
17        if the 【company】 business has been incorporated, or for  
18        unincorporated business has been operated for commercial purposes  
19        in its present form, for more than five years; and (3) on the date of  
20        the exchange of the corporation business tax benefit certificate, the  
21        【company】 business has the requisite number of full-time  
22        employees in New Jersey that were required on June 30 as set forth  
23        in part (2) of this definition.

24        "Technology business" means a technology company, sole  
25        proprietorship, limited liability company, partnership, S  
26        corporation, or any other business entity that is emerging and that  
27        has its headquarters or base of operations in this State; that owns,  
28        has filed for, or has a valid license to use protected, proprietary  
29        intellectual property; and that employs some combination of the  
30        following: highly educated or trained managers and workers, or  
31        both, employed in this State who use sophisticated scientific  
32        research service or production equipment, processes or knowledge  
33        to discover, develop, test, transfer or manufacture a product or  
34        service.

35        "Technology company" means an emerging corporation that has  
36        its headquarters or base of operations in this State; that owns, has  
37        filed for, or has a valid license to use protected, proprietary  
38        intellectual property; and that employs some combination of the  
39        following: highly educated or trained managers and workers, or  
40        both, employed in this State who use sophisticated scientific  
41        research service or production equipment, processes or knowledge  
42        to discover, develop, test, transfer or manufacture a product or  
43        service.

44        (cf: P.L.2010, c.10, s.2)

1        24. (New section) As used in 'this act sections 24 through 32  
2 of P.L. , c. (C. ) (pending before the Legislature as this  
3 bill)<sup>1</sup>:

4        "Business" means a sole proprietorship, a partnership, limited  
5 liability company, or other entity classified as a partnership for  
6 federal income tax purposes, or a New Jersey S Corporation.

7        "Business relocation or expansion or investment" means capital  
8 investment in a new or expanded business facility in this State.

9        "Business facility" means any factory, mill, plant, refinery,  
10 warehouse, building, complex of buildings or structural components  
11 of buildings, and all machinery, equipment and personal property  
12 located within this State, used in connection with the operation of  
13 the business of a taxpayer that is subject to the tax imposed  
14 pursuant to N.J.S.54A:1-1 et seq., and all facility preparation and  
15 start-up costs of the taxpayer for the business facility which it  
16 capitalizes for federal income tax purposes.

17        "Compensation" means wages, salaries, commissions or any  
18 other form of remuneration paid to employees for personal services.

19        "Expanded business facility" means any business facility, other  
20 than a new business facility, resulting from acquisition,  
21 construction, reconstruction, installation or erection of  
22 improvements or additions to existing property if such  
23 improvements or additions are purchased 'in taxable years  
24 beginning' on or after the 'operative' date of 'enactment of' this  
25 section, but only to the extent of a taxpayer's qualified investment  
26 in such improvements or additions.

27        "New business facility" means a business facility that meets the  
28 following conditions:

29        a. is employed by a business in the conduct of the business, the  
30 gross income of which is or will be taxable under N.J.S.54A:1-1 et  
31 seq. Such facility shall not be considered a new business facility in  
32 the hands of a business if the business' only activity with respect to  
33 such facility is to lease it to another person;

34        b. is purchased by a business and is placed in service or use 'in  
35 taxable years beginning' on or after the 'operative' date of  
36 'enactment of' this section;

37        c. was not purchased by a business from a related person,  
38 provided however, the director may waive this requirement if the  
39 facility was acquired from a related person for its fair market value  
40 and the acquisition was not tax motivated; and

41        d. was not in service or use during the 90-day period  
42 immediately prior to transfer of the title to the facility, provided that  
43 this restriction for the 90-day period may be waived by the director  
44 if the director determines that individuals employed at the facility  
45 may be considered as "new employees" as defined in this section.

46        "New employee" means an individual residing and domiciled in  
47 this State, hired by a business to fill a position or a job in this State

1 which previously did not exist in the business' business enterprise in  
2 this State prior to the date on which the taxpayer's qualified  
3 investment is placed in service or use in this State provided that:

4 a. the individual's duties in connection with the operation of  
5 the business facility are on a regular, full-time and permanent basis  
6 or regular part-time and permanent basis;

7 b. the individual is not a related individual as defined in  
8 subsection (i) of section 51 of the federal Internal Revenue Code of  
9 1986 (26 U.S.C. s.51), or does not own 10% or more of the business  
10 with such ownership interest to be determined under the rules set  
11 forth in section 267 of the federal Internal Revenue Code of 1986  
12 (26 U.S.C. s.267);

13 c. the individual is not an individual who worked for the  
14 business during the six-month period ending on the date the  
15 business' qualified investment is placed in service or use and is  
16 rehired by the business during the six-month period beginning on  
17 the date the business' qualified investment is placed in service or  
18 use in this State; and

19 d. the individual is not an employee for whom the taxpayer is  
20 allowed another State tax credit.

21 As used in this definition: "full-time" means employment for at  
22 least 140 hours per month at a wage not less than the State or  
23 federal minimum wage, if either minimum wage provision is  
24 applicable to the business and "permanent basis" does not include  
25 employment that is temporary or seasonal and therefore the  
26 compensation paid to temporary or seasonal employees will not be  
27 considered for purposes of sections 26 and 28 of P.L. , c.  
28 (C. ) (pending before the Legislature as this bill); and "part-  
29 time" means customarily performing such duties at least 20 hours  
30 per week for at least six months during the taxable year. In no  
31 event shall the number of new employees directly attributable to the  
32 qualified investment for the purpose of the credit allowed pursuant  
33 to sections 24 through 32 of P.L. , c. (C. ) (pending before  
34 the Legislature as this bill) exceed the total increase in the  
35 taxpayer's average employment in this State for the taxable year  
36 over the average employment in this State for the previous taxable  
37 year and in no event shall the number of new employees directly  
38 attributable to the qualified investment for the purpose of the credit  
39 allowed pursuant to sections 24 through 32 of P.L. , c. (C. )  
40 (pending before the Legislature as this bill) exceed one-half of the  
41 average employment in this State for the taxable year; and provided,  
42 that the director may require that the net increase in the business'  
43 employment in this State be determined and certified for the  
44 business' controlled group.

45 Provided further, however, that individuals filling jobs saved as a  
46 direct result of the business' qualified investment in property  
47 purchased for business relocation or expansion 'in taxable years  
48 beginning' on or after the 'operative' date of 'enactment of' this

1 section may be treated as new employees filling new jobs if the  
2 business certifies the material facts to the director and the director  
3 expressly finds that: but for the new employer purchasing the assets  
4 of a business in bankruptcy under chapter 7 or 11 of the United  
5 States Bankruptcy Code and such new employer making qualified  
6 investment in property purchased for business relocation or  
7 expansion, the assets would have been sold by the United States  
8 bankruptcy court in a liquidation sale and the jobs so saved would  
9 have been lost; or but for the business' qualified investment in  
10 property purchased for business relocation or expansion in this  
11 State, the business facility in this State would have closed and the  
12 employees located at the facility would have lost their jobs;  
13 provided that the director shall not make this certification unless the  
14 director finds that the business is insolvent as defined in paragraph  
15 (32) of 11 U.S.C. s.101 or that the business facility was destroyed in  
16 whole or in significant part by fire, flood or act of God.

17 "New job" means a job which did not exist in the business of the  
18 taxpayer in this State prior to the business' qualified investment  
19 being made, and which is filled by a new employee.

20 "Partnership" means a syndicate, group, pool, joint venture or  
21 other unincorporated organization through or by means of which  
22 any business, financial operation or venture is carried on, and which  
23 is not a trust or estate, a corporation or a sole proprietorship. The  
24 term "partner" includes a member in such a syndicate, group, pool,  
25 joint venture or organization.

26 "Property purchased for business relocation or expansion" means  
27 improvements to real property and tangible personal property, but  
28 only if that improvement or personal property was constructed or  
29 purchased and placed in service or use by the business, for use as a  
30 component part of a new or expanded business facility located in  
31 this State.

32 a. Property purchased for business relocation or expansion  
33 shall include only:

34 (1) improvements to real property placed in service or use 'in  
35 taxable years beginning' on or after the '[operative]' date of  
36 'enactment of' this '[act] section' by the business;

37 (2) tangible personal property placed in service or use by the  
38 business 'in taxable years beginning' on or after the '[operative]'  
39 date of '[this act] enactment of this section', with respect to which  
40 depreciation, or amortization in lieu of depreciation, is allowable in  
41 determining the gross income tax liability of the business under  
42 N.J.S.54A:1-1 et seq., and which has a remaining recovery period  
43 of three or more taxable years at the time the property is placed in  
44 service or use in this State; or

45 (3) tangible personal property owned and used by the business at  
46 a business location outside this State which is moved into this State  
47 'in taxable years beginning' on or after the '[operative]' date of

1       'enactment of' this section, for use as a component part of a new or  
2       expanded business facility located in this State; provided that the  
3       property is depreciable or amortizable personal property for income  
4       tax purposes, and has a remaining recovery period of three or more  
5       taxable years at the time the property is placed in service or use in  
6       this State.

7       b. Property purchased for business relocation or expansion shall  
8       not include:

9           (1) Repair costs, including materials used in the repair, unless for  
10       federal income tax purposes, the cost of the repair must be  
11       capitalized and not expensed;

12           (2) Airplanes;

13           (3) Property which is primarily used outside this State with that  
14       use being determined based upon the amount of time the property is  
15       actually used both within and without this State;

16           (4) Property which is acquired incident to the purchase of the  
17       stock or assets of the seller unless for good cause shown, the  
18       director consents to waiving this disqualification; or

19           (5) Property purchased 'in taxable years beginning' on or after  
20       the 'operative' date of 'enactment of' this section, unless  
21       pursuant to a written contract to purchase executed prior to the  
22       'operative taxable years beginning on or after the' date of  
23       'enactment of' this section, the cost or consideration for which  
24       cannot be quantified with any reasonable degree of accuracy at the  
25       time such property is placed in service or use; provided that if the  
26       contract of purchase specifies a minimum purchase price the  
27       amount thereof shall be used to determine the qualified investment  
28       in such property under section 27 of P.L. , c. (C. ) (pending  
29       before the Legislature as this bill) if the property otherwise qualifies  
30       as property purchased for business relocation or expansion.

31       c. Property shall be deemed to have been purchased prior to a  
32       specified date only if:

33           (1) the physical construction, reconstruction or erection of the  
34       property was begun prior to the specified date, or such property was  
35       constructed, reconstructed, erected or acquired pursuant to a written  
36       contract as existing and binding on the purchase prior to the  
37       specified date; or

38           (2) the machinery or equipment was owned by the business prior  
39       to the specified date, or was acquired by the business pursuant to a  
40       binding purchase contract which was in effect prior to the specified  
41       date.

42       "Purchase" means any acquisition of property, including an  
43       acquisition pursuant to a lease, but only if:

44           a. the property is not acquired from a person whose  
45       relationship to the person acquiring it would result in the  
46       disallowance of deductions under section 267 or subsection (b) of

1 section 707 of the federal Internal Revenue Code of 1986 (26  
2 U.S.C. s.267 or s.707); and

3 b. the basis of the property for federal income tax purposes, in  
4 the hands of the person acquiring it, is not determined:

5 (1) in whole or in part by reference to the federal adjusted basis  
6 of such property in the hands of the person from whom it was  
7 acquired; or (2) under subsection (e) of section 1014 of the federal  
8 Internal Revenue Code of 1986 (26 U.S.C. s.1014).

9 "Related person" means:

10 a. a corporation, partnership, association or trust controlled by  
11 the business;

12 b. an individual, corporation, partnership, association or trust  
13 that is in control of the business; <sup>1</sup>or<sup>1</sup>

14 c. a corporation, partnership, association or trust controlled by  
15 an individual, corporation, partnership, association or trust that is in  
16 control of the business<sup>1</sup>]; or

17 d. a member of the same controlled group as the business]<sup>1</sup>.

18 As used in the definition of related person and as is applicable to  
19 the definitions of purchase and small or mid-size business,  
20 "control," with respect to a corporation, means ownership, directly  
21 or indirectly, of stock possessing 50% or more of the total  
22 combined voting power of all classes of the stock of the corporation  
23 entitled to vote; "control," with respect to a trust, means ownership,  
24 directly or indirectly, of 50% or more of the beneficial interest in  
25 the principal or income of the trust. The ownership of stock in a  
26 corporation, of a capital or profits interest in a partnership or  
27 association or of a beneficial interest in a trust shall be determined  
28 in accordance with the rules for constructive ownership of stock  
29 provided in subsection (c) of section 267 of the federal Internal  
30 Revenue Code of 1986 (26 U.S.C. s.267(c)), other than paragraph  
31 (3) of subsection (c) of that section.

32 "Small or mid-size business" means a business that has an annual  
33 payroll [of \$5,000,000 or less]<sup>1</sup> and annual gross receipts [of not  
34 more than \$10,000,000 for the taxable year in which property  
35 purchased for business relocation or expansion is placed in service  
36 or use by the business; provided that beginning with taxable years  
37 commencing on and after January 1 next following the operative  
38 date of this section the director shall prescribe the amount of annual  
39 payroll and annual gross receipts which shall apply by increasing  
40 each such amount hereinabove by an annual inflation adjustment  
41 factor, which prescribed amount shall be rounded to the next lowest  
42 multiple of \$50. "Annual inflation adjustment factor" means the  
43 factor calculated by dividing the consumer price index for urban  
44 wage earners and clerical workers for the nation, as prepared by the  
45 United States Department of Labor for September of the calendar  
46 year prior to the calendar year in which the taxable year begins, by  
47 that index for September of the calendar year two years prior to the

1 calendar year in which the taxable year begins] that do not exceed  
2 the limits for annual payroll and annual gross receipts promulgated  
3 by the director pursuant to the definition of "small or mid-size  
4 business taxpayer" by section 2 of P.L.1993, c.170 (C.54:10A-5.5)<sup>1</sup>.

5 The annual payroll of a business shall include the employees of its  
6 domestic and foreign affiliates, whether employed on a full-time,  
7 part-time, temporary, or other basis, during the preceding 12  
8 months. If a business has not been in existence for 12 months, the  
9 payroll of the business shall be divided by the number of weeks,  
10 including fractions of a week, that it has been in business, and the  
11 result multiplied by 52. That amount shall then be added to the 12-  
12 month payrolls of its domestic and foreign affiliates to determine  
13 the annual payroll of the business for purposes of this definition.

14 The annual gross receipts of a business shall include the annual  
15 gross receipts of its foreign and domestic affiliates. The annual  
16 gross receipts of a business which has been in business for three or  
17 more complete taxable years means the average of the annual gross  
18 receipts of the business for the last three taxable years. For  
19 purposes of this definition, the gross receipts of the business  
20 includes receipts from sales of tangible personal property and  
21 services, interests, rents, royalties, fees, commissions and receipts  
22 from any other source, but less returns and allowances, sales of  
23 fixed assets, interaffiliated transactions between a business and its  
24 domestic and foreign affiliates, and taxes collected for remittance to  
25 a third party, as shown on its books for federal income tax purposes.  
26 The annual receipts of a business that has been in business for less  
27 than three complete taxable years means its total receipts for the  
28 period it has been in business, divided by the number of weeks  
29 including fractions of a week that it has been in business, and  
30 multiplied by 52.

31 "Affiliates" includes all concerns that are affiliates of each other  
32 when either directly or indirectly one concern controls the other or a  
33 third party or parties controls both. In determining whether  
34 concerns are independently owned and operated and whether or not  
35 affiliation exists, the director shall consider all appropriate factors,  
36 including common ownership, common management and  
37 contractual relationships.

38 "Concern" means any business entity organized for profit (even  
39 if its ownership is in the hands of a nonprofit entity), having a place  
40 of business located in this State, and which makes a contribution to  
41 the economy of this State through payment of taxes, or the sale or  
42 use in this State of tangible personal property, or the procurement or  
43 providing of services in this State, or the hiring of employees who  
44 work in this State. "Concern" includes but is not limited to any  
45 person as defined in R.S.1:1-2.

46

47 25. (New section) a. A business shall be allowed a credit  
48 against the portion of the tax imposed in N.J.S.54A:1-1 et seq., that

1 is attributable to and the direct consequence of the business' 2 qualified investment in a new or expanded business facility in this 3 State which results in the creation of at least five new jobs in the 4 case of a small or mid-size business, or at least 50 new jobs in the 5 case of any other business, provided that the median compensation 6 of all new jobs included in the business' determination of the new 7 jobs factor shall not be less than <sup>1</sup>[\$27,000 per year, provided that 8 beginning with taxable years commencing on and after January 1 9 next following the operative date of this section the director shall 10 adjust the median annual compensation which shall apply as 11 provided in subsection e. of this section.] the median compensation 12 determined by the director pursuant to subsection e. of section 3 of 13 P.L.1993, c.170 (C.54:10A-5.6).<sup>1</sup> The amount of this credit shall be 14 determined and applied as hereinafter provided.

15 b. The amount of the credit allowed shall be determined by 16 multiplying the amount of the business' "qualified investment," 17 determined under section 27 of P.L. , c. (C. ) (pending 18 before the Legislature as this bill), in "property purchased for 19 business relocation or expansion" by the business' new jobs factor 20 determined under section 28 of P.L. , c. (C. ) (pending 21 before the Legislature as this bill). The product of this calculation 22 shall establish the maximum amount of credit allowed under this 23 section due to the qualified investment.

24 c. The amount of credit allowed shall be taken over a five-year 25 period, at the rate of one-fifth of the amount thereof per taxable 26 year, beginning with the taxable year in which the taxpayer places 27 the qualified investment in service or use in this State.

28 d. For purposes of the credit allowed by this section, property 29 shall be considered placed in service or use in the earlier of the 30 following taxable years:

31 (1) The taxable year in which, under the business' depreciation 32 practice, the period for depreciation with respect to such property 33 begins; or

34 (2) The taxable year in which the property is placed in a 35 condition or state of readiness and availability for a specifically 36 assigned function.

37 <sup>1</sup>[e. Beginning with taxable years commencing on and after 38 January 1 next following the operative date of section 3 of 39 P.L.1993, c.170 (C.54:10A-5.6) the director shall prescribe the 40 annual median compensation of all new jobs included in the 41 taxpayer's determination of new jobs factor by increasing the 42 amount of median compensation set forth in subsection a. of this 43 section by an annual inflation adjustment factor, which prescribed 44 amount shall be rounded to the next lowest multiple of \$50. 45 "Annual inflation adjustment factor" means the factor calculated by 46 dividing the consumer price index for urban wage earners and 47 clerical workers for the nation, as prepared by the United States 48 Department of Labor for September of the calendar year prior to the

1 calendar year in which the taxable year begins, by that index for  
2 September of the calendar year two years prior to the calendar year  
3 in which the taxable year begins.]<sup>1</sup>

4

5 26. (New section) a. The aggregate annual credit allowed for a  
6 taxable year shall be an amount equal to the sum of:

7 (1) The one-fifth part allowed under section 25 P.L. , c.  
8 (C. ) (pending before the Legislature as this bill) for qualified  
9 investment placed into service or use during a prior taxable year,  
10 plus

11 (2) The one-fifth part allowed under section 25 P.L. , c.  
12 (C. ) (pending before the Legislature as this bill) for qualified  
13 investment placed into service or use during the current taxable  
14 year.

15 b. (1) The amount determined under subsection a. shall be  
16 allowed as a credit against that portion of the business' gross  
17 income tax liability which is attributable to and the direct result of  
18 the business' qualified investment. The amount determined under  
19 subsection a. and allowed as a credit against the tax imposed  
20 pursuant to N.J.S.54A:1-1 et seq., for a taxable year shall not reduce  
21 that tax liability by more than 50% of that portion of the business'  
22 tax liability otherwise due for the taxable year which is attributable  
23 to and the direct result of the business' qualified investment.

24 (2) If any amount of credit determined under subsection a.  
25 remains after the amount allowed as a credit under the limitations of  
26 paragraph (1) of this subsection, that amount of credit remaining  
27 shall be refunded to the business. The amount refunded to the  
28 business shall not exceed 50% of the sum of the amount of property  
29 taxes timely paid in the taxable year pursuant to R.S.54:4-1 et seq.  
30 and the amount of implicit property taxes paid through rent or lease  
31 payments in respect of property taxable pursuant to R.S.54:4-1 et  
32 seq., and for which taxes another party that is not a related person is  
33 liable, which is attributable to and the direct result of the taxpayer's  
34 qualified investment.

35 c. (1) If the taxes due under N.J.S.54A:1-1 (determined before  
36 application of allowable credits against the tax), the sum of the  
37 amount of property taxes timely paid in the taxable year pursuant to  
38 R.S.54:4-1 et seq. and the amount of implicit property taxes paid  
39 through rent or lease payments in respect of property taxable  
40 pursuant to R.S.54:4-1 et seq., and for which taxes another party  
41 that is not a related person is liable, are not solely attributable to  
42 and the direct result of the business' qualified investment, the  
43 amount of those taxes which are so attributable shall be determined  
44 by multiplying the amount of taxes due under those acts for the  
45 taxable year (determined before application of allowable credits  
46 against tax) by a fraction, the numerator of which is all  
47 compensation paid during the taxable year to all employees of the  
48 business employed in this State whose positions are directly

1 attributable to the qualified investment. The denominator of the  
2 fraction is the compensation paid during the taxable year to all  
3 employees of the business employed in this State.

4 (2) Any credits allowable under section 19 of P.L.1983, c.303  
5 (C.52:27H-78) and section 12 of P.L.1985, c.227 (C.55:19-13),  
6 shall be applied against and reduce only the amount of gross income  
7 tax not apportioned to the qualified investment used for this credit.  
8 Provided, that any excess of those credits may be applied against  
9 the amount of gross income tax apportioned to the qualified  
10 investment under this credit that is not offset by the amount of  
11 annual credit against the tax allowed under this act for the taxable  
12 year, unless their application is otherwise prohibited by P.L.1987,  
13 c.102, P.L.1983, c.303, or P.L.1985, c.227.

14 (3) If any credit for the taxable year pursuant to this section  
15 remains after application of the provisions of subsections a. and b.  
16 of this section, the amount thereof shall be forfeited. No carryover  
17 to a subsequent taxable year or carryback to a prior taxable year  
18 shall be allowed for the amount of any unused portion of any annual  
19 credit allowance.

20 d. For the purposes of this act, "implicit property taxes" means  
21 15% of the amount of the rent or lease payments made by the  
22 taxpayer in respect of property taxable pursuant to R.S.54:4-1 et  
23 seq., and for which taxes another party that is not a related person is  
24 liable.

25  
26 27. (New section) a. The qualified investment in property  
27 purchased for business relocation or expansion shall be the  
28 applicable percentage of the cost of each property purchased for  
29 business relocation or expansion which is placed in service or use in  
30 this State by the business during the taxable year. Provided, that  
31 only the cost of property purchased for business relocation or  
32 expansion placed in service or use in this State during the taxable  
33 year for which the average value of the business' real and tangible  
34 personal property within the State, is greater than that average value  
35 for the previous tax year, shall be considered in determining  
36 qualified investment.

37 b. For the purpose of subsection a., the applicable percentage  
38 of any cost of property purchased for business relocation or  
39 expansion shall be determined under the following table:

40  
41 If property has a: The applicable percentage is:

42  
43 three year recovery period ..... 35%  
44 five year recovery period ..... 70%  
45 seven year or more recovery period ..... 100%

46  
47 The recovery period of any property, for purposes of this section,  
48 shall be determined as of the date such property is first placed in

1 service or use in this State by the business, determined in  
2 accordance with section 168 of the federal Internal Revenue Code  
3 of 1986 (26 U.S.C. s.168).

4 c. For purposes of subsection a., the cost of each property  
5 purchased for business relocation or expansion shall be determined  
6 under the following restrictions:

7 (1) cost shall not include the value of property given in trade or  
8 exchange for the property purchased for business relocation or  
9 expansion;

10 (2) if property is damaged or destroyed by fire, flood, storm or  
11 other casualty, or is stolen, the cost of replacement property shall  
12 not include any insurance proceeds received in compensation for  
13 the loss;

14 (3) in the case of self-constructed property, the cost thereof shall  
15 be the amount properly charged to the capital account for  
16 depreciation in accordance with federal income tax law; and

17 (4) the cost of property used by the business out-of-State and  
18 then brought into this State shall be determined based on the  
19 remaining recovery period of the property at the time it is placed in  
20 service or use in this State, and the cost shall be the original cost of  
21 the property to the business less straight line depreciation allowable  
22 for the taxable years or portions thereof the business used the  
23 property outside this State.

24 (5) The cost of equipment acquired by written lease is the  
25 minimum amount required by the agreement, agreements, contract  
26 or contracts to be paid over the term of the lease, provided however,  
27 that the minimum amount shall not include any amount required to  
28 be paid, as determined by the director, after the expiration of the  
29 recovery period of the equipment.

30 d. No amount of cost for property which qualifies for the  
31 credits allowed under sections 14 through 17 of P.L. , c.  
32 (C. ) (pending before the Legislature as this bill), shall be  
33 allowed as qualified investment under this section.

34

35 28. (New section) a. The new jobs factor used to determine the  
36 amount of credit allowed 'under this act by sections 24 through  
37 32 of P.L. , c. (C. ) (pending before the Legislature as this  
38 bill)' shall be based on the number of new jobs created in this State  
39 that are directly attributable to the qualified investment of the  
40 business.

41 b. (1) (a) For a business that is not a small or mid-size business  
42 taxpayer, if 50 new jobs are created and filled during the taxable  
43 year in which the qualified investment is placed in service or use in  
44 this State, the applicable new jobs factor shall be 0.005. For each 50  
45 additional new jobs over the initial 50, up to 1000 total new jobs,  
46 the applicable new jobs factor of 0.005 shall be increased by adding  
47 thereto 0.005, up to a maximum new jobs factor of 0.10.

1       (b) During each of the remaining four years of the five-year  
2 credit period, the business shall redetermine the new jobs factor for  
3 the taxable year on the annual return based on the average number  
4 of new employees employed in new jobs during that taxable year  
5 (determined on a monthly basis) created as the direct result of the  
6 business' qualified investment.

7       (2) (a) For a business that is a small or mid-size business  
8 taxpayer, if five new jobs are created and filled during the taxable  
9 year in which the qualified investment is placed in service or use in  
10 this State, the applicable new jobs factor shall be 0.01. For each five  
11 additional new jobs over the initial five, up to 100 total new jobs,  
12 the applicable new jobs factor of 0.01 shall be increased by adding  
13 thereto 0.01, up to a maximum new jobs factor of 0.20.

14       (b) During each of the remaining four years of the five-year  
15 credit period, the taxpayer shall redetermine the new jobs factor for  
16 the taxable year on the annual return based on the average number  
17 of new employees employed in new jobs during that taxable year  
18 (determined on a monthly basis) created as the direct result of the  
19 taxpayer's qualified investment.

20       c. An employee's position shall be directly attributable to the  
21 qualified investment if:

22       (1) the employee's service is performed or the employee's base of  
23 operations is at the new or expanded business facility;

24       (2) the position did not exist prior to the construction,  
25 renovation, expansion or acquisition of the business facility and the  
26 making of the qualified investment; and

27       (3) but for the qualified investment, the position would not have  
28 existed.

29       d. With the annual gross income tax return filed under  
30 N.J.S.54A:1-1 et seq., for each taxable year during the five-year  
31 credit period for a qualified investment, the business shall certify to  
32 the taxpayer and the Division of Taxation:

33       (1) the new jobs factor for that taxable year for the qualified  
34 investment;

35       (2) the amount of the credit allowed for that taxable year for the  
36 qualified investment;

37       (3) that the qualified investment property continued to be used in  
38 the business, or if any of it was disposed of during the taxable year,  
39 the date of disposition, and that such property was not disposed of  
40 prior to expiration of its recovery period, as determined under  
41 section 27 of P.L. , c. (C. ) (pending before the Legislature  
42 as this bill); and

43       (4) that the new jobs are directly attributable to the qualified  
44 investment, are filled by individuals who meet the definition of new  
45 employee, and the median annual compensation of all new  
46 employees is equal to or greater than the minimum median annual  
47 compensation required by section 25 of P.L. , c. (C. )  
48 (pending before the Legislature as this bill).

1       e. With the annual return for the gross income tax imposed  
2 under N.J.S.54A:1-1 et seq., filed for the taxable year in which the  
3 qualified investment is first placed in service or use in this State,  
4 the business shall estimate and certify the number of new jobs  
5 reasonably projected to be created by it in this State within the  
6 period prescribed in subsection g. of this section, that are, or will be  
7 directly attributable to the qualified investment of the business.

8       f. The hours of part-time employees shall be aggregated to  
9 determine the number of equivalent full-time employees for the  
10 purpose of determining the new jobs factor pursuant to subsection  
11 b. of this section but shall not be so aggregated for the purposes of  
12 subsection c. of this section.

13      g. With the annual return for the tax imposed under  
14 N.J.S.54A:1-1 et seq., filed for the third taxable year in which the  
15 qualified investment is in service or use in this State, the business  
16 shall certify the actual number of new jobs created by it in this  
17 State, that are directly attributable to the qualified investment of the  
18 business.

19       (1) If the actual number of jobs created would result in a higher  
20 new jobs factor, the credit allowed under '1. [this act] sections 24  
21 through 32 of P.L. , c. (C. ) (pending before the Legislature  
22 as this bill)<sup>1</sup> shall be redetermined and amended returns filed for the  
23 first and second taxable years that the qualified investment was in  
24 service or use in this State.

25       (2) If the actual number of jobs created would result in a lower  
26 new jobs factor, the credit previously allowed under this act shall be  
27 redetermined and amended returns filed for the first and second  
28 taxable years. Any additional taxes due under N.J.S.54A:1-1 et  
29 seq., shall be remitted with the amended returns filed with the  
30 director, together with any penalty and interest, for failure to pay  
31 any such tax when due.

32

33       29. (New section) a. If during any taxable year, property with  
34 respect to which a tax credit has been allowed under section 24  
35 through 32 P.L. , c. (C. ) (pending before the Legislature as  
36 this bill):

37       (1) is disposed of prior to the end of its recovery period, as  
38 determined under section 27 of P.L. , c. (C. ) (pending  
39 before the Legislature as this bill); or

40       (2) ceases to be used in a new or expanded business facility of  
41 the taxpayer in this State prior to the end of its recovery period, as  
42 determined under section 27 of P.L. , c. (C. ) (pending  
43 before the Legislature as this bill), then the unused portion of the  
44 credit allowed for such property shall be forfeited for the taxable  
45 year and all ensuing years. Additionally, except when the property  
46 is damaged or destroyed by fire, flood, storm or other casualty, or is  
47 stolen, the business shall redetermine the amount of credit allowed  
48 in all earlier years by reducing the applicable percentage of cost of

1 such property allowed under section 27 of P.L. , c. (C. )  
2 (pending before the Legislature as this bill), to correspond with the  
3 percentage of cost allowable for the period of time that the property  
4 was actually used in this State in the new or expanded business  
5 facility of the business. The business shall then file a reconciliation  
6 statement with its annual gross income tax return for the year in  
7 which the forfeiture occurs with the Division of Taxation and the  
8 pertinent taxpayers and the taxpayers shall pay any additional tax  
9 owed due to reduction of the amount of credit allowable for such  
10 earlier years, together with any penalty and interest for failure to  
11 pay any such tax.

12 b. If during any taxable year the business ceases operation of a  
13 new or expanded business facility in this State for which a credit  
14 was allowed under section 24 through 32 P.L. , c. (C. )  
15 (pending before the Legislature as this bill), before expiration of the  
16 recovery period of the property with respect to which a tax credit  
17 has been allowed under this credit, then the unused portion of the  
18 allowed credit shall be forfeited for the taxable year and all ensuing  
19 years. Additionally, except when the cessation is due to fire, flood,  
20 storm or other casualty, the business shall redetermine the amount  
21 of credit allowed in earlier years by reducing the applicable  
22 percentage of cost of such property allowed under section 27 of  
23 P.L. , c. (C. ) (pending before the Legislature as this bill), to  
24 correspond with the percentage of cost allowable for the period of  
25 time that the property was actually used in this State in a new or  
26 expanded business facility of the business that is subject to tax  
27 under N.J.S.54A:1-1 et seq. The business shall then file a  
28 reconciliation statement with its annual gross income tax return for  
29 the taxable year in which the forfeiture occurs with the Division of  
30 Taxation and the pertinent taxpayers and the taxpayers shall pay  
31 any additional taxes owed due to reduction of the amount of credit  
32 allowable for such earlier years, together with any penalty and  
33 interest for failure to pay any such tax.

34 c. If during any taxable year subsequent to the taxable year in  
35 which the new jobs factor is redetermined as provided in section 28  
36 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
37 the average number of employees of the business, for the then  
38 current taxable year, employed in positions created because of and  
39 directly attributable to the qualified investment falls below the  
40 minimum number of new jobs created upon which the business'  
41 annual credit allowance is based, the business shall calculate what  
42 the taxpayer's annual credit allowance would have been had the  
43 taxpayer's new jobs factor been determined based upon the average  
44 number of employees, for the then current taxable year, employed  
45 in positions created because of and directly attributable to the  
46 qualified investment. The difference between the result of this  
47 calculation and the business' annual credit allowance for the  
48 qualified investment as determined under section 25 of P.L. , c.

1 (C. ) (pending before the Legislature as this bill), shall be  
2 forfeited for the then current taxable year, and for each succeeding  
3 taxable year unless for a succeeding taxable year the business'  
4 average employment in positions directly attributable to the  
5 qualified investment once again meets the level required to enable  
6 the business to utilize its full annual credit allowance for that  
7 taxable year.

8

9 30. (New section) a. (1) Property of a small or mid-size business  
10 shall not be treated as disposed of under section 29 of P.L. , c.  
11 (C. ) (pending before the Legislature as this bill) by reason of a  
12 mere change in the form of conducting the business as long as the  
13 property is retained in a business of a small or mid-size business in  
14 this State, and the business retains a controlling interest in the  
15 successor business. In this event, the successor business shall be  
16 allowed to claim the amount of credit still available with respect to  
17 the new or expanded business facility or facilities transferred, and  
18 the small or mid-size business-transferor shall not be required to  
19 redetermine the amount of credit allowed in earlier taxable years.

20 (2) Property of a business that is not a small or mid-size business  
21 taxpayer shall not be treated as disposed of under section 29 of  
22 P.L. , c. (C. ) (pending before the Legislature as this bill) by  
23 reason of a mere change in the form of conducting the business as  
24 long as the property is retained in a business of a taxpayer in this  
25 State, and the business retains a controlling interest in the successor  
26 business. In this event, the owners of the successor business shall be  
27 allowed to claim the amount of credit still available with respect to  
28 the new or expanded business facility or facilities transferred, and  
29 the taxpayer-transferor shall not be required to redetermine the  
30 amount of credit allowed in earlier taxable years.

31 b. (1) Property of a small or mid-size business shall be treated as  
32 disposed of under section 29 of P.L. , c. (C. ) (pending  
33 before the Legislature as this bill) by reason of a change in the form  
34 of conducting the business if the property is not retained in a  
35 business of a small or mid-size business in this State in which the  
36 small or mid-size business retains a controlling interest.

37 (2) Property of a small or mid-size business shall not be treated  
38 as disposed of under section 29 of P.L. , c. (C. ) (pending  
39 before the Legislature as this bill) by reason of any transfer or sale  
40 to a successor small or mid-size business which continues to  
41 operate the new or expanded business facility in this State. Upon  
42 transfer or sale, the successor shall acquire the amount of credit that  
43 remains available under this credit for each subsequent taxable year  
44 and the business-transferor shall not be required to redetermine the  
45 amount of credit allowed in earlier years.

46 (3) Property of a business that is not a small or mid-size business  
47 shall not be treated as disposed of under section 29 of P.L. , c.  
48 (C. ) (pending before the Legislature as this bill) by reason of

1 any transfer or sale to a successor business which continues to  
2 operate the new or expanded business facility in this State. Upon  
3 transfer or sale, the successor shall acquire the amount of credit that  
4 remains available under this credit for each subsequent taxable year  
5 and the business-transferor shall not be required to redetermine the  
6 amount of credit allowed in earlier years.

7 (4) Property of a small or mid-size business shall be treated as  
8 disposed of under section 29 of P.L. , c. (C. ) (pending  
9 before the Legislature as this bill) by reason of any transfer or sale  
10 to a successor that is not a small or mid-size business, whether or  
11 not the successor continues to operate the business in this State.  
12 Upon such transfer or sale, the successor shall not acquire any  
13 amount of credit under this credit and the business-transferor shall  
14 redetermine, as required by sections 24 through 32 of P.L. , c.  
15 (C. ) (pending before the Legislature as this bill), the amount of  
16 credit allowed in earlier years.

17

18 31. (New section) a. A business whose owner claims credit  
19 under sections 24 through 32 of P.L. , c. (C. ) (pending  
20 before the Legislature as this bill) shall maintain sufficient records  
21 to establish the following facts for each item of qualified property:

22 (1) its identity;  
23 (2) its actual or reasonably determined cost;  
24 (3) its straight-line depreciation life;  
25 (4) the month and taxable year in which it was placed in service;  
26 (5) the amount of credit taken; and  
27 (6) the date it was disposed of or otherwise ceased to be  
28 qualified property.

29 b. A business that does not keep records required for  
30 identification of investment credit property shall be treated as  
31 having disposed of, during the taxable year, any investment credit  
32 property which the taxpayer cannot establish was still on hand in  
33 this State at the end of that year.

34 c. If a business cannot establish when investment credit  
35 property reported for purposes of claiming this credit during a  
36 taxable year was placed in service, the business shall be treated as  
37 having placed it in service in the most recent prior year in which  
38 similar property was placed in service unless the business can  
39 establish that the property placed in service in the most recent year  
40 is still on hand. In that event, the business shall be treated as  
41 having placed the property in service in the next most recent year.

42

43 32. (New section) a. The burden of proof shall be on a taxpayer  
44 to establish by clear and convincing evidence that the taxpayer is  
45 entitled to the credit allowed pursuant to sections 24 through 32 of  
46 P.L. , c. (C. ) (pending before the Legislature as this bill).

47 b. Notwithstanding any provision of sections 24 through 32 of  
48 P.L. , c. (C. ) (pending before the Legislature as this bill) to

1 the contrary, no credit shall be allowed or applied for any qualified  
2 investment property placed in service or use until the person  
3 asserting a claim for the allowance of credit makes written  
4 application to the director for allowance of the credit as provided in  
5 this subsection and receives written acknowledgement of its receipt  
6 from the director. An application for credit is timely made if filed  
7 no later than the last day of the due date without extensions, for  
8 filing the tax return required under N.J.S.54A:1-1 et seq., for the  
9 taxable year in which the property to which the credit relates is  
10 placed in service or use and all information required by the director  
11 is provided as part of the application.

12 c. The failure to timely apply for the credit shall result in the  
13 forfeiture of 50% of the annual credit allowance otherwise  
14 allowable under sections 24 through 32 of P.L. , c. (C. )  
15 (pending before the Legislature as this bill). This penalty shall  
16 apply annually until such application is filed.

17

18 33. Section 11 of P.L.1993, c.170 (C.54:10A-5.14) is amended  
19 to read as follows:

20 11. The Director of the Division of Taxation shall prepare and  
21 transmit to the Governor and the Legislature, on or before the  
22 second March 1 following the operative date of this section and  
23 annually thereafter, a report concerning the revenue cost and  
24 distributional impact of this act and sections 24 through 32 of  
25 P.L. , c. (C. ) (pending before the Legislature as this bill) in  
26 such a manner as to facilitate an evaluation of its costs in State tax  
27 revenue forgone and its benefits in new job creation. To facilitate  
28 an understanding of the gross amount and percentage of credits  
29 claimed in relation to the size, number and income of corporations  
30 and the number of jobs created, the report shall include statistical  
31 analyses of the number and value of applications for credits, credits  
32 granted and anticipated to be granted, and the number of new jobs  
33 created and anticipated to be created. To facilitate an understanding  
34 of the distribution of the use of the credit, or any concentration of  
35 such use in a particular industry or by a particular taxpayer, and the  
36 creation of new jobs among corporations, the report shall include  
37 statistics of credit use and new jobs creation segregated by specific  
38 industry, displayed in a manner that facilitates an understanding of  
39 the relative distribution of credit claims and uses and the relative  
40 distribution of new jobs created. To facilitate an understanding of  
41 the distinction between the new jobs created as a result of the credit  
42 and the new jobs not resulting from the credit, the report shall  
43 include statistics concerning the mean cost in State tax revenue  
44 forgone of creating a new job in specific industries, the relative new  
45 job creation rates between corporations using the credit and those  
46 not using the credit, and increases in employment in the State and  
47 the region. The director shall include in the report such further

1 observations and recommendations about the use or administration  
2 of the credit as the director deems appropriate.  
3 (cf: P.L.1993, c.170, s.11)

4

5 34. Section 12 of P.L.1993, c.170 (C.54:10A-5.15) is amended  
6 to read as follows:

7 12. Notwithstanding the provisions of subsection (g) of  
8 R.S.43:21-11 to the contrary, the Commissioner of the Department  
9 of Labor and Workforce Development shall provide the Director of  
10 the Division of Taxation such copies of the quarterly reports filed  
11 by taxpayers with the Department of Labor pursuant to  
12 subparagraph (A) of paragraph (2) of subsection (a) of R.S.43:21-14  
13 as the director may request to verify the qualifications of the  
14 taxpayers to the credits allowed under 【this act】 '[P.L.1995]  
15 P.L.1993<sup>1</sup>, c.170 (C.54:10A-5.4 et seq.) and sections 24 through 32  
16 of P.L. , c. (C. ) (pending before the Legislature as this bill).  
17 The director shall not use the reports provided for any purpose other  
18 than the administration of the credits allowed under '[this act]  
19 P.L.1993, c.170 (C.54:10A-5.4 et seq.)<sup>1</sup> and sections 24 through 32  
20 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
21 and reports so provided shall be deemed files and records of the  
22 director pursuant to R.S.54:50-8.

23 (cf: P.L.1993, c.170, s.12)

24

25 35. Section 12 of P.L.1985, c.227 (C.55:19-13) is amended to  
26 read as follows:

27 12. Any person, firm or corporation actively engaged in the  
28 conduct of business at a location within a project, as defined in this  
29 act, which is subject to the provisions of the "Corporation Business  
30 Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) or the "New  
31 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the  
32 business of which at that location consists primarily of  
33 manufacturing or other business that is not retail sales or  
34 warehousing oriented, shall, for a period of two years from the date  
35 upon which an agreement for the undertaking of the project was  
36 entered into pursuant to section 8 or 9 of '[this act] P.L.1985, c.227  
37 (C.55:19-8 et seq.)<sup>1</sup>, be entitled to an annual credit against the  
38 amount of tax imposed under that act of \$1,500.00 for each new  
39 employee employed at that location who is a resident of the  
40 qualified municipality and who immediately prior to such  
41 employment was unemployed at least 90 days or was dependent  
42 upon public assistance as the primary source of income. A credit  
43 for which an employer taxpayer qualifies under this section shall be  
44 allowed in the tax year next following the tax year of qualification,  
45 and may be continued into a second tax year if such qualification  
continues, but it shall be allowed only for those new employees who

1       were employed for at least six consecutive months by the employer  
2       taxpayer in the year of qualification.  
3       (cf: P.L.1985, c.227, s.12)

4

5       36. Section 7 of P.L.1995, c.137 (C.34:1B-7.43) is amended to  
6       read as follows:

7       7. Not later than one year following the effective date of <sup>1</sup>【this  
8       act】 the “New Jersey Emerging Technology and Biotechnology  
9       Financial Assistance Act,” P.L.1995, c.137 (C.34:1B-7.37 et seq.)<sup>1</sup>,  
10      and for each succeeding year in which a financial assistance  
11      agreement entered into under <sup>1</sup>【this act】 the “New Jersey Emerging  
12       Technology and Biotechnology Financial Assistance Act,”  
13       P.L.1995, c.137 (C.34:1B-7.37 et seq.)<sup>1</sup> is in effect, the authority  
14      shall prepare a report on the program. The report shall include, but  
15      need not be limited to, a description of the demand for the program  
16      from emerging technology and biotechnology businesses and  
17      companies and financial institutions, the efforts made by the  
18      authority to promote the program, the total amount of financial  
19      assistance approved by the authority pursuant to the program and an  
20      assessment of the effectiveness of the program in meeting the goals  
21      of <sup>1</sup>【this act】 the “New Jersey Emerging Technology and  
22       Biotechnology Financial Assistance Act,” P.L.1995, c.137  
23       (C.34:1B-7.37 et seq.)<sup>1</sup>. The authority shall submit its report to the  
24      Governor and the Legislature, including therein any  
25      recommendations for legislation to improve the effectiveness of the  
26      program.

27       (cf: P.L.1995, c.137, s.7)

28

29       37. Section 8 of P.L.1995, c.137 (C.34:1B-7.44) is amended to  
30       read as follows:

31       8. The authority shall adopt, pursuant to the "Administrative  
32       Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and  
33       regulations necessary to effectuate the purposes of <sup>1</sup>【this act】 the  
34       “New Jersey Emerging Technology and Biotechnology Financial  
35       Assistance Act,” P.L.1995, c.137 (C.34:1B-7.37 et seq.)<sup>1</sup>. In  
36      developing procedures and forms to be used in connection with the  
37      application for and approval of financial assistance pursuant to  
38      <sup>1</sup>【this act】 the “New Jersey Emerging Technology and  
39       Biotechnology Financial Assistance Act,” P.L.1995, c.137  
40       (C.34:1B-7.37 et seq.)<sup>1</sup>, the authority shall consider the special  
41      needs and problems of emerging technology and biotechnology  
42      businesses and companies in the State.

43       (cf: P.L.1995, c.137, s.8)

1       38. Section 1 of P.L.2005, c.345 (C.54:10A-5.39) is amended to  
2 read as follows:

3       1. a. A taxpayer, upon application to the Director of the Division  
4 of Taxation in the Department of the Treasury and the New Jersey  
5 Economic Development Authority, shall be allowed a credit against  
6 the tax imposed pursuant to section 5 of P.L.1945, c.162  
7 (C.54:10A-5), in an amount equal to 20 percent of the qualified film  
8 production expenses of the taxpayer during a privilege period  
9 commencing after the effective date of P.L.2005, c.345, provided  
10 that (1) at least 60 percent of the total film production expenses,  
11 exclusive of post-production costs, of the taxpayer will be incurred  
12 for services performed and goods used or consumed in New Jersey,  
13 and (2) principal photography of the film commences within 150  
14 days after the approval of the application for the credit.

15       b. A taxpayer, upon application to the Director of the Division  
16 of Taxation in the Department of the Treasury and the New Jersey  
17 Economic Development Authority, shall be allowed a credit against  
18 the tax imposed pursuant to section 5 of P.L.1945, c.162  
19 (C.54:10A-5), in an amount up to 20 percent, as determined by the  
20 authority of the qualified digital media content production expenses  
21 of the taxpayer during a privilege period commencing after the  
22 effective date of P.L.2007, c.257, provided that at least \$2,000,000  
23 of the total digital media content production expenses of the  
24 taxpayer will be incurred for services performed and goods used or  
25 consumed in New Jersey and at least a significant percentage, as  
26 determined by the authority, of the qualified digital media content  
27 production expenses of the taxpayer will include wages and salaries  
28 paid to one or more new full-time employees in New Jersey. For  
29 purposes of this subsection, "new full-time employee" means a  
30 person employed by the taxpayer for consideration for at least 35  
31 hours a week, or who renders any other standard of service  
32 generally accepted by custom or practice as full-time employment,  
33 whose wages are subject to withholding as provided in the "New  
34 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is a  
35 partner of a taxpayer that is an eligible partnership, who works for  
36 the partnership for at least 35 hours a week, or who renders any  
37 other standard of service generally accepted by custom or practice  
38 as full-time employment, and whose distributive share of income,  
39 gain, loss, or deduction, or whose guaranteed payments, or any  
40 combination thereof, is subject to the payment of estimated taxes, as  
41 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
42 et seq., and who is determined by the authority to work in a newly  
43 created permanent position according to criteria it develops. "New  
44 full-time employee" shall not include any person who works as an  
45 independent contractor or on a consulting basis for the taxpayer. In  
46 determining the amount of any grant of tax credits made pursuant to  
47 this subsection, the authority shall consider the number of new full-  
48 time positions created by the taxpayer as well as the quality of the

1 full-time positions created, including but not limited to the salaries  
2 and benefits provided to new full-time employees. The authority, in  
3 consultation with the Division of Taxation, shall establish rules for  
4 the recapture of all, or a portion of, the grant of tax credits pursuant  
5 to this subsection in the event the taxpayer fails to maintain the new  
6 full-time positions that were included in calculating the qualified  
7 digital media content production expenses of the taxpayer.

8 c. The amount of the credit applied under this section against  
9 the tax imposed pursuant to section 5 of P.L.1945, c.162, for a  
10 privilege period, when taken together with any other credits allowed  
11 against the tax imposed pursuant to section 5 of P.L.1945, c.162,  
12 shall not exceed 50 percent of the tax liability otherwise due and  
13 shall not reduce the tax liability to an amount less than the statutory  
14 minimum provided in subsection (e) of section 5 of P.L.1945,  
15 c.162. The priority in which credits allowed pursuant to this section  
16 and any other credits shall be taken shall be as determined by the  
17 Director of the Division of Taxation. The amount of the credit  
18 otherwise allowable under this section which cannot be applied for  
19 the privilege period due to the limitations of this subsection or  
20 under other provisions of P.L.1945, c.162 may be carried over, if  
21 necessary, to the seven privilege periods following the privilege  
22 period for which the credit was allowed.

23 d. A taxpayer may, with an application for a credit provided for  
24 in subsection a. or subsection b. of this section, apply to the director  
25 and the executive director of the authority for a tax credit transfer  
26 certificate in lieu of the taxpayer being allowed any amount of the  
27 credit against the tax liability of the taxpayer. The director and the  
28 executive director of the authority may consult with the New Jersey  
29 Motion Picture and Television Development Commission in  
30 consideration of any application for approval of a tax credit or tax  
31 credit transfer certificate under this section. The tax credit transfer  
32 certificate, upon receipt thereof by the taxpayer from the director  
33 and the authority, may be sold or assigned, in full or in part, to any  
34 other taxpayer that may have a tax liability under P.L.1945, c.162  
35 or N.J.S.54A:1-1 et seq., in exchange for private financial  
36 assistance to be provided by the purchaser or assignee to the  
37 taxpayer that has applied for and been granted the credit. The  
38 certificate provided to the taxpayer shall include a statement  
39 waiving the taxpayer's right to claim that amount of the credit  
40 against the tax imposed pursuant to section 5 of P.L.1945, c.162  
41 (C.54:10A-5) that the taxpayer has elected to sell or assign. The  
42 sale or assignment of any amount of a tax credit transfer certificate  
43 allowed under this section shall not be exchanged for consideration  
44 received by the taxpayer of less than 75% of the transferred credit  
45 amount. Any amount of a tax credit transfer certificate used by a  
46 purchaser or assignee against a tax liability under P.L.1945, c.162  
47 shall be subject to the same limitations and conditions that apply to  
48 the use of a credit pursuant to subsection c. of this section. Any

1 amount of a tax credit transfer certificate obtained by a purchaser or  
2 assignee under subsection a. of this section may be applied against  
3 the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et  
4 seq. and shall be subject to the same limitations and conditions that  
5 apply to the use of a credit pursuant to section 2 of P.L.2005, c.345  
6 (C.54A:4-12).

7 e. As used in this section:

8 "Digital media content" means any data or information that is  
9 produced in digital form, including data or information created in  
10 analog form but reformatted in digital form, text, graphics,  
11 photographs, animation, sound and video content. "Digital media  
12 content" does not mean content offerings generated by the end user  
13 (including postings on electronic bulletin boards and chat rooms);  
14 content offerings comprised primarily of local news, events,  
15 weather or local market reports; public service content; electronic  
16 commerce platforms (such as retail and wholesale websites);  
17 websites or content offerings that contain obscene material as  
18 defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or  
19 content that are produced or maintained primarily for private,  
20 industrial, corporate or institutional purposes; or digital media  
21 content acquired or licensed by the taxpayer for distribution or  
22 incorporation into the taxpayer's digital media content.

23 "Film" means a feature film, a television series or a television  
24 show of 15 minutes or more in length, intended for a national  
25 audience. "Film" shall not include a production featuring news,  
26 current events, weather and market reports or public programming,  
27 talk show, game show, sports event, award show or other gala  
28 event, a production that solicits funds, a production containing  
29 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-  
30 3, or a production primarily for private, industrial, corporate or  
31 institutional purposes.

32 "Qualified digital media content production expenses" means an  
33 expense incurred in New Jersey for the production of digital media  
34 content. Qualified digital media content production expenses shall  
35 include but shall not be limited to wages and salaries of individuals  
36 employed in the production of digital media content on which the  
37 tax imposed by the "New Jersey Gross Income Tax Act,"  
38 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of computer  
39 software and hardware, data processing, visualization technologies,  
40 sound synchronization, editing, and the rental of facilities and  
41 equipment. Qualified digital media content production expenses  
42 shall not include expenses incurred in marketing, promotion or  
43 advertising digital media or other costs not directly related to the  
44 production of digital media content. Costs related to the acquisition  
45 or licensing of digital media content by the taxpayer for distribution  
46 or incorporation into the taxpayer's digital media content shall not  
47 be qualified digital media content production expenses.

1        "Qualified film production expenses" means an expense incurred  
2    in New Jersey for the production of a film including post-  
3    production costs incurred in New Jersey. Qualified film production  
4    expenses shall include but shall not be limited to wages and salaries  
5    of individuals employed in the production of a film on which the  
6    tax imposed by the "New Jersey Gross Income Tax Act,"  
7    N.J.S.54A:1-1 et seq. has been paid or is due; the costs of  
8    construction, operations, editing, photography, sound  
9    synchronization, lighting, wardrobe and accessories and the cost of  
10   rental of facilities and equipment. Qualified film production  
11   expenses shall not include expenses incurred in marketing or  
12   advertising a film.

13        "Total digital media content production expenses" means costs  
14    for services performed and property used or consumed in the  
15   production of digital media content.

16        "Total film production expenses" means costs for services  
17    performed and tangible personal property used or consumed in the  
18   production of a film.

19        "Post-production costs" means the costs of the phase of  
20    production that follows principal photography, in which raw  
21    footage is cut and assembled into a finished film with sound  
22    synchronization and visual effects.

23        f. The Director of the Division of Taxation in the Department  
24    of the Treasury, in consultation with the New Jersey Motion Picture  
25    and Television Development Commission and the New Jersey  
26    Economic Development Authority, shall adopt rules in accordance  
27    with the "Administrative Procedure Act," P.L.1968, c.410  
28    (C.52:14B-1 et seq.), as are necessary to implement this act  
29    including examples of qualified film production and digital media  
30    content production expenses and the procedures and forms to apply  
31    for a credit and for a tax credit transfer certificate necessary for a  
32    taxpayer to sell or assign an amount of tax credit under this section.  
33    The value of credits, including tax credits allowed through the  
34    granting of tax credit transfer certificates, approved by the director  
35    and the authority pursuant to subsection a. of this section, section  
36    20 of P.L. , c. (C. ) (pending before the Legislature as this  
37    bill), and pursuant to section 2 of P.L.2005, c.345 (C.54A:4-12)  
38    shall not exceed a cumulative total of \$10,000,000 in any fiscal year  
39    to apply against the tax imposed pursuant to section 5 of P.L.1945,  
40    c.162 (C.54:10A-5), and the tax imposed pursuant to the "New  
41    Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the  
42    cumulative total amount of credits and tax credit transfer  
43    certificates allowed to taxpayers for privilege periods or taxable  
44    years commencing during a single fiscal year under subsection a. of  
45    this section, section 20 of P.L. , c. (C. ) (pending before the  
46    Legislature as this bill), and section 2 of P.L.2005, c.345 (C.54A:4-  
47    12) exceeds the amount of credits available in that year, then  
48    taxpayers who have first applied for and have not been allowed a

1 credit or tax credit transfer certificate amount for that reason shall  
2 be allowed, in the order in which they have submitted an  
3 application, the amount of tax credit or certificate on the first day of  
4 the next succeeding fiscal year in which tax credits and tax credit  
5 transfer certificates under subsection a. of this section, section 20 of  
6 P.L. , c. (C. ) (pending before the Legislature as this bill),  
7 and section 2 of P.L.2005, c.345 (C.54A:4-12) are not in excess of  
8 the amount of credits available. The value of credits, including tax  
9 credits allowed through the granting of tax credit transfer  
10 certificates, approved by the director and the authority pursuant to  
11 subsection b. of this section shall not exceed a total of \$5,000,000  
12 in any fiscal year to apply against the tax imposed pursuant to  
13 section 5 of P.L.1945, c.162 (C.54:10A-5). If the total amount of  
14 credits and tax credit transfer certificates allowed to taxpayers for  
15 privilege periods or taxable years commencing during a single fiscal  
16 year under subsection b. of this section exceeds the amount of  
17 credits available in that year, then taxpayers who have first applied  
18 for and have not been allowed a credit or tax credit transfer  
19 certificate amount for that reason shall be allowed, in the order in  
20 which they have submitted an application, the amount of tax credit  
21 or certificate on the first day of the next succeeding fiscal year in  
22 which tax credits and tax credit transfer certificates under  
23 subsection b. of this section are not in excess of the amount of  
24 credits available. The Executive Director of the New Jersey  
25 Economic Development Authority, in conjunction with the Director  
26 of the Division of Taxation shall prepare and submit a report to the  
27 Governor and the Legislature on the effectiveness of the credit as an  
28 incentive for encouraging film productions and digital media  
29 content productions to locate in New Jersey which shall be  
30 completed before the third taxable year or privilege period in which  
31 a credit may be claimed.

32 g. For the purpose of determining eligibility for or the amount  
33 of any grant of tax credits pursuant to this section, the authority  
34 shall not include any job that is included in the calculation of a  
35 business employment incentive grant pursuant to the provisions of  
36 P.L.1996, c.26 (C.34:1B-124 et al.) or a business retention and  
37 relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.).  
38 (cf: P.L.2007, c.257, s.1)

39

40 39. Section 34 of P.L.2009, c.90 (C.34:1B-209.2) is amended to  
41 read as follows:

42 34. As used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-  
43 209.2 and C.34:1B-209.3), the terms "affiliate," "authority,"  
44 "capital investment," "eligible municipality," "partnership,"  
45 "residential unit," and "urban transit hub" **【shall】** have the same  
46 meanings as **【ascribed thereto in】** defined by the "Urban Transit  
47 Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.), **【as**

1 amended by P.L.2009, c.90 (C.52:27D-489a et al.)], provided that  
2 all references therein to "business" and "qualified business facility"  
3 [shall be] are deemed to refer respectively to "developer" and  
4 "qualified residential project," as [such] those terms are defined in  
5 this section. Provided however, for purposes of a "mixed use  
6 project" as that term is defined and used pursuant to subparagraph  
7 (b) of paragraph (4) of subsection a. of section 35 of P.L.2009, c.90  
8 (C.34:1B-209.3), "qualified business facility" means that term as  
9 defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208). In  
10 addition, as used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-  
11 209.2 and C.34:1B-209.3):

12 "Developer" [shall have the same meaning as] means  
13 "business," as [such term is] defined in the "Urban Transit Hub  
14 Tax Credit Act," P.L.2007, c.346 (C.34:1B-207 et seq.) [ , as  
15 amended by P.L.2009, c.90 (C.52:27D-489a et al.)].

16 "Qualified residential project" means any building, complex of  
17 buildings or structural components of buildings consisting  
18 predominantly of residential units, located in an urban transit hub  
19 within an eligible municipality.<sup>1</sup>

20 (cf: P.L.2011, c.89, s.3)

21

22 ' [39] 40<sup>1</sup>. (New section) The gross income tax credits  
23 authorized pursuant to P.L. , c. (C. ) (pending before the  
24 Legislature as this bill) shall be subject to the conditions of this  
25 section.

26 A credit shall not be allowed for a creditable activity if that  
27 activity has already been used by the taxpayer for any other State  
28 tax credit authorized under law.

29 The maximum amount of the taxpayer's liability against which a  
30 credit may be applied for a taxable year is that share of a taxpayer's  
31 total liability attributable to the inclusion of the income of the  
32 taxpayer's credited business entity in the taxpayer's gross income,  
33 determined according to the following ratio. The numerator of the  
34 ratio is that proportion of the taxpayer's income for the taxable year  
35 in respect of the credited business entity that the net income from  
36 the category of gross income in which the income from the credited  
37 business entity for the taxable year falls bears to all sources of gross  
38 income in that category for the taxable year. The denominator of  
39 the ratio is the gross income of the taxpayer for the taxable year  
40 determined pursuant to N.J.S.54A:5-1 and N.J.S.54A:5-2, before  
41 itemized exclusions and deductions. This ratio shall be multiplied  
42 by the taxpayer's total tax liability for the taxable year, before  
43 credits, to determine the share of the taxpayer's liability against  
44 which a credit may be applied for a taxable year. Any amount of  
45 credit which may not be applied to liability because of this  
46 subsection may be carried forward pursuant to the terms of  
47 allowable carry forward, if any, under each credit. This subsection

1 shall not reduce the amount of credit that may otherwise be  
2 available for a tax credit transfer certificate.

3 A business entity that elects to be treated as a partnership for  
4 federal income tax purposes shall not be allowed a credit directly  
5 under the gross income tax, but the amount of credit of a taxpayer  
6 in respect of a distributive share of partnership income, shall be  
7 determined by allocating to the taxpayer that proportion of the  
8 credit acquired by the partnership that is equal to the taxpayer's  
9 share, whether or not distributed, of the total distributive income or  
10 gain of the partnership for its taxable year ending within or with the  
11 taxpayer's taxable year 'except as otherwise provided by law'<sup>1</sup>.

12 A New Jersey S Corporation shall not be allowed a credit  
13 directly under the gross income tax, but the amount of credit of a  
14 taxpayer in respect of a pro rata share of S Corporation income,  
15 shall be determined by allocating to the taxpayer that proportion of  
16 the credit acquired by the New Jersey S Corporation that is equal to  
17 the taxpayer's share, whether or not distributed, of the total pro rata  
18 share of S Corporation income of the New Jersey S Corporation for  
19 its privilege period ending within or with the taxpayer's taxable  
20 year.

21 'Applications for credits or transfer certificates authorized  
22 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
23 this bill) shall be made by the business entity of a taxpayer, except  
24 as otherwise prescribed by the director.'<sup>1</sup>

25 The Director of the Division of Taxation in the Department of  
26 the Treasury shall adopt regulations in accordance with the  
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
28 seq.) that the director deems necessary to administer the gross  
29 income tax credits authorized pursuant to P.L. , c. (C. )  
30 (pending before the Legislature as this bill) on substantially similar  
31 terms to the related corporation business tax credits.

32

33 **'[40.] 41.'** This act shall take effect immediately and apply to  
34 creditable activity occurring in taxable years beginning on or after  
35 the date of enactment.