

[First Reprint]

SENATE, No. 3054

STATE OF NEW JERSEY
214th LEGISLATURE

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)

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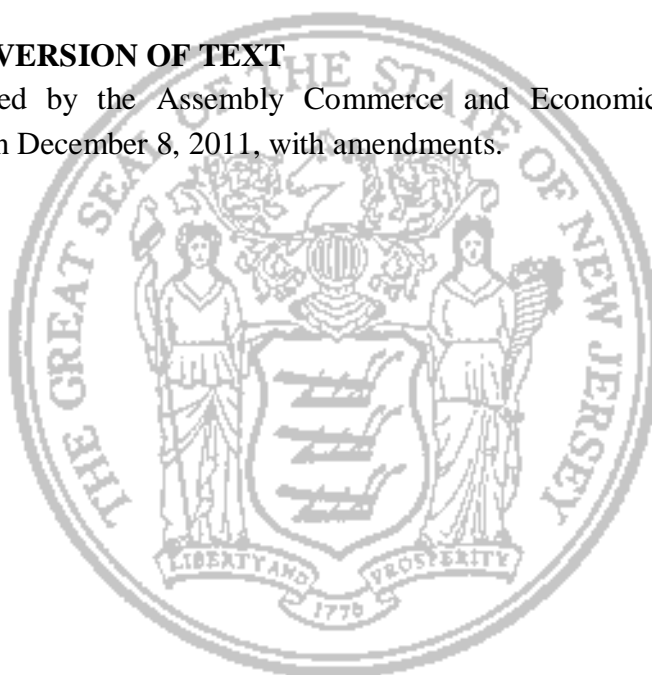
**Senators Stack, Sarlo, Cunningham, Van Drew, Beach, Oroho, Ruiz,
Turner and Assemblyman Fuentes**

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:

¹Assembly 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'. 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' 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 ¹, 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 Fund¹.

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

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., '["The Savings Institution Tax
17 Act," P.L.1973, c.31 (C.54:10D-1 et seq.),]' 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 '[corporate]
35 corporation' 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, 'and the' railroad franchise
39 tax¹[, and the saving institution tax]¹.

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.)¹, 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] pursuant to section 2
48 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 '6] 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 ¹of 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 36¹/₁₂ 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 60¹/₁₂ 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 ¹[(cf: P.L.1993, c.171, s.4)]¹
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 ¹[(cf: P.L.1993, c.171, s.5)]¹
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)
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)
23 qualifies as treatment equipment or conveyance equipment as
24 defined in subsection a. of this section, and (2) is or will be in its
25 operation, considered in conjunction with the reuse of the further
26 treated wastewater effluent that results from that operation,
27 beneficial to the environment. The application shall be submitted in
28 writing in a form as the commissioner shall prescribe and shall
29 specifically include; the date or anticipated date of purchase of the
30 equipment, a physical and functional description of the equipment,
31 the cost, the name and address or location of each primary
32 wastewater treatment facility from which effluent is or is to be
33 received for further treatment, the name and address or location of
34 each facility to which the effluent is or is to be conveyed after the
35 further treatment for reuse, the nature of the reuse, the location of
36 any site at which the wastewater that has been or is to be further
37 treated is being or is to be discharged either prior to or after reuse,
38 the volume of such wastewater that is or is to be reused, the portion
39 of that volume that is or is to be consumed in that reuse and the
40 portion thereof that is or is to be discharged thereafter, and the
41 taxpayer's explanation of how the operation of the system and the
42 reuse of the wastewater effluent that has been further treated are or
43 will be beneficial to the environment. The application shall also
44 include the taxpayer's affidavit that, to the best of the taxpayer's
45 knowledge, the equipment has not previously qualified for a credit
46 pursuant to this section either for the taxpayer or other owner or for
47 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^{1,1} 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 full¹-¹time
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,¹ 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)

24. (New section) As used in '[this act] sections 24 through 32 of P.L. , c. (C.) (pending before the Legislature as this bill)':

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

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

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

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

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

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

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

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

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

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

"New employee" means an individual residing and domiciled in 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; ¹or¹

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 business¹; or

17 d. a member of the same controlled group as the business¹.

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 ¹[of \$5,000,000 or less]¹ and annual gross receipts ¹[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)¹.

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 ¹["\$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).¹ 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 ¹[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.】¹
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

| If property has a: | The applicable percentage is: |
|--|-------------------------------|
| three year recovery period | 35% |
| five year recovery period | 70% |
| 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 ¹by sections 24 through
37 32 of P.L. , c. (C.) (pending before the Legislature as this
38 bill)¹ 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 '[this act] sections 24
21 through 32 of P.L. , c. (C.) (pending before the Legislature
22 as this bill)'¹ 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]** ¹**[P.L.1995]**
15 P.L.1993¹, 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 ¹**[this act]**
19 P.L.1993, c.170 (C.54:10A-5.4 et seq.)¹ 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 ¹**[this act]** P.L.1985, c.227
37 (C.55:19-8 et seq.)¹, 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
46 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 ¹[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.)¹,
10 and for each succeeding year in which a financial assistance
11 agreement entered into under ¹[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.)¹ 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 ¹[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.)¹. 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 ¹[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.)¹. In
36 developing procedures and forms to be used in connection with the
37 application for and approval of financial assistance pursuant to
38 ¹[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.)¹, 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.¹

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

21

22 ¹**【39】 40**¹. (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 ¹except as otherwise provided by law¹.

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 ¹Applications 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.¹

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 ¹**[40.] 41.**¹ 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.