ASSEMBLY, No. 3294

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED OCTOBER 6, 2008

Sponsored by:
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Assemblyman NELSON T. ALBANO
District 1 (Cape May, Atlantic and Cumberland)
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District 6 (Camden)
Assemblywoman LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

Co-Sponsored by:
Assemblywoman Vainieri Huttle, Assemblymen Diegnan, Chivukula and Assemblywoman Pou

SYNOPSIS

Provides certain enhancements to Business Retention and Relocation Assistance Grant Program.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 11/14/2008)

AN ACT concerning enhancements to the Business Retention and Relocation Assistance Grant Program and amending P.L.1996, c.25 and P.L.2004, c.65.

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

1. Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to read as follows:

2. As used in this act:

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

"Advanced computing company" means a person with headquarters or base of operations located in New Jersey and engaged in the research, development, production, or provision of advanced computing for the purpose of developing or providing products or processes for specific commercial or public purposes;

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

"Advanced materials company" means a person with headquarters or base of operations located in New Jersey and engaged in the research, development, production, or provision of advanced materials for the purpose of developing or providing products or processes for specific commercial or public purposes;

<u>"Authority" means the New Jersey Economic Development Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);</u>

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

"Biotechnology company" means a person with headquarters or base of operations located in New Jersey and engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a

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 <u>thus</u> is new matter.

person with headquarters or base of operations located in New Jersey and engaged in providing services or products necessary for such research, development, production, or provision;

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

["Commissioner" means the Executive Director of the New Jersey Commerce Commission;

"Department" means the New Jersey Commerce Commission;]

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

"Commitment duration" means five years from the date specified in the project agreement entered into pursuant to section 5 of P.L.1996, c.25 (C.34:1B-116);

"Designated industry" means a business engaged in the field of biotechnology, pharmaceuticals, manufacturing, financial services or transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology;

"Designated urban center" means an urban center designated in the State Development and Redevelopment Plan adopted by the State Planning Commission;

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

"Electronic device technology company" means a person with headquarters or base of operations located in New Jersey and engaged in the research, development, production, or provision of electronic device technology for the purpose of developing or providing products or processes for specific commercial or public purposes;

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

<u>"Executive Director" means the Executive Director of the New Jersey Economic Development Authority;</u>

"Full-time employee" means a person who is employed for consideration for at least thirty-five hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and who is determined by the [commissioner] <u>executive director</u> to be employed in a permanent position according to criteria as the [Board of Directors of the New Jersey Commerce Commission] <u>authority</u> may prescribe. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. "Full-time employee" shall not include a child, grandchild, parent, or spouse of an individual who has direct or indirect ownership of at least 5% of the profits, capital, or value of the business;

"Headquarters" of a business means the single location that serves as the national administrative center of the business, at which the primary office of the chief executive officer or chief operating officer of the business, as well as the offices of the management officials responsible for key [businesswide] <u>business-wide</u> functions such as finance, legal, marketing, and human resources, are located;

"High-technology business" means an advanced computing company, advanced materials company, electronic device technology company, environmental technology company or medical device technology company;

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

"Medical device technology company" means a person with headquarters or base of operations located in New Jersey and engaged in the research, development, production, or provision of medical device technology for the purpose of developing or providing products or processes for specific commercial or public purposes;

"New business location" means the premises that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than eight years from the date of relocation;

"Manufacturing facility" means a business location at which more than 50% of the business personal property that is housed in the facility is eligible for the sales tax exemption pursuant to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13) for machinery, apparatus or equipment used in the production of tangible personal property;

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

"Project agreement" means an agreement between a business and the ⟦department⟧ <u>authority</u> that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount of the applicable grant of tax credits, and other such provisions which further the purposes of P.L.1996, c.25 (C.34:1B-112 et seq.);

"Research and development facility" means a business location at which more than 50% of the business personal property that is purchased for the facility is eligible for the sales tax exemption pursuant to section 26 of P.L.1980, c.105 (C.54:32B-8.14) for property used in research and development;

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of the members of a "controlled group of corporations" as defined pursuant to section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, shall be considered the eligible positions of a single employer; and

"Total allowable relocation costs" means ⟦$1,500⟧ <u>$2,500</u> times the number of retained full-time jobs<u>, or $4,000 times the number of full-time jobs if the business relocates 2,000 or more full-time jobs from outside of a designated urban center to one or more new locations within a designated urban center</u>. "Total allowable relocation costs" does not include the amount of any bonus award authorized pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1).

(cf: P.L.2007, c.253, s.14)

2. Section 3 of P.L.1996, c.25 (C.34:1B-114) is amended to read as follows:

3. The Business Retention and Relocation Assistance Grant Program is hereby established as a program under the jurisdiction of the New Jersey ⟦Commerce Commission⟧ <u>Economic Development Authority</u> and shall be administered by the New Jersey ⟦Commerce Commission⟧ <u>Economic Development Authority</u>. The purpose of the program is to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which

are in danger of being relocated to premises outside of the State. To implement that purpose, and to the extent that funding for the program is available, the program may provide grants of tax credits but in no case shall the amount of an individual grant of tax credits exceed 80% of the projected State tax revenues from the retained full-time jobs covered by the project agreement of an applicant for a grant of tax credits.
(cf: P.L.2007, c.253, s.15)

3. Section 4 of P.L.1996, c.25 (C.34:1B-115) is amended to read as follows:

4. a. To qualify for a grant of tax credits, a business shall enter into an agreement to undertake a project to:

(1) relocate a minimum of 50 retained full-time jobs from one or more locations within this State to a new business location or locations in this State, or maintain a minimum of 50 full-time jobs at an existing business location or locations in this State, without relocating to another location or locations in the State, if the business provides evidence to the authority of a demonstrable risk that the business might leave the State for such business reasons as lease expirations, competing proposals from other states, a competitive cost advantage in favor of out-of-State locations, or other factors; and

(2) maintain the retained full-time jobs pursuant to the project agreement for the commitment duration.

b. A project that consists solely of point-of-final-purchase retail facilities shall not be eligible for a grant of tax credits. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this section, catalog distribution centers shall not be considered point-of-final-purchase retail facilities.
(cf: P.L.2007, c.310, s.1)

4. Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is amended to read as follows:

7. a. The total value of the grants of tax credits issued pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) shall not exceed an aggregate annual limit of $20,000,000 for a fiscal year. A tax credit issued pursuant to P.L.1996, c.25 may be applied against liability arising in the tax period in which the tax credit is issued and the tax period next following, and shall expire thereafter.

b. Grants of tax credits shall be awarded and issued to qualifying businesses as follows, subject to the limitations of subsection c. of this section:

(1) for a project that covers a business relocating a minimum of 500 full-time employees, a grant of tax credits made pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) shall equal total allowable relocation costs plus any applicable bonus award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1) and shall be issued immediately upon the entry of the project agreement between the ⟦commissioner⟧ executive director and the business with an approved project, up to the aggregate annual limit; and

(2) for a project that covers a business relocating between 50 and 499 full-time employees, a grant of tax credits shall not be issued until the end of the fiscal year in which the application is approved.

c. If the sum of the amount of tax credits issued pursuant to paragraph (1) of subsection b. of this section in a fiscal year, plus the amount of tax credits approved pursuant to paragraph (2) of subsection b. of this section exceeds the $20,000,000 aggregate annual limit, the ⟦commissioner⟧ executive director shall reduce, on a pro rata basis, the award to each business receiving a grant of tax credits pursuant to paragraph (2) of subsection b. as necessary to comply with the aggregate annual limit.

(cf: P.L.2007, c.310, s.2)

5. Section 5 of P.L.1996, c.25 (C.34:1B-116) is amended to read as follows:

5. Each business seeking a grant of tax credits for a project shall submit an application for approval of the project to the ⟦commissioner⟧ executive director in a form and manner prescribed in regulations adopted by the ⟦commissioner⟧ authority. The application must be submitted to the ⟦commissioner⟧ executive director for approval at least 45 days prior to moving to the new business location; provided however, a business relocating 1,500 or more retained full-time jobs to one or more new locations within a designated urban center shall, if relocating to a leased location, submit an application within six months of executing its lease. The application for approval of a project shall include:

a. A schedule of short-term and long-term employment projections of the business in the State based upon the relocation;

b. (Deleted by amendment, P.L.2004, c.65.)

c. Terms of any lease agreements or details of the purchase or building of the new business location;

d. An estimate of the projected retained State tax revenues resulting from the relocation;

e. A description of the type of contribution the business can make to the long-term growth of the State's economy and a description of the potential impact on the State's economy if the jobs are not retained;

f. Evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of the application;

g. Evidence of alternative relocation plans, such as an analysis of the cost effectiveness of remaining in this State versus relocation under the alternative plans;

h. A written commitment by the business to maintain 95% of the retained full-time jobs for at least the first two years of the commitment duration, and to maintain a minimum of 90% of the retained full-time jobs for the commitment duration; and

i. Any other necessary and relevant information as determined by the 【commissioner】 <u>executive director</u>.

The 【commissioner】 <u>executive director</u> may provide whatever assistance the 【commissioner】 <u>executive director</u> deems appropriate in the preparation of an application for approval of a project and may issue grants of tax credits pursuant to the project agreement entered between the 【commissioner】 <u>executive director</u> and the business with an approved project at the 【commissioner's】 <u>executive director's</u> discretion subject to the provisions of P.L.1996, c.25 (C.34:1B-112 et seq.).

The project agreement shall include terms establishing the starting date, or event that will determine the starting date, of the commitment duration and any other terms or conditions as determined by the 【commissioner】 <u>executive director</u>.

(cf: P.L.2004, c.65, s.8)

6. Section 11 of P.L.2004, c.65 (C.34:1B-118.1) is amended to read as follows:

11. In determining the amount of any grant of tax credits made pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), the 【commissioner】 <u>executive director</u> shall consider, as part of the 【commissioner's】 <u>executive director's</u> overall calculation process, the following factors:

a. The number of full-time jobs retained;

b. The quality of the full-time jobs retained, including but not limited to the salaries and benefits provided to retained full-time employees;

c. Any capital investments made by the business at the new business location;

d. The nature of the business' operations, including but not limited to whether the business is a designated industry;

e. The potential impact on the State if the business were to relocate to another state;

f. The site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L.1985, c.398 (C.52:18A-200);

g. Whether positions average at least 1.5 times the minimum hourly wage during the commitment duration; and

h. The duration and extent of past operations by the business in New Jersey and any other information indicating the business' level of commitment to the State and the likelihood that the business will continue to operate in this State in the future.

(cf: P.L.2004, c.65, s.11)

7. Section 8 of P.L.1996, c.25 (C.34:1B-119) is amended to read as follows:

8. The ⟦commissioner⟧ authority shall, after consultation with the Director of the Division of Taxation, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations necessary to govern the proper conduct and operation of the program consistent with the provisions of P.L.1996, c.25 (C.34:1B-112 et seq.) including, but not limited to, a procedure for recapturing relocation grants of tax credits awarded pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) in those cases in which the ⟦commissioner⟧ executive director determines that the business receiving the grant of tax credits fails to meet or comply with any condition or requirement attached by the ⟦commissioner⟧ executive director to the receipt of the grant of tax credits or included in rules and regulations adopted by the ⟦commissioner⟧ authority governing the implementation of the program. The Director of the Division of Taxation is authorized to promulgate such rules and regulations as may be necessary to effect the tax-related provisions of the program.

(cf: P.L.2004, c.65, s.12)

8. Section 9 of P.L.1996, c.25 (C.34:1B-120) is amended to read as follows:

9. As determined by the ⟦commissioner⟧ executive director, a business which is awarded a grant of tax credits under P.L.1996, c.25 (C.34:1B-112 et seq.) shall submit annually, no later than March 1st of each year, commencing the year following the calendar year in which the business was approved for the grant of tax credits and for the remainder of the commitment duration, a copy of the State tax return for the business showing business income or activity, appropriate to its form of ownership together with an annual report listing the full-time employees in eligible positions employed at the location or locations approved for the grant of tax credits, to the ⟦commissioner⟧ executive director. Failure to submit a copy of its annual report or submission of the annual report without the information required above, may result in the forfeiture of any grant of tax credits to be received by the business and the recapture of any tax credits issued to the business unless the ⟦commissioner⟧ executive director determines that there

are extenuating circumstances excusing the business from the timely filing required.
(cf: P.L.2004, c.65, s.13)

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

14. The [commissioner] <u>authority</u> shall adopt rules for the recapture of all, or a portion of, the grant of tax credits, based on criteria established by the [commissioner] <u>authority</u> pursuant to regulation or under the terms of the project agreement if the business fails to maintain the retained full-time jobs at the location or locations approved for the grant of tax credits for the commitment duration or fails to meet or comply with any condition or requirement under the terms of the project agreement or included in rules and regulations adopted by the [commissioner] <u>authority</u> governing the implementation of the program. The rules shall allow for the [commissioner] <u>authority</u> to notify the Director of the Division of Taxation in the Department of the Treasury, who shall issue a recapture assessment which shall be based upon the proportionate value of the grant of tax credits that corresponds to the amount and period of noncompliance. The recapture of funds shall be subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. Recaptured funds shall be deposited in the General Fund of the State.
(cf: P.L.2004, c.65, s.14)

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

17. a. The [commissioner] <u>authority</u> shall establish a corporation business tax credit and insurance premiums tax credit certificate transfer program to allow businesses in this State with unused amounts of tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and otherwise allowable, that cannot be applied by the business to which originally issued before the expiration of the credit, to surrender those tax credits for use by other corporation business and insurance premiums taxpayers in this State, provided that the taxpayer receiving the surrendered tax credits is not affiliated with the business that is surrendering its tax credits. For the purposes of this section, the test of affiliation is whether the same entity directly or indirectly owns or controls 5% or more of the voting rights or 5% or more of the value of all classes of stock of both the taxpayer receiving the tax credits and the business that is surrendering the tax credits. The tax credits may be used on the corporation business tax and insurance premiums tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer or insurance premiums taxpayer that is the recipient of the

corporation business tax credit certificate or insurance premiums tax credit certificate to assist in the funding of costs incurred by the relocating business.

b. The ⟦commissioner⟧ <u>executive director</u>, in cooperation with the Director of the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and by taxpayers under the taxes imposed on insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), section 1 of P.L.1950, c.231 (C.17:32-15) and N.J.S.17B:23-5 to acquire surrendered tax benefits, which shall be issued in the form of corporation business tax credit and insurance premiums tax credit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least 75% of the amount of the surrendered tax credit of a business relocating in the State. The private financial assistance shall assist in funding expenses incurred in connection with the operation of the business in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the ⟦commissioner⟧ <u>executive director</u> to be necessary to carry out the purposes of P.L.1996, c.25 (C.34:1B-112 et seq.).

c. The ⟦commissioner⟧ <u>executive director</u> shall coordinate the applications for surrender and acquisition of unused but otherwise allowable tax credits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to businesses in this State.

d. The ⟦commissioner⟧ <u>executive director</u> shall, in consultation with the Director of the Division of Taxation, develop criteria for the approval or disapproval of applications.

(cf: P.L.2004, c.65, s.17)

11. Section 10 of P.L.1996, c.25 (C.34:1B-121) is amended to read as follows:

10. The ⟦commissioner⟧ <u>executive director</u> shall prepare and transmit to the Governor and the Legislature on or before November 1st of each year, a report concerning the impact of the program on job retention in the State.

(cf: P.L.2004, c.65, s.15)

12. Section 11 of P.L.1996, c.25 (C.34:1B-122) is amended to read as follows:

11. The ⟦department⟧ <u>authority</u> shall conduct a study to determine the minimum funding level required to successfully implement this program. The study shall fully consider the rate of

return for each job relocation in the State as a result of the relocation grants.
(cf: P.L.1996, c.25, s.11)

13. Section 12 of P.L.1996, c.25 (C.34:1B-123) is amended to read as follows:

12. There is appropriated to the New Jersey [Commerce and Economic Growth Commission] Economic Development Authority from the General Fund such sums as may be necessary, as certified by the [commissioner] executive director and the Director of the Division of Budget and Accounting, to fund business retention and relocation grants of tax credits made under P.L.1996, c.25 (C.34:1B-112 et seq.), the amount of which shall not exceed the retained State tax revenues as defined in section 2 of P.L.1996, c.25 (C.34:1B-113).
(cf: P.L.2004, c.65, s.16)

14. This act shall take effect immediately and apply to grant years beginning on or after the date of enactment.

STATEMENT

This bill modifies the provisions of the "Business Retention and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.) (“BRRA act”) to enhance the benefits of the BRRA act to certain businesses.

Specifically, the bill amends the BRRA act to: 1) extend eligibility to businesses that pose a demonstrable flight risk due to lease expirations, competing proposals, a competitive cost advantage in favor of out-of-State locations, or other factors, without requiring relocation to another facility in New Jersey as a prerequisite; and 2) increase the one-time base tax credit amount from $1,500 to $2,500 per retained full-time job and from $1,500 to $4,000 per job if those jobs a) number 2,000 or more, and b) are being located from outside any designated urban center to areas within such a center.

Under the provisions of the BRRA act, a “designated urban center” is an urban area that meets the criteria for designated urban centers under the State Development and Redevelopment Plan adopted by the State Planning Commission (the "commission") in accordance with the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.). According to the current plan, nine urban areas meet the criteria adopted by the commission and would be affected by changes to the incentive program under the bill. These urban areas include: Atlantic City, Camden, Newark, Jersey City, Trenton, New Brunswick, Paterson, Elizabeth, and Asbury Park.

Further, the bill replaces the New Jersey Commerce Commission with the New Jersey Economic Development Authority (the "authority") as the agency to oversee the BRRA act program, given that the New Jersey Commerce Commission has been abolished and its responsibilities in connection with the program have been transferred to the authority.