SYNOPSIS

Expands treatment of mixed use projects under urban transit hub tax credit.

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on December 13, 2010, with amendments.

(Sponsorship Updated As Of: 1/7/2011)

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

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

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

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

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership, an S corporation, or a limited liability corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

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

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 ABU committee amendments adopted December 13, 2010.
the operation of a business in a building, structure, facility or improvement to real property.

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

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or an employee who is a resident of another State but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

“Mixed use project” means a project comprising both a qualified business facility and a qualified residential project.

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

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

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

“Qualified residential project” shall have the meaning ascribed to that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).
"Residential unit" means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

"Urban transit hub" means:

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

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

c. property adjacent to, or connected by rail spur to, a freight rail line if the business utilizes that freight line for loading and unloading freight cars on trains; which property shall have been specifically delineated by the authority pursuant to subsection e. of section 3 of P.L.2007, c.346 (C.34:1B-209).

A property which is partially included within the radius shall only be considered part of the hub if over 50 percent of its land area falls within the radius. "Rail station" shall not include any rail station located at an international airport.

(cf: P.L.2009, c.90, s.31)

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

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

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

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

(4) A business shall not be allowed tax credits under this section if the business participates in a business employment incentive grant relating to the same capital and employees that qualify the business for this credit, or if the business receives assistance pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is allowed a tax credit under this section shall not be eligible for incentives authorized pursuant to P.L.2002, c.43 (C.52:27B1BB-1 et al.). A business shall not qualify for a tax credit under this section, based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-237 et seq.).

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

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

(7) A business shall be allowed a tax credit of 100 percent of its capital investment, made after the effective date of P.L., c. (C.) (pending before the Legislature as this bill) but prior to its submission of documentation pursuant to subsection c. of this
section, in a qualified business facility that is part of a mixed use
project, provided that (a) the qualified business facility represents at
least $17,500,000 of the total capital investment in the mixed use
project, (b) the business employs not fewer than 250 full-time
employees in the qualified business facility, and (c) the total capital
investment in the mixed use project of which the qualified business
facility is a part is not less than $50,000,000. The allowance of
credits under this paragraph shall be subject to the restrictions and
requirements, to the extent that those are not inconsistent with the
provisions of this paragraph, set forth in paragraphs (1) through (6)
of this subsection, including but not limited to the requirement that
the business shall demonstrate to the authority, at the time of
application, that the State's financial support of the proposed capital
investment in a qualified business facility will yield a net positive
benefit to both the State and the eligible municipality.

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

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

The credit amount for any tax period ending after the date eight
years after the effective date of P.L.2007, c.346 (C.34:1B-207 et
seq.) during which the documentation of a business’ credit amount
remains unapproved shall be forfeited, although credit amounts for
the remainder of the years of the 10-year credit period shall remain
available to it.

The amount of credit allowed for a tax period to a business that
is a tenant in a qualified business facility shall not exceed the
business’ total lease payments for occupancy of the qualified
business facility for the tax period.

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

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

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

(2) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under this section, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business' Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(3) If, in any tax period, the number of full-time employees employed by the business at the qualified business facility located in an urban transit hub within an eligible municipality drops below 250 then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified
business facility to 250 has been reviewed and approved by the
authority, for which tax period and each subsequent tax period the
full amount of the credit shall be allowed.

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

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

e. (1) The Executive Director of the New Jersey Economic
Development Authority, in consultation with the Director of the
Division of Taxation in the Department of the Treasury, shall adopt
rules in accordance with the "Administrative Procedure Act,"
P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
this act, including but not limited to: examples of and the
determination of capital investment; the enumeration of eligible
municipalities; specific delineation of urban transit hubs; the
determination of the limits, if any, on the expense or type of
furnishings that may constitute capital improvements; the
promulgation of procedures and forms necessary to apply for a
credit, including the enumeration of the certification procedures and
allocation of tax credits for different phases of a qualified business
facility or mixed use project; and provisions for credit applicants to
be charged an initial application fee, and ongoing service fees, to
cover the administrative costs related to the credit.

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

(cf: P.L.2009, c.90, s.32)

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

34. As used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-
209.2 and C.34:1B-209.3), the terms "affiliate," "authority,"
"capital investment," "eligible municipality," "partnership,"
"residential unit," and "urban transit hub" shall have the same
meanings as ascribed thereto in the "Urban Transit Hub Tax Credit
Act," P.L.2007, c.346 (C.34:1B-207 et seq.), as amended by
P.L.2009, c.90 (C.52:27D-489a et al.), [except] provided that all
references therein to "business" and "qualified business facility" shall be deemed to refer respectively to "developer" and "qualified residential project," as such terms are defined in this section.

Provided however, for purposes of a "mixed use project" as that term is defined and used pursuant to subparagraph b. of paragraph 4 of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3), "qualified business facility" means that term as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208). In addition, as used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-209.2 and C.34:1B-209.3):

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

"Qualified residential project" means any building, complex of buildings or structural components of buildings, including a mixed use project, consisting predominantly of residential units, located in an urban transit hub within an eligible municipality.

(cf: P.L.2009, c.90, s.34)

4. Section 35 of P.L.2009, c.90 (C.34:1B-209.3) is amended to read as follows:

35. a. (1) A developer, upon application to and approval from the authority, shall be allowed a credit of up to 20 percent of its capital investment, made after the effective date of P.L.2009, c.90 (C.52:27D-489a et al.) but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified residential project, pursuant to the restrictions and requirements of this section. To be eligible for any tax credits authorized under this section, a developer shall demonstrate to the authority, through a project pro forma analysis at the time of application, that the qualified residential project is likely to be realized with the provision of tax credits at the level requested but is not likely to be accomplished by private enterprise without the tax credits. The value of all credits approved by the authority pursuant to P.L.2009, c.90 (C.52:27D-489a et al.) may be up to $150,000,000, except as may be increased by the authority as set forth below; provided, however, that the combined value of all credits approved by the authority pursuant to both P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L.2009, c.90 (C.52:27D-489a et al.) shall not exceed $1,500,000,000. The authority shall monitor application and allocation activity under P.L.2007, c.346 (C.34:1B-207 et seq.), and if sufficient credits are available after taking into account allocation under P.L.2007, c.346 (C.34:1B-207 et seq.) to those qualified business facilities for which applications have been filed or for which applications are
reasonably anticipated, and if the executive director judges certain qualified residential projects to be meritorious, the aforementioned $150,000,000 cap may, in the discretion of the executive director, be exceeded for allocation to qualified residential projects in such amounts as the executive director deems reasonable, justified, and appropriate. In allocating all credits to qualified residential projects under this section, the executive director shall take into account, together with other factors deemed relevant by the executive director: input from the municipality in which the project is to be located, whether the project furthers specific State or municipal planning and development objectives, or both, and whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant, dilapidated, outmoded, government-owned, or underutilized property, or both.

(2) A developer shall make or acquire capital investments totaling not less than $50,000,000 in a qualified residential project to be eligible for a credit under this section. A developer that acquires a qualified residential project shall also be deemed to have acquired the capital investment made or acquired by the seller.

(3) The capital investment requirement may be met by the developer or by one or more of its affiliates.

(4) A developer of a mixed use project shall be allowed a credit pursuant to subparagraphs (a) or (b) of this paragraph, but not both.

(a) A developer shall be allowed a credit in accordance with this section for a qualified residential project that includes a mixed use project.

(b) A developer shall be allowed a credit of up to 20 percent of its capital investment, made after the effective date of P.L. ___, c. ___ (pending before the Legislature as this bill) but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified residential project that is part of a mixed use project, provided that: (a) the capital investment in the qualified residential project represents at least $17,500,000 of the total capital investment in the mixed use project; and (b) the total capital investment in the mixed use project of which the qualified residential project is a part is not less than $50,000,000. The allowance of credits under this paragraph shall be subject to the restrictions and requirements, to the extent that those are not inconsistent with the provisions of this paragraph, set forth in paragraphs (1) through (3) of this subsection, including but not limited to the requirement prescribed in paragraph (1) of this subsection that the developer shall demonstrate to the authority, through a project pro forma analysis at the time of application, that the qualified residential project is likely to be realized with the provision of tax credits at the level requested but is not likely to be accomplished by private enterprise without the tax credits.

\(1\) As used in this subparagraph.
“Mixed use project” means a project comprising both a qualified residential project and a qualified business facility. ¹ 

b. A developer shall apply for the credit within five years after the effective date of P.L.2009, c.90 (C.52:27D-489a et al.), and a developer shall submit its documentation for approval of its credit amount within eight years after the effective date of P.L.2009, c.90 (C.52:27D-489a et al.).

c. The credit shall be administered in accordance with the provisions of subsections c. and e. of section 3 of P.L.2007, c.346 (C.34:1B-209), as amended by section 32 of P.L.2009, c.90, and section 33 of P.L.2009, c.90 (C.34:1B-209.1), except that (1) all references therein to "business" and "qualified business facility" shall be deemed to refer respectively to "developer" and "qualified residential project," as such terms are defined in section 34 of P.L.2009, c.90 (C.34:1B-209.2) and (2) all references therein to credits claimed by tenants and to reductions or disqualifications in credits as determined by annual review of the authority shall be disregarded. ¹Provided however, for purposes of a “mixed use project” as that term is used and defined pursuant to subparagraph b. of paragraph 4 of subsection a. of this section, “qualified business facility” means that term as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208). ¹

5. This act shall take effect immediately.