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SYNOPSIS
Establishes a closing fund to provide financial resources for certain economic development projects.

CURRENT VERSION OF TEXT
As reported by the Assembly Budget Committee on December 13, 2010, with amendments.

(Sponsorship Updated As Of: 1/7/2011)
AN ACT establishing a closing fund that provides financial resources for certain economic development projects and supplementing P.L.1974, c.80 (C.34:1B-1 et seq.).

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

1. This act shall be known and may be cited as the “New Jersey Closing Fund Act.”

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 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.

“Affiliate” of a business means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Evidence of such control shall include whether 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) and whether the entity is an organization in a group of organizations under common control as defined in subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. s.414).

“Applicant” means any person, business, State entity or municipality.

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

"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.

“Brownfield site” means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or is suspected to have been, a discharge of 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 thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
1Assembly ABU committee amendments adopted December 13, 2010.
contaminant, as defined in section 34 of P.L.1997, c.278 (C.58:10B-26).

“Business” means a corporation; sole proprietorship; partnership; corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986; limited liability company, limited partnership, or any other business entity through which income flows as a distributive share to its owners; nonprofit corporation; or any other form of business organization located either within or outside the State, including a cooperative association. “Cooperative association” shall include financial, stock, or commodities exchanges.

“Capital investment” in a project means expenses incurred after the effective date of this act for: (a) the site preparation and construction, repair, renovation, improvement, tenant fit-up, equipping, or furnishing of a building, structure, facility, or improvement to real property; (b) obtaining and installing furnishings and machinery, apparatus or equipment in a building, structure, facility, or improvement to real property; (c) pre-development costs, costs not directly associated with the building, structure, facility, or improvement but incurred during the construction period, and debt service costs for the project; and (d) any other costs and expenses that can be capitalized under generally accepted accounting principles.

“Designated industry facility” means (a) a facility in the field of biotechnology, pharmaceuticals, financial services, transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology; (b) a manufacturing facility; (c) a research and development facility; (d) a headquarters facility; or (e) a sports and entertainment facility.

“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.

"Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources.

"Full-time job" means a position that is filled with (a) an individual who is employed 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, 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 authority to be employed in a permanent position according to such criteria as the authority shall establish; (b) an individual who is a partner of an eligible partnership, 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.; or (c) a permitted contract worker. "Full-time employee" shall not include any position filled by a person who works as an independent contractor or on a consulting basis for the business other than a permitted contract worker.

“Headquarters facility” means the single location that serves as the national administrative center of a 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 business-wide functions such as finance, legal services, marketing, and human resources, are located.

"Manufacturing" means a type of business location at which more than 50 percent 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.

"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.

“Municipality” means (a) the municipal governing body or an entity acting on behalf of the municipality if permitted by the federal Internal Revenue Code of 1986; or (b) if a redevelopment agency or redevelopment entity is established in the municipality pursuant to P.L.1992, c.79 (C.40A:12A-1 et seq.) and the municipality so provides, the redevelopment agency or redevelopment entity so established.

“New Jersey Closing Fund” or “fund” means the dedicated account established pursuant to section 3 of this act.

“Payback period” means the time period necessary for a business to recover the initial outlay on a capital investment.

“Permitted contract worker” means (a) an individual who is employed by a vendor of the business who performs work at the project location 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 withholdings by the vendor as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; or (b) an individual who
performs work as an independent contractor at the project for at 1 least 35 hours a week, or who renders any other standard of service 2 generally accepted by custom or practice as full-time employment, 3 and who receives a federal Internal Revenue Service Form 1099 4 (Payor statement of renumeration) from the business and pays 5 estimated taxes.

"Research and development facility” means a business location 6 at which more than 50% of the business personal property that is 7 purchased for the facility is eligible for the sales tax exemption 8 pursuant to section 26 of P.L.1980, c.105 (C.54:32B-8.14) for 9 property used in research and development.

“Smart growth area” shall have the meaning prescribed for that 10 term by section 1 of P.L.2004, c.89 (C.52:27D-10.2).

“Sports and entertainment facility” means any privately or 11 publicly owned or operated facility used for sports contests, 12 entertainment, or both, such as a theater, stadium, ballpark, 13 museum, arena, racetrack, or other place where performances, 14 concerts, exhibits, games, or contests are held and for which an 15 entry fee is charged.

“State entity” means any entity created by State law with the 16 power to undertake a redevelopment project directly or through a 17 State entity redeveloper and with the power to determine the 18 location, type, and character of a redevelopment project or part of a 19 redevelopment project on land owned or controlled by the entity.

"State Treasurer” means the Treasurer of the State of New 20 Jersey.

3. The "New Jersey Closing Fund” is hereby established under 21 the jurisdiction of the State Treasurer and administered by the 22 authority. The purpose of the fund shall be to stimulate economic 23 activity by encouraging and promoting the retention and expansion 24 of existing business and industry within the State, and by creating 25 and attracting new business and industry to the State. To 26 implement that purpose, and to the extent funding is available, the 27 State Treasurer may grant an award from the fund to projects that 28 will significantly benefit the State and that require additional 29 resources as an inducement to locate or remain in the State.

4. a. The authority shall determine the eligibility of each 30 project based on a finding that the project meets the following 31 criteria:
   (1) the project comprises a designated industry facility;
   (2) the project will have a payback period of at least five years;
   (3) the receipt of an award from the fund will be a material 34 factor in the applicant’s decision to proceed with the project;
   (4) together with any other financial incentives the project 37 receives from the State, the project will yield a measurable net
positive financial benefit to both the State and the municipality in which the project is to be located; and

(5) the project will stimulate economic activity within the State through the creation of new full-time jobs, the retention of existing full-time jobs, or a significant capital investment in the project.

b. The authority shall determine the eligibility of each project consistent with the criteria set forth in subsection a. of this section; provided, however, that the authority, in consultation with the State Treasurer, may waive these criteria based on extraordinary circumstances if the authority and the State Treasurer determine that the project would significantly benefit the economy of the State. The authority shall recommend approval or disapproval of a project for an award from the fund, to the State Treasurer. In recommending a project for an award of funds, the authority shall include proposed performance conditions that the project shall meet to obtain the award.

c. Upon review of the recommendations of the authority, the State Treasurer may accept the recommendations of the authority and may submit the recommendations of the authority that the State Treasurer has accepted to the Joint Budget Oversight Committee. Upon approval by the State Treasurer of its recommendations of a project for an award of funds, the authority shall prepare a contract for the award of funds that include proposed performance conditions that the project shall meet to obtain the funds. Provided however, that no contract for the award of funds shall be entered pursuant to section 7 of this act unless the Joint Budget Oversight Committee approves the recommendations of the authority submitted to the committee by the State Treasurer. The committee shall notify the State Treasurer in writing of the approval or disapproval of the committee within 30 days of receipt of the recommendations. Should the committee not act within 30 days of receipt of the recommendations, the recommendations shall be deemed approved by the committee and the contract for award of funds may be entered.

5. a. The total amount of awards made from the fund shall not exceed $50,000,000 during any fiscal year. In determining the amount of an award for a project, the authority and the State Treasurer may consider any factor that they deem relevant to determining whether and to what extent the project will stimulate and improve economic conditions within the State. Such factors may include, but are not limited to, the following:

(1) the number of full-time jobs to be created, retained or both;

(2) the quality of the full-time jobs to be created, retained or both, including, but not limited to, the salaries and benefits provided;

(3) the economic conditions of the region where the project is located;
(4) the nature of the project, including the type of designated industry facility comprised in the project;
(5) the amount of capital investment in the project;
(6) the strategic importance of the project to the region;
(7) whether the project is located in a designated urban center, smart growth area, or brownfield site; and
(8) the financial strength and past operations of the applicant.

b. The amount of the award from the fund shall not exceed $1 for every $4 of private capital investment in the project from the applicant or any of its affiliates.

c. Funds awarded to the project may be used for the following:
(1) job training;
(2) construction of, or improvement to, infrastructure;
(3) the acquisition of land, buildings and rights-of-way, and the construction, improvement or repair of buildings;
(4) the installation, purchase or upgrade of machinery and equipment;
(5) working capital;
(6) site preparation, including demolition and clearance;
(7) environmental assessments;
(8) remediation of hazardous material as defined in 46 U.S.C. s.2101; and
(9) architectural and engineering fees of up to 10 percent of the total amount of the funds awarded.

6. An applicant seeking an award from the fund shall submit an application therefor to the State Treasurer, with a copy to the authority, in a form and manner prescribed in regulations adopted by the authority. The application shall include:

a. a schedule of short-term and long-term employment projections resulting from the project’s location in the State;
b. the terms of any lease agreements or details of the purchase or building of a designated industry facility in connection with the project;
c. an estimate of the projected State tax revenues resulting from the project;
d. the amount of capital investment in the project;
e. a description of the type of contribution the project can make to the long-term growth of the State’s economy;
f. a written commitment by the applicant to operate the project for at least five years after receipt of the award; and
g. any other necessary and relevant information as determined by the authority.

7. Upon approval by the State Treasurer, the authority and the applicant shall enter into a contract that sets forth the following:
a. the total amount of funds approved to be awarded from the fund for the project;
b. the performance conditions, if any, that the applicant shall meet to receive payment of the award including, but not limited to, net new employment and total capital investment;

c. a provision setting forth the schedule of payments from the fund;

d. a provision specifying that the funds received may only be used for the purposes specified in subsection c. of section 5 of this act;

e. a provision requiring that the project operate for at least five years after receipt of the award;

f. a provision setting forth the sanctions for failure to meet performance conditions, including a recapture of funds if a business fails to operate the project for at least five years in accordance with those conditions;

g. a provision stating that the payments from the fund are contingent upon appropriation of sufficient funds by the Legislature; and

h. any other provision that the State Treasurer finds necessary to ensure the proper use of the funds.

8. The authority, in consultation with the State Treasurer, shall adopt rules and regulations, 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 which shall include, but not be limited to:

a. rules prescribing methods to calculate payback period, determine other eligibility requirements, evaluate the factors in making an award under this act, and monitor compliance with this act;

b. rules establishing procedures and forms necessary to apply for an award from the fund; and

c. rules for the assessment of application fees and ongoing service fees to cover the administrative costs related to this act.

9. There shall be annually appropriated to the authority from the General Fund such sums as may be necessary to fund the New Jersey Closing Fund, including an amount equal to five percent of the incremental State revenues directly realized from businesses operating on redevelopment project premises calculated in accordance with the provisions of section 6 of P.L.2009, c.90 (C.52:27D-489f).

10. This act shall take effect immediately.