

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3883

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED JUNE 4, 2009

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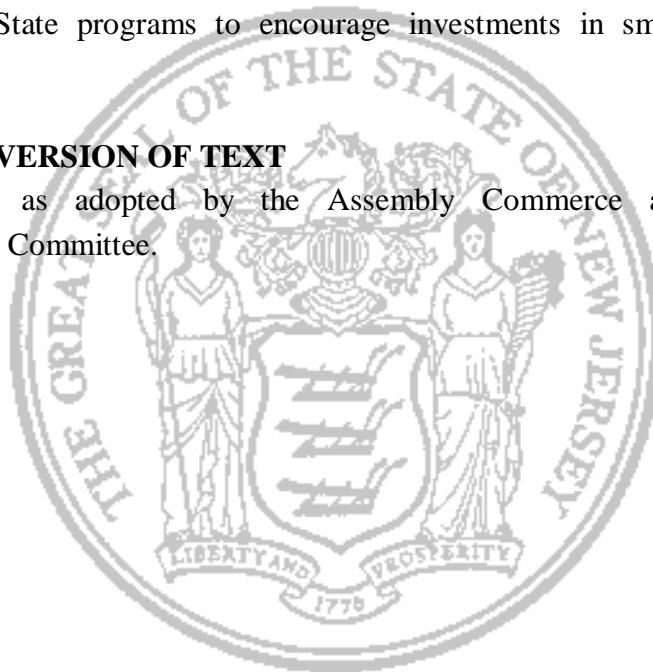
Assemblywoman Wagner

SYNOPSIS

Expands State programs to encourage investments in small technology companies.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Commerce and Economic Development Committee.



(Sponsorship Updated As Of: 6/19/2009)

1 AN ACT expanding State programs to encourage investments in
2 small technology companies, and amending P.L.1997, c.344 and
3 P.L.1999, c.140
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

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

10 1. a. The New Jersey Economic Development Authority shall
11 establish within the New Jersey Emerging Technology and
12 Biotechnology Financial Assistance Program established pursuant
13 to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business
14 tax benefit certificate transfer program to allow new or expanding
15 emerging technology and biotechnology companies in this State
16 with unused amounts of research and development tax credits
17 otherwise allowable which cannot be applied for the credit's tax
18 year due to the limitations of subsection b. of section 1 of P.L.1993,
19 c.175 (C.54:10A-5.24) and unused net operating loss carryover
20 pursuant to subparagraph (B) of paragraph (6) of subsection (k) of
21 section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax
22 benefits for use by other corporation business taxpayers in this
23 State, provided that the taxpayer receiving the surrendered tax
24 benefits is not affiliated with a corporation that is surrendering its
25 tax benefits under the program established under P.L.1997, c.334.
26 For the purposes of this section, the test of affiliation is whether the
27 same entity directly or indirectly owns or controls 5% or more of
28 the voting rights or 5% or more of the value of all classes of stock
29 of both the taxpayer receiving the benefits and a corporation that is
30 surrendering the benefits. The tax benefits may be used on the
31 corporation business tax returns to be filed by those taxpayers in
32 exchange for private financial assistance to be provided by the
33 corporation business taxpayer that is the recipient of the corporation
34 business tax benefit certificate to assist in the funding of costs
35 incurred by the new or expanding emerging technology and
36 biotechnology company.

37 b. The authority, in cooperation with the Division of Taxation
38 in the Department of the Treasury, shall review and approve
39 applications by new or expanding emerging technology and
40 biotechnology companies in this State with unused but otherwise
41 allowable carryover of research and development tax credits
42 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and
43 unused but otherwise allowable net operating loss carryover
44 pursuant to paragraph (6) of subsection (k) of section 4 of P.L.1945,
45 c.162 (C.54:10A-4), to surrender those tax benefits in exchange 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.

1 private financial assistance to be made by the corporation business
2 taxpayer that is the recipient of the corporation business tax benefit
3 certificate in an amount equal to at least ~~【75%】~~ 80 percent of the
4 amount of the surrendered tax benefit. Provided that the amount of
5 the surrendered tax benefit for a surrendered research and
6 development tax credit carryover is the amount of the credit, and
7 provided that the amount of the surrendered tax benefit for a
8 surrendered net operating loss carryover is the amount of the loss
9 multiplied by the new or expanding emerging technology or
10 biotechnology company's anticipated allocation factor, as
11 determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6)
12 for the tax year in which the benefit is transferred and subsequently
13 multiplied by the corporation business tax rate provided pursuant to
14 subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5). The
15 authority shall be authorized to approve the transfer of no more than
16 ~~【\$50,000,000 of tax benefits over State fiscal year 2000,~~
17 ~~\$40,000,000 of tax benefits over each State fiscal year 2001 through~~
18 ~~2004, and】~~ \$60,000,000 ~~【over】~~ of tax benefits in a State fiscal year
19 ~~【2005 and each State fiscal year thereafter】~~. If the total amount of
20 transferable tax benefits requested to be surrendered by approved
21 applicants exceeds ~~【\$50,000,000 for State fiscal year 2000,~~
22 ~~\$40,000,000 for each State fiscal year 2001 through 2004, or~~
23 ~~\$60,000,00】~~ \$60,000,000 ~~for a State fiscal year 【2005 and for each~~
24 ~~State fiscal year thereafter】~~, the authority, in cooperation with the
25 Division of Taxation in the Department of the Treasury, shall not be
26 authorized to approve the transfer of more than ~~【\$50,000,000 for~~
27 ~~State fiscal year 2000, more than \$40,000,000 for each State fiscal~~
28 ~~2001 through 2004, or \$60,000,00】~~ \$60,000,000 ~~for that State fiscal~~
29 ~~year 【2005 and for each State fiscal year thereafter】~~ and shall
30 allocate the transfer of tax benefits by approved companies using
31 the following method:

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

35 (2) an eligible applicant with more than \$250,000 of transferable
36 tax benefits shall be authorized to surrender a minimum of
37 \$250,000 of its transferable tax benefits;

38 (3) ~~【an eligible applicant with more than \$250,000 of~~
39 ~~transferable tax benefits that was approved to surrender tax benefits~~
40 ~~in the prior fiscal year shall be authorized to surrender a minimum~~
41 ~~of 50% of the transferable tax benefits surrendered in the prior~~
42 ~~fiscal year or \$250,000 whichever is greater, provided that the~~
43 ~~amount of transferable tax benefits authorized shall not exceed the~~
44 ~~applicant's transferable tax benefits for the current fiscal year;】~~
45 ~~(Deleted by amendment. P.L. _____, c. ____.) (Pending before the~~
46 ~~Legislature as this bill)~~

1 (4) an eligible applicant with more than \$250,000 shall also be
2 authorized to surrender additional transferable tax benefits
3 determined by multiplying the applicant's transferable tax benefits
4 less the minimum transferable tax benefits that company is
5 authorized to surrender under paragraph (2) **【or (3)】** of this
6 subsection by a fraction, the numerator of which is the total amount
7 of transferable tax benefits that the authority is authorized to
8 approve less the total amount of transferable tax benefit approved
9 under paragraphs (1), (2), **【(3)】** and (5) of this subsection and the
10 denominator of which is the total amount of transferable tax
11 benefits requested to be surrendered by all eligible applicants less
12 the total amount of transferable tax benefits approved under
13 paragraphs (1), (2), **【(3)】** and (5) of this subsection;

14 (5) The authority shall establish the boundaries for three
15 innovation zones to be geographically distributed in the northern,
16 central, and southern portions of this State. Of the \$60,000,000 of
17 transferable tax benefits authorized for each State fiscal year,
18 **【\$5,000,000 shall be allocated for the surrender of transferable tax**
19 **benefits exclusively by eligible companies that operate within the**
20 **boundaries of the innovation zones during State fiscal year 2005,**
21 **and】** \$10,000,000 shall be **【so】** allocated **【for State fiscal year 2006**
22 **and for each State fiscal year thereafter】** for the surrender of
23 transferable tax benefits exclusively by new and expanding
24 emerging technology and biotechnology companies that operate
25 within the boundaries of the innovation zones, except that any
26 portion of the \$10,000,000 that is not so approved shall be available
27 for that State fiscal year for the surrender of transferable tax
28 benefits by new and expanding emerging technology and
29 biotechnology companies that do not operate within the boundaries
30 of an innovation zone.

31 If the total amount of transferable tax benefits that would be
32 authorized using the above method exceeds **【\$50,000,000 for State**
33 **fiscal year 2000, \$40,000,000 for each State fiscal year 2001**
34 **through 2004, or \$60,000,00】** \$60,000,000 for a State fiscal year
35 **【2005 and for each State fiscal year thereafter】**, then the authority,
36 in cooperation with the Division of Taxation in the Department of
37 the Treasury, shall limit the total amount of tax benefits authorized
38 to be transferred to **【\$50,000,000 for State fiscal year 2000,**
39 **\$40,000,000 for each State fiscal year 2001 through 2004, or**
40 **\$60,000,00】** \$60,000,000 **【for State fiscal year 2005 and for each**
41 **State fiscal year thereafter】** by applying the above method on an
42 apportioned basis.

43 For purposes of this section transferable tax benefits include an
44 eligible applicant's unused but otherwise allowable carryover of net
45 operating losses multiplied by the applicant's anticipated allocation
46 factor as determined pursuant to section 6 of P.L. 1945, c.162

1 (C.54:10A-6) for the tax year in which the benefit is transferred and
2 subsequently multiplied by the corporation business tax rate as
3 provided in subsection (c) of section 5 of P.L.1945, c.162
4 (C.54:10A-5) plus the total amount of the applicant's unused but
5 otherwise allowable carryover of research and development tax
6 credits. An eligible applicant's transferable tax benefits shall be
7 limited to net operating losses and research and development tax
8 credits that the applicant requests to surrender in its application to
9 the authority and shall not, in total, exceed the maximum amount of
10 tax benefits that the applicant is eligible to surrender.

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

30 The maximum lifetime value of surrendered tax benefits that a
31 corporation shall be permitted to surrender pursuant to the program
32 is ~~[\$10,000,000]~~ \$15,000,000. Applications must be received
33 ~~[within 30 days from enactment of P.L.1999, c.140 (C.34:1B-7.42b~~
34 ~~et al.) for State fiscal year 2000 and]~~ on or before June 30 ~~[for]~~ of
35 each ~~[subsequent]~~ State fiscal year.

36 ~~[The private financial assistance shall be used to fund expenses~~
37 ~~incurred in connection with the operation of the new or expanding~~
38 ~~emerging technology or biotechnology company in the State,~~
39 ~~including but not limited to the expenses of fixed assets, such as the~~
40 ~~construction and acquisition and development of real estate,~~
41 ~~materials, start-up, tenant fit-out, working capital, salaries, research~~
42 ~~and development expenditures and any other expenses determined~~
43 ~~by the authority to be necessary to carry out the purposes of the~~
44 ~~New Jersey Emerging Technology and Biotechnology Financial~~
45 ~~Assistance Program.]~~

46 The authority, in consultation with the Division of Taxation,
47 shall establish rules for the recapture of all, or a portion of, the

1 amount of a grant of a corporation business tax benefit certificate
2 from the new or expanding emerging technology and biotechnology
3 company having surrendered tax benefits pursuant to this section in
4 the event the taxpayer fails to use the private financial assistance
5 received for the surrender of tax benefits as required by this
6 subsection or fails to maintain a headquarters or a base of operation
7 in this State during the five years following receipt of the private
8 financial assistance; except if the failure to maintain a headquarters
9 or a base of operation in this State is due to the liquidation of the
10 new or expanding emerging technology and biotechnology
11 company.

12 c. The authority, in cooperation with the Division of Taxation
13 in the Department of the Treasury, shall review and approve
14 applications by taxpayers under the Corporation Business Tax Act
15 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire
16 surrendered tax benefits approved pursuant to subsection b. of this
17 section which shall be issued in the form of corporation business
18 tax benefit transfer certificates, in exchange for private financial
19 assistance to be made by the taxpayer in an amount equal to at least
20 **[75%] 80 percent** of the amount of the surrendered tax benefit of an
21 emerging technology or biotechnology company in the State. A
22 corporation business tax benefit transfer certificate shall not be
23 issued unless the applicant certifies that as of the date of the
24 exchange of the corporation business tax benefit certificate it is
25 operating as a new or expanding emerging technology or
26 biotechnology company and has no current intention to cease
27 operating as a new or expanding emerging technology or
28 biotechnology company.

29 The private financial assistance shall assist in funding expenses
30 incurred in connection with the operation of the new or expanding
31 emerging technology or biotechnology company in the State,
32 including but not limited to the expenses of fixed assets, such as the
33 construction and acquisition and development of real estate,
34 materials, start-up, tenant fit-out, working capital, salaries, research
35 and development expenditures and any other expenses determined
36 by the authority to be necessary to carry out the purposes of the
37 New Jersey Emerging Technology and Biotechnology Financial
38 Assistance Program.

39 The authority shall require a corporation business taxpayer that
40 acquires a corporation business tax benefit certificate to enter into a
41 written agreement with the new or expanding emerging technology
42 or biotechnology company concerning the terms and conditions of
43 the private financial assistance made in exchange for the certificate.
44 The written agreement may contain terms concerning the
45 maintenance by the new or expanding emerging technology or
46 biotechnology company of a headquarters or a base of operation in
47 this State.

1 d. [The authority shall coordinate the applications for
2 surrender and acquisition of unused but otherwise allowable tax
3 benefits pursuant to this section in a manner that can best stimulate
4 and encourage the extension of private financial assistance to new
5 and expanding emerging technology and biotechnology companies
6 in this State. The applications shall be submitted and the authority
7 shall approve or disapprove the applications.

8 The authority shall, in consultation with the New Jersey
9 Commerce and Economic Growth Commission, the New Jersey
10 Commission on Science and Technology and any institution of
11 higher education in New Jersey, develop criteria for the approval or
12 disapproval of applications. Such criteria shall include, but need
13 not be limited to, an evaluation of the new or expanding emerging
14 technology or biotechnology company's actual or potential scientific
15 and technological viability, a determination that the new or
16 expanding emerging technology or biotechnology company's
17 principal products or services are sufficiently innovative to provide
18 a competitive advantage, a determination that the proposed financial
19 assistance will result in significant growth in permanent, full-time
20 employment in the State, a determination made by the authority that
21 the new or expanding emerging technology or biotechnology
22 company does not have sufficient resources to operate in the short
23 term or cannot secure financial assistance from venture capital,
24 stock issuance, product sales revenue, a parent corporation or other
25 affiliates, bank or any other method of obtaining capital, and a
26 determination that the financial assistance provided pursuant to this
27 act demonstrates the prospect of a significant positive change in the
28 applicant's net income. The authority shall establish the weight of
29 importance to be given each criterion utilized in its application
30 approval process. No application for surrender and acquisition of
31 unused but otherwise allowable tax benefits pursuant to this section
32 shall be approved in which the new or expanding technology or
33 biotechnology company (1) has demonstrated positive net income in
34 any of the two previous full years of ongoing operations as
35 determined on its financial statements; or (2) has demonstrated a
36 ratio in excess of 110% or greater of operating revenues divided by
37 operating expenses in any of the two previous full years of
38 operations as determined on its financial statements; or (3) is
39 directly or indirectly at least 50% owned or controlled by another
40 corporation that has demonstrated positive net income in any of the
41 two previous full years of ongoing operations as determined on its
42 financial statements or is part of a consolidated group of affiliated
43 corporations, as filed for federal income tax purposes, that in the
44 aggregate has demonstrated positive net income in any of the two
45 previous full years of ongoing operations as determined on its
46 combined financial statements.

1 Once an application has been approved, the applicant shall be
2 permitted to surrender, subject to the limitations set forth in
3 subsection b. of this section and the net operating loss carryover and
4 research and development tax credit carryover time periods
5 pursuant to subparagraph (B) of paragraph (6) of subsection (k) of
6 section 4 of P.L.1945, c.162 (C.54:10A-4) and subsection b. of
7 section 1 of P.L.1993, c.175 (C.54:10A-5.24), the surrendered tax
8 benefits that are requested in the application regardless of whether
9 the applicant continues to meet the eligibility criteria set forth in the
10 act in subsequent years.

11 The authority shall require a corporation business taxpayer that
12 acquires a corporation business tax benefit certificate to enter into a
13 written agreement with the new or expanding emerging technology
14 or biotechnology company concerning the terms and conditions of
15 the private financial assistance made in exchange for the certificate.
16 The written agreement may contain terms concerning the
17 maintenance by the new or expanding emerging technology or
18 biotechnology company of a headquarters or a base of operation in
19 this State. ~~](Deleted by amendment, P.L. , c. .) (pending before~~
20 ~~the Legislature as this bill)~~
21 (cf: P.L.2004, c.65, s.18)

22
23 2. Section 1 of P.L.1999, c.140 (C.34:1B-7.42b) is amended to
24 read as follows:

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

26 “Authority” means the New Jersey Economic Development
27 Authority established pursuant to section 4 of P.L. 1974, c.80
28 (C.34:1B-4);].

29 “Biotechnology” means the continually expanding body of
30 fundamental knowledge about the functioning of biological systems
31 from the macro level to the molecular and sub-atomic levels, as
32 well as novel products, services, technologies and sub-technologies
33 developed as a result of insights gained from research advances that
34 add to that body of fundamental knowledge;].

35 “Biotechnology company” means an emerging corporation that
36 has its headquarters or base of operations in this State; that owns,
37 has filed for, or has a valid license to use protected, proprietary
38 intellectual property; and that is engaged in the research,
39 development, production, or provision of biotechnology for the
40 purpose of developing or providing products or processes for
41 specific commercial or public purposes, including but not limited
42 to, medical, pharmaceutical, nutritional, and other health-related
43 purposes, agricultural purposes, and environmental purposes, or a
44 person whose headquarters or base of operations is located in this
45 State, engaged in providing services or products necessary for such
46 research, development, production, or provision;].

1 “Full-time employee” means a person employed by a new or
2 expanding emerging technology or biotechnology company for
3 consideration for at least 35 hours a week, or who renders any other
4 standard of service generally accepted by custom or practice as full-
5 time employment and whose wages are subject to withholding as
6 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
7 seq., or who is a partner of a new or expanding emerging technology
8 or biotechnology company who works for the partnership for at least
9 35 hours a week, or who renders any other standard of service
10 generally accepted by custom or practice as full-time employment, and
11 whose distributive share of income, gain, loss, or deduction, or whose
12 guaranteed payments, or any combination thereof, is subject to the
13 payment of estimated taxes, as provided in the “New Jersey Gross
14 Income Tax Act,” N.J.S.54A:1-1 et seq. To qualify as a “full-time
15 employee,” an employee shall also receive from the new or expanding
16 emerging technology or biotechnology company health benefits under
17 a group health plan as defined under section 14 of P.L.1997, c.146
18 (C.17B:27-54), a health benefits plan as defined under section 1 of
19 P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health
20 insurance covering more than one person issued pursuant to Article 2
21 of chapter 27 of Title 17B of the New Jersey Statutes. “Full-time
22 employee” shall not include any person who works as an independent
23 contractor or on a consulting basis for the new or expanding emerging
24 technology or biotechnology company.

25 “New or expanding” means a technology or biotechnology
26 company that at the end of the calendar year prior to the year in
27 which the company files an application for surrender of unused but
28 otherwise allowable tax benefits under P.L.1997, c.334 (C.34:1B-
29 7.42a et al.), on the date on which the application is submitted, and
30 on the date on which the company receives the corporation business
31 tax benefit certificate, has fewer than 225 employees in the United
32 States of America [, of whom 75% are New Jersey-based
33 employees filling a position or job in this State]; [and] but that has
34 at least one full-time employee working in this State if the company
35 has been incorporated for less than three years, that has at least five
36 full-time employees working in this State if the company has been
37 incorporated for more than three years but less than five years, and
38 that has at least 10 full-time employees working in this State if the
39 company has been incorporated for more than five years.

40 “Technology company” means an emerging corporation that has
41 its headquarters or base of operations in this State; that owns, has
42 filed for, or has a valid license to use protected, proprietary
43 intellectual property; and that employs some combination of the
44 following: highly educated or trained managers and workers, or
45 both, employed in this State who use sophisticated scientific
46 research service or production equipment, processes or knowledge

1 to discover, develop, test, transfer or manufacture a product or
2 service.

3 (cf: P.L.1999, c.140, s.1)

4

5 3. This act shall take effect immediately.