CHAPTER 90

AN ACT concerning economic development, job creation, economic growth, affordable housing, urban transit hub tax credits, expanding capacity and facilities at our institutions of higher education, bonding in certain planning areas, and exempting certain taxes and energy charges of certain manufacturing facilities; authorizing certain taxes and fees to fund redevelopment; amending and supplementing various sections of the statutory law; and making an appropriation.

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

C.52:27D-489a Short title.

1. This act shall be known and may be cited as the "New Jersey Economic Stimulus Act of 2009."

C.52:27D-489b Findings, declarations relative to economic stimulus.

2. The Legislature finds and declares:

a. The State of New Jersey is confronting a fiscal and economic crisis more severe than any experienced since the Great Depression. Counties and municipalities are likewise witnessing dramatic reductions in local revenues as a consequence of the global economic recession. As part of an ongoing, coordinated attempt to spur economic improvement and reverse this deflationary cycle, the Legislature and the Governor recently enacted a number of laws designed to minimize the impact of current conditions on New Jersey businesses and residents, including legislation providing incentives to create jobs and make business investments in this State.

b. America has seen two economic changes since the birth of our nation over two hundred years ago. The initial change from an agrarian based economy to an industrial based economy in the revolution of the mid to late 1800s caused a realignment of our culture and population and brought prosperity to millions of our hardworking citizens. Much more recently, during those years culminating in the end of the 20th century, the rise of technology and financial services was our second change and increased that prosperity manyfold.

c. As a consequence of the current world-wide financial crisis, opportunities for New Jersey residents to achieve prosperity have now shrunk. Many of our citizens are facing economic hardships not seen since the Great Depression. The financial crisis has diminished the ability of the private sector to create economic development on its own. The worldwide drop in available capital along with a self-fulfilling drop in consumer confidence has created a downward spiral that can be overcome with the assistance of a partnership – a public-private partnership that targets tax cuts to drive economic development and job creation.

d. The poor economic climate continues to pose particular challenges for private sector entities desiring to engage in job creation and economic development activities. In order to spur economic growth and improve the quality of life for all New Jersey residents, it is appropriate for the Legislature to revisit, modify, and supplement several of the current statutes governing economic development and related activities in this State, including but not limited to job creation, economic growth, tax credits, state and local taxation of manufacturing and other activities, higher education, redevelopment, and affordable housing. Each of the facets of P.L.2009, c.90 (C.52:27D-489a et al.) represents a direct response to the unique economic development challenges currently facing the State and local units. It is the belief of the Legislature that each of the individual components of P.L.2009, c.90 (C.52:27D-489a et al.) will serve to combat one or more aspects of the current economic crisis and that

these complementary components will promote economic development and job creation activities immediately upon enactment.

e. Current economic conditions compel bold and timely action to create a third economic change that will enhance our prosperity and build confidence in our future. That prosperity must be extended to all areas of New Jersey, urban, suburban, and rural, and include all sectors of the State's economy.

f. Through the use of tax increment financing, tax credits, development fee suspensions, and dedicated economic development revenues, along with a more efficient redevelopment process, New Jersey will be able to restore its economy to economic health and create good-paying jobs for its residents; assist the private development of affordable housing; assist institutions of higher education to develop needed classrooms, laboratories, dormitory rooms, and other educational facilities; and generate revenues for necessary State and local governmental services.

C.52:27D-489c Definitions relative to economic stimulus.

3. As used in sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.):

"Applicant" means a developer proposing to enter into a redevelopment incentive grant agreement.

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

"Developer" means any person who enters or proposes to enter into a redevelopment incentive grant agreement pursuant to the provisions of section 9 of P.L.2009, c.90 (C.52:27D-489i). A developer also may be a municipal government or a redevelopment agency as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3).

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Eligible revenue" means the property tax increment and any other incremental revenues set forth in section 11 of P.L.2009, c.90 (C.52:27D-489k).

"Incentive grant" means reimbursement of all or a portion of the project financing gap of a redevelopment project through the State or a local Economic Redevelopment and Growth Grant program pursuant to section 4 or section 5 of P.L.2009, c.90 (C.52:27D-489d or C.52:27D-489e).

"Project area" means land or lands under common ownership or control including through a redevelopment agreement with a municipality or as otherwise established by a municipality.

"Project financing gap" means the part of the total redevelopment project cost, including return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital, which shall not be less than 20 percent of the total project cost, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources.

"Project revenue" means all rents, fees, sales, and payments generated by a project, less taxes or other government payments.

"Property tax increment" means the amount obtained by:

(1) multiplying the general tax rate levied each year by the taxable value of all the property assessed within a project area in the same year, excluding any special assessments; and

(2) multiplying that product by a fraction having a numerator equal to the taxable value of all the property assessed within the project area, minus the property tax increment base,

and having a denominator equal to the taxable value of all property assessed within the project area.

For the purpose of this definition, "property tax increment base" means the aggregate taxable value of all property assessed which is located within the redevelopment project area as of October 1st of the year preceding the year in which the redevelopment incentive grant agreement is authorized.

"Qualifying economic redevelopment and growth grant incentive area" means Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a center as designated by the State Planning Commission; a transit village, as determined by the Commissioner of Transportation; and federally owned land approved for closure under a federal Base Realignment Closing Commission action.

"Redevelopment incentive grant agreement" means an agreement between, (1) the State and the New Jersey Economic Development Authority and a developer, or (2) a municipality and a developer, under which, in exchange for the proceeds of an incentive grant, the developer agrees to perform any work or undertaking necessary for a redevelopment project, including the clearance, development or redevelopment, construction, or rehabilitation of any structure or improvement of commercial, industrial, residential, or public structures or improvements within a qualifying economic redevelopment and growth grant incentive area or a transit village.

"Redevelopment project" means a specific work or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer within a project area.

"Redevelopment utility" means a self-liquidating fund created by a municipality pursuant to section 12 of P.L.2009, c.90 (C.52:27D-489l) to account for revenues collected and incentive grants paid pursuant to section 11 of P.L.2009, c.90 (C.52:27D-489k), or other revenues dedicated to a redevelopment project.

"Revenue increment base" means the amounts of all eligible revenues from sources within the redevelopment project area in the calendar year preceding the year in which the redevelopment incentive grant agreement is executed, as certified by the State Treasurer for State revenues, and the chief financial officer of the municipality for municipal revenues.

"Transit village" means a community with a bus, train, light rail, or ferry station that has developed a plan to achieve its economic development and revitalization goals and has been designated by the New Jersey Department of Transportation as a transit village.

C.52:27D-489d Establishment of local Economic Redevelopment and Growth Grant program.

4. a. The governing body of a municipality wherein is located a qualifying economic redevelopment and growth grant incentive area may adopt an ordinance to establish a local Economic Redevelopment and Growth Grant program for the purpose of encouraging redevelopment projects in that area through the provision of incentive grants to reimburse developers for all or a portion of the project financing gap for such projects. No local Economic Redevelopment and Growth Grant program shall take effect until the Local Finance Board approves the ordinance.

b. A developer that submits an application for a local incentive grant shall indicate on the application whether it is also applying for a State incentive grant. An application by a developer applying for a local incentive grant only shall not require approval by the authority. A municipality or its redevelopment agency only may apply for local incentive

grants for: (1) the construction of infrastructure improvements in the public right-of-way, or (2) publicly owned facilities.

c. No local incentive grant shall be finally approved by a municipality until approved by the Local Finance Board.

d. In deciding whether or not to approve a local incentive grant agreement the Local Finance Board shall consider the following factors:

(1) the economic feasibility of the redevelopment project;

(2) the extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project;

(3) the degree to which the redevelopment project will advance State, regional, and local development and planning strategies;

(4) the likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for project costs incurred as provided in the redevelopment incentive grant agreement;

(5) the relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;

(6) the need for the redevelopment incentive grant agreement to the viability of the redevelopment project;

(7) compliance with the provisions of P.L.2009, c.90 (C.52:27D-489a et al.); and

(8) the degree to which the redevelopment project enhances and promotes job creation and economic development.

C.52:27D-489e State Economic Redevelopment and Growth Grant program.

5. a. The New Jersey Economic Development Authority, in consultation with the State Treasurer, shall establish an Economic Redevelopment and Growth Grant program for the purpose of encouraging redevelopment projects in qualifying economic redevelopment and growth grant incentive areas that do not qualify as such areas solely by virtue of being a transit village, through the provision of incentive grants to reimburse developers for certain project financing gap costs.

b. (1) A developer that submits an application for a State incentive grant shall indicate on the application whether it is also applying for a local incentive grant.

(2) When an applicant indicates it is also applying for a local incentive grant, the authority shall forward a copy of the application to the municipality wherein the redevelopment project is to be located for approval by municipal ordinance.

c. An application for a State incentive grant shall be reviewed and approved by the authority and by the municipality by ordinance.

C.52:27D-489f Payments to developer from State.

6. a. Up to the limits established in subsection b. of this section and in accordance with a redevelopment incentive grant agreement, the State Treasurer shall pay to the developer incremental State revenues directly realized from businesses operating on the redevelopment project premises from the following taxes: the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed on sewerage and water corporations pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), the tax derived from net profits from business, a distributive share of partnership income, or a pro rata share of S corporation income under

the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., the tax derived from a business at the site of a redevelopment project that is required to collect the tax pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), the tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) from the purchase of materials used for the remediation, the construction of new structures, or the construction of new residences at the site of a redevelopment project, the hotel and motel occupancy fee imposed pursuant to section 1 of P.L.2003, c.114 (C.54:32D-1), or the portion of the fee imposed pursuant to section 3 of P.L.1968, c.49 (C.46:15-7) derived from the sale of real property at the site of the redevelopment project and paid to the State Treasurer for use by the State, that is not credited to the "Shore Protection Fund" or the "Neighborhood Preservation Nonlapsing Revolving Fund" (“New Jersey Affordable Housing Trust Fund”) pursuant to section 4 of P.L.1968, c.49 (C.46:15-8).

b. Up to 75 percent of the projected annual incremental revenues may be pledged towards the State portion of an incentive grant.

c. All administrative costs associated with the incentive grant shall be assessed to the applicant and be retained by the State Treasurer from the annual incentive grant payments.

d. The incremental revenue for the revenues listed in subsection a. of this section shall be calculated as the difference between the amount collected in any fiscal year from any eligible revenue source included in the local redevelopment incentive grant agreement, less the revenue increment base for that eligible revenue.

e. The municipality is authorized to collect any and all information necessary to facilitate grants under this program and remit that information, as may be required from time to time, in order to assist in the calculation of incremental revenue.

C.52:27D-489g Payments to developers from municipalities.

7. a. Up to the limits established in subsection b. of this section, and in accordance with a redevelopment incentive grant agreement, the municipality shall pay to the developer incremental eligible revenues directly realized from activities or business operations on the redevelopment project premises.

b. Up to 75 percent of the incremental local revenues collected pursuant to subsection d. of section 11 of P.L.2009, c.90 (C.52:27D-489k) may be pledged towards the municipal portion, if any, of an incentive grant.

c. All administrative costs associated with the local incentive grant shall be assessed to the applicant and be retained by the municipality from its annual payments to the developer.

C.52:27D-489h Incentive grant application form, procedure.

8. a. (1) The New Jersey Economic Development Authority, in consultation with the State Treasurer, shall promulgate an incentive grant application form and procedure for the Economic Redevelopment and Growth Grant program.

(2) (a) The Local Finance Board, in consultation with the New Jersey Economic Development Authority, shall develop a minimum standard incentive grant application form for municipal Economic Redevelopment and Growth Grant programs.

(b) Through regulation, the Economic Development Authority shall establish standards for redevelopment projects seeking State or local incentive grants 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.

b. Within each incentive grant application, a developer shall certify information concerning:

(1) the status of control of the entire redevelopment project site;

(2) all required State and federal government permits that have been issued for the redevelopment project, or will be issued pending resolution of financing issues;

(3) local planning and zoning board approvals, as required, for the redevelopment project;

(4) estimates of the revenue increment base, the eligible revenues for the project, and the assumptions upon which those estimates are made.

c. (1) With regard to State tax revenues proposed to be pledged for an incentive grant the authority and the State Treasurer shall review the redevelopment project costs, evaluate and validate the project financing gap estimated by the developer, and conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the project will result in net benefits to the State.

(2) With regard to local incremental revenues proposed to be pledged for an incentive grant the authority and the Local Finance Board shall review the redevelopment project costs, evaluate and validate the financing gap projected by the developer, and conduct a local fiscal impact analysis to ensure that the overall public assistance provided to the project will result in net benefits to the municipality wherein the redevelopment project is located.

(3) The authority, State Treasurer, and Local Finance Board may act cooperatively to administer and review applications, and shall consult with the Office of State Planning on matters concerning State, regional, and local development and planning strategies.

(4) The costs of the aforementioned reviews shall be assessed to the applicant as an application fee.

C.52:27D-489i Certain grant agreements permitted.

9. a. The authority is authorized to enter into a redevelopment incentive grant agreement with a developer for any redevelopment project located within a qualifying economic redevelopment and growth grant incentive area that does not qualify as such area solely by virtue of being a transit village.

b. The decision whether or not to enter into a redevelopment incentive grant agreement is solely within the discretion of the authority and the State Treasurer, provided that they both agree to enter into an agreement.

c. The Chief Executive Officer of the New Jersey Economic Development Authority, in consultation with the State Treasurer shall negotiate the terms and conditions of any redevelopment incentive grant agreement on behalf of the State.

d. The redevelopment incentive grant agreement shall specify the amount of the incentive grant to be awarded the developer, the frequency of payments, and the length of time, which shall not exceed 20 years, during which that reimbursement shall be granted. In no event shall the combined amount of the reimbursements under redevelopment incentive grant agreements with the State or municipality exceed 20 percent of the total cost of the project, exclusive of publicly-owned infrastructure.

e. The authority and the State Treasurer may enter into a redevelopment incentive grant agreement only if they make a finding that the State revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer for its project financing gap. This finding may be made by an estimation based upon the professional judgment of the Chief Executive Officer of the New Jersey Economic Development Authority and the State Treasurer.

f. In deciding whether or not to recommend entering into a redevelopment incentive grant agreement and in negotiating a redevelopment agreement with a developer, the Chief Executive Officer of the New Jersey Economic Development Authority shall consider the following factors:

(1) the economic feasibility of the redevelopment project;

(2) the extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project;

(3) the degree to which the redevelopment project will advance State, regional and local development and planning strategies;

(4) the likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for project costs incurred as provided in the redevelopment incentive grant agreement;

(5) the relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;

(6) the need of the redevelopment incentive grant agreement to the viability of the redevelopment project; and

(7) the degree to which the redevelopment project enhances and promotes job creation and economic development.

g. (1) A developer that has entered into a redevelopment incentive grant agreement with the authority and the State Treasurer pursuant to this section may, upon notice to and consent of the authority and the State Treasurer, pledge and assign as security for any loan, any or all of its right, title and interest in and to such agreements and in the incentive grants payable thereunder, and the right to receive same, along with the rights and remedies provided to the developer under such agreement. Any such assignment shall be an absolute assignment for all purposes, including the federal bankruptcy code.

(2) Any pledge of incentive grants made by the developer shall be valid and binding from the time when the pledge is made and filed in the records of the authority. The incentive grants so pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. Neither the redevelopment incentive grant agreement nor any other instrument by which a pledge under this section is created need be filed or recorded except with the authority.

C.52:27D-489j Assistance to developer to enhance credit.

10. The New Jersey Economic Development Authority, or any other State agency, may provide assistance to a developer in order to enhance its credit for the purpose of securing private project financing on more favorable terms.

C.52:27D-489k Agreement between developer and municipality.

11. a. The governing body of a municipality is authorized to enter into a redevelopment incentive grant agreement with a developer, which shall not be effective until adopted by ordinance, for any redevelopment project located within a qualifying economic redevelopment and growth grant incentive area.

b. The redevelopment incentive grant agreement shall specify the amount of the incentive grant to be awarded the developer, the frequency of payments, and the length of time, which shall not exceed 20 years, during which that reimbursement shall be granted. In

no event shall the combined amount of the reimbursements under redevelopment incentive grant agreements with the State or municipality exceed 20 percent of the total cost of the project.

c. The municipality may enter into a redevelopment incentive grant agreement only if the chief financial officer of the municipality makes a finding that the incremental revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer for its project financing gap. Such finding shall be based upon appropriate documentation and calculations supporting the decision.

d. Within a qualifying economic redevelopment and growth grant incentive area a municipality that has entered into a local redevelopment incentive grant agreement may pledge eligible revenues it is authorized to collect as follows:

(1) incremental payments in lieu of taxes, with respect to property located in the district, made pursuant to the "Five-Year Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et seq.), or the "Long Term Tax Exemption Law," P.L.1991, c.431 (C.40A:20-1 et al.);

(2) incremental revenues collected from payroll taxes, with respect to business activities carried on within the area, pursuant to section 15 of P.L.1970, c.326 (C.40:48C-15);

(3) incremental revenue from lease payments made to the municipality, the developer, or the developer's successors with respect to property located in the area;

(4) incremental revenue collected from parking taxes derived from parking facilities located within the area pursuant to section 7 of P.L.1970, c.326 (C.40:48C-7);

(5) incremental admissions and sales taxes derived from the operation of a public facility within the area pursuant to section 1 of P.L.2007, c.302 (C.40:48G-1);

(6) (a) incremental sales and excise taxes which are derived from activities within the area and which are rebated to or retained by the municipality pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.) or any other law providing for such rebate or retention;

(b) within Planning Area 1 (Metropolitan) under the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), a municipality may impose the entire State sales tax on business activities within a redevelopment project located in an urban enterprise zone that would ordinarily be entitled to collect reduced rate revenues under section 21 of P.L.1983, c.303 (C.52:27H-80), and pledge the excess revenues to a local redevelopment incentive grant agreement;

(7) incremental parking revenue collected, pursuant to section 7 of P.L.1970, c.326 (C.40:48C-7), from public parking facilities built as part of a redevelopment project, except for public parking facilities owned by parking authorities pursuant to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et seq.);

(8) incremental revenues collected, pursuant to section 3 of P.L.2003, c.114 (C.40:48F-1), P.L.1981, c.77 (C.40:48E-1 et seq.), or P.L.1947, c.71 (C.40:48-8.15 et seq.), from hotel and motel taxes;

(9) upon approval by the Local Finance Board, other incremental municipal revenues that may become available;

(10) the property tax increment.

The incremental revenue for the revenues listed in this subsection, when applicable, shall be calculated as the difference between the amount collected in any fiscal year from any eligible revenue source included in the local redevelopment incentive grant agreement, less the revenue increment base for that eligible revenue.

e. (1) In calculating the general tax rate of a municipality each year, the aggregate amount of the incremental ratable value over the property tax increment base in the redevelopment project area that is pledged as part of a redevelopment incentive grant agreement shall be excluded from the ratable base of a municipality.

(2) The amount of property tax increment not pledged toward a redevelopment incentive grant agreement shall be allocated pursuant to the normal tax rate distribution.

The full incremental value of a project area shall be included in the value used for county and regional school tax apportionment until such time that the Director of the Division of Taxation in the Department of the Treasury can certify that property tax management systems are capable of handling the technical and legal requirements of treating parcels in areas of redevelopment as exempt from county and regional school apportionment.

f. In addition to the incremental revenues that may be pledged in subsection d. of this section, any amount of tax proceeds collected from the tax on the rental of motor vehicles pursuant to section 20 of P.L.2009, c.90 (C.40:48H-2), may be included in a redevelopment incentive grant agreement with a developer, regardless of whether or not the redevelopment project area is within or outside of the designated industrial zone from which the tax on the rental of motor vehicles is collected.

g. (1) A developer that has entered into a redevelopment incentive grant agreement with a municipality pursuant to this section may, upon notice to and consent of the municipality, pledge and assign as security for any loan, any or all of its right, title and interest in and to such agreements and in the incentive grants payable thereunder, and the right to receive same, along with the rights and remedies provided to the developer under such agreement. Any such assignment shall be an absolute assignment for all purposes, including the federal bankruptcy code.

(2) Any pledge of incentive grants made by the developer shall be valid and binding from the time when the pledge is made and filed in the office of the municipal clerk. The incentive grants so pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. Neither the redevelopment incentive grant agreement nor any other instrument by which a pledge under this section is created need be filed or recorded except with the municipality.

C.52:27D-489l Creation of municipal redevelopment utility permitted.

12. a. A municipality may adopt an ordinance creating a municipal redevelopment utility under the name and style of "the _____ redevelopment utility," with all or any significant part of the name of the municipality inserted. The redevelopment utility shall be a municipal public utility for the purposes of Title 40A of the New Jersey Statutes.

b. The purpose of every redevelopment utility shall be to receive revenues collected pursuant to section 11 of P.L.2009, c.90 (C.52:27D-489k) and to use those revenues as payment of incentive grants, and for other local purposes that may be approved by the Local Finance Board, as that board deems necessary or useful.

c. If a municipality does not create a municipal redevelopment utility, then any revenues collected pursuant to section 11 of P.L.2009, c.90 (C.52:27D-489k) and any grants received to pay incentive grants shall be treated as riders in the municipal budget pursuant to N.J.S.40A:4-36.

C.52:27D-489m Certain laws inoperative, without effect relative to certain applications.

13. Sections 11 through 41 of P.L.2001, c.310 (C.52:27D-459 through C.52:27D-489) shall be inoperative and without effect for applications submitted after the effective date of P.L.2009, c.90; provided, however, those sections shall remain in effect for revenue allocation districts for which financing has been approved prior to the effective date of P.L.2009, c.90. Any revenue allocation district that has been approved prior to the effective date of P.L.2009, c.90, but for which financing has not been approved prior to that date, shall fall under the provisions of sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.).

14. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as follows:

C.34:1B-5 Powers.

5. The authority shall have the following powers:

a. To adopt bylaws for the regulation of its affairs and the conduct of its business;

b. To adopt and have a seal and to alter the same at pleasure;

c. To sue and be sued;

d. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and such manner as it may deem proper, or by the exercise of the power of eminent domain in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or other property which it may determine is reasonably necessary for any project; provided, however, that the authority in connection with any project shall not take by exercise of the power of eminent domain any real property except upon consent thereto given by resolution of the governing body of the municipality in which such real property is located; and provided further that the authority shall be limited in its exercise of the power of eminent domain in connection with any project to municipalities receiving State aid under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to municipalities which had a population, according to the latest federal decennial census, in excess of 10,000;

e. To enter into contracts with a person upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of the project and to pay or compromise any claims arising therefrom;

f. To establish and maintain reserve and insurance funds with respect to the financing of the project or the school facilities project and any project financed pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

g. To sell, convey or lease to any person all or any portion of a project for such consideration and upon such terms as the authority may determine to be reasonable;

h. To mortgage, pledge or assign or otherwise encumber all or any portion of a project, or revenues, whenever it shall find such action to be in furtherance of the purposes of this act, P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

i. To grant options to purchase or renew a lease for any of its projects on such terms as the authority may determine to be reasonable;

j. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of

P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and conditions thereof;

k. In connection with any application for assistance under P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or P.L.2007, c.137 (C.52:18A-235 et al.) or commitments therefor, to require and collect such fees and charges as the authority shall determine to be reasonable;

l. To adopt, amend and repeal regulations to carry out the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.);

m. To acquire, purchase, manage and operate, hold and dispose of real and personal property or interests therein, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;

n. To purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;

o. To purchase, acquire, attach, seize, accept or take title to any project or school facilities project by conveyance or by foreclosure, and sell, lease, manage or operate any project or school facilities project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

p. To borrow money and to issue bonds of the authority and to provide for the rights of the holders thereof, as provided in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

q. To extend credit or make loans to any person for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing of a project or school facilities project, which credits or loans may be secured by loan and security agreements, mortgages, leases and any other instruments, upon such terms and conditions as the authority shall deem reasonable, including provision for the establishment and maintenance of reserve and insurance funds, and to require the inclusion in any mortgage, lease, contract, loan and security agreement or other instrument, of such provisions for the construction, use, operation and maintenance and financing of a project or school facilities project as the authority may deem necessary or desirable;

r. To guarantee up to 90% of the amount of a loan to a person, if the proceeds of the loan are to be applied to the purchase and installation, in a building devoted to industrial or commercial purposes, or in an office building, of an energy improvement system;

s. To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the redevelopment utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.), and to fix and pay their compensation from funds available to the

redevelopment utility therefor, all without regard to the provisions of Title 11A of the New Jersey Statutes;

t. To do and perform any acts and things authorized by P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.), under, through or by means of its own officers, agents and employees, or by contract with any person;

u. To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable;

v. To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

w. To construct, reconstruct, rehabilitate, improve, alter, equip, maintain or repair or provide for the construction, reconstruction, improvement, alteration, equipping or maintenance or repair of any development property and lot, award and enter into construction contracts, purchase orders and other contracts with respect thereto, upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of any such development property and the settlement of any claims arising therefrom and the establishment and maintenance of reserve funds with respect to the financing of such development property;

x. When authorized by the governing body of a municipality exercising jurisdiction over an urban growth zone, to construct, cause to be constructed or to provide financial assistance to projects in an urban growth zone which shall be exempt from the terms and requirements of the land use ordinances and regulations, including, but not limited to, the master plan and zoning ordinances, of such municipality;

y. To enter into business employment incentive agreements as provided in the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.);

z. To enter into agreements or contracts, execute instruments, and do and perform all acts or things necessary, convenient or desirable for the purposes of the redevelopment utility to carry out any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.), including, but not limited to, entering into contracts with the State Treasurer, the Commissioner of Education, districts, the New Jersey Schools Development Authority, and any other entity which may be required in order to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

aa. (Deleted by amendment, P.L.2007, c.137);

bb. To make and contract to make loans to local units to finance the cost of school facilities projects and to acquire and contract to acquire bonds, notes or other obligations issued or to be issued by local units to evidence the loans, all in accordance with the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.);

cc. Subject to any agreement with holders of its bonds issued to finance a project or school facilities project, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds of the authority or for the

purchase upon tender or otherwise of the bonds, lines of credit, letters of credit, reimbursement agreements, interest rate exchange agreements, currency exchange agreements, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread or similar exposure or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements, and other security agreements or instruments in any amounts and upon any terms as the authority may determine and pay any fees and expenses required in connection therewith;

dd. To charge to and collect from local units, the State and any other person, any fees and charges in connection with the authority's actions undertaken with respect to school facilities projects, including, but not limited to, fees and charges for the authority's administrative, organization, insurance, operating and other expenses incident to the financing of school facilities projects;

ee. To make loans to refinance solid waste facility bonds through the issuance of bonds or other obligations and the execution of any agreements with counties or public authorities to effect the refunding or rescheduling of solid waste facility bonds, or otherwise provide for the payment of all or a portion of any series of solid waste facility bonds. Any county or public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of not less than fifty percent of the aggregate debt service for the refunded or rescheduled debt of the particular county or public authority for the duration of the loan; except that, whenever the solid waste facility bonds to be refinanced were issued by a public authority and the county solid waste facility was utilized as a regional county solid waste facility, as designated in the respective adopted district solid waste management plans of the participating counties as approved by the department prior to November 10, 1997, and the utilization of the facility was established pursuant to tonnage obligations set forth in their respective interdistrict agreements, the public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of a percentage of the aggregate debt service for the refunded or rescheduled debt of the public authority not to exceed the percentage of the specified tonnage obligation of the host county for the duration of the loan. Whenever the solid waste facility bonds are the obligation of a public authority, the relevant county shall execute a deficiency agreement with the authority, which shall provide that the county pledges to cover any shortfall and to pay deficiencies in scheduled repayment obligations of the public authority. All costs associated with the issuance of bonds pursuant to this subsection may be paid by the authority from the proceeds of these bonds. Any county or public authority is hereby authorized to enter into any agreement with the authority necessary, desirable or convenient to effectuate the provisions of this subsection.

The authority shall not issue bonds or other obligations to effect the refunding or rescheduling of solid waste facility bonds after December 31, 2002. The authority may refund its own bonds issued for the purposes herein at any time;

ff. To pool loans for any local government units that are refunding bonds and do and perform any and all acts or things necessary, convenient or desirable for the purpose of the authority to achieve more favorable interest rates and terms for those local governmental units;

gg. To finance projects approved by the board, provide staff support to the board, oversee and monitor progress on the part of the board in carrying out the revitalization, economic development and restoration projects authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its responsibilities pursuant thereto;

hh. To offer financial assistance to qualified film production companies as provided in the "New Jersey Film Production Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.); and

ii. To finance or develop private or public parking facilities or structures, which may include the use of solar photovoltaic equipment, in municipalities qualified to receive State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and municipalities that contain areas designated pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town center, and to provide appropriate assistance, including but not limited to, extensions of credit, loans, and guarantees, to municipalities qualified to receive State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and municipalities that contain areas designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town center, and their agencies and instrumentalities or to private entities whose projects are located in those municipalities, in order to facilitate the financing and development of parking facilities or structures in such municipalities. The authority may serve as the issuing agent of bonds to finance the undertaking of a project for the purposes of this subsection.

15. N.J.S.40A:1-1 is amended to read as follows:

Definitions.

40A:1-1. The following words, as used in this title, shall have the following meanings unless the context clearly indicates a different meaning:

"budget" means the budget of a local unit;

"cash basis budget" means a budget prepared in accordance with the "Local Budget Law";

"clerk" means the clerk of a municipality or of a board of chosen freeholders;

"director" means the Director of the Division of Local Government Services in the Department of Community Affairs;

"fiscal year" means the period for which a local unit adopts a budget, as required pursuant to the "Local Budget Law," N.J.S.40A:4-1 et seq., and shall be the calendar year beginning on January 1 and ending on December 31, unless the local unit is a municipality in which the fiscal year has been changed to the State fiscal year, pursuant to section 2 or 3 of P.L.1991, c.75 (C.40A:4-3.1 or C.40A:4-3.2), in which case, "fiscal year" shall mean the State fiscal year or the transition year, as appropriate;

"full membership of a governing body" means the number of members of the body when all the seats are filled;

"local finance board" means the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs;

"local unit" means a county or municipality;

"municipal public utility" means any water, sewer, electric power or gas system, or any combination thereof, or any public parking system, redevelopment, or any other utility, enterprise or purpose authorized to be undertaken by a local unit from which it may receive fees, rents, or other charges, and with respect to redevelopment utilities, incremental revenues authorized pursuant to section 11 of P.L.2009, c.90 (C.52:27D-489k);

"State fiscal year" means the period commencing on July 1 and ending on June 30 in any municipality in which the fiscal year has been changed pursuant to section 2 or 3 of P.L.1991, c.75 (C.40A:4-3.1 or C.40A:4-3.2);

"transition year" means the period beginning on January 1 and ending on June 30 in the calendar year during which the change in a municipality's fiscal year takes effect, as

authorized under the provisions of section 2 or 3 of P.L.1991, c.75 (C.40A:4-3.1 or C.40A:4-3.2).

16. N.J.S.40A:2-45 is amended to read as follows:

Self-liquidating purposes.

40A:2-45. Any municipal public utility shall be deemed to be a self-liquidating purpose if the cash receipts from fees, rents or other charges, and for redevelopment utilities, taxes other than taxes assessed on real property, in a fiscal year are sufficient to meet operating and maintenance costs (exclusive of depreciation and obsolescence) and interest and debt redemption charges payable or accruing in such year without recourse to general taxation or the deficit, if any, anticipated in the dedicated utility assessment budget. There may be included in such cash receipts any fees, rents and other charges collected from other departments or utilities of the local unit at a rate not in excess of the fees, rents or other charges to other consumers, customers or users, or if there be no other consumers, customers or users properly comparable, then not in excess of the comparable fees, rents and other charges of privately owned or operated utilities or enterprises. Any municipal public utility may include interest on investments and deposits and appropriated surplus as revenues, in addition to the other revenues authorized by this section, in a determination of whether that municipal public utility shall be deemed to be a self-liquidating purpose.

17. Section 31 of P.L.2001, c.310 (C.52:27D-479) is amended to read as follows:

C.52:27D-479 Calculation of general tax rate.

31. a. In calculating the general tax rate levied each year, the aggregate amount of the ratable increments of the revenue allocation districts that have been pledged to bondholders or are otherwise required by the district agent for the development of the plan shall not be considered a part of the total taxable value of land and improvements within the municipality.

b. In calculating the net valuation on which school district taxes and county taxes are apportioned, the aggregate amount of the ratable increments in the revenue allocation district shall be excluded.

c. For purposes of this section, "ratable increment" means the taxable value of all property assessed within a revenue allocation district for the tax year, minus the property tax increment base.

C.52:27D-489n Implementation guidelines, directives, rules, regulations.

18. The Local Finance Board in the Department of Community Affairs, the State Treasurer, and the Economic Development Authority may adopt implementation guidelines or directives, and adopt such administrative rules, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the implementation of those agencies' respective responsibilities under sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.), except that notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Local Finance Board, the State Treasurer, and the Economic Development Authority may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as they deem necessary to implement the provisions of sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.) which shall be effective for a period not to exceed 12 months and shall thereafter be amended, adopted, or re-adopted in accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

C.40:48H-1 Tax on motor vehicle rentals to finance redevelopment activities.

19. The Legislature finds that there exist in certain municipalities certain industrial, port, and airport areas which warrant redevelopment but do not presently generate adequate funding sources with which to stimulate such activities. As a result, municipal revenues derived from other areas in the municipality have for many years been diverted to such areas in order to induce redevelopment at such locations. In addition, the worldwide financial credit crisis has created an environment in which private financial activity in certain cities has been curtailed, resulting in decreased revenue collections that have necessitated severe cuts in local budgets for services. The Legislature declares that it is therefore an appropriate and necessary public purpose to provide a new source of funding, derived from a tax on the rental of motor vehicles within designated industrial zones, to finance various redevelopment activities occurring within those municipalities.

C.40:48H-2 Municipalities permitted to impose tax on rental of motor vehicles; definitions.

20. a. A municipality having a population in excess of 100,000 and within which is located a commercial airport which provides for a minimum of 10 regularly scheduled commercial airplane flights per day, or a municipality in which any portion of such an airport is located, by ordinance, may impose a tax on the rental of motor vehicles on such rental transactions that occur within a designated industrial zone of the municipality. Such tax shall be imposed on the person, corporation, or other legal entity that is permitted the use of a motor vehicle that it does not own for a period of time that is less than one year, in exchange for the payment of a fee, and shall be collected on behalf of the municipality by the person collecting such rental fee, in accordance with such procedures as shall be established in the ordinance imposing the tax.

The local motor vehicle rental tax rate imposed under an ordinance adopted pursuant to this section shall not exceed five percent of the total amount of the fee charged for the rental of the motor vehicle, excluding any taxes and surcharges. After the adoption of an ordinance, a municipality may subsequently amend the ordinance from time to time to adjust the boundaries of the industrial zone or, subject to the provisions of section 26 of P.L.2009, c.90 (C.40:48H-8), to modify the tax rate; however, the modified rate shall not exceed five percent of the total amount of the fee charged for the rental of the motor vehicle, excluding any taxes and surcharges.

An ordinance establishing a local motor vehicle rental tax, or modifying the rate of that tax, shall take effect on the first day of the month immediately following the date on which the ordinance becomes legally in force and effect.

b. As used in this section:

"Eligible purposes" means (1) the payment or reimbursement of costs of any “redevelopment project” or other undertaking in furtherance of a “redevelopment plan” in any “area in need of redevelopment” or “area in need of rehabilitation” within the municipality (including, but not limited to, redevelopment projects and undertakings located within the industrial zone), as such terms are defined in the “Local Redevelopment and Housing Law”, P.L.1992, c.79 (C.40A:12A-1 et al.), (2) the making of municipal subsidies or contributions as authorized by P.L.1992, c.79, (3) the payment or reimbursement, within or relating to any urban enterprise zone located within the municipality, of such costs as are enumerated in the definition of “project” as contained in subsection c. of section 29 of P.L.1983, c.303 (C.52:27H-88), without reference to the zone assistance fund or the zone development corporation, (4) the payment of bonds issued for any of the foregoing purposes, (5) planning, evaluation, negotiation, and other preliminary expenses relating to any of the

foregoing purposes, and (6) costs of administration and enforcement, including costs and expenses of the municipality incurred in collecting the tax.

“Industrial zone” means such portion or portions of the municipality, which may be identified by reference to zoning districts, census tracks, or both, not exceeding in the aggregate 50 percent of the territory of the municipality, as is determined by the municipality to be an area having, or intended to have, predominantly industrial, port, airport, and related uses.

"Motor vehicle" means any automobile, truck, van, bus, or similar conveyance that is intended primarily for passenger (as distinct from cargo) use, and meeting the requirements of the State for operation on public roads.

"Rental of motor vehicle" means any contract or agreement by which a person, corporation, or other legal entity is permitted the use of a motor vehicle that it does not own for a period of time that is less than one year in exchange for the payment of a fee. A rental transaction is deemed to occur at the location at which such person, corporation, or other legal entity takes possession of the motor vehicle.

"Rental tax account" means the dedicated trust account established by a municipality pursuant to subsection c. of this section.

"Tax proceeds" means amounts collected pursuant to any tax imposed pursuant to sections 19 through 27 of P.L.2009, c.90 (C.40:48H-1 et seq.).

c. The Director of the Division of Taxation in the Department of the Treasury may require, by regulation, that all taxes collected pursuant to sections 19 through 27 of P.L.2009, c.90 (C.40:48H-1 et seq.) be collected in the same manner as surcharges are collected under section 28 of P.L.2009, c.90 (C.40:48G-2). Revenues that are collected and distributed back to the municipality shall be deposited into a trust account established by the municipality and dedicated exclusively to the purpose of funding one or more eligible purposes. In the case of any assignment pursuant to section 23 of P.L.2009, c.90 (C.40:48H-5), the terms of such assignment shall include the agreement of the municipality to enforce collection of the taxes in such manner as provided therein, and may provide for direct payment of all or a portion of the tax proceeds to a bond trustee. In addition to tax proceeds, there shall be deposited into the rental tax account such other moneys as may, from time to time, be directed by law to be deposited therein.

C.40:48H-3 Tax proceeds anticipated as dedicated revenues; appropriation.

21. a. All tax proceeds required to be collected by the municipality pursuant to sections 19 through 27 of P.L.2009, c.90 (C.40:48H-1 et seq.) shall be anticipated as dedicated revenues and appropriated to such dedicated purposes in the municipal budget pursuant to N.J.S.40A:4-39.

b. Except to the extent tax proceeds are assigned to a bond trustee pursuant to section 23 of P.L.2009, c.90 (C.40:48H-5), all tax proceeds shall, promptly upon receipt by the chief financial officer, be deposited into the rental tax account. There may also be deposited into the rental tax account, or with the bond trustee, such additional amounts as may from time to time be appropriated for such purpose by the municipality, and the proceeds of any bonds issued pursuant to P.L.2009, c.90 (C.52:27D-489a et al.) may also be deposited into the rental tax account.

C.40:48H-4 Noncompliance; disorderly person.

22. a. Any person having the obligation to collect any tax imposed under sections 19 through 27 of P.L.2009, c.90 (C.40:48H-1 et seq.) who fails, neglects, or refuses to make any report required by the Director of the Division of Taxation in the Department of the Treasury

or by an ordinance adopted pursuant to sections 19 through 27 of P.L.2009, c.90 (C.40:48H-1 et seq.), any such person who refuses to permit an officer or agent designed by the director or by the municipality to examine his books, records, and papers, and any such person who knowingly makes any incomplete, false, or fraudulent report, or who attempts to do anything whatsoever to avoid the full disclosure of the amount due under the ordinance to avoid the payment of the whole or any part thereof, is a disorderly person.

b. The failure of any person to receive or procure the forms required for making reports required by the director or by an ordinance adopted pursuant to section 20 of P.L.2009, c.90 (C.40:48H-2) shall not excuse him from making those reports.

C.40:48H-5 Assignment of proceeds to trustee.

23. An ordinance imposing a tax pursuant to sections 19 through 27 of P.L.2009, c.90 (C.40:48H-1 et seq.) may authorize the municipality to assign all or any portion or percentage of the proceeds thereof directly to the trustee for any bonds issued pursuant to section 24 of P.L.2009, c.90 (C.40:48H-6), as payment or security for the bonds. Notwithstanding any law to the contrary, the assignment shall be an absolute assignment of all of the municipality's right, title and interest in the tax proceeds, or portion or percentage thereof. Tax proceeds assigned to the trustee pursuant to this section shall be paid directly by the municipality's chief financial officer to the trustee, and accordingly such assigned tax proceeds shall not be included in the general funds of the municipality, nor shall they be subject to any laws regarding the receipt, deposit, investment, or appropriation of public funds; and they shall retain such status notwithstanding enforcement of the payment by the municipality or assignee.

C.40:48H-6 Issuance of bonds.

24. a. A municipality that has imposed a tax pursuant to section 20 of P.L.2009, c.90 (C.40:48H-2) may issue bonds to finance eligible purposes listed in subsection b. of section 20 of P.L.2009, c.90 (C.40:48H-2), in accordance with provisions governing the issuance of bonds under the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.). A resolution authorizing such bonds shall either identify a particular eligible purpose or purposes toward which the bond proceeds shall be applied and the respective amounts allocable to each such eligible purpose, or may provide that such bond proceeds may be applied to all of the eligible purposes described in subsection b. of section 20 of P.L.2009, c.90 (C.40:48H-2). Bond proceeds shall be deposited in the rental tax account as provided in subsection c. of section 20 of P.L.2009, c.90 (C.40:48H-2). Any bond authorization issued under this section shall be subject to the approval of the Local Finance Board.

b. Notwithstanding the provisions of subsection g. of section 37 of P.L.1992, c.79 (C.40A:12A-37), the bonds issued pursuant to this section shall be issued as non-recourse obligations, and unless otherwise provided for by separate action of the municipality to guarantee such bonds or otherwise provide for a pledge of the municipality's full faith and credit, shall not, except for such action, be considered to be direct and general obligations of the municipality, and, absent such action, the municipality shall not be obligated to levy and collect a property tax sufficient in an amount to pay the principal and interest on the bonds when the same become due and payable. The provisions of the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.) shall not apply to any bonds issued or authorized pursuant to this section and those bonds shall not be considered gross debt of the municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq., and the provisions of chapter 27 of Title 52 of the Revised Statutes shall not apply to such bonds.

c. The expenditure of the proceeds from the sale of the bonds shall not require compliance with public bidding laws, including the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), or any other statute under which an entity other than the municipality, or any other public entity otherwise subject to such law, shall undertake the economic development costs. The use of these funds shall be subject to public accountability and oversight by the municipality.

d. In order to provide additional security to bonds issued under this section, the municipality may provide for an extension of the municipality's full faith and credit. To the extent that the municipality provides for a full faith and credit guaranty of any bonds, but determines not to authorize the issuance of bonds or notes to provide the funding source thereof, it may do so by resolution approved by a majority of the full governing body. To the extent that bonds or notes are authorized to fund such guaranty, such bonds or notes shall be authorized pursuant to the provisions of the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall be deductible from the gross debt of the municipality until such time as bonds or notes are actually issued, and only up to the amount actually issued, to fund such guaranty.

C.40:48H-7 Bond proceeds, certain, exempt from taxation.

25. All bonds issued pursuant to section 24 of P.L.2009, c.90 (C.40:48H-6) are hereby declared to be issued by a political subdivision of this State and for an essential public and governmental purpose and the bonds, and the interest thereon and the income therefrom, and all facility charges, funds, revenues, and other moneys pledged or available to pay or secure the payment of the bonds, or interest thereon, shall at all times be exempt from taxation except for transfer inheritance and estate taxes.

C.40:48H-8 Covenant of State with bondholders.

26. The State of New Jersey does hereby pledge to, and covenant and agree with, the holders of any bonds issued pursuant to section 24 of P.L.2009, c.90 (C.40:48H-6) that the State will not limit or alter the terms of any agreement, ordinance, or resolution made in connection with the security for, and the issuance and sale of, any bonds, so as to in any way impair the rights or remedies of such holders, and will not modify in any way the exemption from taxation provided for in section 25 of P.L.2009, c.90 (C.40:48H-7) until the bonds, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

C.40:48H-9 Bonds, notes, obligations presumed fully authorized.

27. After issuance, pursuant to sections 19 through 26 of P.L.2009, c.90 (C.40:48H-1 et seq.), all bonds, notes, or other obligations shall be conclusively presumed to be fully authorized and issued by all courts and officers of this State, and any person shall be estopped from questioning their sale, execution, or delivery.

C.40:48G-2 Definitions.

28. a. As used in this section:

"Admission charge" means the amount paid for admission, including any service charge and any charge for entertainment at a place of amusement, including but not limited to a dramatic or musical arts admission charge as defined pursuant to subsection (r) of section 2 of P.L.1966, c.30 (C.54:32B-2); and

"Major place of amusement" means a place of amusement as that term is defined in subsection (t) of section 2 of P.L.1966, c.30 (C.54:32B-2), other than a motion picture

theater, and other than an amusement park as defined in section 1 of P.L.1992, c.118 (C.5:3-55), at which admission charges are regularly paid, which place of amusement is not owned by the State or an independent State authority, or is not located on property that is owned by the State, and which contains fixed seats for at least 7,000 patrons. For the purposes of this definition, a county improvement authority is not an independent State authority.

b. (1) The governing body of a municipality that is a city of the second class and in which there is located a major place of amusement, except for a municipality subject to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), may adopt an ordinance imposing a surcharge of an amount up to $2 on each admission charge that is subject to the New Jersey sales tax pursuant to paragraph (1) of subsection (e) of section 3 of P.L.1966, c.30 (C.54:32B-3), and that is not otherwise exempt from that tax, collected by each major place of amusement in the municipality for admission thereto, which surcharge shall be paid by the customer from whom the sales tax is due pursuant to section 3 of P.L.1966, c.30 (C.54:32B-3). A surcharge imposed under an ordinance adopted pursuant to this paragraph shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon the admission charge. A surcharge imposed under an ordinance adopted pursuant to this paragraph shall be separately stated on any bill, receipt, invoice or similar document provided to the patron, but shall not be considered part of the sale price for the purpose of determining tax pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.).

(2) The governing body of a municipality that is a city of the second class in which there is located a major place of amusement, except for a municipality subject to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), may adopt an ordinance imposing a surcharge of an amount up to $2 on parking for the major place of amusement. A parking surcharge imposed under an ordinance adopted pursuant to this paragraph shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon the parking charge. A surcharge imposed under an ordinance adopted pursuant to this paragraph shall be separately stated on any bill, receipt, invoice or similar document provided to the patron, if any, but shall not be considered part of the sale price for the purpose of determining tax pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.).

c. A copy of an ordinance adopted pursuant to this section shall be transmitted upon adoption or amendment to the State Treasurer along with a list of the names and locations of major places of amusement in the municipality. An ordinance so adopted or any amendment thereto shall provide that the surcharge provisions of the ordinance or any amendment to the surcharge provisions shall take effect on the first day of the first full month occurring 30 days after the date of transmittal to the State Treasurer. Any ordinance adopted pursuant to this section shall contain the following provisions:

(1) A vendor shall not assume or absorb the surcharge imposed by the ordinance;

(2) A vendor shall not in any manner advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the surcharge will be assumed or absorbed by the vendor, that the surcharge will not be separately charged and stated to the customer, or that the surcharge will be refunded to the customer;

(3) Each assumption or absorption by a vendor of the surcharge shall be deemed a separate offense and each representation or advertisement by a vendor for each day the representation or advertisement continues shall be deemed a separate offense; and

(4) Penalties as fixed in the ordinance, for violation of the foregoing provisions.

d. (1) A surcharge imposed pursuant to a municipal ordinance adopted under the provisions of this section shall be collected on behalf of the municipality by the person collecting the admission charge or parking fee from the customer.

(2) Each person required to collect a surcharge imposed by the ordinance shall be personally liable for the surcharge imposed, collected or required to be collected hereunder. Any such person shall have the same right in respect to collecting the surcharge from a customer as if the surcharge were a part of the admission charge and payable at the same time; provided, however, that the chief fiscal officer of the municipality shall be joined as a party in any action or proceeding brought to collect the surcharge.

e. (1) A person required to collect a surcharge imposed pursuant to the provisions of this section shall, on or before the dates required pursuant to section 17 of P.L.1966, c.30 (C.54:32B-17), forward to the Director of the Division of Taxation in the Department of the Treasury the surcharge collected in the preceding month and make and file a return for the preceding month with the director on any form and containing any information as the director shall prescribe as necessary to determine liability for the surcharge in the preceding month during which the person was required to collect the surcharge.

(2) The director may permit or require returns to be made covering other periods and upon any dates as the director may specify. In addition, the director may require payments of surcharge liability at any intervals and based upon any classifications as the director may designate. In prescribing any other periods to be covered by the return or intervals or classifications for payment of surcharge liability, the director may take into account the dollar volume of surcharge involved as well as the need for ensuring the prompt and orderly collection of the surcharge imposed.

(3) The director may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

f. (1) The Director of the Division of Taxation in the Department of the Treasury shall collect and administer the surcharges; in so doing, the director shall have all the powers granted pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.). Surcharges imposed pursuant to the provisions of this section shall be governed by the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

(2) The director shall determine and certify to the State Treasurer on a quarterly or more frequent basis, as prescribed by the State Treasurer, the amount of revenues collected in each municipality pursuant to this section.

(3) The State Treasurer, upon the certification of the director and upon the warrant of the State Comptroller, shall pay and distribute on a quarterly or more frequent basis, as prescribed by the State Treasurer, to each municipality the amount of revenues determined and certified under this subsection.

(4) The revenue received by a municipality shall be appropriated as a special item of local revenue subject to the prior written approval by the Director of the Division of Local Government Services in the Department of Community Affairs, and shall be offset with a local unit appropriation of an equal amount for economic development purposes.

g. The director may, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), make, adopt, amend, or repeal such rules and regulations as the director finds necessary to carry out the provisions of this section.

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

C.34:1B-7.42a Corporation business tax benefit certificate transfer program.

1. a. The New Jersey Economic Development Authority shall establish within the New Jersey Emerging Technology and Biotechnology Financial Assistance Program established pursuant to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business tax benefit certificate transfer program to allow new or expanding emerging technology and biotechnology companies in this State with unused amounts of research and development tax credits otherwise allowable which cannot be applied for the credit's tax year due to the limitations of subsection b. of section 1 of P.L.1993, c.175 (C.54:10A-5.24) and unused net operating loss carryover pursuant to subparagraph (B) of paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for use by other corporation business taxpayers in this State, provided that the taxpayer receiving the surrendered tax benefits is not affiliated with a corporation that is surrendering its tax benefits under the program established under P.L.1997, c.334. 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 benefits and a corporation that is surrendering the benefits. The tax benefits may be used on the corporation business tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate to assist in the funding of costs incurred by the new or expanding emerging technology and biotechnology company.

b. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by new or expanding emerging technology and biotechnology companies in this State with unused but otherwise allowable carryover of research and development tax credits pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable net operating loss carryover pursuant to paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits in exchange for private financial assistance to be made by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate in an amount equal to at least 80% of the amount of the surrendered tax benefit. Provided that the amount of the surrendered tax benefit for a surrendered research and development tax credit carryover is the amount of the credit, and provided that the amount of the surrendered tax benefit for a surrendered net operating loss carryover is the amount of the loss multiplied by the new or expanding emerging technology or biotechnology company's anticipated allocation factor, as determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6) for the tax year in which the benefit is transferred and subsequently multiplied by the corporation business tax rate provided pursuant to subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5). The authority shall be authorized to approve the transfer of no more than $60,000,000 of tax benefits in a State fiscal year. If the total amount of transferable tax benefits requested to be surrendered by approved applicants exceeds $60,000,000 for a State fiscal year, the authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall not be authorized to approve the transfer of more than $60,000,000 for that State fiscal year and shall allocate the transfer of tax benefits by approved companies using the following method:

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

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

(3) (Deleted by amendment, P.L.2009, c.90.)

(4) an eligible applicant with more than $250,000 shall also be authorized to surrender additional transferable tax benefits determined by multiplying the applicant's transferable tax benefits less the minimum transferable tax benefits that company is authorized to surrender under paragraph (2) of this subsection by a fraction, the numerator of which is the total amount of transferable tax benefits that the authority is authorized to approve less the total amount of transferable tax benefits approved under paragraphs (1), (2), and (5) of this subsection and the denominator of which is the total amount of transferable tax benefits requested to be surrendered by all eligible applicants less the total amount of transferable tax benefits approved under paragraphs (1), (2), and (5) of this subsection;

(5) The authority shall establish the boundaries for three innovation zones to be geographically distributed in the northern, central, and southern portions of this State. Of the $60,000,000 of transferable tax benefits authorized for each State fiscal year, $10,000,000 shall be allocated for the surrender of transferable tax benefits exclusively by new and expanding emerging technology and biotechnology companies that operate within the boundaries of the innovation zones, except that any portion of the $10,000,000 that is not so approved shall be available for that State fiscal year for the surrender of transferable tax benefits by new and expanding emerging technology and biotechnology companies that do not operate within the boundaries of an innovation zone.

If the total amount of transferable tax benefits that would be authorized using the above method exceeds $60,000,000 for a State fiscal year, then the authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall limit the total amount of tax benefits authorized to be transferred to $60,000,000 by applying the above method on an apportioned basis.

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

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

The maximum lifetime value of surrendered tax benefits that a corporation shall be permitted to surrender pursuant to the program is $15,000,000. Applications must be received on or before June 30 of each State fiscal year.

The authority, in consultation with the Division of Taxation, shall establish rules for the recapture of all, or a portion of, the amount of a grant of a corporation business tax benefit certificate from the new or expanding emerging technology and biotechnology company having surrendered tax benefits pursuant to this section in the event the taxpayer fails to use the private financial assistance received for the surrender of tax benefits as required by this section or fails to maintain a headquarters or a base of operation in this State during the five years following receipt of the private financial assistance; except if the failure to maintain a headquarters or a base of operation in this State is due to the liquidation of the new or expanding emerging technology and biotechnology company.

c. The authority, in cooperation with 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.), to acquire surrendered tax benefits approved pursuant to subsection b. of this section which shall be issued in the form of corporation business tax benefit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least 80% of the amount of the surrendered tax benefit of an emerging technology or biotechnology company in the State. A corporation business tax benefit transfer certificate shall not be issued unless the applicant certifies that as of the date of the exchange of the corporation business tax benefit certificate it is operating as a new or expanding emerging technology or biotechnology company and has no current intention to cease operating as a new or expanding emerging technology or biotechnology company.

The private financial assistance shall assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company 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 authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

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

d. (Deleted by amendment, P.L.2009, c.90.)

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

C.34:1B-7.42b Definitions relative to certain corporation tax benefit program.

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

"Authority" means the New Jersey Economic Development Authority established pursuant to 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 that add to that body of fundamental knowledge.

"Biotechnology company" means an emerging corporation that has its headquarters or base of operations in this State; that owns, has filed for, or has a valid license to use protected, proprietary intellectual property; and that is 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 person whose headquarters or base of operations is located in this State, engaged in providing services or products necessary for such research, development, production, or provision.

"Full-time employee" means a person employed by a new or expanding emerging technology or biotechnology company 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 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 who is a partner of a new or expanding emerging technology or biotechnology company 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. To qualify as a "full-time employee," an employee shall also receive from the new or expanding emerging technology or biotechnology company 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 chapter 27 of Title 17B of the New Jersey Statutes. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology company.

"New or expanding" means a technology or biotechnology company that at the end of the calendar year prior to the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L.1997, c.334 (C.34:1B-7.42a et al.), on the date on which the application is submitted, and on the date on which the company receives the corporation business tax benefit certificate, has fewer than 225 employees in the United States of America; but that has at least one full-time employee working in this State if the company has been incorporated for less than three years, that has at least five full-time employees working in this State if the company has been incorporated for more than three years but less than five years, and that has at least 10 full-time employees working in this State if the company has been incorporated for more than five years.

"Technology company" means an emerging corporation that has its headquarters or base of operations in this State; that owns, has filed for, or has a valid license to use protected, proprietary intellectual property; and that employs some combination of the following: highly educated or trained managers and workers, or both, employed in this State who use sophisticated scientific research service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service.

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

C.34:1B-208 Definitions relative to the "Urban Transit Hub Tax Credit Act."

2. As used in this act:

"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 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.

"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.

"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.52:27BBB-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.

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

C.34:1B-209 Credit for qualified business facilities, conditions for eligibility; allowance.

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.52:27BBB-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.

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-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; 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.

C.34:1B-209.1 Application for tax credit transfer certificate.

33. A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the executive director of the authority for a tax credit transfer certificate, covering one or more years, in lieu of the business being allowed any amount of the credit against the tax liability of the business. The tax credit transfer certificate, upon receipt thereof by the business from the director and the executive director of the authority, may be sold or assigned, in full or in part, to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-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. The certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the business that originally applied for and was allowed the credit.

C.34:1B-209.2 Definitions.

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 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. 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.

C.34:1B-209.3 Developer allowed certain tax credits.

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.

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.

36. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to read as follows:

C.40:55D-8.2 Findings, declarations relative to Statewide non-residential development fees.

33. The Legislature finds and declares:

a. The collection of development fees from builders of residential and non-residential properties has been authorized by the court through the powers delegated to the Council on Affordable Housing established pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

b. New Jersey's land resources are becoming more scarce, while its redevelopment needs are increasing. In order to balance the needs of developing and redeveloping communities, a reasonable method of providing for the housing needs of low and moderate income and middle income households, without mandating the inclusion of housing in every non-residential project, must be established.

c. A Statewide non-residential development fee program which permits municipalities under the council's jurisdiction to retain these fees for use in the municipality will provide a fair and balanced funding method to address the State's affordable housing needs, while providing an incentive to all municipalities to seek substantive certification from the council.

d. Whereas pursuant to P.L.1977, c.110 (C.5:12-1 et seq.), organizations are directed to invest in the Casino Reinvestment Development Authority to ensure that the development of housing for families of low and moderate income shall be provided. The Casino Reinvestment Development Authority, in consultation with the council, shall work to effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301 et al.).

e. The "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), prohibits municipalities from imposing their own fees to fund affordable housing on non-residential development, and P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this underlying policy.

f. The negative impact of a State policy that over-relies on a municipal fee structure and of State programs that require a municipality to impose fees and charges on developers must be balanced against any public good expected from such regulation. It is undisputable that the charging of fees at high levels dissuades commerce from locating within a State or municipality or locality and halts non-residential and residential development, and these ill effects directly increase the overall costs of housing, and could impede the constitutional obligation to provide for a realistic opportunity for housing for families at all income levels.

37. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to read as follows:

C.40:55D-8.6 Inapplicability of certain provisions of law imposing fee upon developer of certain non-residential property.

37. a. The provisions of this subsection shall not apply to a financial or other contribution that a developer made or committed itself to make prior to the effective date of sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7). The provisions of P.L.2008, c.46 that would permit the imposition of a fee upon a developer of non-residential property shall not apply to:

(1) Non-residential property for which a site plan has received either preliminary approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46), or final approval, pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50), prior to July 1, 2010; provided that a permit for the construction of the building has been issued by the local enforcing agency having jurisdiction, in accordance with section 13 of P.L.1975, c.217 (C.52:27D-131), prior to January 1, 2013;

(2) A non-residential planned development which has received approval of a general development plan pursuant to section 5 of P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development for which the developer has entered into a developer's agreement

pursuant to a development approval granted pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered into a redevelopment agreement pursuant to P.L.1992, c.79 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.); provided, however, that the general development plan, developer's agreement, redevelopment agreement, or any development agreement pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) provides that the developer or redeveloper pay a fee for affordable housing of at least one percent of the equalized assessed value of the improvements which are the subject of the development plan, developer's agreement, or redevelopment agreement;

(3) A non-residential project that, prior to July 1, 2010, has been referred to a planning board by the State, a governing body, or other public agency for review pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31); provided that a permit for the construction of the building has been issued by the local enforcing agency having jurisdiction, in accordance with section 13 of P.L.1975, c.217 (C.52:27D-131), prior to January 1, 2013;

(4) A non-residential property for which a site plan application has received approval by the New Jersey Meadowlands Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-14) prior to July 1, 2010; provided that a permit for the construction of the building has been issued by the local enforcing agency having jurisdiction, in accordance with section 13 of P.L.1975, c.217 (C.52:27D-131), prior to January 1, 2013;

(5) Individual buildings within a nonresidential phased development that received either preliminary or final approval prior to July 1, 2010, provided that a permit for the construction of the building has been issued prior to January 1, 2013.

b. A developer may challenge non-residential development fees imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the municipality or by the State, as the case may be. Appeals from a determination of the director may be made to the tax court in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

c. Whenever non-residential development is situated on real property that has been previously developed with a building, structure, or other improvement, the non-residential development fee shall be equal to two and a half (2.5) percent of the equalized assessed value of the land and improvements on the property where the non-residential development is situated at the time the final certificate of occupancy is issued, less the equalized assessed value of the land and improvements on the property where the non-residential development is situated, as determined by the tax assessor of the municipality at the time the developer or owner, including any previous owners, first sought approval for a construction permit, including, but not limited to, demolition permits, pursuant to the State Uniform Construction Code, or approval under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

Whenever the developer of a non-residential development has made or committed itself to make a financial or other contribution relating to the provision of housing affordable to low and moderate income households prior to the enactment of P.L.2008, c.46 (C.52:27D-329.1 et al.), the non-residential development fee shall be reduced by the amount of the financial contribution and the fair market value of any other contribution made by or committed to be made by the developer. For purposes of this section, a developer is considered to have made

or committed itself to make a financial or other contribution, if and only if: (1) the contribution has been transferred, including but not limited to when the funds have already been received by the municipality; (2) the developer has obligated itself to make a contribution as set forth in a written agreement with the municipality, such as a developer's agreement; or (3) the developer's obligation to make a contribution is set forth as a condition in a land use approval issued by a municipal land use agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

d. Unless otherwise provided for by law, no municipality shall be required to return a financial or any other contribution made by or committed to be made by the developer of a non-residential development prior to the enactment of P.L.2008, c.46 (C.52:27D-329.1 et al.) relating to the provision of housing affordable to low and moderate income households, provided that the developer does not obtain an amended, modified, or new municipal land use approval with a substantial change in the non-residential development. If the developer obtains an amended, modified, or new land use approval for non-residential development, the municipality, person, or entity shall be required to return to the developer any funds or other contribution provided by the developer for the provision of housing affordable to low and moderate income households and the developer shall not be entitled to a reduction in the affordable housing development fee based upon that contribution.

e. The provisions of sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any manner as affecting the method or timing of assessing real property for property taxation purposes. The payment of a non-residential development fee shall not increase the equalized assessed value of any property.

38. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to read as follows:

C.52:27D-320 “New Jersey Affordable Housing Trust Fund.”

20. There is established in the Department of Community Affairs a separate trust fund, to be used for the exclusive purposes as provided in this section, and which shall be known as the "New Jersey Affordable Housing Trust Fund." The fund shall be a non-lapsing, revolving trust fund, and all monies deposited or received for purposes of the fund shall be accounted for separately, by source and amount, and remain in the fund until appropriated for such purposes. The fund shall be the repository of all State funds appropriated for affordable housing purposes, including, but not limited to, the proceeds from the receipts of the additional fee collected pursuant to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the Statewide non-residential development fees collected pursuant to section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or reverting from municipal development trust funds, or other monies as may be dedicated, earmarked, or appropriated by the Legislature for the purposes of the fund. All references in any law, order, rule, regulation, contract, loan, document, or otherwise, to the "Neighborhood Preservation Nonlapsing Revolving Fund" shall mean the "New Jersey Affordable Housing Trust Fund." The department shall be permitted to utilize annually up to 7.5 percent of the monies available in the fund for the payment of any necessary administrative costs related to the administration of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), the State Housing Commission, or any costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et al.).

a. Except as permitted pursuant to subsection g. of this section, and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the commissioner shall award grants or loans from this fund for housing projects and programs in municipalities whose housing elements have received substantive certification from the council, in municipalities receiving State aid

pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), in municipalities subject to a builder's remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328) or in receiving municipalities in cases where the council has approved a regional contribution agreement and a project plan developed by the receiving municipality.

Of those monies deposited into the "New Jersey Affordable Housing Trust Fund" that are derived from municipal development fee trust funds, or from available collections of Statewide non-residential development fees, a priority for funding shall be established for projects in municipalities that have petitioned the council for substantive certification.

Programs and projects in any municipality shall be funded only after receipt by the commissioner of a written statement in support of the program or project from the municipal governing body.

b. The commissioner shall establish rules and regulations governing the qualifications of applicants, the application procedures, and the criteria for awarding grants and loans and the standards for establishing the amount, terms and conditions of each grant or loan.

c. For any period which the council may approve, the commissioner may assist affordable housing programs which are not located in municipalities whose housing elements have been granted substantive certification or which are not in furtherance of a regional contribution agreement; provided that the affordable housing program will meet all or part of a municipal low and moderate income housing obligation.

d. Amounts deposited in the "New Jersey Affordable Housing Trust Fund" shall be targeted to regions based on the region's percentage of the State's low and moderate income housing need as determined by the council. Amounts in the fund shall be applied for the following purposes in designated neighborhoods:

(1) Rehabilitation of substandard housing units occupied or to be occupied by low and moderate income households;

(2) Creation of accessory apartments to be occupied by low and moderate income households;

(3) Conversion of non-residential space to residential purposes; provided a substantial percentage of the resulting housing units are to be occupied by low and moderate income households;

(4) Acquisition of real property, demolition and removal of buildings, or construction of new housing that will be occupied by low and moderate income households, or any combination thereof;

(5) Grants of assistance to eligible municipalities for costs of necessary studies, surveys, plans and permits; engineering, architectural and other technical services; costs of land acquisition and any buildings thereon; and costs of site preparation, demolition and infrastructure development for projects undertaken pursuant to an approved regional contribution agreement;

(6) Assistance to a local housing authority, nonprofit or limited dividend housing corporation or association or a qualified entity acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for rehabilitation or restoration of housing units which it administers which: (a) are unusable or in a serious state of disrepair; (b) can be restored in an economically feasible and sound manner; and (c) can be retained in a safe, decent and sanitary manner, upon completion of rehabilitation or restoration; and

(7) Other housing programs for low and moderate income housing, including, without limitation, (a) infrastructure projects directly facilitating the construction of low and moderate income housing not to exceed a reasonable percentage of the construction costs of the low and moderate income housing to be provided and (b) alteration of dwelling units occupied or to be occupied by households of low or moderate income and the common areas

of the premises in which they are located in order to make them accessible to handicapped persons.

e. Any grant or loan agreement entered into pursuant to this section shall incorporate contractual guarantees and procedures by which the division will ensure that any unit of housing provided for low and moderate income households shall continue to be occupied by low and moderate income households for at least 20 years following the award of the loan or grant, except that the division may approve a guarantee for a period of less than 20 years where necessary to ensure project feasibility.

f. Notwithstanding the provisions of any other law, rule or regulation to the contrary, in making grants or loans under this section, the department shall not require that tenants be certified as low or moderate income or that contractual guarantees or deed restrictions be in place to ensure continued low and moderate income occupancy as a condition of providing housing assistance from any program administered by the department, when that assistance is provided for a project of moderate rehabilitation if the project (1) contains 30 or fewer rental units and (2) is located in a census tract in which the median household income is 60 percent or less of the median income for the housing region in which the census tract is located, as determined for a three person household by the council in accordance with the latest federal decennial census. A list of eligible census tracts shall be maintained by the department and shall be adjusted upon publication of median income figures by census tract after each federal decennial census.

g. In addition to other grants or loans awarded pursuant to this section, and without regard to any limitations on such grants or loans for any other purposes herein imposed, the commissioner shall annually allocate such amounts as may be necessary in the commissioner's discretion, and in accordance with section 3 of P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants under the program created pursuant to P.L.2004, c.140 (C.52:27D-287.1 et al.). Such rental assistance grants shall be deemed necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), in order to meet the housing needs of certain low income households who may not be eligible to occupy other housing produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

h. The department and the State Treasurer shall submit the "New Jersey Affordable Housing Trust Fund" for an audit annually by the State Auditor or State Comptroller, at the discretion of the Treasurer. In addition, the department shall prepare an annual report for each fiscal year, and submit it by November 30th of each year to the Governor and the Legislature, and the Joint Committee on Housing Affordability, or its successor, and post the information to its web site, of all activity of the fund, including details of the grants and loans by number of units, number and income ranges of recipients of grants or loans, location of the housing renovated or constructed using monies from the fund, the number of units upon which affordability controls were placed, and the length of those controls. The report also shall include details pertaining to those monies allocated from the fund for use by the State rental assistance program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3) and subsection g. of this section.

i. The commissioner may award or grant the amount of any appropriation deposited in the "New Jersey Affordable Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-320.1) to municipalities pursuant to the provisions of section 39 of P.L.2009, c.90 (C.40:55D-8.8).

C.40:55D-8.8 Applicability of section.

39. The provisions of this section shall apply only to those developments for which a fee was imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), known as the "Statewide Non-residential Development Fee Act."

a. A developer of a property that received preliminary site plan approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46), or final approval, pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50) prior to July 17, 2008 and that was subject to the payment of a nonresidential development fee prior to the enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a return of any moneys paid that represent the difference between moneys committed prior to July 17, 2008 and monies paid on or after that date.

b. A developer of a non-residential project that, prior to July 17, 2008, has been referred to a planning board by the State, a governing body, or other public agency for review pursuant to section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject to the payment of a nonresidential development fee prior to the enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a return of any moneys paid that represent the difference between monies committed prior to July 17, 2008 and moneys paid on or after that date.

c. If moneys are required to be returned under subsection a., b. or d. of this section, a claim shall be submitted, in writing, to the same entity to which the moneys were paid, within 120 days of the effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity to whom the funds were paid shall promptly review all requests for returns, and the fees paid shall be returned to the claimant within 30 days of receipt of the claim for return.

d. A developer of a non-residential project that paid a fee imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to the return of those monies paid, provided that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as amended by P.L.2009, c.90 do not permit the imposition of a fee upon the developer of that non-residential property.

e. Notwithstanding the provisions of subsections a., b., c., and d. of this section, if, on the effective date of P.L.2009, c.90 (C.52:27D-489a et al.), a municipality that has returned all or a portion of non-residential fees in accordance with subsection a. or b. of this section shall be reimbursed from the funds available through the appropriation made into the "New Jersey Affordable Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-320.1) within 30 days of the municipality providing written notice to the Council on Affordable Housing.

C.52:27D-311.3 Reduction, elimination of affordable housing obligation of municipality.

40. The portion of the affordable housing obligation of a municipality attributable to a particular non-residential development shall be reduced or eliminated if:

a. the collection of fees under sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) is effectively suspended for a period of time pursuant to that law; and

b. the Council on Affordable Housing, in consultation with the Department of Community Affairs, has made a determination within two years of the effective date of P.L.2009, c.90 (C.52:27D-489a et al.), that there are insufficient funds in the "New Jersey Affordable Housing Trust Fund," or through other State or federal housing subsidies available to a municipality to assist in the production of such housing units, in the same amount as would have been collected if not for the suspension thereof, pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) by the date of the determination.

c. Nothing in P.L.2009, c.90 (C.52:27D-489a et al.) shall be construed to affect the municipal obligation to provide a realistic opportunity for its projected fair share of the

regional housing need as determined by the Council on Affordable Housing in accordance with the provisions of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

C.52:27D-320.1 Appropriation to the “New Jersey Affordable Housing Trust Fund.”

41. a. Notwithstanding any law to the contrary, there is appropriated $15 million to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), to replace the suspended non-residential development fee established under the provisions of the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

b. (1) Municipalities authorized by the provisions of the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) to directly receive and use development fees are permitted to petition the commissioner for the award of a grant or loan of any portion of the appropriation described in subsection a. of this section. The commissioner shall award grants or loans from the fund to municipalities that incorporated anticipated or existing housing projects and programs funded by a municipal development trust fund in a housing element submitted to the council pursuant to section 7 of P.L.1985, c.222 (C.52:27D-307).

(2) The commissioner shall target the award of any grant or loan to municipalities based on the extent that their housing plan relied on housing projects or programs funded in part or in whole by municipal development trust fund revenues.

C.18A:3B-39 Long-range facilities plan.

42. a. A public research university or a State college shall submit a long-range facilities plan on projects to be developed to the New Jersey Commission on Higher Education for its review and recommendations. The long-range facilities plan shall contain details of any public-private partnerships contemplated or entered into by the public research university or State college pursuant to section 43 of P.L.2009, c.90 (C.18A:64-85), which shall include details on the sources of dedicated funds that will be used for repayment of loans. The long-range facilities plan shall adhere to 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) when practicable. The long-range facilities plan shall be amended at least once every five years. The plan shall detail the facilities needs of the institution and the institution’s plans to address those needs for the ensuing five years.

b. In developing its response to the plan, the commission shall consider the overall facilities needs of the institution, long-term fiscal implications of the plan including the debt burden of the institution, the relation of the facilities plan to the academic and student service programs of the institution, and the extent and cost of any deferred maintenance of the institution. The commission shall issue its response to the plan within one full semester of its receipt.

c. An amendment to a long-range facilities plan may be submitted at any time to the commission for its review and recommendations.

C.18A:64-85 State, county college may enter into certain contracts with a private entity.

43. a. A State college or county college may enter into a contract with a private entity, subject to subsection f. of this section, to be referred to as a public-private partnership agreement, that permits the private entity to assume full financial and administrative responsibility for the on-campus construction, reconstruction, repair, alteration, improvement or extension of a building, structure, or facility of the institution, provided that the project is

financed in whole by the private entity and that the State or institution of higher education, as applicable, retains full ownership of the land upon which the project is completed.

b. A private entity that assumes financial and administrative responsibility for a project pursuant to subsection a. of this section shall not be subject to the procurement and contracting requirements of all statutes applicable to the institution of higher education at which the project is completed, including, but not limited to, the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), and the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.).

c. Each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a State or county college pursuant to subsection a. of this section shall be paid not less than the prevailing wage rate for the worker's craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

d. (1) All construction projects under a public-private partnership agreement entered into pursuant to this section shall contain a project labor agreement. The project labor agreement shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in a manner that to the greatest extent possible enhances employment opportunities for individuals residing in the county of the project's location. Further, the general contractor, construction manager, design-build team, or subcontractor for a construction project proposed in accordance with this paragraph shall be registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified by the Division of Property Management and Construction to perform work on a public-private partnership higher education project. All construction projects proposed in accordance with this paragraph shall be submitted to the New Jersey Economic Development Authority for its review and approval and, when practicable, are encouraged to adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council.

(2) Where no public fund has been established for the financing of a public improvement, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a bond guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement.

e. A general contractor, construction manager, design-build team, or subcontractor shall be registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified by the Division of Property Management and Construction to perform work on a public-private partnership higher education project.

f. (1) On or before the first day of the nineteenth month next following enactment of P.L2009, c.90, all projects proposed in accordance with this section shall be submitted to the New Jersey Economic Development Authority for its review and approval. The projects are encouraged, when practicable, to adhere to 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). Any application that is deemed to be incomplete on the first day of the nineteenth month next following enactment of P.L.2009, c.90 shall not be eligible for consideration.

(2) (a) In order for an application to be complete and considered by the authority it shall include, but not be limited to: (i) a public-private partnership agreement between the State or county college and the private developer; (ii) a full description of the project; (iii) the estimated costs and financial documentation for the project; (iv) a timetable for completion

of the project extending no more than five years after consideration and approval; and (v) any other requirements that the authority deems appropriate or necessary.

(b) As part of the estimated costs and financial documentation for the project the application shall contain a long-range maintenance plan and shall specify the expenditures that qualify as an appropriate investment in maintenance. This long-range maintenance plan shall be approved by the authority pursuant to regulations promulgated by the authority that reflect national building maintenance standards and other appropriate building maintenance benchmarks. All contracts to implement a long-range maintenance plan pursuant to this paragraph shall contain a project labor agreement. The project labor agreement shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in a manner that to the greatest extent possible enhances employment opportunities for individuals residing in the county of the project's location.

(3) The authority shall review all completed applications, and request additional information as is needed to make a complete assessment of the project. No project shall be undertaken until final approval has been granted by the authority; provided, however, that the authority shall retain the right to revoke approval if it determines that the project has deviated from the plan submitted pursuant to paragraph (2) of this subsection.

(4) The authority may promulgate any rules and regulations necessary to implement this subsection, including provisions for fees to cover administrative costs.

Where no public fund has been established for the financing of a public improvement, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a bond guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement.

44. Section 28 of P.L.1986, c.43 (C.18A:64-79) is amended to read as follows:

C.18A:64-79 Multi-year contracts.

28. A State college may only enter into a contract exceeding 36 consecutive months for the:

a. Supplying of fuel and oil for heating and other purposes and utilities for any term not exceeding in the aggregate five years; or

b. Plowing and removal of snow and ice for any term not exceeding in the aggregate five years; or

c. Collection and disposal of garbage and refuse for any term not exceeding in the aggregate five years; or

d. Purchase, lease or servicing of information technology for any term of not more than five years; or

e. Insurance for any term of not more than five years; or

f. Leasing or service of automobiles, motor vehicles, machinery and equipment of every nature and kind for any term not exceeding in the aggregate five years; or

g. (Deleted by amendment, P.L.2005, c.369).

h. Providing of food supplies and services, including food supplies and management contracts for student centers, dining rooms, vending operations, and cafeterias, for a term not exceeding 30 years; or

i. Performance of work or services or the furnishing of materials or supplies for the purpose of conserving energy in buildings owned by, or operations conducted by, the contracting unit, the entire price of which is to be established as a percentage of the resultant

savings in energy costs, for a term not exceeding 10 years; provided that a contract is entered into only subject to and in accordance with rules and regulations adopted and guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy cost savings; or

j. Any single project for the construction, reconstruction or rehabilitation of a public building, structure or facility, or a public works project, including the retention of the services of an architect, engineer, construction manager, or other consultant in connection with the project, for the length of time necessary for the completion of the actual construction; or

k. The management and operation of bookstores, performing arts centers, residence halls, parking facilities and building operations for a term not exceeding 30 years; or

l. The provision of banking, financial services, and e-commerce services for a term not exceeding five years; or

m. The provision of services for maintenance and repair of building systems, including, but not limited to, fire alarms, fire suppression systems, security systems, and heating, ventilation, and air conditioning systems for a term not exceeding five years; or

n. Purchase of alternative energy or the purchase or lease of alternative energy services or equipment for conservation or cost saving purposes for a term not exceeding 30 years.

All multiyear leases and contracts entered into pursuant to this section, except contracts and agreements for the provision of work or the supplying of equipment to promote energy conservation and authorized pursuant to subsection i. of this section, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds to meet the extended obligation or contain an annual cancellation clause.

45. Section 28 of P.L.1982, c.189 (C.18A:64A-25.28) is amended to read as follows:

C.18A:64A-25.28 Duration of certain contracts.

28. Duration of certain contracts. A county college may only enter into a contract exceeding 24 consecutive months for the:

a. Supplying of:

(1) Fuel for heating purposes for any term not exceeding in the aggregate three years; or

(2) Fuel or oil for use in automobiles, autobuses, motor vehicles or equipment for any term not exceeding in the aggregate three years; or

b. Plowing and removal of snow and ice for any term not exceeding in the aggregate three years; or

c. Collection and disposal of garbage and refuse for any term not exceeding in the aggregate three years; or

d. Providing goods or services for the use, support or maintenance of proprietary computer hardware, software peripherals and system development for the hardware for any term of not more than five years; or

e. Insurance, including the purchase of insurance coverages, insurance consultant or administrative services, and including participation in a joint self-insurance fund, risk management programs or related services provided by a county college insurance group, or participation in an insurance fund established by a county pursuant to N.J.S.40A:10-6, for any term of not more than three years; or

f. Leasing or service of automobiles, motor vehicles, electronic communications equipment, machinery and equipment of every nature and kind for any term not exceeding in the aggregate five years; or

g. Supplying of any product or rendering of any service by a company providing voice, data, transmission or switching services, for a term not exceeding five years; or

h. The providing of food supplies and services, including food supplies and management contracts for student centers, dining rooms and cafeterias, for a term not exceeding 30 years; or

i. (Deleted by amendment, P.L.2009, c.4).

j. Any single project for the construction, reconstruction or rehabilitation of a public building, structure or facility, or a public works project including the retention of the services of an architect or engineer in connection with the project, for the length of time necessary for the completion of the actual construction; or

k. The management and operation of bookstores for a term not exceeding 30 years; or

l. Custodial or janitorial services for any term not exceeding in the aggregate three years; or

m. Child care services for a term not exceeding three years; or

n. Security services for a term not exceeding three years; or

o. Ground maintenance services for a term not exceeding three years; or

p. Laundering, dry-cleaning or rental of uniforms for a term not exceeding three years; or

q. The performance of work or services or the furnishing of materials and supplies for the purpose of producing class I renewable energy, as that term is defined in section 3 of P.L.1999, c.23 (C.48:3-51), at, or adjacent to, buildings owned by, or operations conducted by, the contracting unit, the entire price of which is to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 30 years; provided, however, that these contracts shall be entered into only subject to and in accordance with guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy cost savings and energy generation costs.

All multi-year leases and contracts entered into pursuant to this section, except contracts and agreements for the provision of work or the supplying of equipment to promote energy conservation through the production of class I renewable energy and authorized pursuant to subsection q. of this section, and except contracts for insurance coverages, insurance consultant or administrative services, participation or membership in a joint self-insurance fund, risk management programs or related services of a county college insurance group, and participation in an insurance fund established by a county pursuant to N.J.S.40A:10-6 or a joint insurance fund established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), shall contain a clause making them subject to the availability and appropriation annually of sufficient funds to meet the extended obligation or contain an annual cancellation clause.

C.18A:3B-40 Network to propose, develop economic development policies, programs.

46. The New Jersey Commission on Higher Education shall appoint and convene a network of academics and researchers from New Jersey’s public and independent institutions of higher education to propose and develop economic development policies and programs for the higher education community.

C.18A:72A-81 Short title.

47. Sections 47 through 49 of P.L.2009, c.90 (C.18A:72A-81 et seq.) shall be known and may be cited as the "Higher Education Partnership Agreements Act."

C.18A:72A-82 Definitions relative to higher education partnership agreements.

48. As used in sections 48 and 49 of P.L.2009, c.90 (C.18A:72A-82 and C.18A:72A-83):

"Board" means the Local Finance Board established in the Division of Local Government Services in the Department of Community Affairs.

"Bonds" mean bonds, notes or other obligations issued to finance or refinance higher education projects by a municipality, or on behalf of a municipality by a county improvement authority created pursuant to the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.).

"Higher education partnership agreement" means an agreement between a municipality and an institution of higher education providing for the issuance of bonds by the municipality, a county improvement authority or a redevelopment entity, and the pledge of payments by the institution of higher education to secure those bonds to finance a higher education project, or part thereof.

“Higher education project” means the establishment and construction of higher education buildings and the expansion and construction of additional facilities at, and the acquisition of additional and upgraded equipment for existing higher education buildings, including but not limited to the planning, erecting, purchasing, improving, developing, constructing, reconstructing, extending, rehabilitating, renovating, upgrading, demolishing and equipping of facilities at institutions of higher education.

“Institution of higher education" means: Rutgers, The State University; a State college or university established pursuant to chapter 64 of Title 18A of the New Jersey Statutes; the New Jersey Institute of Technology; the University of Medicine and Dentistry of New Jersey; a county college and any other public university or college now or hereafter established or authorized by State law; and any college or university incorporated and located in New Jersey, which by virtue of law or character or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education which is equivalent to the education provided by the State's public institutions of higher education, as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis or other professional persons in the field of religion.

"Municipality" means the municipal governing body or an entity acting on behalf of the municipality if permitted by the federal Internal Revenue Code of 1986, or, 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 entity so established.

C.18A:72A-83 Higher education partnership agreements.

49. A municipality and an institution of higher education may enter into a higher education partnership agreement for the development of a higher education project. The board shall promulgate rules and regulations, modeled after the procedures and protections set forth in the “Redevelopment Area Bond Financing Law,” sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.), within 120 days following the enactment of sections 47 through 49 of P.L.2009, c.90 (C.18A:72A-81 et seq.) in order to effectuate the purposes of this section.

C.54:32B-8.60 Exemption of certain receipts to, by postconsumer manufacturing facility from certain taxes.

50. a. Receipts from the sale or use of energy and utility service to or by a postconsumer material manufacturing facility for use or consumption directly and primarily in the production of tangible personal property, other than energy, shall be exempt from the tax imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.), during the tax exemption period.

b. Notwithstanding the provisions of subsection a. of this section, a seller of energy and utility service shall charge and collect from the purchaser that is a postconsumer material manufacturing facility the tax at the rate then in effect, and the tax shall be refunded to the purchaser by the filing, within 30 days of the close of the calendar quarter in which the sale or use is made or rendered, of a claim with the director for a refund of sales and use taxes paid for energy and utility service, which refund shall be paid within 60 days of the filing of a claim for refund. Proof of claim for refund shall be made by the submission of auditable receipts and such other documentation as the director may require.

c. If the owner of a postconsumer material manufacturing facility relocates the facility to a location outside this State during the tax exemption period, the owner of the facility shall pay the director the amount of tax for which an exemption shall have been allowed and refunded in accordance with subsection b. of this section. The State Treasurer shall notify the director of the relocation of a postconsumer material manufacturing facility to a location outside this State, and the director shall issue a tax assessment for the recapture of tax, equal to the amount of tax for which an exemption shall have been allowed and refunded in accordance with subsection b. of this section. The recapture of tax shall be a State tax subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., and shall be deposited in the General Fund.

d. For purposes of this section,

“Postconsumer material manufacturing facility," means a facility that:

(1) received service under an electric public utility rate schedule that applied only to the owner of the facility on January 1, 2004;

(2) manufactures products made from "postconsumer material," as that term is defined in 40 C.F.R. s.247.3; provided however, that not less than 75 percent of the facility's total annual sales dollar volume of such products produced in this State meet the definition of “postconsumer material”;

(3) completed a "comprehensive energy audit," as that term is defined pursuant to section 2 of P.L.1995, c.180 (C.48:2-21.25), not more than 48 months before but not later than 90 days after the effective date of P.L.2009, c.90 (C.52:27D-489a et al.); and

(4) employed, individually or collectively with an affiliated facility, not less than 150 employees in this State on April 1, 2009.

“Tax exemption period” means the period on or after January 1, 2010 but before January 1, 2017.

51. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to read as follows:

C.48:2-21.34 Definitions relative to phase out schedule of transitional energy facility assessment unit rate surcharges; formulas; adjustments to rates.

67. a. As used in this section:

"Base rates" means the rates, including minimum bills, charged for utility commodities or service subject to the board's jurisdiction, other than the rates charged under a utility's levelized energy adjustment clause, hereinafter "LEAC," or levelized gas adjustment clause, hereinafter "LGAC," or equivalent rate provision;

"Base year" means the calendar year 1996;

"Board" means the Board of Public Utilities;

"Manufacturing facility" means a facility:

(1) with respect to which the owner of the facility shall have entered into an off-tariff rate agreement with an electric public utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24 et seq.);

(2) that manufactures products made from using "postconsumer material," as that term is defined in section 247.3 of title 40, Code of Federal Regulations, and other recovered material feedstocks that meet the requirements of the Comprehensive Procurement Guideline For Products Containing Recovered Materials as promulgated by the United States Environmental Protection Agency in section 247.1 et seq. of title 40, Code of Federal Regulations, pursuant to the "Resource Conservation and Recovery Act," Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No. 13101, issued by the President of the United States on September 14, 1998, provided that at least 75 percent of the manufacturing facility's total annual sales dollar volume of such products that are produced in New Jersey meet the recycled content standards within such guidelines;

(3) for which a "comprehensive energy audit," as that term is defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have been undertaken within 90 days after the effective date of P.L.2007, c.94 (C.48:2-21.36 et al.), which audit shall have evaluated cost-effective energy efficiency and conservation measures as part of the efforts to reduce energy costs;

(4) that has been in operation in this State for at least 25 years as of the effective date of P.L.2007, c.94 (C.48:2-21.36 et al.); and

(5) at which at least 800 employees are employed on the first business or work day after the expiration of such off-tariff rate agreement;

“Postconsumer material manufacturing facility” means a facility that:

(1) received service under an electric public utility rate schedule that applied only to the owner of the facility on January 1, 2004;

(2) manufactures products made from "postconsumer material," as that term is defined in 40 C.F.R. s.247.3; provided however, that not less than 75 percent of the facility's total annual sales dollar volume of such products produced in this State meet the definition of “postconsumer material”;

(3) completed a "comprehensive energy audit," as that term is defined pursuant to section 2 of P.L.1995, c.180 (C.48:2-21.25), not more than 48 months before but not later than 90 days after the effective date of P.L.2009, c.90 (C.52:27D-489a et al.); and

(4) employed, individually or collectively with affiliated facilities, not less than 150 employees in this State on April 1, 2009;

"Sales and use tax" means the sales and use tax liability computed on sales and use of energy and utility service as defined in section 2 of P.L.1966, c.30 (C.54:32B-2);

"Utility" means a public utility subject to regulation by the board pursuant to Title 48 of the Revised Statutes; and

"Utility service" means the supply, transmission, distribution or transportation of electricity, natural gas or telecommunications services or any combination of such commodities, processes or services.

b. No later than 60 days after the date this act is enacted, each electric, gas and telecommunications utility subject to the provisions of this act shall file with the board, and shall simultaneously provide copies to the Director of the Division of the Ratepayer Advocate, revised tariffs and such other supporting schedules, narrative and documentation required by this act, as set forth in this section, to reflect in the utility's rates the changes in tax liability effected pursuant to this act. No later than 90 days after the date of the utility's filing, and after determining that the filing and the rate changes provided for therein are in

compliance with the provisions of this act, the board shall approve the utility's filing and associated rates for billing to the utility's customers, effective for utility service rendered on and after January 1, 1998. If the board determines that the utility's filing and the associated rate changes provided for therein are not in compliance with the provisions of this act, the board shall require the utility to amend or otherwise modify its filing to render it in compliance. The board may also permit the rates provided for in the utility's filing to be implemented on an interim basis pending the board's final determination in the event the board, in its discretion, determines that due to the filing's complexity, or for other valid reasons, including but not limited to the enactment of this act after June 30, 1997, additional time is needed for the board to complete its review of the filing. If the rates approved by the board upon its final determination are less than the rates implemented on an interim basis, the difference shall be refunded to the utility's customers with interest computed in accordance with N.J.A.C.14:3-7.5(c). The rate adjustments implemented pursuant to this act shall not constitute a fixing of rates pursuant to R.S.48:2-21 and shall not be subject to the hearing requirements set forth in that section.

c. As of the effective date of the rate changes implemented pursuant to this act, and except for rates applicable to sales that were or are currently exempt from the unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates applicable to sales to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies, the board shall remove from the base rates of each electric public utility and gas public utility the unit tax rates included therein for the recovery of those unit-based energy taxes, and include therein provision for the recovery of corporation business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and additionally shall authorize the collection of the sales and use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as follows:

(1) The base rates of each gas and electric utility shall be reduced by the amount of the unit-based energy taxes per kilowatthour or per therm included therein.

(2) The provision for corporation business tax initially included in the base rates of each gas and electric utility shall be based on the utility's after-tax net income earned in the base year as booked, unless the board determines, in its discretion, that such income as booked is unusually high or low or otherwise unrepresentative of the utility's prospective net income, in which case the utility's base year net income shall be adjusted as determined by the board.

To permit the board to make this determination, in addition to including in its filing schedules showing its net income earned in the base year as booked, the utility shall include adjustments to such booked income to eliminate the effect of revenues, expenses and extraordinary or other charges that are non-recurring, atypical, or both, including, but not limited to an adjustment to eliminate the effect of unusually hot or cold weather, and that would otherwise make the utility's base year net income unusually high or low or otherwise unrepresentative of the utility's prospective net income. If the adjustment is being made to eliminate the effect of unusually hot or cold weather, associated revenue and expense adjustments shall also be made. Subject to the board's approval, such adjusted income shall be the basis for the calculation of the initial provision for corporation business tax to be included in the utility's base rates.

The utility shall also include a calculation of its rate of return on common equity achieved in the base year, both as booked and as adjusted in accordance with the foregoing. The calculation shall be made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1, and shall separately show the effect of reflecting adjustments to the calculation, if any, that may have been employed historically in establishing the utility's rate of return on common equity allowed for ratemaking purposes. The utility's filing shall also include copies of its audited

financial statements for the base year and associated quarterly and other reports filed with the Securities and Exchange Commission.

To reflect the provision for corporation business tax in base rates, the demand charges, or charges per kilowatt, decatherm or million cubic feet; the energy charges, or charges per kilowatthour or per therm; and the customer charges, or charges other than demand and energy charges, set forth in each base rate schedule, and the floor price employed in parity rate schedules, included in the utility's tariff filed with and approved by the board shall be increased by amounts determined by multiplying such charges by the adjustment factor, "A e, g" derived below:

$$A_{e,g} = \frac{(I_{e,g}) \times (Rs/(1-Re))}{(Br_{e,g})}$$

where:

"A e, g" means the adjustment factor applicable to electric base rates (e), gas base rates (g), or both, other than rates applicable to sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

"I e, g" means the utility's base year after-tax net income from electric or gas sales, or both, and transportation service subject to the board's jurisdiction and other operating revenue if such revenue is reflected in the utility's cost of service for ratemaking purposes, adjusted as approved by the board;

"Br e, g" means the utility's base year revenue from base rates applicable to electric or gas sales, or both, and transportation service subject to the board's jurisdiction, but excluding sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

"Rs" means the corporation business tax rate, expressed as a decimal;

"Rf" means the applicable federal corporation income tax rate expressed as a decimal; and

"Re" equals Rs + Rf(1-Rs).

The utility shall account for the changes in tax liability provided for by this act effective January 1, 1998. Such accounting shall include the recording on the utility's income statement and balance sheet of deferred corporation business tax defined, for book accounting purposes, as differences in corporation business tax expense arising from timing differences in the recognition of revenue and expenses for book and tax purposes.

(3) When billed to the utility's customers, the adjusted base rate charges determined pursuant to paragraphs (1), (2), and (4) of this subsection, and the charges determined pursuant to the utility's levelized energy adjustment clause, levelized gas adjustment clause, or both, as determined both upon the effective date of the rate changes authorized by this act and as revised prospectively in accordance with the utility's tariff filed with and approved by the board, and the transitional energy facility assessment unit rate surcharges, hereinafter, "TEFA unit rate surcharges," determined in accordance with subsection d. of this section, shall be increased by an amount determined by multiplying such charges by the sales and use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the utility's rates for service included in its tariff, for informational purposes the tariff shall include such rates after application of the sales and use tax authorized by this section.

(4) The utility's filing with the board to implement the rate changes provided for by this act shall include an analysis, description, and quantification of the effect of the changes in rates and tax payments implemented pursuant to this act on the utility's requirement for cash working capital, and if such requirement is less than the cash working capital allowed for the collection and payment of unit-based energy taxes formerly imposed pursuant to P.L.1940,

c.5 (C.54:30A-49 et seq.) in determining the utility's base rates in effect prior to the rate changes implemented pursuant to this act, and to the extent the working capital reduction is not offset by a reduction in net deferred taxes as provided for below, such base rates shall be reduced by the reduction in the utility's revenue requirement associated with the remaining reduction in the working capital requirement not so offset, if any. The reduction in working capital shall be determined by using the same methodology employed in establishing the working capital allowance related to unit-based energy taxes reflected in the utility's base rates in effect prior to the rate changes implemented pursuant to this act. The reduction in the utility's revenue requirement associated with the reduced working capital requirement shall be calculated using the utility's last overall rate of return allowed by the board, including provision for federal income taxes and the corporation business tax implemented pursuant to this act payable on the equity portion of the return, and shall be implemented on the effective date of the rate changes provided for, and in the manner set forth in paragraph (2) of this subsection.

If the utility's requirement for cash working capital is increased as a result of the changes in rates and tax payments implemented pursuant to this act, the utility may accrue carrying costs, calculated at its last overall rate of return allowed by the board and applied on a simple annual interest basis without compounding, on the increased working capital requirement and request recovery of such carrying costs in a rate proceeding before the board.

The working capital-related base rate changes and carrying cost accruals shall be subject to the board's approval, and shall not be included in the determination of the TEFA unit tax surcharges provided for in subsection d. of this section.

The utility's filing with the board to implement the rate changes provided for by this act shall also include an analysis, description and quantification of net deferred taxes. For the purposes of this section, "net deferred taxes" means deferred corporation business taxes, net of federal deferred income taxes, associated with the tax and rate changes implemented pursuant to this act, including deferred corporation business tax recorded in accordance with section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the calendar year in which this act takes effect and for each year of the tax life of the asset giving rise to the deferred corporation business taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

If the change in such net deferred taxes projected for the calendar year in which the rate changes implemented pursuant to this act take effect is negative and if the utility's requirement for working capital is reduced as a result of the changes in rates and tax payments implemented pursuant to this act, the working capital-related rate reduction that otherwise would have been implemented pursuant to this subsection shall be treated as set forth in subparagraph (a) or (b) of this paragraph. For the purposes of this act, a change in net deferred taxes is considered negative when it reduces an existing deferred tax liability or creates a deferred tax asset on the utility's balance sheet. An appropriate rate adjustment for the working capital impacts of this act, reflecting all relevant facts and circumstances at the time of the adjustment, shall be made in the year when the earlier of the following events occur:

(a) The year in which the reduction in carrying costs assumed for the rate reduction for working capital that would have been made but for this paragraph is no longer required to offset, on a present value basis, the annual carrying costs calculated on the accumulated balance of negative net deferred taxes projected to be recorded by the utility, its successors and assigns, over the tax life of the single asset account giving rise to such net deferred taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph (a):

(i) Carrying costs and present values are to be computed using the weighted average after-tax rate of return approved by the board in the utility's last base rate proceeding.

(ii) The accumulated balance of such negative net deferred taxes shall include net deferred taxes associated with all assets and liabilities originally placed in service by the utility and held by the utility or a company affiliated with the utility regardless of whether or not such assets continue to be subject to regulation by the New Jersey Board of Public Utilities.

(b) The year in which both an appropriate working capital adjustment and the accumulated balance of negative deferred taxes, as described in sub-subparagraph (ii) of subparagraph (a) of this paragraph (4), are reflected in the utility's rate base in a rate proceeding before the board. It is the intent of this section to fully compensate utilities on a present value basis, for the carrying costs associated with negative net deferred taxes arising as a result of this act, and to remit to ratepayers any credit due them as a result of any overcompensation as may have occurred due to the treatment of working capital and deferred taxes as set forth herein or in subparagraph (a) of this paragraph (4). At the time the above base rate adjustment is made, an analysis shall be made to determine if such carrying costs have been or will be fully recovered pursuant to the intent of this provision and any additional credit or charge to ratepayers to adjust for ratepayer overpayments or underpayments, if any shall be addressed.

If the change in net deferred taxes is positive, the increase shall be added to, or increase, the reduction in the utility's requirement for working capital if the requirement is reduced as a result of the rate and tax payment changes implemented pursuant to this act, or subtracted from the working capital requirement if it is increased, and the resultant net working capital requirement shall be reflected in rates or accrue carrying costs in the same manner as prescribed for changes in the utility's requirement for working capital above.

The deferred tax-related rate changes or carrying cost accruals shall be subject to the board's approval and shall not be included in the determination of the TEFA unit rate surcharges provided for in subsection d. of this section.

d. (1) Electric and gas utilities shall file, for the board's review and approval, initial TEFA unit rate surcharges determined by deducting from each unit-based energy tax unit tax rate effective January 1, 1997 the following:

(a) An amount per kilowatthour or per therm determined by multiplying the total revenue received in the base year from sales to which that unit tax rate would have been applicable by the factor Ru/(1 + Ru), where Ru is the sales and use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and dividing the result by the kilowatthours or therms billed in that unit tax rate class in the base year; and

(b) An amount per kilowatthour or per therm determined by dividing the revenue that would have been received in the base year from the inclusion, in the manner prescribed in paragraph (2) of subsection c. of this section, of the corporation business tax in the rates applicable to sales billed in that unit tax rate class by the kilowatthours or therms billed in that rate class. In each case, the determination shall reflect the effect of adjustments that affect the level of sales and revenue, if any, as provided in subsection c. of this section. Of the resultant rate per kilowatthour or per therm, the portion for recovery of the utility's transitional energy facilities assessment liability shall be determined by multiplying such rate by the factor (1 - Rs), where Rs is the corporation business tax rate expressed as a decimal.

The TEFA unit rate surcharges shall constitute non-bypassable wires and/or mains charges of the utility, and shall be applied to all sales within the customer classes to which they apply, regardless of whether such customers are purchasing bundled or unbundled services from the utility, but shall not be applied to sales:

(i) that were or are currently exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies,

(ii) for a period of seven years commencing on the first day after the expiration of an off-tariff rate agreement, entered into or negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24 et seq.), to a manufacturing facility for use or consumption directly and primarily in the production of tangible personal property, other than energy, and

(iii) for a period of seven years beginning on January 1, 2010, to a postconsumer material manufacturing facility for use or consumption directly and primarily in the production of tangible personal property, other than energy.

Notwithstanding the provisions of the exemption provided in sub-subparagraph (ii) and sub-subparagraph (iii) of subparagraph (b) of paragraph (1) of subsection d. of this section, the TEFA unit rate surcharge shall be applied to the sales to the owner of the manufacturing facility or the postconsumer material manufacturing facility and the owner shall be refunded an amount equal to the TEFA unit rate surcharge paid by the filing, within 30 days following the close of a calendar quarter in which the exemption applies, of a claim with the Director of the Division of Taxation in the Department of the Treasury for a refund of the TEFA unit rate surcharge paid, which refund shall be paid within 60 days of the refund claim being filed. Proof of claim for refund shall be made by the submission of such records and other documentation as the director may require. If the owner of the manufacturing facility or the postconsumer material manufacturing facility at any time during the exemption period provided in sub-subparagraph (ii) or sub-subparagraph (iii) of subparagraph (b) of paragraph (1) of subsection d. of this section relocates the manufacturing facility to a location outside of this State, the owner shall pay to the director the amount of TEFA unit rate surcharge for which an exemption shall have been allowed and refund obtained under this section. The State Treasurer shall notify the director of the relocation of a manufacturing facility or a postconsumer material manufacturing facility to a location outside of this State, and the director shall issue a tax assessment for the recapture of tax, equal to the amount of TEFA unit rate surcharge for which an exemption shall have been allowed and refund obtained under this section. The recapture of tax shall be a State tax subject to the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., and shall be deposited in the General Fund.

If, following the effective date of this act, a customer taking bundled service from the utility shall elect to obtain its requirements from another supplier and take transportation or wheeling service from the utility, the TEFA unit rate surcharge applicable to the bundled service shall continue to apply to the transportation or wheeling service. The TEFA components of the unit rate surcharges determined pursuant to this subsection (the components of the surcharges remaining after deducting the provision for corporation business tax included therein) shall be used to determine the transitional energy facility assessment liability pursuant to sections 36 through 49 of P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

(2) Unless reduced pursuant to paragraphs (3) and (4) of this subsection, the initial TEFA unit rate surcharges are to be reduced annually on January 1, 1999 through January 1, 2001 by the following percentages:

January 1, 1999,	20%
January 1, 2000,	40%
January 1, 2001,	60%

(3) For each year beginning with calendar year 1998 and ending with calendar year 2001, the TEFA surcharge adjustment shall be determined as the difference between:

(a) The sum of the estimated, or actual when known, (i) TEFA liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-107), and sales and use taxes collected and corporation business taxes booked for the year 1998 by the gas and electric utilities and other entities subject to the TEFA provisions of this act (the year 1998 liability), and (ii) the TEFA liabilities of those utilities and entities in all years following the year 1998 through the year in which a determination is being made pursuant to this subsection (the determination year); and

(b) The sum of (i) the total of each remitter's base year liability, as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii) the cumulative TEFA obligation, defined as the sum through the determination year of the amounts calculated by multiplying, for the applicable year, the percentage in the second column of the following table:

Determination Year	% of Year 1998 TEFA
1999	80%
2000	60%

by the Year 1998 TEFA,

where the Year 1998 TEFA is calculated as the total of each remitter's base year liability less the sales and use taxes collected and the corporation business taxes booked for the privilege period ending in calendar year 1998 by the gas and electric utilities and other entities subject to the TEFA provisions of this act. For purposes of this subsection, the amounts assumed for the determination year, including the year 1998 liability when first determined for the purposes of this subsection, shall be estimates based on nine months of actual data through and including the month of September, and three months of data forecast for the months of October through December.

(4) If the TEFA surcharge adjustment determined for the determination year is positive (that is, if the amount determined pursuant to subparagraph (a) of paragraph (3) of this subsection is greater than the amount determined pursuant to subparagraph (b) of paragraph (3) of this subsection), no reduction shall be made in the reduction in the TEFA unit rate surcharges provided for in paragraph (2) of this subsection for the year following the determination year. If the TEFA surcharge adjustment is negative, the reduction in the TEFA unit rate surcharges that otherwise would have been implemented on January 1 of the year following the determination year pursuant to paragraph (2) of this subsection shall be reduced by an amount (by percentage points) equal to the percentage the TEFA surcharge adjustment is of the total of the base year transitional energy facility assessment of all remitters, as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided however, that such reduction in the reduction in the TEFA unit rate surcharges shall not exceed the percentage shown in paragraph (2) of this subsection for that year; and provided further that in the first two years, that such reduction shall not exceed 10 percentage points for each year.

(5) (a) The TEFA unit rate surcharges for calendar years 2002 through 2011 shall be the same as the TEFA unit rate surcharges in effect for calendar year 2001.

(b) The TEFA unit rate surcharges in effect for calendar year 2011 shall be reduced on January 1, 2012 and January 1, 2013 by the following percentages:

January 1, 2012	25%
January 1, 2013	50%

e. The utility's filing with the board to implement the rate changes provided for by this act shall include proof of revenue schedules that show for each rate schedule included in the utility's tariff, aggregated by unit-based energy tax unit tax classes, the number of customers

billed under the rate schedule, the billing determinants of such customers (i.e. the kilowatts of billing demand and kilowatthours of electric energy consumed, and the million cubic feet/decatherm subject to gas capacity-related charges and decatherm of gas consumed) and the associated revenue, both as booked in the base year and on a pro forma basis reflecting the rate changes implemented pursuant to this act. The proof of revenue shall additionally show the amount of unit-based energy taxes included in the base year revenue as booked, the unit-based energy taxes that would have been collected at the unit-based energy tax unit tax rates effective January 1, 1997, if different, as well as the corporation business tax, sales and use tax and transitional energy facility assessment revenue that would have been collected or received on a pro forma basis if the rates implemented pursuant to this act had been in effect in the base year.

f. The board may, in its discretion, permit the rate changes provided for in this act to be implemented as part of a pending base rate case or other proceeding in which the utility's rates are to be changed, provided that the effective date of the changes is not delayed beyond the date on which the changes would have been implemented under subsection c. of this section. The board may also, pursuant to its powers provided by law, permit or require further modifications in the implementation of this section to address unforeseen consequences arising out of the implementation of this act.

g. Customers of the utility who are exempt from the sales and use tax imposed on sales of gas and/or electricity or as a result of rate changes occurring prior to the effective date of this act or for other valid reasons are due a refund of sales or use tax inadvertently imposed on such customers as a result of implementing the rate changes provided for by this act shall file with the State Treasurer to obtain such refunds. The State Treasurer shall promptly notify the utility of customers granted refunds under this provision in order to prevent additional collections of the sales and use tax from such customers.

h. Public utilities providing telecommunications service regulated by the board shall file for the board's review and approval revised tariffs that eliminate from the rates applicable to such service the excise tax liability included therein pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the corporation business tax calculated using the methodology used in calculating the adjustment factor set forth in paragraph (2) of subsection c. of this section. Subsection d. of this section shall not apply to telecommunication utilities, and telecommunication utilities subject to a plan of regulation other than rate base/rate of return shall additionally not be required to file the rate of return information required by paragraph (2) of subsection c. Such utilities shall, however, include a narrative and/or other documentation as required by the board to support the reasonableness of the after-tax income, which may be adjusted to eliminate the effect of non-recurring or other atypical events, on which the corporate business tax inclusion in rates is based. Telecommunications utilities shall comply with all other applicable provisions of this section.

i. (1) The board shall not adjust the rates of a public utility, as provided in subsections c. and d. of this section, for a purchase by a cogenerator of natural gas and the transportation of that gas, that is exempt from sales and use tax pursuant to paragraph (2) of subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46). The board shall not allocate, in any future rate case, any sales and use tax, corporation business tax, or transitional energy facility assessment to rates for this purpose.

(2) The board shall adjust the rates, as provided in subsection c. of this section, for a purchase by a cogenerator of any quantity of natural gas and the transportation of that gas that is not exempt from sales and use tax pursuant to paragraph (2) of subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46).

(3) For the purposes of this section, "cogenerator" means a person or business entity that owns or operates a cogeneration facility in the State of New Jersey, which facility is a plant, installation or other structure whose primary purpose is the sequential production of electricity and steam or other forms of useful energy which are used for industrial, commercial, heating or cooling purposes, and which is designated by the Federal Energy Regulatory Commission, or its successor, as a "qualifying facility" pursuant to the provisions of the "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617.

52. This act shall take effect immediately; however, sections 9 and 11 shall remain inoperative until the first day of the third month next following enactment unless the Local Finance Board determines an earlier operative date.

Approved July 28, 2009.