

CHAPTER 89

AN ACT concerning economic development and redevelopment under the urban transit hub tax credit and the economic redevelopment and growth grant programs, amending P.L.2007, c.346, P.L.2008, c.46, and P.L.2009, c.90.

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

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

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.

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

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

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

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

"Qualified residential project" shall have the meaning ascribed to that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).

"Residential unit" means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

"Urban transit hub" means:

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

2. 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.

(7) A business shall be allowed a tax credit of 100 percent of its capital investment, made after the effective date of P.L.2011, c.89 but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified business facility that is part of a mixed use project, provided that (a) the qualified business facility represents at least \$17,500,000 of the total capital investment in the mixed use project, (b) the business employs not fewer than 250 full-time employees in the qualified business facility, and (c) the total capital investment

in the mixed use project of which the qualified business facility is a part is not less than \$50,000,000. The allowance of credits under this paragraph shall be subject to the restrictions and requirements, to the extent that those are not inconsistent with the provisions of this paragraph, set forth in paragraphs (1) through (6) of this subsection, including but not limited to the requirement that the business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive benefit to both the State and the eligible municipality.

(8) In determining whether a proposed capital investment will yield a net positive benefit, the authority shall not consider the transfer of an existing job from one location in the State to another location in the State as the creation of a new job, unless (a) the business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality whether in-State or out-of-State, or (b) the business's chief executive officer, or equivalent officer, submits a certification to the authority indicating that the existing jobs are at risk of leaving the State and that the business's chief executive officer, or equivalent officer, has reviewed the information submitted to the authority and that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility. In the event that this certification by the business's chief executive officer, or equivalent officer, is found to be willfully false, the authority may revoke any award of tax credits in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to. When considering an application involving intra-State job transfers, the authority shall require the company to submit the following information as part of its application: a full economic analysis of all locations under consideration by the company; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the authority, the authority shall independently verify and confirm, by way of making a factual finding by separate vote of the authority's board, the business's assertion that the jobs are actually at risk of leaving the State, before a business may be awarded any tax credits under this section.

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 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 credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the value of all credits approved by the authority against tax liabilities pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year shall not exceed \$150,000,000.

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, (a) 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, or (b) the number of full-time employees, who are not the subject of intra-State job transfers, pursuant to paragraph (8) of subsection a. of this section,

employed by the business at any other business facility in the State, whether or not located in an urban transit hub within an eligible municipality, drops by more than 20 percent from the number of full-time employees in its 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 number of full-time employees employed by the business at the qualified business facility to 250 or an increase above the 20 percent reduction has been reviewed and approved by the authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

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

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

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

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

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

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.), provided that all references therein to "business" and "qualified business facility" shall be deemed to refer respectively to "developer" and "qualified residential project," as such terms are defined in this section. Provided however, for purposes of a "mixed use project" as that term is defined and used pursuant to subparagraph (b) of paragraph (4) of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3), "qualified business facility" means that term as defined pursuant to section

2 of P.L.2007, c.346 (C.34:1B-208). In addition, as used in sections 34 and 35 of P.L.2009, c.90 (C.34:1B-209.2 and C.34:1B-209.3):

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

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

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

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 35 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.) for qualified residential projects may be up to \$150,000,000, except as may be increased by the authority as set forth below; provided, however, that the combined value of all credits approved by the authority pursuant to both P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L.2009, c.90 (C.52:27D-489a et al.) shall not exceed \$1,500,000,000. The authority shall monitor application and allocation activity under P.L.2007, c.346 (C.34:1B-207 et seq.), and if sufficient credits are available after taking into account allocation under P.L.2007, c.346 (C.34:1B-207 et seq.) to those qualified business facilities for which applications have been filed or for which applications are reasonably anticipated, and if the executive director judges certain qualified residential projects to be meritorious, the aforementioned \$150,000,000 cap may, in the discretion of the executive director, be exceeded for allocation to qualified residential projects in such amounts as the executive director deems reasonable, justified, and appropriate. In allocating all credits to qualified residential projects under this section, the executive director shall take into account, together with other factors deemed relevant by the executive director: input from the municipality in which the project is to be located, whether the project furthers specific State or municipal planning and development objectives, or both, and whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant, dilapidated, outmoded, government-owned, or underutilized property, or both.

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

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

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

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

(b) A developer shall be allowed a credit of up to 35 percent of its capital investment, made after the effective date of P.L.2011, c.89 but prior to its submission of documentation pursuant to subsection c. of this section, in a qualified residential project that is part of a mixed use project, provided that: (a) the capital investment in the qualified residential project represents at least \$17,500,000 of the total capital investment in the mixed use project; and (b) the total capital investment in the mixed use project of which the qualified residential project is a part is not less than \$50,000,000. The allowance of credits under this paragraph shall be subject to the restrictions and requirements, to the extent that those are not inconsistent with the provisions of this paragraph, set forth in paragraphs (1) through (3) of this subsection, including but not limited to the requirement prescribed in paragraph (1) of this subsection that the developer shall demonstrate to the authority, through a project pro forma analysis at the time of application, that the qualified residential project is likely to be realized with the provision of tax credits at the level requested but is not likely to be accomplished by private enterprise without the tax credits.

As used in this subparagraph:

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

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. Provided however, for purposes of a “mixed use project” as that term is used and defined pursuant to subparagraph (b) of paragraph (4) of subsection a. of this section, “qualified business facility” means that term as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

5. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended to read as follows:

C.52:27D-329.9 Developments, certain, in certain regional planning entities.

18. a. Notwithstanding any rules of the council to the contrary, for developments consisting of newly-constructed residential units located, or to be located, within the jurisdiction of any regional planning entity required to adopt a master plan or comprehensive management plan pursuant to statutory law, including the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization Planning Authority pursuant to section 5 of P.L.2006, c.16 (C.52:27I-5), or its successor, and the Highlands Water Protection and Planning Council pursuant to section 11 of P.L.2004, c.120 (C.13:20-11), but excluding joint planning boards formed pursuant to section 64 of P.L.1975, c.291

(C.40:55D-77), there shall be required to be reserved for occupancy by low or moderate income households at least 20 percent of the residential units constructed, to the extent this is economically feasible.

b. Subject to the provisions of subsection d. of this section, a developer of a project consisting of newly-constructed residential units being financed in whole or in part with State funds, including, but not limited to, transit villages designated by the Department of Transportation and units constructed on State-owned property, shall be required to reserve at least 20 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as required under the rules of the council, unless the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan.

c. (1) The Legislature recognizes that regional planning entities are appropriately positioned to take a broader role in the planning and provision of affordable housing based on regional planning considerations. In recognition of the value of sound regional planning, including the desire to foster economic growth, create a variety and choice of housing near public transportation, protect critical environmental resources, including farmland and open space preservation, and maximize the use of existing infrastructure, there is created a new program to foster regional planning entities.

(2) The regional planning entities identified in subsection a. of this section shall identify and coordinate regional affordable housing opportunities in cooperation with municipalities in areas with convenient access to infrastructure, employment opportunities, and public transportation. Coordination of affordable housing opportunities may include methods to regionally provide housing in line with regional concerns, such as transit needs or opportunities, environmental concerns, or such other factors as the council may permit; provided, however, that such provision by such a regional entity may not result in more than a 50 percent change in the fair share obligation of any municipality; provided that this limitation shall not apply to affordable housing units directly attributable to development by the New Jersey Sports and Exposition Authority within the New Jersey Meadowlands District.

(3) In addition to the entities identified in subsection a. of this section, the Casino Reinvestment Development Authority, in conjunction with the Atlantic County Planning Board, shall identify and coordinate regional affordable housing opportunities directly attributable to Atlantic City casino development, which may be provided anywhere within Atlantic County, subject to the restrictions of paragraph (4) of this subsection.

(4) The coordination of affordable housing opportunities by regional entities as identified in this section shall not include activities which would provide housing units to be located in those municipalities that are eligible to receive aid under the "Special Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or are coextensive with a school district which qualified for designation as a "special needs district" pursuant to the "Quality Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at any time in the last 10 years have been qualified to receive assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the jurisdiction of any of the regional entities specified in subsection a. of this section.

d. Notwithstanding the provisions of subsection b. of this section, or any other law or regulation to the contrary, for purposes of mixed use projects or qualified residential projects in which a business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) or

a tax credit pursuant to section 35 of P.L.2009, c.90 (C.34:1B-209.3), or both, an "eligible municipality," as defined in section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of deciding the percentage of newly-constructed residential units within the project, up to 20 percent of the total, required to be reserved for occupancy by low or moderate income households. For a mixed use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of P.L.2011, c.89, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for low or moderate income households in accordance with the terms and conditions of such approval.

6. Section 3 of P.L.2009, c.90 (C.52:27D-489c) is amended to read as follows:

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.

"Ancillary infrastructure project" means public structures or improvements that are located in the public right-of-way outside the project area of a redevelopment project, provided a developer or municipal redeveloper has demonstrated that the redevelopment project would not be economically viable without such improvements.

"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).

"Infrastructure improvements in the public right-of-way" mean public structures or improvements located in the public right of way that are located within a project area or that constitute an ancillary infrastructure project.

"Municipal redeveloper" means a municipal government or a redevelopment agency acting on behalf of a municipal government as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3) that is an applicant for a redevelopment incentive grant agreement.

"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; an area zoned for development pursuant to a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L.1968, c.404 (C.13:17-21); any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L.1971, c.137 (C.5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L.1968, c.404 (C.13:17-4); a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.); 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, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, 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 and any ancillary infrastructure project associated therewith.

"Redevelopment utility" means a self-liquidating fund created by a municipality pursuant to section 12 of P.L.2009, c.90 (C.52:27D-4891) 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.

7. The provisions of P.L.2011, c.89 shall be severable, and if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect the validity of the remaining provisions of P.L.2011, c.89.

8. This act shall take effect immediately.

Approved July 26, 2011.