

# 2011 LAME DUCK ACTIONS IMPACTING BUSINESS

## CONSUMER AFFAIRS

**MOTOR FUEL REBATE PROGRAM-** A-3133/S-2927 (Riley, Coughlin, Burzichelli, Gordon, Beach)

**Action:** Signed, P.L.2011, c.164

**Summary:** This law permits the use of rebates, allowances, concessions, or benefits for motor fuel purchases on credit, debit or rewards cards. Also, the retail dealer would not bear the cost of the rebate, allowance, concession or benefit received by the motor fuel purchaser, except for a processing fee assessed in the ordinary course of business.

## ECONOMIC DEVELOPMENT

**GROW NJ –** S-3033/A-4306 (Lesniak, Kyrillos, Coutinho, Conaway, Bucco, Chiusano, Ramos)

**Action:** Signed, P.L. 2011, c. 149

**Summary:** The GrowNJ Assistance program will provide at least \$200 million in incentives to create and retain New Jersey jobs. It will encourage business investment and expansion in New Jersey by providing tax credits, based on capital investment and job creation or retention, to companies moving to or growing in the state. Under GrowNJ, an eligible business will receive an annual tax credit of \$5,000 to \$8,000 for 10 years for each full-time job created or retained. A business is also eligible for a GrowNJ tax credit if it retains 100 full-time jobs or creates at least 100 full-time jobs in an EDA-designated desirable industry and also makes a capital investment of at least \$20 million in a qualified incentive area. The law also makes changes to eligibility requirements for the Urban Transit Hub Tax Credit (UTHTC) program to expand the program's use in retaining and attracting jobs to New Jersey, including the addition of medical facility sites, vacant hospital sites, and federally designated CHOICE neighborhoods within one mile of a rail station in a UTHTC city.

**SMALL BUSINESS LOAN PROGRAM-** S-3052wGR/A-4336 (Whelan, Sarlo/Benson, Coutinho, Singleton, DeAngelo)

**Action:** Signed, P.L.2011, c.201

**Summary:** The law establishes a Small Business Loan Program in EDA, which allows certain small businesses to be eligible for loans from EDA. The business must be independently owned and operated, and must operate primarily in New Jersey as well as satisfy other criteria that are to be established by the EDA. Additionally, loans provided to small businesses may be applied to any aspect of the business that supports capital purchases, employee training, and salaries for new positions, as determined by the EDA.

**CREDIT CONTRACTORS WITH INTEREST- S-317/A-3990 (Codey, Rice/Green, Egan)**

**Action:** Pocket Veto

**Summary:** This law would have required contracting units and boards of education to credit contractors with interest earned on certain retained payments that are released to the contractor upon completion of a project. The current law provides that the contracting units may retain interest earned on the retained 2 percent of payments paid to the contractor.

**HIGHER EDUCATION DATABASE- S-3072/A-4341 (Madden, Buono/Lampitt, Benson, Singleton)**

**Action:** Pocket Veto

**Summary:** The law would have required the Commission on Higher Education, to work in consultation with the NJ Economic Development Authority (EDA) and the New Jersey Commission on Science and Technology to create and maintain a database that contained certain assets of participating institutions of higher education. It would have included a participating institution's research and development activities, scientific capabilities, physical facilities and equipment, as well as the expertise and specialized qualifications of its faculty and staff. In turn, this would have been used to promote the establishment of higher education and business partnerships. The administration prefers to handle the creation of the database administratively.

**NEW JERSEY BUSINESS ACTION CENTER- A-4337/S-3079 (Coutinho, Singleton/Madden, Oroho)**

**Action:** Pocket Veto

**Summary:** This law would have created the New Jersey Business Action Center within the NJ Department of State. It also would have set forth that the Business Action Center would have acted as the state's liaison to the business community and provided pertinent business information. This law was redundant since the New Jersey Business Action Center already exists.

## **ELECTIONS**

**CAMPAIGN CONTRIBUTIONS- S-3166/A-4432 (Lesniak, Oroho/Cryan, Chiusano, Quijano, McHose)**

**Action:** Signed, P.L.2011, c.204

**Summary:** This law expands the prohibition in current law on soliciting campaign contributions on certain public properties by candidates and their agents for certain public offices to include all candidates for elective public office and any public property. Under the law, no candidate for any elective public office or their agents can directly or indirectly solicit any contribution on property exclusively owned or leased by the state, any agency of the state, any county, municipality, board of education of a school district, fire district, authority, or other state or local entity, district or instrumentality. The law also incorporates into the law a new provision that explicitly confers jurisdiction upon the Election Law Enforcement Commission to enforce this statutory prohibition against soliciting or making campaign contributions on public property.

## **EMPLOYMENT AND LABOR POLICY**

**SHARED WORK PROGRAM - S-1301/A-3818** (Madden, Doherty, Moriarty, DiMaio, Watson Coleman, Singleton)

**Action:** Signed, P.L.2011, c.154

**Summary:** This law is designed to encourage employers who must reduce their employees' work hours because of economic conditions to avoid layoffs by sharing the remaining work. That is achieved by permitting, under certain circumstances, a full-time employee to receive unemployment benefits when the employee's weekly work time is reduced by 10 percent or more. The law also permits the employee to attend an approved training program while receiving those benefits.

**COUNCIL ON GENDER PARITY - S-1395/A-2563** (Weinberg, Ruiz/Vainieri Huttel, Quigley)

**Action:** Signed, P.L.2011, c.186

**Summary:** The law revises the duties of the Council on Gender Parity in Labor and Education to include, as practicable: conducting studies and promoting research to develop means to correct gender inequitable practices, including practices leading to pay disparities between men and women; disseminating this information to employers, labor organizations, professional associations, educational institutions, the media and the general public; developing and making available information on best practices for workplace gender equity to enable employers to evaluate job categories based on objective criteria; and establishing a statewide recognition of exceptional practices to promote gender equity in the workplace.

**UNEMPLOYMENT BENEFIT EXTENSION- S-3186/A-4437** (Madden, Sarlo/Egan, Singleton)

**Action:** Signed, P.L.2011, c.206

**Summary:** This law extends the three-year look-back until the time when the 100 percent federal funding of extended benefits ends. Therefore, if Congress acted to extend the provision permitting states to use a three-year look-back, New Jersey would continue to provide extended benefits to its citizens until such time as either the three year look-back expires or the 100 percent federal funding ends.

**BACK TO WORK PROGRAM -A-4332/S-3080** (Oliver, Coughlin, Wisniewski, Moriarty, DeAngelo, Greenstein, Gordon, Madden)

**Action:** Pocket Veto

**Summary:** This law would have established the "Back to Work NJ Program" within the Department of Labor and Workforce Development to provide workplace training to certain eligible unemployment insurance beneficiaries. Under the law, an eligible participant who was receiving unemployment insurance benefits would have been eligible to participate in the program and receive workplace training from an eligible employer for a maximum of 24 hours per week for up to six weeks. The law would have opened employers to inadvertent wage-and-hour violations.

## **ENERGY**

**NEW JERSEY PROPERTY ASSESSMENT CLEAN ENERGY MUNICIPAL FINANCING PROGRAM-** SCS for S-1406wGR/A-2502 (B. Smith, Bateman/Chivukula, DeAngelo, Lampitt, Gusciora Vainieri Huttle, Diegnan)

**Action:** Signed, P.L.2011, c.187

**Summary:** This law establishes the “New Jersey Property Assessment Clean Energy Municipal Financing Program.” It allows for certain types of financing for the purchase and installation of renewable energy systems and energy efficiency improvements by property owners. The law is broken into two components. The first component requires the NJ Economic Development Authority to establish low-cost sources of financing, such as renewable energy and conservation bonds and investment from private capital sources, to provide funding to municipalities that wish to finance the purchase of qualified energy systems and improvements to interested property owners. The second component authorizes a municipality to adopt an ordinance to establish a program to finance qualified energy systems and improvements by property owners.

**HYDRAULIC FRACTURING MORATORIUM-** S-2576wGR/A-3653 (Gordon, Greenstein, Bateman/Wagner, Gusciora, Vainieri Huttle, Conaway, Ramos)

**Action:** Signed, P.L.2011, c.194

**Summary:** This law bans for 12 months from the effective date the drilling technique of hydraulic fracturing, used for natural gas exploration or production. Also, the NJ Department of Environmental Protection must conduct an investigation into whether hydraulic fracturing could have or is likely to have a negative impact on air and water quality in New Jersey. The findings are to be reported to the Governor and the Legislature.

**SOCIETAL BENEFITS CHARGE CREDIT-** A-2528/S-2344 (Chivukula, Quijano/B. Smith, Beck)

**Action:** Signed, P.L.2011, c.216

**Summary:** This law establishes a credit to be applied against the liability of a commercial or industrial ratepayer for payment of the societal benefits charge. The credit would be equal to one-half of the costs incurred by a commercial or industrial ratepayer for the purchase and installation of certain energy efficiency products or services during the preceding calendar year. However, the amount of the credit to be allowed would be determined by the board and would not exceed a business's total liability for the societal benefits charge in a calendar year. The amount of the credit that cannot be applied for a given calendar year may be carried over to a maximum of 10 years immediately following the year in which the credit is first applied.

**DISTRIBUTED GENERATION STUDY-** A-2872/S-2971 (Chivukula/B. Smith)

**Action:** Signed, P.L.2011, c.219

**Summary:** This law would require the NJ Board of Public Utilities (BPU) to conduct a study to determine the effects of distributed generation upon energy supply and demand, and determine whether distributed generation contributes to any cost savings for public electric utilities. After the study, the BPU will establish criteria for fixing rates associated with the assessment and imposition of standby charges and require electric public utilities to file tariff rates according to such criteria. These criteria must ensure equity between distributed generation customers and other electric public utility customers with regard to the imposition of standby charges.

**UTILITY POLE SOLAR EQUIPMENT STUDY-** A-3991wGR/S-2978 (Chivukula, Johnson/Whelan)

**Action:** Signed, P.L.2011, c.226

**Summary:** The BPU will conduct a review of the safety implications of the installation and maintenance of solar and photovoltaic electric generation equipment by public electric utilities on utility poles.

**BPU ONLINE DOCUMENTS-** A-3366/S-3164 (Barnes, Riley, Quijano, Burzichelli/Sarlo, Norcross)

**Action:** Signed, P.L.2011, c.221

**Summary:** Under this law, the BPU will establish, on its official Internet site, a secure online process to allow entities under BPU jurisdiction to complete online any documents that the BPU, by regulation or order, requires the entity to file. Additionally, it will allow these entities to electronically submit the documents for review and approval by the appropriate officer of the BPU.

**LOCAL RENEWABLE ENERGY COLLABORATIVE AND CENTRAL RENEWABLE ENERGY GENERATION SYSTEMS-** SCS for S-463/ACS for A-915 (B. Smith, Buono/Chivukula, Ramos, Johnson, Quijano)

**Action:** Pocket Veto

**Summary:** Under the law, local renewable energy collaborative and central renewable energy generation systems would have been established. The law also would have directed the BPU to adopt standards which require electric public utilities to offer nondiscriminatory rates to customers who are members of a local renewable energy collaborative.

**COMMERICAL RENEWABLE ENERGY STSTEMS TAX EXEMPTION-** S-2888/A-3893 (B. Smith/Chivukula, McKeon)

**Action:** Pocket Veto

**Summary:** This law would have established a property tax exemption for “commercial renewable energy systems.” Under the law, property that has been certified by a local enforcing agency as a commercial renewable energy system would have been exempt from property taxation and instead have been subjected to a uniform tax rate.

**ENERGY EFFICIENT OUTDOOR LIGHTING-** A-917/S-1780 (Chivukula, Lampitt/Beach, Gordon)

**Action:** Pocket Veto

**Summary:** This law would have required the state to install, replace, or maintain outdoor lighting fixtures that comply with design requirements intended to minimize wasted light. The law would not have required the state to replace outdoor lighting fixtures that are properly functional as of the law’s effective date.

**RENEWABLE ENERGY GENERATION STANDARDS-** A-3142/S-2196 (Chivukula, Wilson, Fuentes, Quijano/B. Smith, Bateman)

**Action:** Pocket Veto

**Summary:** The law would have directed the BPU to permit municipalities to undertake local government renewable energy generation demonstration projects. BPU would have adopted

standards which require electric public utilities to offer non-discriminatory rates to eligible municipalities that have established a local government renewable energy generation entity.

**CLASS 1 RENEWABLE ENERGY REVISION-** ACS for A-3806/SCS for S-2811 (Stender, McKeon, Singleton/Smith, Allen)

**Action:** Pocket Veto

**Summary:** This law would have revised the definition of Class 1 renewable energy to include energy produced by certain geothermal heat pumps. The percentage of renewable energy generated by the geothermal heat pumps would have had to meet standards established by the NJ Department of Environmental Protection, in consultation with the Board of Public Utilities.

**FARMLAND-BASED WIND ENERGY GENERATION-** ACS for A-3992/SCS for S-2887 (Chivukula, B. Smith)

**Action:** Pocket Veto

**Summary:** This law would have established a new category of farmland-based wind energy generation projects that would have required no regulatory review other than site plan approval. The provisions establishing the streamlined review, however, would not apply to a farm located in the coastal area, the Pinelands area, or the Highlands Region. Moreover, the provisions of the law would have applied only to farms located in Cumberland and Salem Counties.

## ENVIRONMENT

**WASTEWATER SERVICE AREA DESIGNATIONS-** S-3156/ACS for A-4335 (Sarlo, Oroho/Coutinho, Greenwald, DeCroce, McHose)

**Action:** Signed, P.L.2011, c.203

**Summary:** Under the law, the wastewater service area and sewer service area designations will remain in effect and not be withdrawn for a period of 180 days after enactment. Additionally, the law requires wastewater management planning agencies to prepare and submit to the NJ Department of Environmental Protection a wastewater management plan designating a sewer service area.

**HAZARDOUS SUBSTANCE DISCHARGE-** SS for S-2108/ACS for A-3124 (B. Smith, Bateman/Quijano, McKeon)

**Action:** Pocket Veto

**Summary:** This law would have clarified liability for discharges of hazardous substances from oil drilling platforms that enter New Jersey waters. Specifically, the law provided that any person who discharges a hazardous substance or is in any way responsible for a hazardous substance that is discharged, shall be liable, strictly, jointly and severally, without regard to fault, for the cleanup and removal costs, as well as for any damage done. The law provided that the liability imposed would not have limited liability that otherwise may be imposed under any other state or federal law.

**NEW JERSEY REGULATORY FLEXIBILITY ACT-** A-2129/S-1336 (Chivukula, McHose, Burzichelli/Sarlo, Van Drew)

**Action:** Pocket Veto

**Summary:** This law would have made changes to the “New Jersey Regulatory Flexibility Act” in order to expand the scope of the law with regard to small businesses. Small businesses are defined as those that employ fewer than 100 full-time employees or have gross annual sales of less than \$6 million. The law would have required an agency to use, when developing rules, the consolidation or simplification of compliance or reporting requirement for small businesses as an approach to minimize the rule’s impact on small businesses.

## **HEALTH AFFAIRS**

**ORAL CHEMOTHERAPY COVERAGE- S-1834/A-2666** (Weinberg, Gill/Vainieri Huttle, Greenstein, Munoz, Ramos)

**Action:** Signed, P.L.2011.c.188

**Summary:** Under this law, health insurance policies sold to individuals, small employers and the State Health Benefits Program (SHBP) are required to cover oral anticancer medications on a basis no less favorable than intravenous anticancer medications. In addition, coverage for expenses for prescribed, orally administered anticancer medications used to kill or slow the growth of cancerous cells are not to be subject to any prior authorization, dollar limit, copayment, deductible or coinsurance provision that does not apply to intravenously administered or injected anticancer medications.

**INDEPENDENT HEALTH CARE APPEALS PROGRAM- S-2145/A-1816**

(Allen/Casagrande, Angelini)

**Action:** Signed, P.L.2011, c.190

**Summary:** This law increases the public awareness of the Independent Health Care Appeals Program, which provides an independent review of final decisions made by health insurance carriers to deny, reduce, or terminate benefits. Specifically, the law requires hospitals and doctors’ offices to provide patients with more information about the Independent Health Care Appeals Program. Hospitals are also required to train appropriate staff about the program.

**SICKLE CELL ANEMIA TREATMENTS- A-1120 /S-3182** (Evans, Jasey, Tucker/Rice, Turner)

**Action:** Signed, P.L.2011, c.210

**Summary:** The purpose of this law is to improve access to medically necessary treatments for sickle cell anemia through enhanced health insurance coverage and the dissemination of information about this inherited blood disorder to health care providers and the general public. Under the law, health insurance policies purchased by individuals and small businesses are required to cover the cost of treatment for sickle cell anemia, when prescribed as medically necessary by the covered person’s physician.

**PHARMACEUTICAL SALE OF SYRINGES - S-958wGR/A-1088** (Vitale, Weinberg/Gusciora, Johnson, Coughlin)

**Action:** Signed, P.L.2011, c.183

**Summary:** Under the law, licensed pharmacies are permitted to sell hypodermic needles and syringes, as well as other instruments adapted for the administration of drugs by injection, to individuals without a prescription. Those making the purchase have to be over 18 years old and are limited to 10 or fewer needles per purchase. The supply of needles is to be kept behind the

sales counter, and when needles are purchased, pharmacists must provide the customer with information regarding the safe disposal of needles. The law also makes it legal for individuals to possess a hypodermic syringe or needle without a prescription.

**AMBULATORY SURGERY FACILITIES LICENSURE-** S-2780/ACS for A-4099, 3909 (Vitale/Conaway, Benson, Coughlin, Ramos)

**Action:** Pocket Veto

**Summary:** The law would have required that all “surgical practices” be licensed by the NJ Department of Health and Senior Services (DHSS) as ambulatory surgery facilities within one year. A “surgical practice” is defined in the law as a structure or suite of rooms that has not more than one room dedicated for use as an operating room. Also, the structure must have one or more post-anesthesia care units or a dedicated recovery area and be established by a physician.

## LEGAL AFFAIRS

**NEW JERSEY TRADE SECRETS ACT-** A-921/S-2456 (Chivukula, McKeon, Scutari, Cardinale)

**Action:** Signed, P.L.2011, c.161

**Summary:** The “New Jersey Trade Secrets Act,” based on the “Uniform Trade Secrets Act” prepared by the National Conference of Commissioners on Uniform State Laws, has been adopted in 46 states and the District of Columbia, many of which modified it prior to adoption. The New Jersey Law Revision Commission has reviewed and modified the “Uniform Trade Secrets Act” to reflect this state’s common law trade secret jurisprudence.

## REDUCE GOVERNMENT SPENDING

**WEBSITE REQUIREMENT-** ACS for A-3908/S-2765 (DeAngelo, Benson, Ramos, Moriarty, Beck, Buono)

**Action:** Signed, P.L.2011, c.167

**Summary:** This law requires all state, regional, environmental, and local authorities, boards and commissions to maintain an Internet website to provide increased public access to their operations and activities. Information is to include a description of the entity’s mission and responsibilities, in addition to other information.

**NJ REGISTER-** A-2464/S-1783 (Burzichelli, Quijano, Oroho, Addiego)

**Action:** Signed, P.L.2011, c.215

**Summary:** This law requires that all state agency rules be published in the New Jersey Register. It also prohibits the use of regulatory guidance documents to impose new or additional requirements, except under certain circumstances.

**REPORTS OF STATE AGENCIES ON WEBSITE-** S-1217/A-2408 (Weinberg, Van Drew/Lampitt, Milam, Albano, Johnson, Angelini)

**Action:** Signed, P.L.2011, c.184

**Summary:** Reports and publications that are produced by the state or its agencies and submitted to the Governor, the Legislature, or the public, must now be made available electronically on the

Internet instead of being printed in hard copy. The law specifies that individuals who are unable to access reports or publications electronically may request printed copies of the documents.

## **SMALL BUSINESS**

**DIRECT SHIPPING FOR WINERIES-** S-3172/A-4436 (Sweeney Burzichelli, Wisniewski, Riley)

**Action:** Signed, P.L.2011, c.207

**Summary:** This law changes the statutes governing the sale and distribution of products by New Jersey wineries by permitting direct shipping and creating an out-of-state winery license. Plenary wineries that produce a maximum of 250,000 gallons per year will be permitted to sell their products to licensed retailers after paying a fee. It also allows plenary wineries that produce a maximum of 250,000 gallons per year to directly ship up to 12 cases of wine for personal consumption to any person over the age of 21.

## **TAXATION**

**COSMETIC MEDICAL PROCEDURE GROSS RECEIPTS TAX-** S-1988/A-3846 (Sarlio, Kyrillos/Johnson, Singleton, Moriarty)

**Action:** Signed, P.L.2011, c.189

**Summary:** The 6 percent cosmetic medical procedure gross receipts tax will be phased out in a three step process. The phase-out will gradually alleviate the financial and administrative burdens associated with the tax. Since the gross receipts tax was imposed in 2004, the tax has increased overall costs for recipients of cosmetic medical procedures and imposed an administrative burden on the medical offices lawing the procedures and the state agencies charged with the administration and enforcement of the tax.

**CORPORATION BUSINESS TAX CREDIT PROGRAMS-** S-3054/A-4342 (Sweeney, Greenstein/Lampitt)

**Action:** Pocket Veto

**Summary:** The law would have expanded certain corporation business tax credit programs to the gross income tax. The purpose of this law was to provide gross income taxpayers with the same incentives available to corporation business taxpayers for investment and hiring, particularly sole proprietors, partnerships, and limited liability companies.

## **WORKERS' COMPENSATION**

**WORKERS' COMPENSATION PAYMENTS-** S-676/A-3166 (Sarlio, Gill, Egan, Evans, Wisniewski, Giblin)

**Action:** Pocket Veto

**Summary:** This law would have increased the amount of workers' compensation paid for certain hand and foot injuries. Specifically, the legislation would have provided that for certain hand injuries, the award of workers' compensation would have been calculated based on a maximum of 300 weeks of compensation, as opposed to the current 245 weeks. In addition, the legislation provided that for certain foot injuries, the award of workers' compensation shall be

calculated based on a maximum of 275 weeks of compensation, as opposed to the current 230 weeks.