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AGENDA FOR ECONOMIC GROWTH

2008-2009
New Jersey State Issues Briefing

INTRODUCTION

ABOUT THE NJBIA AGENDA FOR ECONOMIC GROWTH

The New Jersey Business & Industry Association's *Agenda for Economic Growth* is a blueprint for building a strong private-sector economy in New Jersey, creating jobs, strengthening the State's business climate, and improving its economic competitiveness. These are specific NJBIA recommendations in the areas of Business Taxes, Education, Economic Development, Energy, Environment, Healthcare and Manufacturing.

A common theme running through the recommendations in the *Agenda for Economic Growth* is the need to reduce New Jersey's high cost of doing business. Some factors impacting the high cost of doing business are predominately outside state government influence – the globalization of the economy, for example – but other factors are directly affected by State Government actions. New Jersey is in fierce competition with Pennsylvania, New York, Delaware and Maryland to retain and attract jobs. Today we are lagging the region in job growth and one of the worst national performers. Reducing the high cost of doing business in our state must be a top priority.

ABOUT NJBIA

The New Jersey Business & Industry Association was founded in 1910 as the New Jersey Manufacturers Association. Today, it is the largest state-level employer association in the nation. NJBIA represents 23,000 member companies that collectively employ an estimated 1.2 million people. NJBIA members span a wide spectrum of industries and are located throughout the State. The overwhelming majority of NJBIA member companies are small businesses with fewer than 25 employees. In fact, only 7 percent of NJBIA's membership is comprised of businesses with more than 100 employees.

NJBIA provides a wide range of services to its members through its publications, seminars and special events. NJBIA has several affiliates, including New Jersey Manufacturers Insurance Company, the New Jersey Public Research Organization (NJPRO) Foundation, and *New Jersey Business* magazine.

CONTACT

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OVERVIEW

NJBIA'S AGENDA FOR LEGISLATIVE AND REGULATORY ACTION

- A healthcare system that emphasizes affordability, quality, transparency and accessibility.
- A business tax structure that is fair and competitive with other states.
- Conservative spending of State resources with an emphasis on eliminating redundant and ineffective programs.
- An annual cap on spending increases to recurring annual revenue growth.
- Employee benefits programs that do not exceed those imposed by competing states, like paid family leave.
- Cost-effective environmental regulations and programs that are consistent, flexible, balanced and job friendly.
- A competitive energy market that is reliable, affordable and balances conservation, renewable and current sources of energy.
- Economic development programs that meet employers' needs and complement and supplement business job creation and retention efforts.
- Unemployment compensation and workers' compensation systems that are fair, reasonable and competitive with other states.
- A public education system that establishes clear accountability and provides every child with the opportunity to receive a quality education at reasonable cost to taxpayers.
- A legal system that promotes fairness, common sense and personal responsibility.
- More reforms to make sure government is conducted in a transparent and open process and contracts are provided solely on merit.

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ESTABLISH A PREFERENCE PROGRAM FOR NEW JERSEY MANUFACTURERS UNDER GOVERNMENT CONTRACTS

DESCRIPTION

Authorize the NJ Commerce & Economic Growth Commission to establish a limited preference system for State and local government purchasing goods from New Jersey manufacturers. The commission would determine the percentage of contracts for goods that could be awarded to qualified New Jersey based manufacturers, defined as a for-profit business that produces goods or products.

BACKGROUND

Currently, New Jersey state government has contract set asides for small businesses. However, there are no specific contract preferences for New Jersey manufacturers.

The State small business set-aside is 25 percent. For goods and service contracts, small businesses must register within three categories based on annual gross revenues: less than \$500,000; less than \$5 million; less than \$12 million. Individual contract procurements will specify applicable small business set-aside ranges being sought.

Half the states provide a limited government purchasing preference for certain in-state manufactured goods, including Pennsylvania, New York, Maryland, Massachusetts and Connecticut.

NJBIA POSITION

NJBIA supports this issue as an attempt to assist New Jersey's manufacturers. It provides appropriate recognition of the State's manufacturing community and the challenges it faces competing with foreign manufacturers. Additionally, it recognizes the important role the State of New Jersey and its political subdivisions play in purchasing goods.

ARGUMENTS IN SUPPORT OF MANUFACTURER CONTRACT PREFERENCES

Manufacturing remains an important industry sector in New Jersey, but is experiencing across-the-board job declines – 23 percent (96,200) of manufacturing jobs lost since 2001.

With 320,000 manufacturing jobs remaining in New Jersey and another 170,000 jobs dependent on manufacturing, a public policy imperative should be to

construct incentives to help retain the manufacturing jobs we have by encouraging use of New Jersey manufactured products.

Manufacturing jobs pay above average wages and benefits, do not usually require a college degree and are often located in urban areas.

Currently, New Jersey State and local governments have contract set asides for small businesses. However, there are no specific contract preferences for New Jersey manufacturers.

Half the states provide a limited government purchasing preference for certain in-state manufactured goods, including Pennsylvania, New York, Maryland, Massachusetts and Connecticut.

Creating a New Jersey government purchasing preference for the State's manufacturing community would be an important benefit to our manufacturing sector.

COST

The anticipated cost would be minimal, depending on the preference system established by the commerce commission. Additionally, any costs would be offset by taxpayer savings derived from retaining manufacturing sector employment.

LEGISLATIVE HISTORY

Assembly Bill 1479 was introduced in the 2008-2009 legislative session. It was reported out of the Assembly Commerce and Economic Growth Committee on February 25 and is awaiting action in the full Assembly.

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**REFORM THE BEIP JOB INCENTIVE PROGRAM TO SPUR
 GREATER ECONOMIC GROWTH**

DESCRIPTION

Eliminating recently imposed restrictions on Business Employment Incentive Program (BEIP) participation can spur urban economic growth. In urban areas that desperately need job creation, the program should be restored to its original and more successful form. Specifically, caps on new employee salaries (approximately \$160,000) and excess job creation requirements (limited to 120 percent of the original job creation goal) should be rescinded for urban businesses. And, the 10-year term limit on participation should be extended, at the discretion of the NJ Economic Development Authority (EDA), with lowered grant amounts and increased job retention mandates.

BACKGROUND

The BEIP program works as follows: Employers that create new jobs receive a portion of new employees' income tax payments (ranging from 10 to 80 percent) in the form of an annual grant for a period of 10 years. The employer promises to maintain minimum new employment levels for at least 15 years. Incentive grants are based on actual jobs created, not promised, and paid only after new employees have worked the full year. The employers must demonstrate that the BEIP grant is a materially important factor in their decision to relocate or expand in New Jersey.

Legislation enacted in 2003 capped the total amount of a BEIP grant any one applicant can receive over the life of the grant at \$50,000 per new employee (or an annual salary of approximately \$160,000 per employee). In 2005, EDA adopted regulations limiting the amount of additional jobs qualifying for grant payment to 20 percent above the originally contracted new jobs target.

Regardless of the measure used—employment, economic activity or tax generation—BEIP is without question a New Jersey economic development success story. For the past decade, BEIP has served as the primary incentive to encourage new employers to locate in New Jersey.

The statistics speak for themselves. According to program administrators at the EDA, BEIP'S 369 employer participants have created a total of 70,116 jobs and generated \$11.9 billion in public-private investment since the program's inception in 1996.

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Economists at Rutgers University's Bloustein School reviewed BEIP impacts in a 2005 report that looked at projects through February 2005. They found that BEIP grants:

- **Have an Annual Economic Impact of \$8.4 Billion.** Each year, the operations of the BEIP projects add approximately \$8.4 billion to New Jersey's gross State product. This equates to an annual increase of approximately \$88 for each tax dollar spent to fund the program.
- **Generate \$349 Million in Additional Tax Revenues Annually.** The 183 BEIP projects generate approximately \$349 million in additional State tax revenue each year. In other words, for each tax dollar spent on the BEIP program, the State receives approximately \$3.70 in revenues.
- **Lead to More Than 100,000 New Jobs.** The 183 BEIP projects have created approximately 51,665 permanent jobs. The economic activity generated by the BEIP projects leads indirectly to the creation of another 58,089 jobs, for a total of 109,754 jobs.
- **Are Cost-Effective Across Many Sectors.** The annual grant expenditures made on the BEIP program are approximately \$95.1 million, or about \$1,841 per job created by the BEIP projects. The financial activities sector had the highest expenditure per job created (\$3,119), followed by the professional and business services sector (\$1,661) and the manufacturing sector (\$1,422).
- **Impact Major Business Sectors:** The 88 BEIP projects approved in fiscal year 2005 are estimated to create approximately 12,318 jobs. Like the 183 approved and executed projects, the majority of the 88 projects are in the manufacturing (40.9 percent), professional and business services (20.5 percent), and financial activities (15.9 percent) sectors.
- **Help Small and Mid-Sized Businesses.** The majority of BEIP awards examined (55.7 percent) have been extended to small to mid-sized projects creating fewer than 200 jobs each, while 49.3 percent of the jobs directly generated by the BEIP projects have come from those that created 500 jobs or more.
- **Attract Out-of-State Companies.** Over 50 percent of the BEIP awards analyzed (100 out of 183) have been made to companies relocating their facilities from other states, with 42 percent (77 awards) going to companies expanding their existing operations in New Jersey and very few (6 awards) going to new businesses. The majority of the relocations (69 percent) have come from New York.
- **Go to Companies in Almost Every County.** BEIP grants have been made to companies in almost every county in the State. The largest shares of the awards

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have gone to companies in Hudson (25.1 percent), Middlesex (12 percent) and Morris (9.8 percent) counties. The largest percentages of the total jobs created by BEIP projects have been in Hudson (34.7 percent), Somerset (11.6 percent) and Middlesex (7.6 percent) counties.

NJBIA POSITION

NJBIA supports legislation designed to expand BEIP benefits and eligibility. Specifically, caps on new employee salary (approximately \$160,000) and excess job creation (limited to 120 percent of the original job creation goal) should be rescinded for urban businesses. Additionally, the 10-year term limit on participation should be extended, at the discretion of the EDA, with lowered grant amounts and increased job retention mandates.

ARGUMENTS IN SUPPORT OF ELIMINATING BEIP PROGRAM RESTRICTIONS IN URBAN AREAS

The BEIP is the most successful job creation and economic stimulus program in New Jersey's history. Since its inception in 1996, 369 businesses have directly created a total of 70,116 jobs, indirectly created another 75,000 jobs and generated \$11.9 billion in public-private investment.

BEIP is attractive because it positively impacts on one of the most onerous costs of doing business facing New Jersey employers—our high personnel costs. BEIP grants are directly linked to payrolls—the higher the payroll, the higher the BEIP grant.

Unlike many stimulus programs, BEIP is a model of fiscal responsibility. Incentive grants are based on actual jobs created (not promised) and paid only after new employees have worked for the full year. Grant amounts are calculated as a percentage of personal income taxes generated by the new employees; hence, unlike other State programs, State government makes money from BEIP. In fact, every \$1 spent on BEIP generates \$3.70 in State tax revenues.

Legislative and regulatory changes made to BEIP these past five years were designed to limit the growth of the program. Specifically, these changes effectively capped the new employee salary and limited the number of jobs an applicant can create under the program.

The initial group of BEIP recipients from the late 1990s is reaching its 10-year limit on participation in the program. There is no discretionary ability to continue the BEIP grant past the 10-year limit.

BEIP is a proven urban job generator. The largest shares of participants have come from Hudson County, and 22 projects have been generated in Newark, Elizabeth, Trenton, Camden, Perth Amboy, Vineland, Millville and Bridgeton alone.

ECONOMIC DEVELOPMENT

LEGISLATION

Legislation enacted in 2003 capped the total amount of a BEIP grant any one applicant can receive over the life of the grant at \$50,000 per new employee (or an annual salary of approximately \$160,000 per employee). In 2005 the EDA adopted regulations limiting the amount of additional jobs qualifying for grant payment to 20 percent above the originally contracted new jobs target.

COST

In 2007 BEIP grants totaled \$152 million, out of \$562 million in new State tax revenues generated by the program. Removing program limitations in urban areas, while permitting contract extension beyond ten years, will create no new costs.

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EDUCATION: CONTROLLING COSTS & INCREASING ACCOUNTABILITY

DESCRIPTION

To increase education quality and to save taxpayer dollars, accountability needs to be a bigger part of New Jersey's K-12 education system. To properly hold schools and districts accountable, New Jersey needs better data to assess their effectiveness and efficiency. In addition, the State has recently instituted several promising accountability mechanisms that should be enforced to the fullest extent possible. Also to promote effectiveness and efficiency, New Jersey should aggressively promote consolidation of school districts and school services.

BACKGROUND

From the summer of 2006 through June of 2007, the State Legislature and its four special session joint committees on property taxes examined many of the reasons for and potential solutions to New Jersey's exorbitant property tax system. Education costs were at the heart of many of the issues that were explored, and greater education accountability was part of the solution.

The NJ Department of Education (DOE) is also in the process of updating its education data management system, dubbed NJSMART. It is a comprehensive data warehouse with student level data reporting and a unique statewide student identification system. Governor Corzine, the State Legislature and Education Commissioner Lucille Davy have indicated that it is a crucial need and top priority for the State. Aspects of it are complete and now in use, but other more simple school statistics, like graduation and drop out rates, are still not uniformly reported in New Jersey. More comprehensive data can be used to better tailor instruction to make schools more effective and efficient.

The DOE recently updated its system for monitoring and evaluating public school districts. It implemented the NJ Quality Single Accountability Continuum (QSAC) in 2005. The new system shifts the focus from compliance to assistance, capacity-building and improvement. It uses a single unified accountability system that incorporates instruction, personnel, fiscal management, operations and governance.

The DOE also has new powers to intervene in a school district to correct fiscal and budget problems with the enactment of the School District Fiscal Accountability Act, and county school superintendents were given greater authority to push local districts for more accountability and efficiency with Assembly Speaker Joseph Roberts' CORE bill, which became law in 2007.

Currently, there are 612 local school districts in New Jersey, more than Pennsylvania, Maryland and Delaware combined. There are some districts with no students, many more with fewer than 100 students and many that do not offer a full K-12 education.

NJBIA POSITION

To more efficiently and effectively use taxpayer dollars in education, New Jersey should improve the data collection, reporting and use in its education system.

The DOE should fully enforce NJQSAC, the School District Fiscal Accountability Act, the CORE bill and other NJDOE powers to provide greater oversight over school districts' efficiency and effectiveness.

Small school districts with few students should be consolidated to improve the chances for accountability, efficiency and effectiveness.

ARGUMENTS IN SUPPORT OF CONTROLLING COSTS AND INCREASING ACCOUNTABILITY

Property taxes are the number one issue for New Jersey residents, education costs are the largest component of property taxes and these reforms can help reduce or control those costs.

NJSMART is already a top priority for New Jersey, and properly implementing it would correct the State's worst grade on the recent US Chamber of Commerce State report card on education. NJSMART and other uniform education data reporting are easy ways to improve education policy. They can show what works and what does not; which high schools need help and which are performing well; and which teachers and administrators deserve credit and which ones deserve blame.

NJQSAC, the School District Fiscal Accountability Act and the Executive County Superintendent have recently become law, and they need to be optimally utilized to provide further reform and strengthening of the schools.

New Jersey is like no other state in terms of the delivery of local government and educational services. The high number of small, inefficient school districts is part of the reason for New Jersey's highest-in-the-nation property taxes. Larger school districts can lead to lower per pupil costs because of economies of scale, less redundancy, more collective bargaining power and a host of other improvements. Quality should also improve because more students will have access to more resources when they are shared in a larger school district.

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EXPANDING EDUCATION OPTIONS & INNOVATION

DESCRIPTION

Expanding educational alternatives within New Jersey's school system is critical to better prepare students for the specialization, diversity and complexity of today's and tomorrow's workforce.

Educational alternatives and innovations currently exist in New Jersey, but are not sufficiently promoted and financially supported, especially given their value in workforce development. Strengthening education options allows schools to better shape instruction and the learning environment to meet students' needs. Producing students with diverse interests and greater awareness of the number of real world options and career opportunities is beneficial to the business community and its diverse personnel demands, as well as all students. Augmenting public and private school choice, curriculum innovations and education partnerships should be a goal.

BACKGROUND

Choice within the public school system has been expanding. There has been movement in many school districts to create smaller schools, more specialized schools and schools-within-schools. Examples of this trend are career academies, magnet schools and smaller learning communities within larger schools. These trends can be seen in many larger urban school districts like New York City as an attempt to reform the schools. This approach allows for more individual attention and a more focused education to fit individual student needs.

Public school choice also includes vocational schools and charter schools. New Jersey has 60 schools in 21 county vocational-technical school districts that educate approximately 30,000 students. They have 44 full-time career academies and 800 approved career and technical programs that have contributed to New Jersey's workforce. They have even garnered national attention. Eighteen of the 36 New Jersey high schools named to the top 500 in the nation are county vocational-technical schools. Vocational schools are fast becoming models in preparing high school students and adults for college and the careers of the 21st century.

Charter schools are public schools operated independently of local school districts. They educate approximately 15,000 New Jersey schoolchildren with roughly two-thirds of them qualifying for free or reduced-price lunch. They are subject to most regulations and laws as traditional public schools, except for

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certain facility and leadership requirements. They are also founded on the core concepts of accountability, choice and innovation.

Private school choice on the other hand, is being threatened. Existing non-public schools have been closing in urban areas at an alarming rate, and recently they have begun closing and consolidating in suburban areas as well. These schools have operating costs one-third to one-half that of their comparable public schools and cost the State very little compared to public schools.

Options within school curricula and programs also have a history in New Jersey. From 1995 through 2003, NJBIA fought for technology education because it is an important part of workforce development, and in 2003, succeeded in making technology education part of the core curriculum content standards detailing the subjects that are taught to all public school students.

Employers asked for this change because they needed greater technology and analytical skills in their employees. Employers have also recently collaborated with teachers to create a middle school curriculum that infuses business skills and awareness into the classroom. It was published and disseminated to educators across the State by the New Jersey Policy Research Organization Foundation, the research affiliate of NJBIA. Again employers asked for this curriculum because there was a lack of real world skills and business and career awareness in the classroom.

Another recent example of curricula innovation in New Jersey is the 12th Grade Option initiative, where partnerships between high school, higher education, the community and business were created to make the senior year of high school more meaningful. NJBIA and the NJ Department of Education developed a Career Internship Resource Packet for this program. It could serve as a model for a similar program to promote partnerships.

NJBIA POSITION

To better prepare for the jobs of the future, New Jersey must strengthen educational options through legislation and regulation.

New Jersey should expand public school choice by authorizing more charter schools, vocational-technical schools, schools-within-schools, magnet schools and academies. It should also increase enrollment capacity at county vocational-technical schools to increase the effective workforce preparation opportunities they provide.

New Jersey should also create a non-public school choice program in New Jersey by providing financial resources to attend a private school, such as a State-supported urban scholarships program.

New Jersey's Department of Education should provide for innovation and flexibility within the curriculum by supporting subjects such as technology education, financial literacy and entrepreneurship. And the State should increase the use of programs like partnerships and internships that bring business and schools together.

ARGUMENTS IN SUPPORT OF EXPANDING OPTIONS

New Jersey's vocational-technical high schools work. Collectively, they have a 96 percent success rate in placing their graduates in either work or higher education. Data from NJBIA's 2006 Business Outlook Survey indicates that employers' satisfaction level with entry-level employees from public vocational-technical high schools is more than 50 percent higher than their satisfaction with employees from traditional public high schools.

Vocational schools do not have the capacity to meet the demand for their education. Two students apply to a vocational school for every one open seat. Expanding these schools and their available seats will generate more students with a clear linkage to business and the future workforce.

Non-public schools offer an important option for New Jersey students that need to be preserved. The continued closing of non-public schools will force more students into public schools that have higher per pupil costs for the State, require new school buildings and often have inferior achievement levels in urban areas.

Funding non-public schools through scholarships for example can save the non-public schools and save the State money because it would still be less expensive than educating the student in a public school.

Targeting non-public school scholarships to urban students would offer them more alternatives to better prepare for the workforce. More importantly these schools provide another quality education option to students.

Businesses and State and national business groups have stepped forward to infuse business and technology skills into the curriculum. Technology education, which has a history of business support in New Jersey, must be strengthened.

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INCREASING STANDARDS & EXPECTATIONS FOR STUDENTS

DESCRIPTION

New Jersey businesses need a skilled and trained workforce to maintain a high level of productivity, yet many businesses struggle to find workers with the skills they need. Furthermore, even traditionally blue-collar jobs will require increased skill levels in the future.

Increasing our expectations for New Jersey's educators and students is the single biggest reform that the State can undertake to increase achievement, give the high school diploma more meaning and produce graduates better prepared for the workforce.

To prepare our workforce for the 21st century, New Jersey must increase high school standards and expectations. The State should increase the difficulty of the High School Proficiency Assessment (HSPA) to more accurately reflect a quality high school education as well as the needs of the workforce. New Jersey should limit the use of alternatives to the HSPA, such as the Special Review Assessment (SRA) to only truly special needs students. And high school coursework should include more rigor and more advanced math and science classes.

BACKGROUND

Currently New Jersey mandates that a high school student take four years of language arts and health and physical education; three years of mathematics, science and social studies; and one year each of world language, visual and performing arts and practical arts. Specific courses are not required in these disciplines, allowing different districts to meet these standards through more or less rigorous means.

In 1996 the State established Core Curriculum Content Standards (CCCS) to guide student achievement and assessment, but schools are largely left with no responsibility to cover all the standards.

To graduate high school, students must either pass the HSPA, a test in the junior year linked to the CCCS, or pass the SRA, often described as easier and a back-door way to graduation.

This coursework, curricula and graduation flexibility allows for a wide spectrum in terms of the rigor demanded of high school students in different high schools and school districts.

NJBIA POSITION

To prepare students for the 21st century, New Jersey should establish more uniform standards among different high schools and set higher standards for all high school students.

The HSPA should be made more thorough and challenging for New Jersey high school diplomas to have more meaning for employers.

Graduating high school without passing the HSPA, such as with the SRA, should be rare and limited to those students with true special needs, not just those who do not pass the HSPA.

The New Jersey high school experience should be reformed to promote higher level coursework, including more advanced mathematics and science.

When reforming high school coursework and assessments, flexibility should be provided for students already preparing for the workforce through a licensed career and technical education (CTE) program.

ARGUMENTS IN SUPPORT OF HIGHER STANDARDS

Research has shown that challenging, high-level coursework leads to increased SAT scores, less remediation in college, higher college graduation rates and increased workplace earnings.

Research shows additional classes in Algebra I and II, Geometry, Trigonometry, pre-Calculus and Calculus increase a student's chances of completing college by as much as 62 percent.

Indications are that demanding coursework is even a better predictor of success than grades. Achievement does not matter as much as the fact that student expectations are raised and students are challenged.

More challenging high school coursework has also shown itself to be a potential solution to the achievement gap between white students and minority students.

A more thorough and challenging HSPA would make New Jersey high school diplomas more meaningful for employers. Currently, the HSPA tests students graduating high school at only an 8th grade level and yet it stands as the indicator of a successful high school education.

Reducing the use of the SRA is also important as overuse of the SRA can skew graduation rates. In Newark during the 2006-2007 school year, for example, three of the four largest public high schools had more students using the SRA to graduate than the HSPA.

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The mindset of high expectations is also a critical part of increasing standards. The education association Phi Delta Kappa points out that high expectations among principals is an essential aspect to turning around many failing schools. Teach For America, a national education reform organization, believe that higher expectations for teachers is the main reform needed so that low-income urban and rural schools can be improved.

Businesses struggle to find workers, particularly entry-level workers, with the skills they need. In 2006 NJBIA's Business Outlook Survey indicated that only one-third of employers view New Jersey's high school graduates as good or excellent, and less than one-third report that the verbal communication skills, math and science skills, critical thinking skills and written communication skills of their entry level workers are good or excellent.

Postsecondary institutions, employers and young people spend more than \$17 billion per year on remedial classes so students can gain the knowledge and skills they should have acquired in high school.

Two-thirds of new jobs created between the years 2000 and 2010 will require more than a high school degree, and many traditionally blue-collar jobs will require some high-level skills in the future.

More rigorous schoolwork leads to a 13 percent increase in entry-level wages, while more advanced math classes can lead to an increase in the chances of completing college.

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MAINTAINING, EXPANDING AND PROMOTING WORKFORCE TRAINING

DESCRIPTION

New Jersey has a workforce training program with great potential that should be maintained, expanded and promoted. Public workforce development resources need to be better utilized by employers and employees. Training adults and incumbent workers through county colleges, NJ Department of Labor and Workforce Development (DOL) programs and county vocational-technical schools must be a component of New Jersey's economic development efforts. The DOL should maintain its existing workforce training programs, add flexibility to them to fit employer needs and better promote them. New Jersey also needs to preserve its other adult education opportunities through preserving county vocational-technical school adult education aid and adult high school aid.

BACKGROUND

The mission of New Jersey's 19 community colleges includes providing occupational programs and business support services in response to local and statewide needs. There are 63 New Jersey county college campuses, one within 30 minutes of every resident of the State. In 2004, the 19 county colleges organized to form the NJ Community College Consortium for Workforce & Economic Development to provide even more effective and streamlined training services, saving resources and improving the delivery of training.

Currently DOL offers approximately \$10 million in literacy grants and \$25 million in customized training grants every year so businesses can provide training to their employees. The training is funded by business taxes to the unemployment insurance fund. In the 2008 fiscal year, the \$25 million in customized training grants serves 53,000 employees at 240 companies. Often, however, some of this funding goes unused.

Historically, businesses have had difficulty applying for these grants because they have had to provide a minimum of ten workers to fill a class. The program also required them to pay for a share of the training and fill out onerous paperwork.

In 2007 NJBIA joined with the DOL and county colleges in a partnership to overcome these difficulties. Under this partnership small businesses that have similar training needs can be grouped together to meet the ten-worker minimum. It also waived a lot of the previous cumbersome paperwork requirements. Today, the \$1.88 million grant provides training in computer applications, English

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as a second language, communications and mathematics. The grant allows for 440 classes to provide training to 5,000 employees at about 1,000 businesses.

As of spring 2008, more than 56,000 adults were enrolled in New Jersey's county vocational-technical school districts for training and continuing education, and more than 10,000 adults are enrolled in adult high schools in eight county vocational-technical school districts and 35 other school districts. These adult high schools provide a second chance for dropouts, recent immigrants and disadvantaged New Jersey adults.

The future of adult high schools has been in jeopardy since 2004, when the State budget shifted \$18.4 million from adult high school programs into the generic "consolidated aid" category. Although the school districts that previously received aid for adult high schools were "held harmless" from losing funds, adult high school programs no longer generate per pupil funding (\$1,443) specifically designated for these second chance school students. Since the shift, the consolidated aid can be used for any purpose, which often means that it is not used for adult high schools.

NJBIA POSITION

To maintain and improve New Jersey's workforce, the State must effectively utilize its public workforce development resources.

New Jersey should preserve and promote DOL's training grant programs to more businesses.

The DOL should provide more flexibility in the application and administration of grants so that more employers and employees can benefit from them.

A portion of existing school funding should be dedicated to adult education and adult high schools.

ARGUMENTS IN SUPPORT OF TRAINING PROGRAMS

NJBIA surveys indicate that most of the workforce lacks some skills deemed desirable by their employer. This is especially true for manufacturers, two-thirds of which report difficulty finding skilled workers. Twenty-six percent indicated that this lack of skilled workers is one of their most significant problems.

New Jersey's 19 county colleges and their recently formed New Jersey Community College Consortium for Workforce and Economic Development are an essential part of the State's workforce development system, with basic skills being part of their core mission. The Consortium's success in working with NJBIA, the NJ Utilities Association and NJ Biotech Council demonstrate the effectiveness of a flexible approach working with a group of employers being trained by a consortium with funds from the DOL.

EDUCATION

Flexibility is the key to making the most out of New Jersey's workforce development programs. Increased flexibility means more businesses can participate and more employees, especially low-skill and low-income workers, will improve their skills in the workforce. Maintaining these training dollars and expanding them with flexibility is a win-win for everyone.

Adult education and adult high schools provide a critical second chance to many New Jerseyans, yet their enrollment has declined due to lack of dedicated funding. Many urban communities have a high percentage of adults without a high school diploma, including Atlantic, Cumberland, Essex, Hudson, Passaic, Salem and Union counties, all of which are above 20 percent. Adult high schools are also cost-effective because they use existing facilities and staff.

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ALLOCATE ADDITIONAL SOCIETAL BENEFIT CHARGE DOLLARS TO BUSINESS-RELATED ENERGY PROGRAMS

DESCRIPTION

Funds collected for energy efficiency, clean energy and renewable energy programs under the Societal Benefits Charge (SBC) should be allocated to three categories of ratepayer—residential, small commercial, and large commercial and industrial—in the same proportion as they contribute to it. In other words the SBC paid by business ratepayers should be used by business ratepayers.

The State should establish a credit against a business' SBC equal to the cost of certain energy efficient or renewable energy products or services. This credit would encourage businesses to purchase and install energy-saving products and services by allowing the businesses to claim a credit against the SBC.

BACKGROUND

The SBC is paid by all electricity consumers in New Jersey. Because commercial and industrial (C&I) ratepayers consume 64 percent of the State's electricity, they pay significantly more money under the SBC.

SBC funds are then distributed among six policy initiatives, one of which falls under the State's Clean Energy Program. Currently, the Board of Public Utilities (BPU) administers the program and decides the funding allocation between residential and C&I customers. Within the C&I money, there is also funding for schools and other public buildings. Recently, the rebates for solar energy projects have been eliminated for larger C&I ratepayers and are only available for residential and small businesses.

Furthermore the backlog and paperwork at the BPU has left many projects in limbo for months. A renewable project that is submitted today is not guaranteed funding. Combined Heat and Power (CHP) grant programs have almost a year wait from submission to approval as well.

NJBIA POSITION

The BPU should strive for a more balanced ratio in funding C&I energy conservation projects. Money should be divided between different ratepayer classes based on their share of SBC contributions.

The Legislature should enact a tax credit to encourage additional efficiencies and renewable energy projects by businesses.

The backlog and uncertainty in the application process for energy related grants and tax credits must be reduced in order to help businesses invest in energy efficiency programs and help the State achieve its overall energy goals.

LEGISLATIVE HISTORY

A-616 was introduced January 8, 2008 and referred to the Assembly Telecommunications and Utilities Committee. The bill would more equally allocate the SBC funds among residential, small commercial and large C&I utility customers. It would also establish a credit against the SBC for energy efficiency projects and provide for certain energy assistance grants.

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BUSINESS GOING GREEN- KEEP IT VOLUNTARY AND ACCESSIBLE

DESCRIPTION

Over the past year there has been a variety of policy initiatives related to “going green” on the residential, business, municipal and State level. However, there has been little education or assistance for many of these sectors on how to actually go green. As a result, many businesses are left to their own devices to sort through issues like so-called “green building codes” (constructing buildings to be more energy efficient), solar panels and other renewable energy sources, and conservation programs.

Additionally, some policy advocates want to mandate the use of these programs. Usually there is a large additional cost for building green. NJBIA feels it is important to encourage companies to voluntarily undertake more energy-efficient building but to stop short of forcing these additional costs on the private sector.

BACKGROUND

The Clean Energy Program within the NJ Board of Public Utilities (BPU) is the main source of business incentives and information related to energy efficiency and renewables. While the program has existed since deregulation, there has been little emphasis on helping the business customer understand ways to go green and programs to offset the cost. Information as simple as how to conduct an energy audit is not currently available for a business ratepayer.

Additionally, businesses are capped by the Clean Energy Fund at \$200,000 for energy efficiency rebates and incentives, while residential customers have no limitations. Building green can add as much as 20 percent to the cost of a new building, but for many companies in New Jersey, it is the cost of retrofitting an old building that adds unexpected costs to a budget. This is a perfect opportunity to encourage companies through rebates and incentives to consider implementing green practices and help meet the bottom line.

Within the Clean Energy Program is funding for the SmartStart Building program. This program assists businesses located in smart growth areas designated by the State Plan with different aspects of construction and retrofitting of buildings. A business must submit an application before any equipment is purchased or work begins. There is a limit of \$200,000 per customer utility account for rebates or incentives.

The New Jersey Building Code currently does not feature a green subcode. The Clean Energy Program sets voluntary standards for products that meet the \$200,000 rebate or incentive level.

NJBIA POSITION

NJBIA supports policies that provide guidance and financial incentives to businesses that implement green strategies on a voluntary basis. Because all business ratepayers contribute to the Clean Energy Fund, this is an ideal place to provide educational materials to help companies pursue strategies to go green. Understanding ways to incorporate green thinking is a first step in planning for a voluntary change in the company. NJBIA believes that the \$200,000 cap on business should be lifted and would encourage legislation to eliminate this provision.

However, the State must resist the urge to make green building standards mandatory. These standards have a high initial cost that could have a negative economic effect on businesses that are struggling in a weak economy.

LEGISLATIVE HISTORY

Legislation that encourages the private sector to voluntarily embark on green strategies includes: A-843 which requires that all ratepayers are eligible for rebates or incentives regardless of geographic location, and ACS-1612-385-1781 /S-241 which exempts certain renewable energy systems from real property taxation and from fees for municipal permits.

A-1629/S-702 however would change the State Uniform Construction Code's energy subcode to more stringent standards that could be costly to business.

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ENERGY AUDITS & INCENTIVES HELPING BUSINESSES LOWER THEIR ENERGY COSTS

DESCRIPTION

Commercial and industrial ratepayers consume 64 percent of the State's electricity, making them the largest financial contributor to the State's Clean Energy Fund. Yet New Jersey's policies skew funding for clean energy projects towards residential projects that yield substantially less in pollution reduction.

In order to attain its energy efficiency goals, the State should invest more in energy efficiency programs for commercial and industrial ratepayers because these investments return greater energy savings and greater reductions in pollution than investments in residential projects. The State should remove the cap on energy efficiency rebates and engage in energy audits for commercial and industrial energy users.

Investing more in commercial and industrial clean energy projects will also help New Jersey's economic competitiveness. New Jersey's commercial and industrial electricity consumers pay some of the highest rates in the country. Increasing energy efficiency would help them reduce a key cost of doing business in the Garden State.

In short, greater clean energy incentives for business will pay off in greater pollution reduction for the tax dollar and make our private-sector more competitive.

BACKGROUND

The Board of Public Utilities (BPU) administers the Clean Energy Program, which is funded by ratepayers through the Societal Benefits Charge (SBC).

The SBC was created as part of the 1999 energy deregulation initiative and is divided amongst six policy initiatives. One of these is the State's Clean Energy Program, which operates the Clean Energy Fund. The Clean Energy Fund provides incentives, usually in the form of rebates or grants, for homeowners and businesses to engage in energy efficiency projects. These include renewable energy projects, such as solar energy and wind power, and conservation projects such as energy efficiency audits and upgrades.

The BPU decides how to divide Clean Energy Fund monies between residential customers and commercial and industrial customers. Recently, the solar energy program rebates have been eliminated for larger commercial and industrial ratepayers, and residential and small business projects are only funded through 2012.

The Board limits the amount of energy efficiency rebates for a commercial or industrial ratepayer to \$200,000 per entity.

Currently the Clean Energy program does not have an energy audit program or educational assistance aimed at commercial and industrial ratepayers, while there is audit assistance for residential and municipal ratepayers.

NJBIA POSITION

The State should encourage more commercial and industrial energy efficiency programs by removing the \$200,000 cap on commercial and industrial ratepayers regarding energy efficiency rebates and incentives.

The State should direct more resources toward commercial and industrial ratepayers for energy audits and education programs aimed at increased energy efficiency.

The State should not mandate energy efficiency or renewable projects on businesses, but maintain a system that encourages them to voluntarily undertake such projects by providing financial incentives.

ARGUMENTS FOR SUPPORTING MORE COMMERCIAL AND INDUSTRIAL ENERGY EFFICIENCY PROJECTS

New Jersey's commercial and industrial energy consumers pay some of the highest electricity rates in the nation. According to the federal Energy Information Agency, New Jersey's industrial users pay the 7th highest electric rates in the nation and commercial users pay the 11th highest.

Commercial and industrial users consume 64 percent of all electricity sold in New Jersey. Therefore, they contributed the most to the Clean Energy Fund through the SBC yet receive the least of the benefits.

Investments in commercial and industrial energy efficiency projects yield much greater public benefits than investments in residential projects. While the State invested much less in commercial and industrial projects in 2006, these projects yielded three times the reduction in carbon emissions than residential projects.

Commercial and Industrial efficiency projects often cost more than \$200,000 but yield a significantly larger bang for the buck in terms of KWh saved. For the 2008 year the BPU has budgeted over \$57 million for these projects. In prior years there has been carry over money, which could be attributed to the low rebate levels.

COST

BPU records show that investments in commercial and industrial energy efficiency projects provide greater pollution reduction for the dollar than investments in residential projects.

In 2006, the Clean Energy Program budgeted over \$79 million for residential efficiency programs, while only \$39 million was budgeted for commercial and industrial programming. The Clean Energy Program Report for 2006 showed that commercial and industrial programs reduced carbon emissions by 67,969 metric tons, compared to residential programs, which reduced them by only 19,032 metric tons.

In other words, **commercial and industrial projects achieved nearly three times the benefit at half of the costs.**

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REDUCE MANUFACTURING ENERGY COSTS BY ELIMINATING THE 11 PERCENT ENERGY TAX/SURCHARGE AND PROMOTING EFFICIENCY

DESCRIPTION

NJBIA recommends an 11 percent reduction in manufacturer's (defined as a business location where at least 50 percent of equipment and machinery is used in the production of goods) electric costs by exempting them from the 7 percent sales tax and the "temporary" 4 percent "Transitional Energy Facilities Assessment (TEFA)." Manufacturers should also be exempt from the sales tax on natural gas. The Department of Environmental Protection (DEP) should amend its industrial permit regulations to achieve maximum energy grid stability and demand-side management.

BACKGROUND

Taxes and Deregulation

New Jersey Commercial and Industrial (C&I) electricity customers comprise 64 percent of the State's electricity load. According to the US Energy Information Administration, New Jersey's industrial electricity prices are the seventh highest in the nation. Skyrocketing energy prices have impacted the ability of New Jersey companies to compete with other facilities around the nation and around the world.

As part of electric industry deregulation in 1997, the 13 percent "gross receipts and franchise tax" was scheduled to be reduced to eight percent over five years, such that users would pay only the then 6 percent sales tax and a 2 percent Corporation Business Tax assessment. Instead the phase-down was stopped at 10 percent with the increase in the sales tax, this has been increased to 11 percent. This is an additional cost on companies not imposed in other states.

Demand-Side Management

The Board of Public Utilities (BPU), PJM (the electric grid operator) and energy utilities encourage commercial and industrial customers to participate in demand-side management programs designed to curb power usage during emergency and high-demand periods. This involves private sector companies generating their own electricity to prevent blackouts, brownouts or restore the grid. However, the DEP's permitting process discourages participation in the program. Anyone with a DEP air permit is limited in the amount of emissions their operation can produce and the number of hours it can produce them. If a facility engages in on-site electricity generation, those emissions are going to increase. If the additional emissions exceed what is allowed under the permit, the facility faces fines and penalties for an environmental violation even though the facility is operating normally.

Societal Benefits Charge

All energy consumers pay a Societal Benefits Charge which funds an annual \$140 million program of subsidies for alternative energy sources, such as solar and wind energy projects, as well as energy efficiency upgrades in lighting, building structure and equipment. Commercial and industrial (C&I) consumers pay the bulk of the money into the fund. BPU regulations, however, cap payments for efficiency upgrades to businesses at \$200,000 per customer utility account. And BPU has allocated the majority of the Societal Benefits Charge for energy efficiency to the residential sector.

NJBIA POSITION

Legislators should lower energy costs and encourage companies to conserve energy and maintain reliability in New Jersey's power grid with concrete financial incentives.

Legislators should stop delaying the phase-out of TEFA and exempt manufacturers from the 7 percent sales tax on electricity and natural gas.

The State should provide greater conservation incentives by lifting the \$200,000 cap on energy efficiency projects for C&I energy users.

DEP should revamp its air permitting process so it does not punish businesses that engage in on-site electricity generation as part of PJM's Demand-Side Management Program. DEP air permits should be more flexible to allow those participating in demand-side management to increase emissions during an energy demand emergency.

ARGUMENTS IN SUPPORT OF ENERGY COST REDUCTIONS AND INCENTIVES

Manufacturing remains an important industry sector in New Jersey, but is experiencing across-the-board job declines. Just since 2001, New Jersey has experienced a 23 percent decrease in manufacturing employment, representing 92,600 jobs lost.

Despite these job declines, manufacturers will relocate/expand operations in New Jersey if economic development incentives help reduce their cost of doing business.

With 308,600 manufacturing jobs remaining in New Jersey and another 170,000 jobs dependent on manufacturing, a public policy imperative should be to construct incentives to help retain manufacturing jobs.

Manufacturers are among the largest users of electricity and natural gas. High energy costs are continually cited as a major obstacle to manufacturing success in New Jersey. By eliminating the 11 percent energy tax/surcharge, manufacturers will realize significant production savings.

When TEFA was imposed in 1997, it was intended as a temporary surcharge to help the industry transition to a deregulated market. Delaying the intended phase-out is effectively increasing taxes on energy users.

A comprehensive energy efficiency upgrade at a manufacturing facility typically costs more than \$1 million. Capping energy efficiency grants at \$200,000 prevents the program from providing a meaningful incentive to promote efficiency.

It is in the public interest for companies to generate electricity on-site during periods of unusually high demand. It takes pressure off of the power grid and helps prevent brownout and blackouts. DEP should not punish companies with higher fees and fines for engaging in demand-side reduction activities.

COST

Previously, the Office of Legislative Services had estimated that the complete elimination of the then energy tax/surcharge on manufacturers would reduce State budget revenues at most by \$80 million annually. No estimate was provided for counter-balancing revenue increases due to preserved jobs and manufacturing operations.

LEGISLATIVE HISTORY

A-1085 was introduced January 8, 2008 and referred to the Assembly Appropriations Committee. S-1032 was introduced January 28, 2008 and referred to the Senate Economic Growth Commission. Both measures would reduce taxes on the consumption of energy. Previous versions of the bills were endorsed by the New Jersey Sales and Use Tax Review Commission.

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**RETURN COMMERCIAL AND INDUSTRIAL ENERGY PRICE
 RETAIL ADDER FUNDS TO COMMERCIAL & INDUSTRIAL
 CUSTOMERS**

DESCRIPTION

The State has collected an additional tax on the largest commercial and industrial electricity customers within the Commercial and Industrial Energy Price (CIEP) rate class who have remained with their traditional electric utility. The balance of the fund, currently more than \$70 million, should be returned to CIEP ratepayers and the tax should be eliminated.

BACKGROUND

In order to encourage market competition, the Board of Public Utilities (BPU) mandated that certain customers within the CIEP rate class purchase electricity from a third party supplier (TPS). Industrial and commercial customers with a peak load of greater than 750 kW who remain with their traditional electric distribution company (EDC) are subject to the retail margin adder surcharge of 0.005 cents per kWh. It was intended to be an incentive for businesses to shop for electricity.

The most recent CIEP data shows that almost 65 percent of businesses Statewide have shopped for competitive supply.

CIEP Switching Data

Distribution Company	Accounts			Load		
	Total	Switching	Percentage	Total	Switching	Percentage
ACE	110	91	82.73%	308.6	308	99.81%
JCP&L	581	372	64.03%	743	621	83.58%
PSE&G	1453	922	63.45%	2124.6	1707.6	80.37%
Rockland	20	11	55.00%	38.4	25.4	66.15%
Statewide Total	2164	1396	64.51%	3214.6	2662	82.81%

Source: NJBPU

However, this means that 35 percent of all eligible customers have not switched and are paying the additional surcharge on a monthly basis. The BPU has collected over \$70 million in penalties and is currently debating what to do with these excess funds.

For over two years, customers subject to the Retail Adder provision have been awaiting the release of retail adder funds to fund needed energy projects. In February 2006 the BPU directed that \$23.1 million of retail margin funds be used

to fund load management, building operator certification and energy audits. This money has yet to be released.

NJBIA POSITION

NJBIA opposes the continuation of the retail margin adder surcharge. It has long ceased to be an incentive for competition and now stands as simply another tax on business. The Legislature should abolish this surcharge. The Association's suggestions for the spending of the over \$70 million already collected are:

- return the money to CIEP ratepayers in the form of a rate rebate;
- develop and implement a CIEP customer education program with a written guidebook on best practices to save energy costs;
- provide a consultant to help businesses design requests for proposals for third party supply and target customers who have yet to shop and develop onsite training for those companies that wish to shop;
- update the Small Manufacturers Guide to Saving Energy which was created by the Department of Environmental Protection in 2000;
- add funding for the Center for Advanced Energy Systems for energy audits of manufacturing facilities;
- provide additional rebates/incentives specifically for CIEP ratepayers for energy efficiency upgrades;
- develop marketing and awareness campaign for demand side management for CIEP customers; and provide building automation system rebates.

BPU HISTORY

In theory the Retail Margin Adder surcharge sunsets every May. However, the BPU consistently reauthorizes it with the Board Order related to the Basic Generation Service (BGS) auction. The BGS Auction is the annual procurement by the electric distribution companies of electricity supply. The BPU approves the auction prices and tariffs that form the basis of the electric price. The law creating the Office of the Business Ombudsman authorized the BPU to allocate funds from the Retail Margin Adder fund to create the position. In addition to this, the BPU has used monies for CIEP consumer education programs. Yet the Board Order from February 2006, which authorized over \$23 million in programs to assist CIEP customers, has not been implemented or allocated.

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EMINENT DOMAIN REFORM IN NEW JERSEY

DESCRIPTION

NJBIA believes there are appropriate uses of eminent domain for redevelopment purposes. However, in using this power, the rights of property owners must be protected, owners must be compensated for lost property and the standards for what constitutes “blight” must be appropriately applied. There also must be transparency in the process that offers an opportunity for property owners to be heard. As such, NJBIA supports legislation that would move toward achieving those goals.

BACKGROUND

NJBIA became involved in the eminent domain debate shortly after the 2005 US Supreme Court decision in *Kelo v. New London CT*. The *Kelo* decision supported the concept that local governments had the right to use the power of eminent domain for redevelopment purposes. The case brought nationwide attention to the use of eminent domain, and what constituted a “public purpose.” However, the court’s decision did not materially affect the practice of eminent domain in New Jersey because New Jersey’s constitution and statutes already authorize the use of eminent domain to redevelop “blighted” areas. Even so, it sparked a debate between municipalities, small business owners and residents over what constituted the appropriate use of eminent domain and what standards should apply.

In early 2006 the New Jersey Legislature took up the issue of eminent domain reform. NJBIA participated in a number of legislative hearings aimed at fixing New Jersey’s eminent domain structure. During those hearings, business owners came forward telling personal stories about how their business properties had been taken under eminent domain, changing their lives forever. Despite these hearings, the Legislature was unable to reach a consensus on how to reform New Jersey’s eminent domain laws.

In June 2007 a NJ State Supreme Court decision, *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*, more narrowly defined what is meant by “blight,” making it more difficult for municipalities to condemn and take private property for redevelopment. In this decision, the Court had to determine whether the municipality properly interpreted the New Jersey State Constitution and Local Redevelopment and Housing Law (LRHL). The high court’s stricter interpretation of “blight” raised the bar for many municipalities that had previously used a more liberal interpretation. Specifically, municipalities believed that property was eligible to be taken via eminent domain merely because it was stagnant or not

fully productive. The court stated that “blight” must be characterized by “a deterioration or stagnation that negatively affects surrounding properties.” This means that if a property has deteriorated but does not affect the surrounding areas, it can no longer be designated as blighted. This stricter definition offers more protection to businesses and other property owners seeking to prevent the condemnation of their properties for redevelopment purposes.

NJBIA POSITION

The New Jersey Business & Industry Association is encouraged by the high court’s decision in *Gallenthin*. It would appear to accomplish one of the Association’s goals, namely to more fully protect business property owners from takings that are based more on a municipality’s desire to redevelop a property than to remove blight. Even so, the Legislature still needs to address the outstanding issues in New Jersey’s eminent domain process. NJBIA looks forward to working with the Legislature on real reform measures that strike a balance between property rights and the tools necessary for redevelopment.

LEGISLATIVE HISTORY

There were several bills introduced that attempted to address the use of eminent domain for redevelopment purposes. Some called for an outright ban. Others tried to address concerns without mandating an outright prohibition.

NJBIA worked with sponsors of two pieces of legislation that attempted to strike a balance between the use of eminent domain for economic development and the rights of property owners, both residential and corporate. A-3257 was introduced on June 8, 2006 and passed the Assembly on June 22, 2006 by a vote of 58-18-11. A competing bill, S-1975, was introduced on June 12, 2006, but stalled in the Senate Community and Urban Affairs Committee.

A-3257 changed the LRHL to provide more notice and transparency in the process. The bill increased relocation assistance and compensation. The bill also specifically gave business owners compensation for their business, separate and distinct from the land on which the business is located. This was modeled after a California law where businesses are compensated for “goodwill.” Under the bill “goodwill” means the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.”

S-1975 changed the LRHL by creating a bifurcated system whereby different standards were established for areas in need of rehabilitation and areas in need of redevelopment. The former describes an area where eminent domain would not be used, but rather, incentives would be provided to rehabilitate the problem sites. The latter is the language used to describe what is commonly referred to as a blighted area that will be taken using eminent domain. The bill also specifically gave business owners compensation for their location. It should be noted that

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these changes were in proposed amendments that were never actually incorporated into the bill because it was never released from committee.

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IMPACT OF DEP REGULATIONS ON DEVELOPMENT AND INVESTMENT IN NEW JERSEY

DESCRIPTION

The regulations promulgated by the New Jersey Department of Environmental Protection (DEP) have a negative impact on the economic viability of our State. Many DEP regulations provide little or no environmental benefit. There is no balance between economic viability and environmental protection. NJBIA's goal is to raise the awareness of decision makers on these issues and bring balance back to the process.

BACKGROUND

In 2007, the DEP proposed over 2,000 pages of land use regulations, almost all of which will have a negative impact on economic growth in the State of New Jersey. The rules cover site remediation, public access to tidally flowed waterways, flood hazard, wetlands protection, and limiting development along designated waterways. In addressing these issues, DEP fails to take into consideration the impact on economic growth. Furthermore, DEP fails to consider the ability of the department to actually implement such rules, given its current staffing constraints. Below you will find a brief overview of some of the regulations:

Public Notification Rules

The public notification rules are an attempt to provide information to the public about site clean-ups. The rules require anyone performing a remediation to provide notice, via sign or letter, to everyone who works, lives or avails themselves of recreation within 200 feet of the property boundary. The notification includes notifying non-English speakers in their native language.

These regulations unnecessarily delay site remediation projects. They apply equally to site each remediation project, regardless of the level of risk to the public. They create another level of approval by an already understaffed DEP, as the DEP would have to review and approve all notification plans. Furthermore, there are literally thousands of languages. The expectation that a developer would have the resources to ascertain the native language of every person within a 200-foot radius goes beyond the pale. The requirements under these rules are costly and irrational, and could ultimately force investment out of the State.

Public Access Rule

Under the guise of providing "beach access," this rule requires 24-hour public access to any tidally flowed waterway, including beaches, rivers, and tributaries.

This rule impacts municipalities, individual property owners, businesses and industrial facilities. For industrial facilities, the rule would require 24 hour access to tidally flowed waterways by either providing such access on-site or paying the DEP for that access to be provided off-site. This proposal sends the wrong message to those companies that have called NJ home for decades by forcing them to pay a hidden tax through this regulatory requirement. Furthermore, the increased costs to municipalities will undoubtedly increase property taxes.

Category One

Creates unnecessary “no development” buffers around 910 miles of rivers, lakes, reservoirs and tributaries in the State, which will severely impact development of new facilities and expansion of existing facilities. The rule effectively bans development within 300 feet, on either side of waterways that are now being designated as Category 1 (C-1).

Water Quality Management Planning Rules

Water Quality Management Plans (WQMPs) take into consideration both potable water and wastewater capacities, and constraints within a specific planning area. Under this rule, development could be stalled or prevented if such projects do not comport with a county’s WQMP. Currently, all WQMPs must also be approved by DEP before they can be implemented, which can take up to two years. Any changes to a WQMP—known as a plan amendment—must also be approved by DEP. The proposed rules require all planning agencies to submit their WQMPs within nine months of adoption of the rule, which we expect will overwhelm the DEP staff and make timely review and approval impossible. This will force development projects into a state of limbo until those plans or plan amendments are approved.

Soil Standards

The new soil standards will directly impact remediation and redevelopment of brownfields. DEP considers all water as potable (drinkable), and their standards treat it as such. A majority of the cleanup standards have changed dramatically and are simply unattainable. The rule will make remediations more difficult and costly, and raises justifiable concerns for those who have cleaned up their properties to standards that were once acceptable. The focus should be on exposure pathways to humans and impact to human health, not simply creating new standards for the sake of creating standards. (For more information, see the SRP Legislative Changes Economic Growth Paper)

Flood Hazard Rules

DEP has proposed 768 pages of regulations that create new buffers around a large number of waterways throughout the State. There are no grandfathering provisions for older facilities in flood plains or riparian corridors. The rule will negatively impact development, redevelopment and facility expansions throughout the State.

New Wetlands Rule Proposal

These regulations force companies to obtain individual permits for construction and maintenance near freshwater wetlands anywhere in the State. Many of these activities are currently covered under general permits. General permits can be approved as quickly as 90 days, while individual permits could take years. Many of these activities are routine, such as trimming branches off of trees around power lines that happen to be located along wetlands, and have no impact on the environment. Therefore, there is no justification for requiring individual permits for such activities. Once again, this sends the wrong message to companies that have made New Jersey their home for decades.

NJBIA POSITION

Finding balance between environmental protection and economic growth is imperative. Keeping companies here and attracting new companies can be done while we continue to protect the environment and human health. While the Department has a job to do, it seems that the idea of balance no longer exists.

Furthermore, the internal vetting of rules fails to take into consideration the impact on economic growth and ultimately stops the DEP from implementing these rules in a fair and efficient manner.

Legislation is only a part of the process. Legislators and key decision makers should take a greater interest in how environmental laws are implemented by DEP. Legislators should use their oversight responsibilities to ensure that regulations provide for a fair and balanced approach to environmental protection.

NJBIA has submitted comments on all proposals in which the comment period has ended. Copies are available on line at the following website.
http://www.njbia.org/issues_environ.asp

COST

The cost of these proposals cannot be accurately derived due to the fact that costs associated with specific projects and activities vary greatly. The cost of compliance for each specific company is based on their specific business operations and permitted activities. But there is a hidden cost to these regulations—the cost in lost ratables and economic activity from businesses that decide these regulations are too much. These costs take the form of brownfield sites that do not get cleaned up and brought back to productive use; of New Jersey businesses that decide to move out of New Jersey; in the form of the company that doesn't relocate to New Jersey because the regulatory burdens are just too great.

There is also the matter of administrative costs. The department is already understaffed and faces a backlog on review of its existing submissions. Yet it has proposed a series of regulations that will dramatically expand its workload. Given the fiscal challenges facing New Jersey, increased staffing is highly

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unlikely. We expect that hundreds of environmentally sound projects will be delayed indefinitely simply because DEP is unable to review them in a timely fashion.

Every department has to operate within a budget, and that means it cannot implement every program or regulation it would like. DEP has plunged ahead with new and expanded environmental programs when it clearly does not have the resources to implement them.

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LEGISLATURE'S OVERSIGHT RESPONSIBILITY TO ENSURE DEP ACCOUNTABILITY

DESCRIPTION

The Department of Environmental Protection (DEP) regulates some business activities in an effort to protect the environment and human health, and NJBIA understands their role. However, we have seen the department push its own agenda forward in a manner that we believe will have a detrimental impact on the economic viability of the State.

In recent years, the department has proposed unreasonable regulations that make compliance more difficult and make it more costly to operate businesses in this State. The regulations also create disincentives for businesses to stay in New Jersey and make it less attractive to those businesses contemplating New Jersey as a viable option for relocation. This benefits no one.

While legislators pass legislation to protect the environment and human health, they generally do not look at how they are implemented by the DEP.

Legislators should consider the regulatory impacts of their legislation before it gets signed into law, and also should require more accountability and transparency from the department in how laws are implemented.

BACKGROUND

Over the past 10 years, legislation which provides the DEP with the authority to propose and adopt rules has been so broadly drafted that the DEP has had unchecked power. Under the authority of current statutes, the department has tripled air permit fees, nearly doubled site remediation fees, raised fines dramatically and created disincentives toward development and economic growth in the State.

NJBIA POSITION

NJBIA understands the DEP's role to protect the environment and human health. However, the DEP has gone unchecked with regard to the administration of funds and the implementation of regulations. NJBIA believes that more scrutiny over the expenditure of funds will provide the Legislature with a better understanding of the programs that the DEP administers. Furthermore, providing a forum in the Legislature to publicly vet concerns with the overall regulatory process will ensure that regulations are being adopted with the interests of all impacted parties in mind and are in line with legislative intent.

ARGUMENTS IN SUPPORT OF DEP ACCOUNTABILITY

Below, are concepts we believe the Legislature should embrace to ensure that the intent of the law is adhered to through the regulatory process. NJBIA urges the Legislature to:

- Hold DEP financially accountable for the funds it administers by requiring annual reports on fund balances and progress reports on expenditures. DEP oversees a variety of different funds from bond act monies, constitutionally dedicated funds, federal funds, and revolving accounts for a variety of different loan programs. In the aggregate, these funds contain over \$1 billion dollars. Whether or not the funds have dedicated purposes, the DEP should inform the Legislature on the status of these accounts, and how these funds are being spent.
- Hold open legislative hearings to provide a forum for the regulated community to air concerns with the regulatory process and provide the opportunity for legislators to ask questions on regulations impacting their constituents. Under the current Administrative Procedures Act, DEP is required to have hearings for the public to comment on their proposed regulations. In many cases, these are one-sided forums where questions are not answered and concerns go unaddressed. Legislative hearings would provide a much-needed oversight of DEP's rule-making activities and provide a forum for legislators to inquire if programs established through statutes are being implemented in line with the Legislature's intent.
- Expand the Regulatory Flexibility Act to require DEP and other departments to consider the impact regulations have on small businesses. Provide adequate time for the DEP to develop regulations. Many times the department is given only three or six months to develop regulations. Providing more time may allow for more input from the regulated community.
- Use unambiguous language that clearly spells out the intent of the bill and provides specific boundaries within which the department can implement it. Many times, the department's interpretation of legislative intent and its authority under such acts is much broader than was originally envisioned by the Legislature.

LEGISLATIVE HISTORY

A-741 was introduced on January 8, 2008 and referred to the Assembly Environment and Solid Waste Committee. It would require the DEP to submit an annual financial report on status of certain fund balances. NJBIA would recommend amending the bill to require the DEP to give a progress report of expenditures from these funds.

ENVIRONMENT

A-832 was voted out of the General Assembly by a vote of 75-1-1 on March 17, 2008. The bill would expand New Jersey's Regulatory Flexibility Act to require the DEP, and other departments, to consider the impact regulations have on small businesses.

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**PROPOSED REGULATORY AND LEGISLATIVE CHANGES TO
 OVERHAUL THE STATE’S SITE REMEDIATION PROGRAM**

DESCRIPTION

Site remediation, the clean-up of contaminated properties to bring them back to beneficial use, plays an important role in economic development and is an essential component of any economic growth strategy. There are over 18,000 known contaminated sites in New Jersey. These are sites that lay fallow and unused, often for decades, because no private-sector company is ready to assume the cost and risk of cleaning it up. This leaves sites abandoned and the public continually exposed to the contamination lurking below the ground.

The scope of the problem and the number of sites far outstrips the ability of the State to pay for these clean-ups. The only way the State can make progress in cleaning up these problems is to maximize private-sector investment.

But any private company thinking about tackling one of these sites must deal with DEP’s prescriptive, cumbersome, process-oriented approach. Each step they must take is detailed in the 140-page Technical Requirements for Site Remediation (Tech Regs), and DEP is required to review and approve every submittal before a project can move to the next step. Worse yet, the DEP faces a severe backlog on the number of submittals awaiting approval.

Despite this arduous permitting process, some environmental groups want to make it even tougher by requiring all sites to be cleaned up to a pristine standard. This will further drive private-sector investment away from the site remediation program and exacerbate the problem.

Instead the Legislature should allow for more cost-effective cleanup methods and encourage common sense in matching the cleanup remedy to the intended future use of the property. If the site is going to be a parking lot, there is no need to clean it up to residential standards. This will attract more private-sector investors into the process and more sites will get cleaned up, reducing exposure to contamination the people of New Jersey will face. And that benefits everyone.

Alleviate Backlog by Licensing Professionals

One of NJBIA’s priorities is licensing site professionals instead of DEP case manager to oversee site cleanups. Under a licensed site professional (LSP) program, an LSP would assume liability for actions taken at the site and submit the approved paperwork to the DEP. This has been successfully done in Massachusetts, and NJBIA believes that this would reduce the backlogs and

speed up the process here by alleviating the burden on the DEP staff. More sites would get cleaned up, more ratables would be generated for municipalities, more tax revenues would be generated for the State, and there would be less suburban sprawl, as most of these sites are in already developed areas.

Legislation: A-1555 establishes a licensing board for professionals who work on low priority site cleanups. This bill was introduced on January 8, 2008, and was referred to the Assembly Environment and Solid Waste Committee.

NJBIA supports A-1555, but would like to the bill to be expanded beyond the stipulated low priority contaminated sites.

Maintain Flexibility to Use Cost-Effective Remedies

The DEP should maintain flexibility in selecting remedies for cleaning up contaminated sites. Depending on the past use of the site and its intended future use, so-called non-permanent remedies can be employed to make the project more affordable, and hence, more attractive to private-sector investment. Non-permanent remedies allow a certain amount of contamination to be left in the ground as long as the exposure pathway is eliminated. In other words, if the contamination cannot get out, there is no reason to clean it up. This remedy should be limited to nonresidential sites, such as a cap for a site destined to be a parking lot.

Environmental groups have asserted that all sites should be cleaned up to pristine standards regardless of the future use of the site or the cost of such a project. We believe this would drive the cost of cleanups too high, to the point that it would literally bring the Site Remediation Program to a halt.

The remedy should be based on the use of that property, not an unattainable desire to simply clean every site to pristine standards regardless of its use. Requiring strict cleanup standards for properties destined to become schools or daycare centers makes sense. Common sense says that when sites are not used for residential purposes or do not impact vulnerable populations, such as children or the elderly, such sites should not require the most extensive and expensive cleanup remedies. NJBIA believes that the Legislature should only provide DEP with the authority to require the strictest standards to those sites that impact vulnerable populations or those sites that are residential developments. On other sites more cost-effective engineering controls or caps should be allowed. In short, the remedy should fit the use of the site.

Legislation: A-1556 provides DEP with the authority over remedy selection for cleanup of contaminated property to be used for residential purposes or schools. The bill was introduced on January 8, 2008 and referred to the Assembly Environment Committee.

Environmental Insurance

The DEP proposed the idea of requiring environmental insurance on sites in an effort to have a “deep pocket” if the site changes use, and there is an impact to the environment or human health. The impetus for this proposal was the highly publicized tragedy of Kiddie Kollege. In this case, the owner of a site that was previously a thermometer factory changed its use to, among other things, a day care center. The site was never cleaned up before this change of use and subsequently children were exposed to mercury.

There were many causes for this breakdown in the system, not the least of which was the willful disregard of the law by the owner. Subsequently, fines and penalties were increased for such violations.

While NJBIA supports the idea of creating safeguards against changes of use, environmental insurance is not the answer. It would be prohibitively expensive and would not serve the purpose intended by the DEP. We believe that there is a better alternative. Right now, permits focus solely on the owner and the owners’ operation of that site. Instead, NJBIA supports the idea of a permit that follows the site throughout its useful life. If a permit followed the site any changes in use would then be brought to the attention of the department, creating an additional safeguard beyond notice from a municipality.

NJBIA POSITION

In tackling the flaws in New Jersey’s Site Remediation Program, legislators should not lose sight of the ultimate goal: cleaning up as many contaminated properties as possible and protecting human health and the environment.

Any legislative changes should attempt to prudently utilize existing DEP resources and at the same time, keep the Site Remediation Program moving in the right direction. Any economic growth strategy must encompass the promotion of site remediation in an effort to bring such sites back into productive use in a safe and effective manner. Furthermore, site remediation facilitates the State’s goal of protecting “greenfields” and promotes the use of sites located where there is existing infrastructure.

We must provide a mechanism to reduce the time it takes to clean up contaminated sites in a manner that is appropriate for each individual site. We must remove some of the burden faced by the DEP case managers. And we must provide safeguards to prevent the mistakes of the past from happening again. These goals can be accomplished through: establishing cleanup requirements that are based on risk; implementing an LSP program to reduce the workload on DEP case managers; and creating a permit that follows the site. By doing so, the State’s environment, citizens and economy will all benefit.

NJBIA stands ready to work with the Legislature to facilitate the changes illustrated above.

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INCREASE THE USE OF ELECTRONIC HEALTH RECORDS TO INCREASE QUALITY AND REDUCE UNNECESSARY COSTS

DESCRIPTION

The use of electronic health records is one of the keys to ensuring quality and affordable care to residents of the State, while reducing the costs of doing business. A more efficient method of keeping records will dramatically reduce the incidence of medical errors and duplicative procedures, which in turn reduces costs and increases the quality of care. Medical mistakes not only harm patients, but they also increase medical costs due to legal and insurance ramifications.

BACKGROUND

The use of electronic medical records, or health information technology as it is sometimes called, is an essential issue for every person, not just in New Jersey, but across the country. Greater use of electronic medical records would improve the quality of care, prevent medical errors, increase access to affordable care, and improve the administration of care by increasing efficiency and reducing paperwork.

At first glance, this issue does not appear to be of high importance to the business community, but the rising cost of healthcare has businesses and employees alike concerned with all aspects of the healthcare delivery system.

NJBIA's 2007 Annual Health Benefits Survey found that healthcare costs increased 11 percent in 2006 and 80 percent over the last five years. The increase in cost has made care more expensive for employees due to higher co-pays and deductibles, while also making it more difficult for employers to provide health plans for their workforces.

Studies have shown that almost one-third of the \$1.6 trillion Americans spend on healthcare is used to pay for duplicative procedures and administrative functions. A Santa Barbara study found that one out of every five lab tests or x-rays was conducted only because previous test results were unavailable.

The cost of healthcare is high enough; errors and poor administration only exacerbate the problem. If rates and fees continue to skyrocket, more employers will not be able to provide their employees with any type of health plan at all, leaving a sizable percentage of the State's population without any coverage. There needs to be a fundamental change in how healthcare is administered in order to control the costs and provide affordable access to citizens.

NJBIA POSITION

Healthcare costs have been rising dramatically, while employers and businesses are struggling to afford coverage for their employees. Utilizing electronic health records will improve the quality of care and save billions of dollars.

ARGUMENTS IN SUPPORT OF ELECTRONIC HEALTH RECORDS

The US Department of Health and Human Services estimates that a national health information network could save \$140 billion annually through improved care and better administration. The money that is saved can be used to increase healthcare quality and ensure its affordability.

The State, along with the rest of the nation, should start to keep health and medical records electronically. While this shift may be expensive initially, in the long run everyone will win. Costs will go down for individuals and employers, the quality of care will increase, and more people will have access to affordable care.

COST

It is unclear how much it would cost the State of New Jersey to implement a broad health information technology system. The cost would largely depend on the approach taken.

LEGISLATIVE HISTORY

A-4044/S-2728, the "New Jersey Health Information Technology Promotion Act", was signed into law January 13, 2008. It establishes the New Jersey Health Information Technology Commission and provides for a statewide health information technology plan.

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KEEP HEALTH INSURANCE AFFORDABLE BY NOT ENACTING ANY MORE HEALTHCARE MANDATES

DESCRIPTION

New Jersey has enacted 31 mandates for previously uncovered medical treatments and services. These measures drive up the cost of purchasing health insurance by mandating coverage of additional services or setting the rates to be paid for those services.

BACKGROUND

The cost of health insurance has exploded in recent years, making it too expensive for many New Jersey companies. As a consequence, the percentage of private-sector employers providing health insurance coverage for their employees is falling.

This trend has been documented in NJBIA's annual Health Benefits Survey. The 2007 survey found that the average cost of employee health coverage soared by 11 percent to a record \$7,561 per employee in 2006. Given the effects of compounding, the total average cost has grown by 80 percent over the last five years. Preliminary results from NJBIA's 2008 survey show that costs have more than doubled since 2000.

Employees, not just employers, also end up paying more. Employers have passed some of the cost of rising premiums on to their employees, requiring employees to pay more for their health insurance. However, the proportion of the total cost borne by employees has remained stable at about 20 percent of the total, according to a Towers Perrin employer survey. But, as premiums rise, employee costs escalate at the same rate.

In response to exploding costs, growing numbers of small businesses are dropping coverage altogether because they can no longer afford it. NJBIA's survey showed that 82 percent of companies with two to 19 employees provided health insurance coverage in 2006, compared with 92 percent three years earlier.

NJBIA POSITION

The government must not drive health insurance costs higher by ordering new health insurance coverage mandates that make everyone—employers and employees alike—pay even more. The Legislature must hold the line on mandates, which can significantly increase the cost of purchasing health insurance.

NJBIA asks the Legislature to:

- hold the line on any new health mandates that would increase the already high cost of health insurance;
- subject all health insurance mandate bills to review by the State's Mandated Health Benefits Advisory Commission prior to Committee consideration to assess its impact on the cost of purchasing health insurance; and
- expand the advisory commission's mission to include the review of existing mandate laws.

ARGUMENTS AGAINST HEALTH INSURANCE COVERAGE MANDATES

NJBIA opposes any measure that would drive up the cost of purchasing health insurance by mandating coverage of additional services or setting the rates to be paid for those services. NJBIA supports the ability of businesses, including healthcare providers and purchasers, to freely negotiate the rates for services.

Small employers are least able to afford to provide health insurance benefits. There is a direct relationship between the size of a company and the likelihood that it will offer health insurance. On average, about 60 percent of small businesses with fewer than 50 employees provide healthcare coverage.

Healthcare mandates impact only a portion of the insurance market, and their costs are disproportionately borne by small businesses and individuals. Legislatively-imposed mandates only apply to health plans sold in the State-regulated market, which represents only a small portion of the overall health insurance market. As such, mandate laws reach less than one-third of New Jerseyans. There are about 2.1 million individuals (about 27 percent of the population) insured through the State regulated market — about 1.1 million in the large-employer market, 900,000 in the small-employer market and 85,000 in the individual market.

Enacting mandate legislation will surely provide more cost pressure on small businesses — the group most at risk for dropping coverage for their employees.

COST

Health insurance mandates have been estimated to increase the cost of purchasing health insurance by as much as 20 percent. Because many health insurance coverage mandates also impact the State Health Benefits Programs, the State is directly impacted. The State is also indirectly impacted through an increase in the ranks of the uninsured, because rising health insurance premiums force people to drop coverage.

LEGISLATIVE HISTORY

More than 30 health insurance coverage mandates bills are awaiting consideration in the 2008-2009 Legislative Session. These bills are often based on an individual constituent's situation, but can significantly increase the cost coverage for everyone.

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**REFORM OF THE STATE-REGULATED HEALTH INSURANCE
 MARKET TO STOP FORCING SMALL EMPLOYERS
 TO DROP COVERAGE**

DESCRIPTION

New Jersey’s health insurance system has identifiable flaws that can be fixed. State lawmakers can act to limit cost increases, making health insurance more affordable for small employers.

BACKGROUND

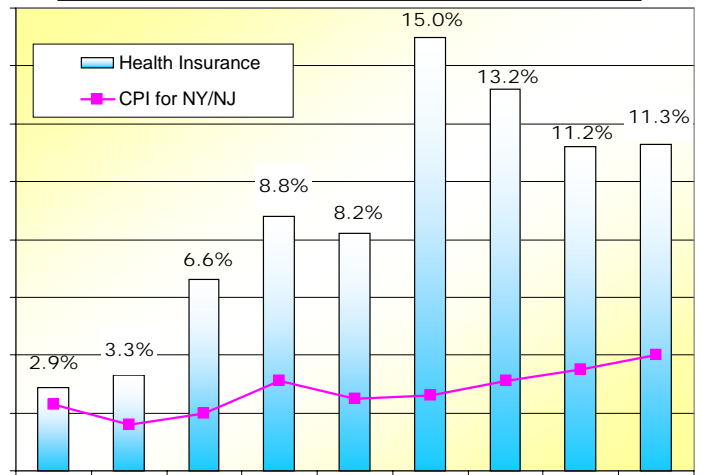
The cost of health insurance has exploded in recent years, making it too expensive for many New Jersey employers to afford. As a consequence the percentage of private-sector employers providing health insurance coverage for their employees is falling.

This trend has been documented in NJBIA’s annual Health Benefits Survey. The Association found in its 2007 survey that the average cost of employee health coverage soared by 11 percent to a record \$7,561 per employee in 2006. Given the effects of compounding, the total average cost has grown by 80 percent over the last five years.

NJBIA’s survey found that fast-rising costs have taken a toll on the State’s smallest employers, those with two to 19 employees. Increasing numbers of small businesses are dropping coverage altogether because they can no longer afford it.

Eighty-two percent of businesses with two to 19 employees provided coverage in 2006, the survey found. This was down from 87 percent in 2004, and a high of 92 percent in 2003. When those

**Health Plan Costs Rise 11.3% in 2006
 Fourth Year of Double-Digit Cost Increases**



Company Size	Average Cost in 2006	Percent Change from 2005
2-19 employees	\$7,577	12.0%
20-50 employees	\$7,014	9.9%
51-99 employees	\$6,952	9.5%
100 or more	\$8,851	9.8%
All companies	\$7,561	11.3%

This is the average amount paid by employers for employee health coverage. It does not include any employee portion of premiums.

employers who no longer provide coverage were asked why, most said it was too costly.

If costs continue to explode in New Jersey, growing numbers of employers almost certainly will be forced to drop health insurance coverage. This will cause the number of uninsured New Jerseyans to grow as well.

NJBIA POSITION

New Jersey needs to make the State's regulated insurance programs more flexible. The State's highly regulated programs for individual (IHC) and small-group insurance (SEH) were put in place in 1992. These programs must be overhauled to give purchasers more choice and flexibility in plan design.

The Legislature should allow small employers more flexibility in the design of their own plans. Permit them to purchase insurance benefits that are best suited to their particular workforce and to exclude coverage of certain medical services they do not want or need.

New Jersey also should reduce to three from five the number of standard health plans that all HMO/insurance providers must offer. Too many standard plans drive up administrative and insurance costs. Finally, the State should offer a low-cost, basic coverage plan as an option for employers looking for more affordable insurance.

ARGUMENTS IN SUPPORT OF MARKET REFORM

While many view health insurance reform as a national issue, New Jersey's health insurance system has identifiable flaws that can be fixed. Lawmakers can do much to fix the flaws by refusing to enact costly new coverage mandates, injecting more flexibility into the State's regulated insurance markets, and giving employers who do provide coverage a State tax benefit.

Any plan to reform the State's health insurance system should target employers who purchase their health insurance through the State's regulated health insurance programs. These include the Individual Health Coverage Program (IHC), which covers individuals (including sole proprietors of small businesses); the Small Employer Health Benefits Program (SEH), which covers groups with two to 50 employees; and the regulated large-employer market (51 or more employees.)

Twenty-seven percent of New Jersey's population (about 2.1 million people) currently receives insurance coverage through these regulated insurance programs. The rest of the covered population receives its insurance predominately through employer self-funded plans, Medicare or Medicaid.

COST

Reform of the State-regulated health insurance market will be a no-cost solution to rising premiums.

LEGISLATIVE HISTORY

A measure which begins the process of market reform received consideration during the 2004-2005 Legislative session. A-3359/S-2773 passed the Assembly and died on second reading in the Senate.

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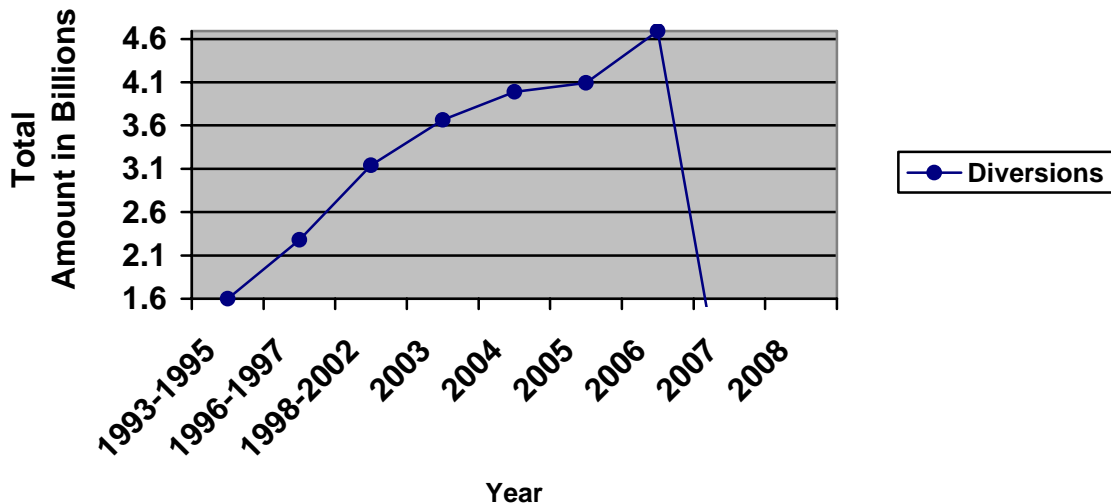
RESTORE THE FISCAL INTEGRITY OF DEDICATED PAYROLL FUNDS BEFORE THEY BECOME INSOLVENT

DESCRIPTION

For the past 14 years New Jersey has used tax revenue from dedicated payroll funds to offset the annual expenses of State government. Despite specific statutory language that dedicates payroll taxes for specific purposes, New Jersey has continuously diverted these funds to meet annual budget obligations. This practice has diminished the balance of our payroll funds. This year the practice has led the Unemployment Insurance Trust fund to automatically trigger a \$350-\$400 million employer tax increase.

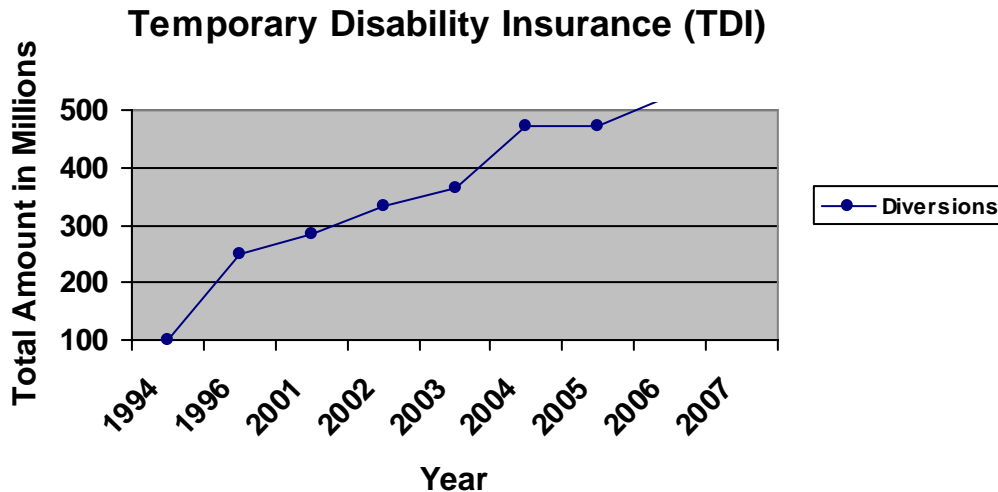
Since 1993 over \$4.7 billion has been diverted from the Unemployment Insurance (UI) Trust fund. In 2005, New Jersey diverted \$350 million from the UI Fund for uncompensated healthcare financing. Unfortunately, this diversion has left the fund dangerously close to insolvency. Presently, the UI fund has approximately \$1 billion dollars available to pay UI benefits. This represents a 20-year low point in the balance of the fund.

Unemployment Insurance Diversions



Similarly, New Jersey has continuously raided its Temporary Disability Benefits Law trust fund (TDI) to the tune of nearly \$600 million over the past 18 years. In the fiscal year 2007 State budget, the Legislature diverted \$50 million from the

TDI fund. The fiscal year 2008 budget diverted \$75 million from the fund. Both diversions were used for general operating expenses of the State, and they have significantly diminished the balance of the TDI fund.



BACKGROUND

New Jersey’s Unemployment Insurance (UI) system was established in 1937 and began paying benefits to laid-off workers in 1939. One of the main objectives of the program is to “alleviate the hardship of involuntary unemployment on workers and their families, and to stabilize the economy.” The benefits allocated for the unemployed are financed from taxes paid by employers and workers.

In addition, New Jersey is one of only five states that provide temporary disability benefits to workers who become injured or sick outside the workplace. The Temporary Disability Benefits Law provides qualified employees with up to 26 weeks of partial wage replacement. For 2008, the law provides a maximum of \$524 per week. The program is funded by both employer and employee contributions and pertains to most private sector employment.

In accordance with the State regulations for 2008, employer taxes are based on the first \$27,700 of each worker’s annual wages and the experience rating of employers. The funds collected from the taxes are deposited in payroll funds administered by the New Jersey Department of Labor and Workforce Development. While both workers and employers pay into these funds, only employer rates change periodically depending upon usage. In other words, a company that has a greater percentage of workers claim TDI benefits will contribute more than a company that has a lesser percentage of workers file claims.

NJBIA POSITION

Historically, the Legislature and other interest groups have viewed the UI Trust Fund, TDI and other funds as being flush with cash and able to sustain diversions for worthy programs. Unfortunately, over a decade of diversions has left these funds with inadequate reserves to meet their current benefit obligations. Additionally, these raids will eventually bankrupt the funds, forcing higher employer taxes. An increased tax burden on employers during an already sluggish economy will make it harder to attract and retain quality businesses.

The Association opposes future diversions from the UI fund, TDI fund or other changes in dedicated payroll funds. As a result of the past diversions, employers now face the prospect of paying higher payroll taxes during a faltering economy. This is illustrated by the current crisis impacting the UI Trust Fund. The Association supports S-1698 and encourages the Legislature to quickly pass this legislation.

LEGISLATIVE HISTORY

P.L. 2005, c. 123 (formerly S-2607) this law redirects \$350 million in unemployment taxes to Health Care Subsidy Fund and modifies UI benefits.

Fiscal year 2007 State Annual Appropriations Act diverted \$50 million from the TDBL trust fund for General Fund Purposes.

Fiscal year 2008 State Annual Appropriations Act diverted \$75 million from the TDBL trust fund for General Fund Purposes.

S-1698 – Buono - Revises calculation of Unemployment Trust Fund Reserve Ration for experience rating year beginning July 1, 2008; appropriates \$260 million to unemployment compensation fund.

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NEW JERSEY'S WRONGFUL DEATH ACT SHOULD REMAIN UNCHANGED

DESCRIPTION

Proposed legislation would allow recovery of damages for “grief” or “emotional distress” of a decedent’s surviving spouse, child, father or mother. In addition, it would expand the categories of persons who could sue under the Wrongful Death Act to include not only spouses and parents, but grandparents, grandchildren and siblings of the decedent.

This proposal goes well beyond what other states allow in wrongful death actions and if enacted, would put New Jersey at an economic disadvantage in competing for businesses and jobs.

BACKGROUND

Approximately 27 states do not allow “grief” damages at all, including states like New York, Pennsylvania, Connecticut and North Carolina that often compete with New Jersey for businesses and jobs.

Of the approximately 23 states that do allow “grief” damages in wrongful death actions, the overwhelming majority of them recognize that there is a serious risk of “runaway jury” verdicts and cap damages. These states have recognized the potential impact of huge jury verdicts on medical malpractice rates, the availability of medical care and the overall business climate.

The expansion of the categories of relatives who can recover for wrongful death actions would also put New Jersey in a small minority of states. Only three states allow recovery by grandparents, only four allow recovery by grandchildren, only eleven allow recovery by siblings and only one jurisdiction allows recovery “by anyone who can prove a loss.” Virtually no other state allows all of the same categories of relatives to receive damages as New Jersey would if the bill is enacted.

NJBIA POSITION

NJBIA supports New Jersey’s existing wrongful death statute as fair and balanced, and opposes legislation that would greatly expand wrongful death liability for New Jersey companies.

The people of New Jersey benefit from a diverse economy, from the large multi-national companies with major operations here to the small businesses that so often drive entrepreneurialism in the State. Many of these businesses would feel the effects of a greatly expanded Wrongful Death Act. Hospitals, physicians and other providers of medical care would face higher medical malpractice insurance

premiums, which in turn would further drive up the cost of healthcare and make it more difficult for employers and employees to afford health insurance. And companies that have done nothing wrong would be punished with higher insurance costs because of the increased liability such a law would bring.

ARGUMENTS IN SUPPORT OF CURRENT LAW

If any of these bills are enacted, New Jersey's Wrongful Death Act would become the most far reaching in the United States. As such, it could have a devastating effect on medical malpractice premiums, product liability insurance premiums, the cost of health insurance and the overall cost of doing business for New Jersey. The people of the State would be better served if legislators maintained New Jersey's current Wrongful Death Act.

New Jersey's existing rules for recovering damages for the wrongful death of another are time-tested and well understood by those who must deal with these cases. Our current law provides a level of certainty and predictability for the lawyers and judges who must try the cases, as well as insurers that must set rates and maintain reserves.

The well understood damages rules that govern wrongful death cases in New Jersey allow cases to be settled efficiently, which is important both to the families of the deceased and to the overall smooth functioning of the civil justice system.

It is important to note that under New Jersey's Wrongful Death Act, claimants are not limited to strictly economic damages. Persons entitled to collect damages for the death of another may recover not just the financial support they have lost (as well as hospital, medical and funeral expenses of the deceased), but the pecuniary value of loss of companionship, loss of advice, and loss of guidance.

Furthermore, one who witnesses the wrongful death of a close family member can, under existing New Jersey law, recover for his or her resulting severe emotional distress under Portee v. Jaffee, 84 N.J. 88 (1980). And the estate of a deceased person can recover pain and suffering, and emotional distress damages that the deceased may have suffered up to the time of death. What New Jersey does not allow is recovery of damages for "grief" or "emotional distress" of a relative.

LEGISLATIVE HISTORY

Several bills have been introduced to amend New Jersey's wrongful death statute, including A-1158, S-125 and S-995. Last session, S-176/A-1511 passed both houses and was pocket vetoed by Governor Corzine.

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CONFORM NEW JERSEY'S "NET OPERATING LOSS" TAX POLICIES TO NATIONAL STANDARDS

DESCRIPTION

Amend New Jersey's Corporation Business Tax (CBT) net operating loss (NOL) policy to conform with national standards by: a) extending New Jersey's 7 year carryforward period to 20 years; b) allowing for the survival of net operating losses in the event of mergers and acquisitions; and c) eliminating the requirement that NOLs be reduced by the dividends-received deduction.

BACKGROUND

The goal of business tax policy is to fairly tax business profitability. Because the vast majority of businesses see profits generated over multi-year periods, annual calculations of profit/loss for tax purposes fail to accurately capture a business' true economic performance, which usually requires a multi-year perspective. This is especially true for start-ups and businesses sensitive to national and international competition.

Business tax policies compensate for this mismatch between tax and economic cycles by allowing businesses to carryforward net operating losses into more profitable years. Without this carryforward requirement, business profits would be taxed without recognition of legitimate, prior-year losses.

The federal government permits both a two-year carryback and 20-year carryforward of business net operating losses. Of the 46 states (including the District of Columbia) with corporate business taxes, 24 states utilize the federal 20-year carryforward standard.

New Jersey permits only a seven-year NOL carryforward. Only eight states utilize a carryforward period of seven years or less. In this region, the federal 20-year NOL standard is used by New York, Pennsylvania, Connecticut, Delaware, Maryland, DC, and Virginia.

Additionally, New Jersey's NOL policy, unlike federal policy, does not permit survival of NOLs in cases of mergers and acquisitions. This drastically reduces the attractiveness of New Jersey companies looking to be acquired and unfairly penalizes these businesses, which have generated legitimate losses. Finally, New Jersey is the only state in the nation that reduces NOLs by the value of the dividends received tax deduction.

NJBIA POSITION

NJBIA supports conforming our NOL policies to federal and our neighboring state standards as a way to ensure we can economically compete.

ARGUMENTS IN SUPPORT OF CONFORMING NOL USE TO NATIONAL/STATE STANDARDS

A goal of business tax policy is to conform, as best as possible, the annual tax cycle to the multi-year economic cycle faced by businesses. This is a particularly important policy to business start-ups and manufacturers.

The tool most often used by governments to accomplish this tax goal is “net operating loss” (NOL) distribution policy. Federal and State governments allow businesses to utilize NOLs from one tax year in other more profitable tax years to help smooth out overall business tax payments to better reflect overall business economic activity.

New Jersey’s current policy of allowing NOL carryforward for up to seven years is dramatically out-of-step with both the federal (two-year carryback/20-year carryforward) and typical state policy. Twenty-four states and the District of Columbia use the Federal 20-year carryforward standard. In addition New Jersey places unique limits on NOL use not found in other jurisdictions.

Many competitor states in our region utilize the 20-year carryforward standard, including New York, Pennsylvania, Connecticut, Delaware and Maryland.

Conforming New Jersey’s NOL carryforward policy to the 20-year standard will improve the states comparative business tax climate and more importantly allow small businesses, new ventures, high-tech businesses and manufacturers’ additional time for investment and employment growth, as these are the type of businesses most prone to generate net operating losses in early and subsequent years of operation.

COST

The revenue loss from extending NOL applicability to 20 years from seven years would be minimal. In the short-term, revenue loss would ensue from those businesses with NOLs which are bumping up against the current seven year use limit and would therefore lose their NOLs but for the extension to 20 years.

LEGISLATIVE HISTORY

The McGreevey corporate business tax increases of 2002 suspended NOL application for years 2002 and 2003. Legislation enacted in 2004 restored 50 percent of NOLs for application in 2004 and 2005. Beginning in 2006, full NOL use was restored.

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CREATE A NEW MANUFACTURING INVESTMENT TAX CREDIT

DESCRIPTION

Create a new 20 percent manufacturing investment corporation business tax credit.

BACKGROUND

New Jersey does not have a significant manufacturing investment credit designed to revitalize and retain its existing manufacturing base.

For example, New Jersey's manufacturing equipment tax credit provides a credit of only two percent for the cost of new equipment. Smaller manufacturers with 50 or fewer employees and net income of less than \$5 million qualify for the higher amount and can get up to 4 percent. This tax credit is further capped at \$1 million or \$2 million. It excludes manufacturing plant investment or reinvestment.

Other investment credits are tied to new job creation. For example, the New Jobs Investment Tax Credit and the Employment Investment Tax Credit each limit the amount of tax credit to a dollar amount linked to job creation.

The Urban Enterprise Zone (UEZ) Investment Credit is a more substantial tax credit (8 percent), inclusive of all investment and with no job-creation requirement. However, the credit is limited to the state's 32 urban enterprise zones and only applies to businesses with fewer than 50 employees.

Both New York and Connecticut provide manufacturing tax credits. New York grants up to 10 percent of machinery and plant costs, and Connecticut, up to 10 percent for manufacturing machinery only. Neither state imposes a tax credit cap.

NJBIA POSITION

The Legislature should reward those companies that invest in New Jersey's shrinking manufacturing base and level the playing field with surrounding states by implementing 20 percent corporate tax credit for manufacturing investment.

ARGUMENTS IN FAVOR OF MANUFACTURING INVESTMENT TAX CREDIT

Manufacturing jobs pay above average wages, do not usually require a college degree and are often located in our urban centers. Therefore, it is in the best interest of the State to support manufacturing jobs with favorable tax policies.

Manufacturing remains an important industry sector in New Jersey, but is experiencing across-the-board job declines. Just since 2001, New Jersey has experienced a 23 percent decrease in manufacturing employment, representing 92,600 jobs lost.

TAXATION

Despite these job declines, manufacturers will relocate/expand operations in New Jersey if economic development incentives help reduce their cost of doing business. For example, in the successful Business Employment Incentive Program (BEIP), which rewards businesses with job-creation/expansion subsidies, manufacturers make up the largest number of employer participants (40 percent).

With 320,000 manufacturing jobs remaining in New Jersey and another 170,000 jobs dependent on manufacturing, a public policy imperative should be to construct incentives to help retain manufacturing jobs.

Much of our manufacturing base is older and in need of reinvestment. With national and international competitive pressure so intense, New Jersey manufacturers must reinvest in state-of-the-art facilities and equipment to compete.

New Jersey's current manufacturing equipment investment tax incentives are modest and lower than those of competitor states. Facilities investment credits typically require a jobs creation component.

A new 20 percent manufacturing investment tax credit (including equipment and facility costs) would jump-start New Jersey's manufacturing sector.

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ENACT SINGLE SALES FACTOR BUSINESS TAX REFORM FOR MANUFACTURERS

DESCRIPTION

To determine New Jersey's share of national taxable income of multi-state businesses, New Jersey uses a formula that considers the value of the New Jersey property (owned or leased facilities), New Jersey portion of the company payroll and New Jersey sales receipts. This works against the public interest by punishing companies that invest and create jobs in New Jersey with higher taxes than companies that invest elsewhere, but simply sell their goods and services here. The Single Sales Factor (SSF) reform would level the playing field for New Jersey companies by eliminating the use of the property and payroll factors, and base a firm's New Jersey taxable income solely on its New Jersey sales relative to its national sales.

BACKGROUND

For companies doing business in more than one state, how to allocate a company's tax liability across these various states is a serious tax issue. In the 1950s, states adopted uniform legislation creating a three part test to determine the share of a multi-state business' profits taxed in any one state. The three part test allocated taxable income to a particular state based on that state's share of a company's national property, payroll and sales. In other words, the more of a physical presence a company maintained in a state, the greater its tax burden in that state.

Over time, most states amended their three-part tests to lessen the negative tax impact of in-state presence (the property and payroll factors) and increase the impact of the sales factor. New Jersey joined this effort in 1995 when legislation was enacted to double weight the sales factor—in effect diminishing the property and payroll factors.

Since 2004, there has been an accelerating trend for states to adopt the SSF, eliminating the property and payroll factors entirely. States have done this either for particular industries (manufacturers, for example) or for all businesses. These states are listed below.

TAXATION

States with SSF legislation:

Connecticut	Georgia	Illinois
Iowa	Maryland (manufacturers only)	Massachusetts (certain manufacturers)
Michigan	Minnesota (phased in by 2014)	Mississippi (non- manufacturers only)
Missouri (optional)	Nebraska	New York
Oregon (phased in by 2008)	Pennsylvania (at 70 percent with phase in underway)	South Carolina (non- manufacturers only)
Texas	Wisconsin	

NJBIA POSITION

NJBIA supports a phase-in of the SSF for manufacturers as a way to improve our manufacturing, reduce the cost of doing business for manufacturers and as an economic development tool for manufacturing job retention.

ARGUMENTS IN SUPPORT OF THE SSF REFORM FOR MANUFACTURERS

Manufacturing remains an important industry sector in New Jersey, but is experiencing across-the-board job declines. Since 2001, New Jersey manufacturers have lost 96,200 jobs, a 23 percent decline.

Despite these job declines, manufacturers will relocate or expand operations in New Jersey if economic development incentives help reduce their cost of doing business. For example, in the successful Business Employment Incentive Program (BEIP), which rewards businesses with job-creation and expansion subsidies, manufacturers make up the largest number of employer participants (40 percent).

With 320,000 manufacturing jobs remaining in New Jersey and another 170,000 jobs dependent on manufacturing, a public policy imperative should be to construct incentives to help retain the manufacturing jobs we have by reducing existing manufacturers' cost of doing business.

New Jersey's tax policies for multi-state businesses penalize firms that operate in New Jersey, in comparison to businesses that have little in the way of in-State operations but sell products and services here. New Jersey's business tax structure particularly discriminates against in-State manufacturers. In effect, New Jersey's manufacturers pay a hidden "investment and jobs" tax (sometimes called a "headquarters" tax). That is to say, the more property and payroll a manufacturer has in-State, the higher its tax relative to a predominately out-of-state manufacturer with similar New Jersey sales.

SSF tax reform eliminates this hidden "headquarters" tax for manufacturers by basing New Jersey manufacturer business taxes solely on New Jersey-based

TAXATION

sales. No longer would a manufacturer headquartered in New Jersey be competitively disadvantaged because of its decision to locate in our State. SSF reform provides an incentive to retain and even expand operations in New Jersey.

Many competitor states have implemented this SSF reform, including New York, Pennsylvania, Connecticut, Massachusetts and Maryland.

COST

In 2001, the NJ Division of Taxation estimated that making SSF available to all businesses would reduce tax collections by a net \$62 million. There is no estimate for just manufacturers, but it probably would be no greater than \$30 million.

LEGISLATIVE HISTORY

SSF legislation for all businesses was introduced in 2000 and made it to the floor of both houses but was not acted on at the end of the legislative session. Currently, A-1449 was introduced on January 8, 2008 and referred to the Assembly Commerce and Economic Growth Committee.

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MAKE AVAILABLE EXISTING BUSINESS TAX CREDITS TO NON-CORPORATE ENTITIES

DESCRIPTION

Amend existing business tax credit law to allow owners and partners of pass-through entities to use them.

BACKGROUND

A pass-through entity is a business where profits are passed through to the owners and partners, who then pay individual gross income taxes on their share, as opposed to traditional corporations, which pay a separate Corporation Business Tax. Pass-through entities include Partnerships, Limited Liability Corporations and S Corporations.

Over the past 15 years, more and more New Jersey businesses are choosing to incorporate as pass-through entities instead of traditional corporations. It is estimated that today only approximately one-third of all businesses are traditional corporations.

The majority of New Jersey's business tax credits for economic development purposes were enacted prior to the boom in pass-through entity business formation. Hence, these tax credits apply only to the Corporation Business Tax, not the Gross Income Tax.

Many of the newer business tax credits are available to pass-through entities. Examples of such credits include the Digital Media and Film Production Tax Credits, the Urban Transit Hub Tax Credit, the Smart Moves for Business program, and a tax credit for employment of disabled individuals.

Examples of important economic development tax credit programs not available to pass-through entity businesses are: Business Retention and Relocation Assistance Grant (BRRAG) tax credits, Manufacturing Equipment and Employment Investment Tax Credits, Research and Development Tax Credits and New Jobs Investment Tax Credits.

NJBIA POSITION

NJBIA supports expanding the pool of businesses eligible for economic incentive programs.

ARGUMENTS IN SUPPORT OF MAKING AVAILABLE EXISTING BUSINESS TAX CREDITS TO PASS-THROUGH ENTITIES

The majority of business tax credits can be used only by corporations through the Corporation Business Tax. These tax credits are not applicable to Gross Income Tax payers. Hence, New Jersey is not making the most of the economic development incentives it offers to businesses.

To keep up with changing business practices, and to have a greater impact on economic development, New Jersey should make all of its business tax credits usable by both corporate and pass-through entities. Awards of tax credits should be based on substantive criteria not form of incorporation.

LEGISLATIVE HISTORY

Every year since 2004, legislation has been introduced allowing owners of S corporations to apply economic development tax credits to their personal income taxes. In the 2008-2009 session A-460 was introduced on January 8, 2008 and referred to the Assembly Commerce and Economic Growth Committee. S-551 was introduced January 8, 2008 and referred to the Senate Commerce Committee.

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REFORMING THE BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT TAX CREDIT PROGRAM

DESCRIPTION

Amend the Business Retention and Relocation Assistance Grant (BRRAG) tax credit program to encourage greater utilization by: a) expanding eligibility to businesses in danger of leaving the State due to uncompetitive business costs or lease expirations (not just relocating companies); and b) expanding the sales tax exemption for property fit-up (equipment, furniture, fixtures) costs in new facilities to all BRRAG recipients.

BACKGROUND

Enacted in 2004, the BRRAG tax credit program allocates \$20 million in corporate business and insurance tax credits each year to businesses relocating within the State and retaining at least 50 full-time jobs in New Jersey. Eligible businesses can qualify for a tax credit of up to \$1,500 per job retained, depending on the number of applicants receiving assistance in any one year. In addition, BRRAG recipients relocating to a new facility within a State Plan designated “development area” and retaining at least 500 jobs (or 250 manufacturing jobs) qualify for a sales tax exemption on equipment, furniture and fixture costs at the site.

The amount of the tax credit is dependent on eight factors, including the number and quality of jobs, capital investments made at the new location, whether the business is in a targeted growth industry, smart growth compliance and indications of the business’ long-term commitment to the State.

Applicants must show at least 10 years of New Jersey operating history, evidence of out-of-state relocation opportunity and a jobs retention commitment of two years for 95 percent of the assisted jobs and the negotiated contractual duration for 90 percent of the jobs.

Even though \$20 million of corporate tax credits are available annually, through September 2007 only \$4 million of BRRAG tax credits have been utilized, with an estimated \$5 million more in tax credits expected to be used in the future.

NJBIA POSITION

NJBIA supports BRRAG changes as an important economic development tool to spur job retention.

ARGUMENTS IN SUPPORT OF EXPANDING BOTH THE BRRAG AND THE SALES TAX EXEMPTION PROGRAM ELIGIBILITY

The BRRAG tax credit program was enacted in 2004 as an economic development companion to the successful Business Employment Incentive Program (BEIP). While BEIP is designed to incent job creation and expansion, BRRAG was created to encourage job retention by benefitting New Jersey businesses which choose to relocate operations to another facility within New Jersey. The goal of BRRAG is to prevent in-State businesses from relocating outside of the State and thereby retain current employees.

The existing BRRAG program only rewards businesses that have already chosen to relocate in-State. By the time a business has made the decision to relocate outside the State, it is usually too late to influence the relocation decision, making BRRAG a poor tool for general job retention.

Because BRRAG previously focused its tax credit benefits solely on in-State relocations of 250 employees or more, BRRAG has been tremendously underutilized. Even though \$20 million of corporate tax credits are available annually, through September 2007 only \$4 million of BRRAG tax credits have been utilized, with an estimated \$5 million more expected to be used in the future.

Maximizing BRRAG's benefits requires expanding assistance eligibility to smaller businesses (a minimum of 50 employees) in danger of relocating outside the State that choose to remain in their current location. In addition, allowing BRRAG recipients to apply for the sales tax exemption program, regardless of the number of jobs retained or their relocation status will incent more job retention.

COST

No new tax credit cost as the expansion will utilize tax credits from the existing \$20 million annual program cap. The impact of the sales tax exemption on fit-up costs is unknown.

LEGISLATIVE HISTORY

The BRRAG tax credit program was enacted in 2004. Legislation enacted earlier this year expanded the program's eligibility to businesses relocating and retaining at least 50 employees, instead of the original 250 employees.

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**CONTINUE TO REPEAL UNFAIR BUSINESS TAX POLICIES:
REPEAL THE THROW-OUT RULE TAX ON OUT-OF-STATE
INCOME****DESCRIPTION**

Repeal the throw-out rule used to allocate sales income under the Corporation Business Tax

BACKGROUND

New Jersey, like all states with business taxes, determines its tax share of a multi-state corporation's profits by using an allocation formula. In New Jersey, the formula begins by calculating New Jersey's share of a company's business activities: i.e., the New Jersey portion of a company's national payroll, its national sales and its national property holdings. The New Jersey business-activity factor is then applied to a company's national profits to determine New Jersey's share of taxable income.

In cases of inter-state sales, most states have agreed to attribute sale income to the destination state (i.e. the state in which the purchaser lives), not the one in which the shipper is located. However, situations can arise where the sales income goes untaxed, such as when the destination state cannot or does not tax the business making the sale. For state tax purposes, these sales are termed "nowhere sales."

In 2002, New Jersey went one step further in adopting its throw-out rule, effectively increasing New Jersey's share of a multi-state corporation's tax base by any sales income that is untaxed by any another state, regardless of New Jersey's relationship to the sale. In effect, New Jersey attributes to itself a portion of the sales activity that occurred in another state.

In an effort to tax these "nowhere sales," about half the states have imposed recapture rules allowing them to count "nowhere sales" income from sales originating in their states.

NJBIA POSITION

NJBIA supports continued repeal of McGreevey's 2002 business tax hikes as a necessary first step in improving our business climate.

ARGUMENTS IN SUPPORT OF REPEALING THE THROW OUT RULE

New Jersey's business tax and business climate continually ranks as among the nation's worst, due primarily to former Governor James McGreevey's business tax hikes of 2002. These tax policies were widely viewed as arbitrary, unfair and

far worse than business tax policies in other states, making New Jersey unattractive to companies looking to locate or expand operations here.

Since 2005, New Jersey's Governor and State Legislature have rolled back two of these most onerous corporate tax policies: the alternate minimum assessment gross receipts tax and the suspension of net operating loss use. They should also repeal the McGreevey throw-out rule for the same reasons.

The throw-out rule is not only unfair but probably unconstitutional. Some of New Jersey's largest companies, like pharmaceutical giant Pfizer, are legally challenging the throw-out rule and expect to win.

McGreevey's own Corporation Business Tax Study Commission in June 2004 recommended repeal of the throw-out rule.

Under the throw-out rule, any out-of-state income which is not taxed by another state is deemed subject to New Jersey taxes. This applies whether the other state has no corporation business tax (such as Nevada) or the other state's business tax simply does not apply to the company.

While many states have similar rules governing the taxation of income from interstate sales that either originate or end in a state, New Jersey's throw-out rule is unique because it taxes income from sales which have absolutely no nexus to New Jersey—sales that neither originate nor end in New Jersey.

Imposing the throw out rule has made New Jersey unpopular and uncompetitive with many major employers.

COST

The Corporation Business Tax Study Commission in 2004 estimated the actual revenue gain associated with imposition of the throw-out rule at \$31 million annually, about 60 percent less than originally anticipated.

LEGISLATIVE HISTORY

The throw out rule was imposed under the Business Tax Reform Act of 2002.

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