LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4929

STATE OF NEW JERSEY
220th LEGISLATURE

DATED: DECEMBER 21, 2022

SUMMARY

Synopsis: Concerns accommodations related to COVID-19 public health emergency for businesses participating in certain State economic development programs.

Type of Impact: Multi-year increase in State expenditures.
Multi-year net impact on State revenues.

Agencies Affected: Economic Development Authority.

Office of Legislative Services Estimate

Fiscal Impact	**FY 2023 & Annually Thereafter**
State Expenditure Increase	Indeterminate
State Revenue Net Impact	Indeterminate

- The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate increase in State expenditures and have an indeterminate net impact on State revenues over a multi-year period. The OLS lacks the informational basis to project the magnitude and direction of the bill's countervailing State revenue effects.

- The bill will result in a State revenue decrease to the extent that businesses participating in certain State economic development programs choose to waive the on-site requirements for full-time employees at qualified business facilities because the waiver will allow businesses to remain eligible for tax credits which they may not have received under current law.

- The bill will result in an increase in State revenues from payments made by those businesses equal to five percent of the tax credit they received for the 2022 tax period. This will be offset by an increase in State expenditures because the bill requires the Economic Development Authority to use the funds it receives via these payments to support certain economic development activities.

- The termination of incentive agreements by businesses participating in the Grow New Jersey Assistance (GROW) Program and the Urban Transit Hub Tax Credit (HUB) Program will result in an increase in State revenues because these businesses would not be eligible to receive tax credits for which they may have otherwise qualified.

- Provisions of the bill allowing businesses to suspend their obligations under the GROW and HUB programs will have an indeterminate impact on State revenues. The overall impact of these provisions on State revenues will be driven by taxpayer decisions to claim tax credits in future tax years. The OLS cannot predict how individual taxpayer decisions will impact State finances in this regard.

BILL DESCRIPTION

The bill provides certain accommodations to businesses participating in the Business Employment Incentive Program, the Business Retention and Relocation Assistance Grant Program, the GROW Program, and the HUB Program that were impacted by the COVID-19 public health emergency. Some provisions of the bill apply to businesses participating in all four programs while others impact only businesses enrolled in the GROW and HUB programs.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill will result in an indeterminate, multi-year increase in State expenditures and have an indeterminate, multi-year net impact on State revenues.

Suspension of On-site Attendance Requirements. Under current law, businesses participating in the Business Employment Incentive Program, the Business Retention and Relocation Assistance Grant Program, and the GROW and HUB programs are awarded economic development incentives in the form of tax credits for meeting certain program thresholds. One of these program thresholds is the creation or retention of a certain number of full-time jobs at a qualified business facility. The number of jobs created or retained varies depending on the program and the location of the qualified business facility. In order for a full-time job to be counted towards satisfying the program requirements under current law, full-time employees must spend at least 60 percent of their time at the qualified business facility.

The bill allows businesses to waive, for the period beginning on July 1, 2022 and ending on December 31, 2023, the requirement that a full-time employee who is employed by the business must spend at least 60 percent of the employee's time at the qualified business facility. A business that elects the waiver must satisfy two criteria. First, any full-time employee employed by the business must spend at least ten percent of the employee's time at the qualified business facility through the 2023 tax period. Second, the business must make a payment to the Economic Development Authority in an amount equal to five percent of the amount of the tax credit that the business receives for the 2022 tax period. The bill requires the Economic Development Authority to use funds received via these payments to support small business activities and downtown activation or commercial corridor activities.

The OLS concludes that the provisions of the bill allowing businesses to waive the on-site requirements for full-time employees at qualified business facilities will result in a decrease in State revenues. Without the changes to the on-site attendance requirement, these businesses would not be eligible to receive tax credits because they would not satisfy all of the current statutory program thresholds through the applicable program, thereby increasing their State tax liabilities. Because the bill allows a business that elects to use the waiver provision to remain eligible to earn the full amount of the tax credit award, State revenues would be lower than they otherwise would be under current law. The OLS cannot predict how many businesses will use the waiver nor the total amount of tax credits that would be forgone if the waiver were not allowed.

The OLS notes that these provisions also will result in an increase in State revenues because the bill requires businesses that forgo the on-site attendance requirements for full-time employees to make a payment to the Economic Development Authority equal to five percent of the tax credit they receive for the 2022 tax period. This will be offset by an increase in State expenditures because the bill requires the authority to use the funds received via these payments to provide loans, guarantees, equity investments, and other forms of financing to support certain economic development activities noted above.

Termination of Incentive Agreements. During the COVID-19 public health emergency, the Economic Development Authority allowed businesses participating in the GROW program to terminate their program agreements any time before December 31, 2022, without the authority recapturing previously distributed tax credits. The bill extends this accommodation to December 31, 2023, commencing with the 2020 tax period or any subsequent tax period ending on or before December 31, 2023. The bill provides this same accommodation to a business that executed an approval letter under the HUB program.

The OLS concludes that these provisions of the bill will result in an indeterminate increase in State revenues. Exercising this option would prevent businesses that have been awarded tax credits through the GROW and HUB programs from claiming any credits not issued prior to termination. Any requested but uncertified or unissued tax credits would be forfeited in consideration of the termination. Assuming these businesses remain New Jersey taxpayers, they would have increased tax liabilities in the tax years or privilege periods following termination of the incentive agreement. Information regarding the number of businesses that have already terminated their GROW incentive agreements is not readily available.

According to information available through the Economic Development Authority, incentive agreement termination is available for all projects demonstrating changes to their business model, real estate decision-making, and job declines related to the COVID-19 pandemic. Businesses may terminate their incentive agreement with no ongoing compliance requirements. Tax credits already awarded to businesses are not subject to recapture. Applicants must explain that the impacts of the public health emergency resulted in changes to the business, the business model, or the continued desire to participate in the GROW program. Once executed, a termination agreement cannot be amended by the authority or the business. Incentive termination agreements include a provision allowing the authority to seek recapture of any tax credits if it is determined that a business's decision to leave the program was made without consideration of COVID-19.

Temporary Suspension of Program Obligations. The bill extends the time allowed under current law for a business to suspend its obligations under a GROW tax credit, and to extend the term of eligibility for the same period of time. Current law allows a suspension of a business's obligations for the 2020 and 2021 tax periods. The bill extends this provision to include the 2022 and 2023 tax periods as well. The bill also extends the ability of a business to suspend its obligations under the HUB program for the same period of time being afforded to GROW program participants.

The OLS concludes that these provisions of the bill would have an indeterminate impact on State revenues. Although the bill allows for the suspension of participants' eligibility for tax credits during certain tax periods, it also extends the period of time for which a business that makes this election is eligible for the tax credits. The length of the extension period being equal to the length of the suspension period. This extension would allow businesses to remain eligible to receive tax credits for a longer period of time than allowed under current law. The overall impact of this provision on State revenues will be driven by taxpayer decisions to claim tax credits in future tax years. The OLS cannot predict how individual taxpayer decisions will impact State finances in this regard.

According to the authority, businesses were required to request a suspension of program requirements for tax year 2020 to the due date for their annual report. Businesses were required to request a suspension of program requirements for 2021 after the end of their tax year but before the due date for filing their annual report. Businesses participating in the GROW and HUB programs may receive tax credits for a period of up to ten years. Under current law, businesses participating in the GROW and HUB programs may carry forward unused tax credits for 20 successive tax periods. Given that current law allows these businesses to suspend GROW and HUB program requirements for two years and the bill allows the suspension period to be extended for two additional years, the tax credit carry forward period for businesses that elect to suspend the GROW and HUB program requirements may be extended for up to four additional years.

Section:	*Revenue, Finance, and Appropriations*
Analyst:	*Scott A. Brodsky* *Staff Fiscal and Budget Analyst*
Approved:	*Thomas Koenig* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).