Sponsored by:
Assemblyman DANIEL R. BENSON
District 14 (Mercer and Middlesex)

SYNOPSIS
   Requires certain employers to provide certain pre-tax transportation fringe benefits.

CURRENT VERSION OF TEXT
   As introduced.
AN ACT concerning pre-tax transportation fringe benefits, and amending and supplementing P.L.1992, c.32.

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

1. Section 3 of P.L.1992, c.32 (C.27:26A-3) is amended to read as follows:

3. As used in this amendatory and supplementary act:

"Alternative means of commuting" means travel between a person's place of residence and place of employment or termini near those places, other than in a motor vehicle occupied by one person. Alternative means of commuting include, but are not limited to, public transportation, car pools, van pools, bus pools, ferries, bicycling, telecommuting, and walking, which may be used in conjunction with such strategies as flextime, staggered work hours, compressed work weeks, and like measures.

"Clean Air Act" means the federal Clean Air Act, as amended by Pub.L.101-549 (42 U.S.C. s. 7401 et seq.) and as subsequently amended or supplemented.

"Commissioner" means the Commissioner of Transportation.

"Commuter transportation benefit" means the cost to employers of providing benefits to an employee for utilizing an alternative means of commuting and the cost of providing services and facilities which would encourage or facilitate use by employees of alternative means of commuting. The benefit shall include the costs of parking by employees at park-and-ride lots.

"Department" means the New Jersey Department of Transportation.

"Employee" means an employee hired or employed by the employer and who reports to the employer's work location, as specified by regulation of the department shall have the same meaning as provided in the "unemployment compensation law," (R.S.43:21-1 et seq.).

"Employer" means any person, partnership, association, corporation, trust, legal representative or any organized group of persons which hires or employs employees and shall also include all public and quasi-public employers, including without limitation the United States and any of its governmental instrumentalities, the State of New Jersey and its instrumentalities and subdivisions, and all State and bi-State authorities, corporations, commissions, boards and like bodies shall have the same meaning as provided in the "unemployment compensation law," (R.S.43:21-1 et seq.).

"Pre-tax transportation fringe benefit" means a pre-tax election transportation fringe benefit that provides commuter highway

EXPLANATION – Matter enclosed in bold-faced brackets thus in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
vehicle and transit benefits, consistent with the provisions and
limits of section 132(f)(1) of the United States Internal Revenue
Code of 1986 (26 U.S.C. s.132(f)(1)) at the maximum benefit levels
allowable under federal law, to be deducted for those programs
from an employee’s gross income pursuant to section 132(f)(2) of
the United States Internal Revenue Code of 1986 (26 U.S.C.
s.132(f)(2)).

"Program" means the Travel Demand Management Program
established pursuant to section 5 of P.L.1992, c.32 (C.27:26A-
and continued pursuant to P.L.1996, c.121 (C.27:26A-4.1 et al.).

"Transportation management association" or "TMA" means a
nonprofit corporation approved by the department as coordinating
transportation services, including but not limited to public
transportation, van pools, car pools, bicycling, and pedestrian
modes, as well as strategies such as flex time, staggered work
hours, and compressed work weeks, for corporations, employees,
developers, individuals, and other groups.

"Travel demand management" or "TDM" means a system of
actions whose purpose is to alleviate traffic-related problems
through improved management of vehicle trip demand. These
actions, which are primarily directed at commuter travel, are
structured to reduce the dependence on and use of single occupancy
vehicles, or to alter the timing of travel to other, less congested time
periods or both.

(cf: P.L.1996, c.121, s.5)

2. (New section) a. Every employer in the State of New Jersey
that employs at least 20 persons shall offer to all of that employer’s
employees, that are not covered by a collective bargaining
agreement, the opportunity to utilize a pre-tax transportation fringe
benefit.

b. If an employer employs persons covered by a collective
bargaining agreement and employs less than 20 employees who are
not covered by the collective bargaining agreement, the employer
shall not be required to provide the opportunity to utilize a pre-tax
transportation fringe benefit.

c. If an employee is employed by the federal government and
that employee is eligible for a benefit through the person’s
employment with the federal government for a transit benefit that is
equal to or greater than a pre-tax transportation fringe benefit, then
the federal government shall not be required to provide those
employees the opportunity to utilize a pre-tax transportation fringe
benefit.

3. (New section) Any employer found to be in violation of the
requirement provided in section 2 of P.L. c. (C. ) (pending
before the Legislature as this bill) shall be liable for a civil penalty
of not less than $100 and not more than $250 for a first violation.
An employer shall have 90 days to offer a pre-tax transportation fringe benefit before the civil penalty is imposed. After 90 days, each additional 30 day period in which an employer fails to offer a pre-tax transportation fringe benefit shall constitute a subsequent violation and a civil penalty of $250 shall be imposed for each subsequent violation. A civil penalty shall not be imposed on any individual employer more than once in any 30 day period. Any penalty incurred under this section may be recovered with costs, and, if applicable, interest charges, in a summary proceeding pursuant to the “Penalty Enforcement Law of 1999” P.L.1999, c.274 (C.2A:58-10 et seq.).

The Commissioner of Labor and Workforce Development shall ensure compliance with the requirement provided in section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) and may issue citations for violations as provided for in this section.

4. (New section) The New Jersey Transit Corporation shall conduct a public awareness campaign in conjunction with the New Jersey Turnpike Authority and the South Jersey Transportation Authority, encouraging the public to contact employers about pre-tax transportation fringe benefits. The campaign shall include signs in public buildings and on roadways of the New Jersey Turnpike Authority and the South Jersey Transportation Authority, as well as the New Jersey Transit Corporation’s stations and terminals, and may also include public service announcements on radio, television, and the websites and social media of the New Jersey Transit Corporation, New Jersey Turnpike Authority, and the South Jersey Transportation Authority.

5. (New section) The Commissioner of Labor and Workforce Development, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations, in consultation with TMAs, transit agencies in the State, and third-party transit benefit providers concerning the administration and enforcement of the pre-tax transportation fringe benefit requirements of P.L. , c. (C. ) (pending before the Legislature as this bill) in a manner that is most compatible with current practices for providing pre-tax transportation fringe benefits.

6. This act shall take effect immediately but shall remain inoperative for 365 days following the date of enactment or upon the effective date of rules and regulations adopted pursuant to section 5 of this act, whichever occurs first.
This bill requires every employer in New Jersey that employs at least 20 persons, not subject to a collective bargaining agreement, to offer a pre-tax transportation fringe benefit to all of the employer’s employees that are not subject to a collective bargaining agreement. The federal government is only required to provide the benefit to federal employees that are not already eligible for a transit benefit equal to or greater than the pre-tax transportation fringe benefit. A pre-tax transportation fringe benefit is a benefit that allows an employee to set aside wages on a pre-tax basis, which is then only made available to the employee for the purchase of certain eligible transportation services, including transit passes and commuter highway vehicle travel. The employer is not required to offer a qualified parking or bicycle benefit, but may offer those benefits.

The bill also establishes a $100 to $250 penalty for the first time any employer is found to be in violation of this requirement. An employer has 90 days from the date of the violation to offer the pre-tax transportation fringe benefit program before the fine is imposed. After 90 days, each additional 30 day period in which an employer fails to offer a pre-tax transportation fringe benefit is a subsequent violation subject to a $250 penalty. The penalty is to be imposed only once in any 30 day period. The Commissioner of Labor and Workforce Development is authorized to ensure that employers provide the pre-tax transportation fringe benefit if required and issue citations for failure to comply with the requirement.

The bill also requires the New Jersey Transit Corporation to establish a public awareness campaign in conjunction with the New Jersey Turnpike Authority and the South Jersey Transportation Authority. The campaign is to encourage the public to contact employers about pre-tax transportation fringe benefits.

Pre-tax transportation fringe benefits can be offered directly by employers or through third party providers. The federal benefit levels available for 2017 are $255 per month and are subject to cost-of-living adjustments by the federal Internal Revenue Service for transit passes and commuter highway vehicle travel. The transportation fringe benefit is not subject to payroll tax for the employer or the employee, allowing both the employer and employee to reduce their federal tax payments.