

ASSEMBLY, No. 5541

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 5, 2023

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

Modifies certain provisions of "New Jersey Innovation Evergreen Act."

CURRENT VERSION OF TEXT

As introduced.



A5541 QUIJANO

2

1 AN ACT concerning the "New Jersey Innovation Evergreen Act" and
2 amending P.L.2020, c.156.

3

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

6

7 1. Section 21 of P.L.2020, c.156 (C.34:1B-289) is amended to
8 read as follows:

9 21. As used in sections 20 through 34 of P.L.2020, c.156
10 (C.34:1B-288 through C.34:1B-302):

11 "Authority" means the New Jersey Economic Development
12 Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

13 "Director" means the Director of the Division of Taxation in the
14 Department of the Treasury.

15 "Follow-on investment" means a subsequent investment made by
16 an investor who has a previous investment in a New Jersey high-
17 growth business.

18 "Full-time employee" means a person employed by a business for
19 consideration for at least 35 hours a week, or who renders any other
20 standard of service generally accepted by custom or practice, as
21 determined by the authority, as full-time employment.

22 "Full-time employee filling a position in the State" means a full-
23 time employee having a primary office in the State and spending at
24 least 60 percent of the employee's work hours at that primary office.

25 "Fund" means the "New Jersey Innovation Evergreen Fund"
26 established by section 23 of P.L.2020, c.156 (C.34:1B-291).

27 "High-growth business" means a business that is growing
28 significantly faster than the average growth rate of the economy or is
29 a start-up company that is investing in developing a product or new
30 business model that will allow it to grow significantly faster than the
31 average growth rate of the economy within the next three to five
32 years.

33 "Incentive area" means an area in this State: (1) designated
34 pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196
35 et seq.), as Planning Area 1 (Metropolitan); or (2) that has been
36 designated as a qualified opportunity zone pursuant to 26 U.S.C.
37 s.1400Z-1.

38 "Innovation ecosystem" means funding, programs, and events that
39 support the establishment and expansion of high-growth companies
40 in targeted sectors. Examples of such funding, programs, and events
41 include: mentoring programs for start-ups, meet-up or networking
42 events, funding for locating a business in a collaborative workspace,
43 programs that provide business services, and entrepreneurial
44 education to companies.

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.

1 "Opportunity zone" means a federal population census tract in this
2 State that was eligible to be designated as a qualified opportunity
3 zone pursuant to 26 U.S.C. s.1400Z-1 as may be amended.

4 "Principal business operations" means any of the following: (1) at
5 least 50 percent of the business's employees [, who are] not primarily
6 engaged in retail sales [,] reside in the State [, or] ; (2) at least 50
7 percent of the business's payroll for employees not primarily engaged
8 in retail sales is paid to individuals living in [this] the State; (3) at
9 least 50 percent of the business's full-time employees not primarily
10 engaged in retail sales are filling a position in the State; or (4) at least
11 50 percent of the business's payroll for employees not primarily
12 engaged in retail sales is paid to full-time employees filling a position
13 in the State.

14 "Program" means the New Jersey Innovation Evergreen Program
15 established by section 22 of P.L.2020, c.156 (C.34:1B-290).

16 "Purchaser" means an entity registered to do business in this State
17 with the Director of the Division of Revenue and Enterprise Services
18 in the Department of the Treasury that purchases an allocation of tax
19 credits under the program.

20 "Qualified business" means a business that, at the time of the first
21 qualified investment in the business and throughout the period of the
22 qualified investment under the program, is registered to do business
23 in this State with the Director of the Division of Revenue and
24 Enterprise Services in the Department of the Treasury; has its
25 principal business operations located in the State and intends to
26 maintain its principal business operations in the State after receiving
27 a qualified investment under the program; is engaged in a targeted
28 industry; and employs fewer than 250 persons at the time of the
29 qualified investment.

30 "Qualified investment" means the direct investment of money by
31 the fund in a qualified business for the purchase of shares of stock,
32 with an option to make an additional investment in an option or
33 warrant or a follow-on investment, in the discretion of the authority,
34 all of which is matched by an investment by a qualified venture firm.

35 "Qualified venture firm" means a venture firm that is approved by
36 the authority as a qualified venture firm pursuant to section 29 of
37 P.L.2020, c.156 (C.34:1B-297).

38 "Special purpose vehicle" means an entity controlled by or under
39 common control with a venture firm that is formed solely for the
40 purpose of investing in a New Jersey high-growth business alongside
41 the venture firm.

42 "Targeted industry" means any industry identified from time to
43 time by the authority which shall initially include advanced
44 transportation and logistics, advanced manufacturing, aviation,
45 autonomous vehicle and zero-emission vehicle research or
46 development, clean energy, life sciences, hemp processing,
47 information and high technology, finance and insurance, professional
48 services, film and digital media, non-retail food and beverage

1 businesses including food innovation, and other innovative industries
2 that disrupt current technologies or business models.

3 "Venture firm" means a partnership, corporation, trust, or limited
4 liability company that invests cash in a business during the early or
5 expansion stages of a business in exchange for an equity stake in the
6 business in which the investment is made. Venture firm may include
7 a venture capital fund, a family office fund, or a corporate investor
8 fund, provided that a professional manager administers the venture
9 firm.

10 (cf: P.L.2020, c.156, s.21)

11

12 2. Section 24 of P.L.2020, c.156 (C.34:1B-292) is amended to
13 read as follows:

14 24. a. The authority shall sell the tax credits authorized pursuant
15 to section 22 of P.L.2020, c.156 (C.34:1B-290) to purchasers through
16 a competitive auction process.

17 b. The authority shall determine the form and manner in which
18 potential purchasers may bid for tax credits available under the
19 program. To be awarded a tax credit under the program, a potential
20 purchaser shall:

21 (1) specify the requested amount of tax credits, which shall not
22 be less than \$500,000;

23 (2) specify the amount the potential purchaser will pay in
24 exchange for the requested amount of tax credits, which shall be set
25 by the authority at an amount not **【be】** less than 75 percent of the
26 requested dollar amount of tax credits;

27 (3) commit to serve on the New Jersey Innovation Evergreen
28 Advisory Board, established pursuant to section 32 of P.L.2020,
29 c.156 (C.34:1B-300), and to otherwise provide mentorship,
30 networking, and collaboration opportunities to qualified businesses
31 that receive funding under the program; and

32 (4) provide any other information that the chief executive officer
33 of the authority determines is necessary.

34 c. Prior to an auction, the authority shall establish and disclose
35 to bidders the weighted criteria the authority will utilize, which the
36 authority shall base on the price offered to purchase the tax credits
37 and the quality of the mentorship and networking opportunities and
38 other support of the State's innovation ecosystem offered by a
39 purchaser in its bid. The authority may pro rate the amount of tax
40 credits allocated to each purchaser. A potential purchaser that
41 submits a bid for tax credits under this section shall receive a written
42 notice from the authority indicating whether the authority has
43 approved it as a purchaser of tax credits and, if so, the amount of tax
44 credits approved.

45 d. Except as provided in section 22 of P.L.2020, c.156 (C.34:1B-
46 290), the authority shall hold one competitive auction per calendar
47 year.

1 e. The authority may contract with an independent third party to
2 conduct the competitive bidding process through which State tax
3 credits issued by the authority may be sold.
4 (cf: P.L.2021, c.160, s.11)

5
6 3. Section 26 of P.L.2020, c.156 (C.34:1B-294) is amended to
7 read as follows:

8 26. a. A purchaser shall apply a credit awarded pursuant to
9 sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through
10 C.34:1B-302) against the purchaser's State tax liability due pursuant
11 to section 5 of P.L.1945, c.162 (C.54:10A-5) **【of the purchaser】** ,
12 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3),
13 section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 for the
14 current privilege period as of the date of the credit's approval. A
15 purchaser may carry forward an unused credit resulting from the
16 limitations of subsection b. of this section, if necessary, for use in the
17 seven privilege periods next following the privilege period for which
18 the credit is awarded.

19 b. The director shall prescribe the order of priority of the
20 application of the credits awarded under sections 20 through 34 of
21 P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302) and any other
22 credits allowed by law. The amount of a credit applied under sections
23 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-
24 302) against the tax imposed pursuant to section 5 of P.L.1945, c.162
25 (C.54:10A-5) for a privilege period, together with any other credits
26 allowed by law, shall not reduce the tax liability of the purchaser to
27 an amount less than the statutory minimum provided in subsection
28 (e) of section 5 of P.L.1945, c.162 (C.54:10A-5).

29 (cf: P.L.2020, c.156, s.26)

30
31 4. Section 27 of P.L.2020, c.156 (C.34:1B-295) is amended to
32 read as follows:

33 27. a. A purchaser may apply to the authority and the director for
34 a tax credit transfer certificate **【**, in the privilege period during which
35 the director allows the purchaser a tax credit pursuant to sections 20
36 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302),**】**
37 in lieu of the purchaser being allowed to apply any amount of the tax
38 credit against the purchaser's State tax liability. A tax credit may be
39 sold or assigned, in full or in part, to another person that may have a
40 tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
41 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3),
42 section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The
43 tax credit transfer certificate provided to the purchaser shall include
44 a statement waiving the purchaser's right to claim the credit that the
45 purchaser has elected to sell or assign.

46 b. The purchaser shall not sell or assign a tax credit transfer
47 certificate allowed under this section for consideration received by
48 the purchaser of less than 85 percent of the transferred credit amount

1 before considering any further discounting to present value which
2 shall be permitted. The tax credit transfer certificate issued to a
3 purchaser by the director shall be subject to any limitations and
4 conditions imposed on the application of State tax credits pursuant to
5 section 26 of P.L.2020, c.156 (C.34:1B-294) and any other terms and
6 conditions that the director may prescribe.

7 c. A buyer or assignee of a tax credit transfer certificate pursuant
8 to this section shall not make any subsequent transfers, assignments,
9 or sales of the tax credit transfer certificate.

10 d. Ten percent of the consideration received by a purchaser from
11 the sale or assignment of a tax credit transfer certificate pursuant to
12 this section shall be remitted to the director and deposited in the
13 General Fund of the State.

14 e. The authority shall publish on its Internet website the
15 following information concerning each tax credit transfer certificate
16 approved by the authority and the director pursuant to this section:

- 17 (1) the name of the transferor;
18 (2) the name of the transferee;
19 (3) the value of the tax credit transfer certificate;
20 (4) the State tax against which the transferee may apply the tax
21 credit; and
22 (5) the consideration received by the transferor.

23 (cf: P.L.2020, c.156, s.27)

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25 5. This act shall take effect immediately.

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STATEMENT

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30 This bill modifies certain provisions of State law concerning the
31 New Jersey Innovation Evergreen Program (program), which is an
32 economic development program that sells discounted tax credits to
33 raise capital for qualified businesses in New Jersey. This program is
34 administered by the Economic Development Authority.

35 Under the program, a qualified business is one that: is registered
36 to do business in the State with the Director of the Division of
37 Revenue and Enterprise Services in the Department of the Treasury;
38 has its principal business operations located in the State and intends
39 to maintain its principal business operations in the State after
40 receiving a qualified investment under the program; is engaged in a
41 targeted industry, and employs fewer than 250 persons at the time of
42 the qualified investment. Under current law, the “principal business
43 operations” requirement is satisfied under either of the following
44 circumstances: (1) at least 50 percent of the business’s employees,
45 who are not primarily engaged in retail sales, reside in the State; or
46 (2) at least 50 percent of the business’s payroll for employees not
47 primarily engaged in retail sales is paid to individuals living in the
48 State.

1 The bill revises these criteria by providing that a business may
2 satisfy the “principal business operations” requirement in any of the
3 following circumstances: (1) at least 50 percent of the business's
4 employees not primarily engaged in retail sales reside in the State;
5 (2) at least 50 percent of the business's payroll for employees not
6 primarily engaged in retail sales is paid to individuals living in the
7 State; (3) at least 50 percent of the business’s full-time employees
8 not primarily engaged in retail sales are filling a position in the State;
9 or (4) at least 50 percent of the business’s payroll for employees not
10 primarily engaged in retail sales is paid to full-time employees filling
11 a position in the State. The bill creates definitions for the terms “full-
12 time employee” and “full-time employee filling a position in the
13 State.”

14 In addition, the bill modifies one of the requirements for
15 purchasers of tax credits under the program. Under current law, to
16 be awarded a tax credit under the program, a potential purchaser is
17 required to specify the amount the potential purchaser will pay in
18 exchange for the requested amount of tax credits, which shall not be
19 less than 75 percent of the requested dollar amount of tax credits.
20 The bill revises this requirement to provide that the authority will set
21 the amount that a potential purchaser will pay in exchange for the
22 requested amount of tax credits. The payment amount set by the
23 authority will not be less than 75 percent of the requested dollar
24 amount of tax credits.

25 Current law allows a purchaser to apply a credit or tax credit
26 transfer certificate awarded under the program against the
27 purchaser’s corporate business tax liability due under the
28 Corporation Business Tax Act (1945). The bill allows a purchaser to
29 apply a credit or tax credit transfer certificate awarded under the
30 program to the purchaser’s corporate business tax liability or, in the
31 case of a purchaser that is an insurance company, to the purchaser’s
32 insurance premiums tax liability.