

[First Reprint]

ASSEMBLY, No. 5541

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JUNE 5, 2023

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Co-Sponsored by:

Assemblyman Coughlin and Assemblywoman Reynolds-Jackson

SYNOPSIS

Modifies certain provisions of "New Jersey Innovation Evergreen Act" and "Food Desert Relief Act."

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 22, 2023, with amendments.



(Sponsorship Updated As Of: 6/30/2023)

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

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

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

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

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

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

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

19 ¹**["Full-time employee" means a person employed by a business**
20 **for consideration for at least 35 hours a week, or who renders any**
21 **other standard of service generally accepted by custom or practice,**
22 **as determined by the authority, as full-time employment.**

23 **"Full-time employee filling a position in the State" means a full-**
24 **time employee having a primary office in the State and spending at**
25 **least 60 percent of the employee's work hours at that primary**
26 **office.**¹

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

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

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

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted June 22, 2023.

1 collaborative workspace, programs that provide business services,
2 and entrepreneurial education to companies.

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

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

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

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

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

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

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

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

46 "Targeted industry" means any industry identified from time to
47 time by the authority which shall initially include advanced
48 transportation and logistics, advanced manufacturing, aviation,

1 autonomous vehicle and zero-emission vehicle research or
2 development, clean energy, life sciences, hemp processing,
3 information and high technology, finance and insurance,
4 professional services, film and digital media, non-retail food and
5 beverage businesses including food innovation, and other
6 innovative industries that disrupt current technologies or business
7 models.

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

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

16

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

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

22 b. The authority shall determine the form and manner in which
23 potential purchasers may bid for tax credits available under the
24 program. To be awarded a tax credit under the program, a potential
25 purchaser shall:

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

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

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

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

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

1 has approved it as a purchaser of tax credits and, if so, the amount
2 of tax credits approved.

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

6 e. The authority may contract with an independent third party
7 to conduct the competitive bidding process through which State tax
8 credits issued by the authority may be sold.

9 (cf: P.L.2021, c.160, s.11)

10

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

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

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

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

36

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

39 27. a. A purchaser may apply to the authority and the director
40 for a tax credit transfer certificate **【**, in the privilege period during
41 which the director allows the purchaser a tax credit pursuant to
42 sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through
43 C.34:1B-302),**】** in lieu of the purchaser being allowed to apply any
44 amount of the tax credit against the purchaser's State tax liability. A
45 tax credit may be sold or assigned, in full or in part, to another
46 person that may have a tax liability pursuant to section 5 of
47 P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132
48 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231

1 (C.17:32-15), or N.J.S.17B:23-5. The tax credit transfer certificate
2 provided to the purchaser shall include a statement waiving the
3 purchaser's right to claim the credit that the purchaser has elected to
4 sell or assign.

5 b. The purchaser shall not sell or assign a tax credit transfer
6 certificate allowed under this section for consideration received by
7 the purchaser of less than 85 percent of the transferred credit
8 amount before considering any further discounting to present value
9 which shall be permitted. The tax credit transfer certificate issued to
10 a purchaser by the director shall be subject to any limitations and
11 conditions imposed on the application of State tax credits pursuant
12 to section 26 of P.L.2020, c.156 (C.34:1B-294) and any other terms
13 and conditions that the director may prescribe.

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

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

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

- 24 (1) the name of the transferor;
25 (2) the name of the transferee;
26 (3) the value of the tax credit transfer certificate;
27 (4) the State tax against which the transferee may apply the tax
28 credit; and
29 (5) the consideration received by the transferor.

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

31

32 ^{15.} Section 38 of P.L.2020, c.156 (C.34:1B-306) is amended to
33 read as follows:

34 38. a. (1) There is established the Food Desert Relief Program
35 to be administered by the New Jersey Economic Development
36 Authority. The program shall include tax credit components, as
37 provided in sections 39 and 40 of P.L.2020, c.156 (C.34:1B-307
38 and C.34:1B-308), in order to incentivize businesses to establish
39 and retain new supermarkets and grocery stores in food desert
40 communities.

41 (2) The total value of tax credits approved by the authority
42 pursuant to sections 39 and 40 of P.L.2020, c.156 (C.34:1B-307 and
43 C.34:1B-308) shall not exceed the limitations set forth in section 98
44 of P.L.2020, c.156 (C.34:1B-362).

45 b. The authority, in consultation with the Department of
46 Agriculture and the Department of Community Affairs, shall
47 initially designate not more than 50 separate geographic areas that
48 have limited access to nutritious foods as food desert communities

1 in this State. The authority, in consultation with the Department of
2 Agriculture and the Department of Community Affairs, shall
3 develop criteria for the designation of food desert communities, but
4 each separate food desert community shall consist of a distinct
5 geographic area with a single defined border. The criteria shall, at a
6 minimum, incorporate analysis of municipal or census tract poverty
7 statistics, food desert information from the Economic Research
8 Service of the United States Department of Agriculture, healthier
9 food retail tract information from the federal Centers for Disease
10 Control and Prevention, and residents' access to nutritious foods,
11 such as fresh fruits and vegetables, through supermarkets and
12 grocery stores. The authority, in consultation with the departments,
13 may also consider in making food desert community designations
14 pursuant to this subsection, data related to municipal or census tract
15 population size and population density, the number of residents who
16 receive Supplemental Nutrition Assistance Program (SNAP)
17 benefits within a municipality, the extent to which a municipality's
18 residents have access to a personal vehicle, and a municipality's
19 Municipal Revitalization Index distress score, obesity rate, and
20 unemployment rate. The authority, in consultation with the
21 departments, shall continuously evaluate areas previously
22 designated as food desert communities and assess whether they still
23 meet the criteria for designation as a food desert community and
24 may designate additional food desert communities once every three
25 years following the effective date of sections 35 through 42 of
26 P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310).

27 c. To receive a tax credit under section 39 or 40 of P.L.2020,
28 c.156 (C.34:1B-307 or C.34:1B-308), a taxpayer shall submit an
29 application to the authority in the form and manner prescribed by
30 the authority and in accordance with criteria established by the
31 authority, which at minimum will include a commitment to accept
32 benefits from federal nutrition assistance programs, such as the
33 Supplemental Nutrition Assistance Program (SNAP) and the
34 Special Supplemental Nutrition Program for Women, Infants, and
35 Children (WIC). Following the approval of an application, the
36 authority may, pursuant to an award agreement, award tax credits to
37 an eligible taxpayer that:

38 (1) develops and opens for business to the public the first or
39 second supermarket or grocery store in a designated food desert
40 community; or

41 (2) owns, leases, or subleases, and operates the first or second
42 new supermarket or grocery store in a designated food desert
43 community.

44 d. (1) The authority may sell all or a portion of the tax credits
45 made available in a fiscal year pursuant to subsection a. of this
46 section through a competitive auction process or a publicly
47 advertised solicitation for offers and dedicate the proceeds from
48 such sale to provide grants and loans to qualifying supermarkets,

1 grocery stores, mid-sized food retailers, small food retailers, and
2 any other eligible entity. The amount of any grant or loan provided
3 pursuant to this subsection shall be in accordance with the need of
4 the supermarket, grocery store, mid-sized food retailer, small food
5 retailer, or any other eligible entity, as determined by the authority.
6 The authority shall sell tax credits pursuant to this section in the
7 manner determined by the authority; provided, however, the
8 authority shall not sell tax credits for less than 85 percent of the tax
9 credit amount. Any credit sold shall be valid in the privilege period
10 in which the sale is **completed** approved, and any unused portion
11 thereof may be carried forward into the next seven privilege periods
12 or until exhausted, whichever is earlier. Grants and loans made
13 available pursuant to this subsection shall be awarded to entities
14 that:

15 (a) operate a supermarket or grocery store that meets criteria
16 established by the authority, which criteria shall, at minimum,
17 include a commitment to accept benefits from federal nutrition
18 assistance programs, including, but not limited to, the Supplemental
19 Nutrition Assistance Program (SNAP) and the Special
20 Supplemental Nutrition Program for Women, Infants, and Children
21 (WIC), in a designated food desert community;

22 (b) own, lease, or sublease, and operate a mid-sized food retailer
23 or small food retailer that commits to selling nutritious foods,
24 including fresh fruits and vegetables, in a designated food desert
25 community; or

26 (c) at the discretion of the authority, support initiatives to
27 strengthen food security of residents in food desert communities.

28 (2) A supermarket, grocery store, mid-sized food retailer, small
29 food retailer, or other eligible entity shall submit an application to
30 the authority to receive a grant or loan pursuant to this subsection.
31 The application shall be submitted in the form and manner
32 prescribed by the authority and in accordance with criteria
33 established by the authority. An entity eligible for a grant or loan
34 under subparagraph (a) of paragraph (1) of this subsection shall not
35 be required to submit a separate application to the authority for the
36 grant or loan, provided that the entity has submitted an application
37 to the authority pursuant to subsection c. of this section.

38 (3) Prior to awarding a grant or loan to an applicant
39 supermarket, grocery store, mid-sized food retailer, small food
40 retailer, or other eligible entity pursuant to this subsection, the
41 authority shall confirm with the Department of Labor and
42 Workforce Development, the Department of Environmental
43 Protection, and the Department of the Treasury whether the
44 applicant is in substantial good standing with the respective
45 department, or has entered into an agreement with the respective
46 department that includes a practical corrective action plan for the
47 applicant. The applicant shall certify that any contractors or
48 subcontractors that perform work at the qualifying supermarket or

1 grocery store: (a) are registered as required by "The Public Works
2 Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et
3 seq.); (b) have not been debarred by the Department of Labor and
4 Workforce Development from engaging in or bidding on Public
5 Works Contracts in the State; and (c) possess a tax clearance
6 certificate issued by the Division of Taxation in the Department of
7 the Treasury. The authority may also contract with an independent
8 third party to perform a background check on the entity.

9

10 ¹~~[5.]~~ 6.¹ This act shall take effect immediately.