

SENATE, No. 3597

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED FEBRUARY 13, 2023

Sponsored by:

Senator ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Increases tax credits for investments made in emerging technology businesses under “New Jersey Angel Investor Tax Credit Act.”

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT increasing the amount of the tax credits provided for
2 investments made in emerging technology businesses and
3 amending P.L.1997, c.349 and P.L.2013, c.14.

4

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

7

8 1. Section 3 of P.L.1997, c.349 (C.54:10A-5.30) is amended to
9 read as follows:

10 3. a. (1) A taxpayer, upon approval of the taxpayer's
11 application therefor by the New Jersey Economic Development
12 Authority and in consultation with the director, shall be allowed a
13 credit against the tax imposed pursuant to section 5 of P.L.1945,
14 c.162 (C.54:10A-5), in an amount equal to **[20]** 30 percent of the
15 qualified investment made by the taxpayer in a New Jersey
16 emerging technology business, in a New Jersey emerging
17 technology business holding company that makes a verified transfer
18 of funds to a New Jersey emerging technology business, or in a
19 qualified venture fund; provided, however, a taxpayer may be
20 allowed a tax credit in an amount equal to **[25]** 35 percent of the
21 qualified investment if the taxpayer satisfies one of the
22 requirements set forth in paragraph (2) of this subsection. The value
23 of tax credits allowed to a taxpayer pursuant to this section shall not
24 exceed \$500,000 for the privilege period for each qualified
25 investment made by the taxpayer.

26 (2) Subject to the limits established in paragraph (1) of this
27 subsection, the New Jersey Economic Development Authority, in
28 consultation with the director, shall increase the amount of a tax
29 credit allowed pursuant to this section by five percent if the
30 taxpayer makes a qualified investment in a New Jersey emerging
31 technology business, or in a New Jersey emerging technology
32 business holding company that makes a verified transfer of funds to
33 a New Jersey emerging technology business, or in a qualified
34 venture fund, if the New Jersey emerging technology business is
35 either located in a qualified opportunity zone pursuant to 26 U.S.C.
36 § 1400Z-1, or a low-income community as defined in subparagraph
37 (e) of 26 U.S.C. § 45D or certified by the State as a minority
38 business or a women's business pursuant to P.L.1986, c.195
39 (C.52:27H-21.17 et seq.) and, in the case of a qualified venture
40 fund, if the qualified venture fund commits by contract to invest 50
41 percent of its funds in diverse entrepreneurs.

42 b. A credit shall not be allowed pursuant to section 1 of
43 P.L.1993, c.175 (C.54:10A-5.24), for expenses paid from funds for
44 which a credit is allowed, or which are includable in the calculation
45 of a credit allowed, under this section. Notwithstanding any other
46 provision of law, the order of priority in which the credit allowed

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.

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1 by this section and any other credits allowed by law may be taken
2 shall be as prescribed by the director.

3 c. Except as provided in subsection d. of this section, the
4 amount of credit otherwise allowable under this section which
5 cannot be applied for the privilege period against tax liability
6 otherwise due for that privilege period may either be carried over, if
7 necessary, to the 15 privilege periods following the privilege period
8 for which the credit was allowed or, at the election of the taxpayer,
9 be claimed as and treated as an overpayment for the purposes of
10 R.S.54:49-15, provided, however, that section 7 of P.L.1992, c.175
11 (C.54:49-15.1) shall not apply.

12 d. A taxpayer may not carry over any amount of credit allowed
13 under subsection a. of this section to a privilege period during
14 which a corporate acquisition with respect to which the taxpayer
15 was a target corporation occurred or during which the taxpayer was
16 a party to a merger or a consolidation, or to any subsequent
17 privilege period, if the credit was allowed for a privilege period
18 prior to the year of acquisition, merger or consolidation, except that
19 if in the case of a corporate merger or corporate consolidation the
20 taxpayer can demonstrate, through the submission of a copy of the
21 plan of merger or consolidation and such other evidence as may be
22 required by the director, the identity of the constituent corporation
23 which was the acquiring person, a credit allowed to the acquiring
24 person may be carried over by the taxpayer. As used in this
25 subsection, "acquiring person" means the constituent corporation
26 the stockholders of which own the largest proportion of the total
27 voting power in the surviving or consolidated corporation after the
28 merger or consolidation.

29 e. The Executive Director of the New Jersey Economic
30 Development Authority, in consultation with the director, shall
31 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
32 c.410 (C.52:14B-1 et seq.), rules and regulations that are necessary
33 to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-
34 5.28 through C.54:10A-5.30) and section 4 of P.L.2013, c.14
35 (C.54A:4-13), including, but not limited to: examples of and the
36 determination of qualified investments of which applicants shall
37 provide documentation with their tax credit application; the
38 promulgation of procedures and forms necessary to apply for a
39 credit; provisions for recapture in the event a taxpayer receives a
40 credit on the basis of its commitment to transfer cash to a qualified
41 venture fund and it does not fund its commitment; and provisions
42 for credit applicants to be charged an initial application fee and
43 ongoing service fees to cover the administrative costs related to the
44 credit.

45 The amount of credits approved by the Executive Director of the
46 New Jersey Economic Development Authority, and in consultation
47 with the director, pursuant to subsection a. of this section and
48 pursuant to section 4 of P.L.2013, c.14 (C.54A:4-13), shall not

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1 exceed a cumulative total of \$35,000,000 in any calendar year to
2 apply against the tax imposed pursuant to section 5 of P.L.1945,
3 c.162 (C.54:10A-5) and the tax imposed pursuant to the "New
4 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the
5 cumulative amount of credits allowed to taxpayers in a calendar
6 year exceeds the amount of credits available in that year, then
7 taxpayers who have first applied for and have not been allowed a
8 credit amount for that reason shall be allowed, in the order in which
9 they have submitted an application, the amount of the tax credit on
10 the first day of the next succeeding calendar year in which tax
11 credits under this section and section 4 of P.L.2013, c.14 (C.54A:4-
12 13) are not in excess of the amount of credits available.
13 (cf: P.L.2020, c.156, s.118)

14

15 2. Section 4 of P.L.2013, c.14 (C.54A:4-13) is amended to read
16 as follows:

17 4. a. (1) A taxpayer, upon approval of the taxpayer's
18 application therefor by the New Jersey Economic Development
19 Authority, and in consultation with the director, shall be allowed a
20 credit against the tax otherwise due for the taxable year under the
21 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an
22 amount equal to **[20]** 30 percent of the qualified investment made
23 by the taxpayer in a New Jersey emerging technology business, in a
24 New Jersey emerging technology business holding company that
25 makes a verified transfer of funds to a New Jersey emerging
26 technology business, or in a qualified venture fund; provided,
27 however, a taxpayer may be allowed a tax credit in an amount equal
28 to **[25]** 35 percent of the qualified investment if the taxpayer
29 satisfies one of the requirements set forth in paragraph (2) of this
30 subsection. The value of tax credits allowed to a taxpayer pursuant
31 to this section shall not exceed \$500,000 for the taxable year for
32 each qualified investment made by the taxpayer.

33 (2) Subject to the limits established in paragraph (1) of this
34 subsection, the New Jersey Economic Development Authority, in
35 consultation with the director, shall increase the amount of a tax
36 credit allowed pursuant to this section by five percent if the
37 taxpayer makes a qualified investment in a New Jersey emerging
38 technology business, in a New Jersey emerging technology business
39 holding company that makes a verified transfer of funds to a New
40 Jersey emerging technology business, or in a qualified venture fund,
41 if the New Jersey emerging technology business is either located in
42 a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1, or a
43 low-income community as defined in subparagraph (e) of 26 U.S.C.
44 § 45D; or certified by the State as a minority business or a women's
45 business pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.) and,
46 in the case of a qualified venture fund, if the qualified venture fund
47 commits by contract to invest 50 percent of its funds in diverse
48 entrepreneurs.

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1 b. The amount of the credit allowed pursuant to this section
2 shall be applied against the tax otherwise due under the "New
3 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., after all other
4 credits and payments. If the credit exceeds the amount of tax
5 liability otherwise due, that amount of excess shall be an
6 overpayment for the purposes of N.J.S.54A:9-7, provided, however,
7 that subsection (f) of N.J.S.54A:9-7 shall not apply.

8 c. (1) A partnership shall not be allowed a credit under this
9 section directly, but the amount of credit of a taxpayer in respect of
10 a distributive share of partnership income under the "New Jersey
11 Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined
12 by allocating to the taxpayer that proportion of the credit acquired
13 by the partnership that is equal to the taxpayer's share, whether or
14 not distributed, of the total distributive income or gain of the
15 partnership for its taxable year ending within or with the taxpayer's
16 taxable year. For the purposes of subsection b. of this section, the
17 amount of tax liability that would be otherwise due of a taxpayer is
18 that proportion of the total liability of the taxpayer that the
19 taxpayer's share of the partnership income or gain included in gross
20 income bears to the total gross income of the taxpayer.

21 (2) The credit for a corporation that has made a valid election as
22 a New Jersey S corporation pursuant to section 3 of P.L.1993, c.173
23 (C.54:10A-5.22) may be applied by the shareholders of the S
24 corporation against the tax liability otherwise due under the "New
25 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., provided that
26 the amount of credit that may be used by a shareholder of the S
27 corporation shall be determined by allocating to each shareholder of
28 the S corporation that proportion of the tax credit of the S
29 corporation that is equal to the shareholder's proportionate share of
30 the S corporation, whether or not distributed, of the total
31 distributive income or gain of the S corporation for its tax period
32 ending with or within the shareholder's tax period, and the credit
33 may be applied by the shareholders against the tax liability
34 otherwise due pursuant to the "New Jersey Gross Income Tax Act,"
35 N.J.S.54A:1-1 et seq.

36 d. The Executive Director of the New Jersey Economic
37 Development Authority, in consultation with the director, shall
38 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
39 c.410 (C.52:14B-1 et seq.), rules and regulations that are necessary
40 to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-
41 5.28 through C.54:10A-5.30) and this section, including, but not
42 limited to: examples of and the determination of qualified
43 investments of which applicants shall provide documentation with
44 their tax credit application; the promulgation of procedures and
45 forms necessary to apply for a credit; provisions for recapture in the
46 event a taxpayer receives a credit on the basis of its commitment to
47 transfer cash to a qualified venture fund and it does not fund its
48 commitment; and provisions for credit applicants to be charged an

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1 initial application fee and ongoing service fees to cover the
2 administrative costs related to the credit.

3 The amount of credits approved by the Executive Director of the
4 New Jersey Economic Development Authority and the Director of
5 the Division of Taxation in the Department of the Treasury,
6 pursuant to subsection a. of this section and pursuant to section 3 of
7 P.L.1997, c.349 (C.54:10A-5.30), shall not exceed a cumulative
8 total of \$35,000,000 in any calendar year to apply against the tax
9 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and
10 the tax imposed pursuant to the "New Jersey Gross Income Tax
11 Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits
12 allowed to taxpayers in a calendar year exceeds the amount of
13 credits available in that year, then taxpayers who have first applied
14 for and have not been allowed a credit amount for that reason shall
15 be allowed, in the order in which they have submitted an
16 application, the amount of the tax credit on the first day of the next
17 succeeding calendar year in which tax credits under this section and
18 section 3 of P.L.1997, c.349 (C.54:10A-5.30) are not in excess of
19 the amount of credits available.

20 e. As used in this section:

21 "Advanced computing" means a technology used in the
22 designing and developing of computing hardware and software,
23 including innovations in designing the full spectrum of hardware
24 from hand-held calculators to super computers, and peripheral
25 equipment.

26 "Advanced materials" means materials with engineered
27 properties created through the development of specialized
28 processing and synthesis technology, including ceramics, high
29 value-added metals, electronic materials, composites, polymers, and
30 biomaterials.

31 "Biotechnology" means the continually expanding body of
32 fundamental knowledge about the functioning of biological systems
33 from the macro level to the molecular and sub-atomic levels, as
34 well as novel products, services, technologies, and sub-technologies
35 developed as a result of insights gained from research advances
36 which add to that body of fundamental knowledge.

37 "Carbon footprint reduction technology" means a technology
38 using equipment for the commercial, institutional, and industrial
39 sectors that: increases energy efficiency; develops and delivers
40 renewable or non-carbon-emitting energy technologies; develops
41 innovative carbon emissions abatement with significant carbon
42 emissions reduction potential; or promotes measurable electricity
43 end-use energy efficiency.

44 "Control" with respect to a corporation, means ownership,
45 directly or indirectly, of stock possessing 80 percent or more of the
46 total combined voting power of all classes of the stock of the
47 corporation entitled to vote; and "control," with respect to a trust,
48 means ownership, directly or indirectly, of 80 percent or more of

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1 the beneficial interest in the principal or income of the trust. The
2 ownership of stock in a corporation, of a capital or profits interest in
3 a partnership or association or of a beneficial interest in a trust shall
4 be determined in accordance with the rules for constructive
5 ownership of stock provided in subsection (c) of section 267 of the
6 federal Internal Revenue Code of 1986 (26 U.S.C. s.267), other than
7 paragraph (3) of subsection (c) of that section.

8 "Controlled group" means one or more chains of corporations
9 connected through stock ownership with a common parent
10 corporation if stock possessing at least 80 percent of the voting
11 power of all classes of stock of each of the corporations is owned
12 directly or indirectly by one or more of the corporations and the
13 common parent owns directly stock possessing at least 80 percent of
14 the voting power of all classes of stock of at least one of the other
15 corporations.

16 "Director" means the Director of the Division of Taxation in the
17 Department of the Treasury.

18 "Diverse entrepreneur" means a New Jersey based business that
19 meets the criteria for a minority business or female business set
20 forth in section 3 of P.L.1983, c.482 (C.52:32-19).

21 "Electronic device technology" means a technology involving
22 microelectronics, semiconductors, electronic equipment and
23 instrumentation, radio frequency, microwave and millimeter
24 electronics, and optical and optic-electrical devices, or data and
25 digital communications and imaging devices.

26 "Information technology" means software publishing, motion
27 picture and video production, television production and post-
28 production services, telecommunications, data processing, hosting
29 and related services, custom computer programming services,
30 computer system design, computer facilities management services,
31 other computer related services, and computer training.

32 "Life sciences" means the production of medical equipment,
33 ophthalmic goods, medical or dental instruments, diagnostic
34 substances, biopharmaceutical products, or physical and biological
35 research.

36 "Medical device technology" means a technology involving any
37 medical equipment or product (other than a pharmaceutical product)
38 that has therapeutic value, diagnostic value, or both, and is
39 regulated by the federal Food and Drug Administration.

40 "Mobile communications technology" means a technology
41 involving the functionality and reliability of the transmission of
42 voice and multimedia data using a communication infrastructure via
43 a computer or a mobile device, that shall include, but not be limited
44 to, smartphones, electronic books and tablets, digital audio players,
45 motor vehicle electronics, home entertainment systems, and other
46 wireless appliances, without having connected to any physical or
47 fixed link.

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1 "New Jersey based business" means a company with fewer than
2 225 employees, of whom at least 75 percent are filling a position in
3 New Jersey, that is doing business, employing or owning capital or
4 property, or maintaining an office in this State.

5 "New Jersey emerging technology business" means a company
6 with fewer than 225 employees, of whom at least 75 percent are
7 filling a position in New Jersey, that is doing business, employing
8 or owning capital or property, or maintaining an office in this State
9 and: has qualified research expenses paid or incurred for research
10 conducted in this State; conducts pilot scale manufacturing in this
11 State; or conducts technology commercialization in this State in the
12 fields of advanced computing, advanced materials, biotechnology,
13 carbon footprint reduction technology, electronic device
14 technology, information technology, life sciences, medical device
15 technology, mobile communications technology, or renewable
16 energy technology.

17 "New Jersey emerging technology business holding company"
18 means any corporation, association, firm, partnership, trust or other
19 form of business organization, but not a natural person, which
20 directly or indirectly, owns, has the power or right to control, or has
21 the power to vote, a controlling share of the outstanding voting
22 securities of a corporation or other form of a New Jersey emerging
23 technology business.

24 "Partnership" means a syndicate, group, pool, joint venture, or
25 other unincorporated organization through or by means of which
26 any business, financial operation, or venture is carried on, and
27 which is not a trust or estate, a corporation, or a sole proprietorship.

28 "Pilot scale manufacturing" means design, construction, and
29 testing of preproduction prototypes and models in the fields of
30 advanced computing, advanced materials, biotechnology, carbon
31 footprint reduction technology electronic device technology,
32 information technology, life sciences, medical device technology,
33 mobile communications technology, or renewable energy
34 technology, other than for commercial sale, excluding sales of
35 prototypes or sales for market testing if the total gross receipts, as
36 calculated in the manner provided in section 6 of P.L.1945, c.162
37 (C.54:10A-6), from the sales of the product, service, or process do
38 not exceed \$1,000,000.

39 "Qualified investment" means the non-refundable transfer of
40 cash to a New Jersey emerging technology business or to a New
41 Jersey emerging technology business holding company by a
42 taxpayer that is not a related person of the New Jersey emerging
43 technology business or the New Jersey emerging technology
44 business holding company, the transfer of which is in connection
45 with either: a transaction between or among the taxpayer and the
46 New Jersey emerging technology business or the New Jersey
47 emerging technology holding company or both in exchange for
48 stock, interests in partnerships or joint ventures, licenses (exclusive

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1 or non-exclusive), rights to use technology, marketing rights,
2 warrants, options, or any items similar to those included herein,
3 including, but not limited to, options or rights to acquire any of the
4 items included herein; or a purchase, production, or research
5 agreement between or among the taxpayer and the New Jersey
6 emerging technology business or the New Jersey emerging
7 technology holding company or both. "Qualified investment" also
8 means the non-refundable transfer of cash or irrevocable contractual
9 commitment to transfer cash to a qualified venture fund.

10 "Qualified research expenses" means qualified research
11 expenses, as defined in section 41 of the federal Internal Revenue
12 Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the
13 fields of advanced computing, advanced materials, biotechnology,
14 electronic device technology, information technology, life sciences,
15 medical device technology, mobile communications technology, or
16 renewable energy technology.

17 "Qualified venture fund" means a venture fund required by
18 contract to invest a minimum of 50 percent of its funds in New
19 Jersey based businesses that the authority, in its sole discretion,
20 based upon the qualified venture fund's investment history, if any,
21 its private placement memorandum and other relevant information,
22 has determined has the capacity to make the minimum investment.

23 "Related person" means:

24 a corporation, partnership, association or trust controlled by the
25 taxpayer;

26 an individual, corporation, partnership, association or trust that is
27 in the control of the taxpayer;

28 a corporation, partnership, association or trust controlled by an
29 individual, corporation, partnership, association or trust that is in
30 the control of the taxpayer; or

31 a member of the same controlled group as the taxpayer.

32 "Renewable energy technology" means a technology involving
33 the generation of electricity from solar energy; wind energy; wave
34 or tidal action; geothermal energy; the combustion of gas from the
35 anaerobic digestion of food waste and sewage sludge at a biomass
36 generating facility; the combustion of methane gas captured from a
37 landfill; and a fuel cell powered by methanol, ethanol, landfill gas,
38 digester gas, biomass gas, or other renewable fuel but not powered
39 by a fossil fuel.

40 "Venture fund" means a partnership, corporation, trust, or limited
41 liability company that invests cash in a business during the early or
42 expansion stages of a business in exchange for an equity stake in
43 the business in, which the investment is made. Venture firm may
44 include a venture capital fund, a family office fund, or a corporate
45 investor fund, provided that a professional manager administers the
46 venture firm.

47 "Verified transfer of funds" means a non-refundable transfer of
48 funds equal to 100 percent of the taxpayer's qualified investment in

1 the New Jersey emerging technology business holding company to a
2 New Jersey emerging technology business by the New Jersey
3 emerging technology business holding company that is
4 accompanied by documentation, as required by the New Jersey
5 Economic Development Authority, which provides proof of a cash
6 transaction originating with a taxpayer and concluding with a New
7 Jersey emerging technology business, provided that the transactions
8 from origin to destination occur within the same taxable year.

9 The definitions of "advanced computing," "advanced materials,"
10 "biotechnology," "carbon footprint reduction technology,"
11 "electronic device technology," "information technology," "life
12 sciences," "medical device technology," "mobile communications
13 technology," "New Jersey emerging technology business," "pilot
14 scale manufacturing," and "renewable energy technology" may be
15 modified by regulation to conform to definitions in other programs
16 administered by the authority.

17 (cf: P.L.2020, c.156, s.119)

18

19 3. This act shall take effect immediately and shall apply to
20 taxable years and privilege periods beginning on or after January 1
21 next following the date of enactment.

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23

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STATEMENT

25

26 This bill increases the amount of the tax credits provided under
27 the "New Jersey Angel Investor Tax Credit Act" for qualified
28 investments made in New Jersey emerging technology businesses.
29 Under current law, taxpayers are allowed credits against the gross
30 income tax and corporation business tax equal to 20 percent of a
31 qualified investment made by the taxpayer in a New Jersey
32 emerging technology business, in a New Jersey emerging
33 technology business holding company that makes a verified transfer
34 of funds to a New Jersey emerging technology business, or in a
35 qualified venture fund. Taxpayers can qualify for an additional five
36 percent credit provided that the qualified investment is made in an
37 emerging technology business that is located in an opportunity zone
38 or a low-income community, is a minority or women's business, or,
39 in the case of a qualified venture fund, if the qualified venture fund
40 commits by contract to invest 50 percent of its funds in diverse
41 entrepreneurs.

42 The bill would increase the amount of the tax credit provided to
43 taxpayers that make qualified investments from 20 to 30 percent
44 while increasing the total amount of the tax credit provided for
45 taxpayers that qualify for the additional five percent credit from 25
46 to 35 percent.