

[First Reprint]

SENATE, No. 219

STATE OF NEW JERSEY
220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Provides that fusion energy and fusion technology companies are eligible to receive benefits under certain economic incentive programs.

CURRENT VERSION OF TEXT

As reported by the Senate Economic Growth Committee on June 13, 2022, with amendments.



(Sponsorship Updated As Of: 6/16/2022)

1 AN ACT related to the applicant eligibility under certain economic
2 incentive programs to specifically include fusion energy and
3 fusion technology companies, amending P.L.1999, c.140 and
4 P.L.1997, c.349, and supplementing P.L.1974, c.80 (C.34:1B-1
5 et seq.).
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 1. (New section) a. Notwithstanding any provision of law to
11 the contrary, the New Jersey Economic Development Authority,
12 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
13 (C.52:14B-1 et seq.), shall, in consultation with the New Jersey
14 Commission on Science, Innovation and Technology and the Board
15 of Public Utilities, adopt rules and regulations for the
16 administration of economic incentive programs to provide that any
17 reference or stipulation under an economic incentive program
18 related to the development or production of renewable energy, the
19 development of emerging technologies, or to the expansion of
20 targeted industries in this State connected to the award of a benefit
21 or incentive to a company under that program is deemed to include
22 the development or production of fusion energy or fusion
23 technology in this State. The rules and regulations adopted
24 pursuant to this subsection shall establish eligibility requirements
25 applicable to the different economic incentive programs and
26 establish uniform methodologies for determining qualifications of
27 an individual applicant that is a fusion energy or fusion technology
28 company under this section to ensure that benefits and incentives
29 are properly earned pursuant to the individual economic incentive
30 program and incentive agreement.

31 ¹Nothing contained in P.L. , c. (C.) (pending before the
32 Legislature as this bill) shall be construed to deem fusion energy or
33 fusion technology eligible for program incentives under the New
34 Jersey Clean Energy Program or other program incentives funded
35 through the societal benefits charge of the "Universal Service Fund"
36 established pursuant to section 12 of P.L.1999, c.23 (C.48:3-60).¹

37 b. As used in this section:

38 "Applicant" means a person applying to the authority to receive a
39 benefit or incentive pursuant to an economic incentive program.

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

42 "Benefit or incentive" means financial incentive, awarded by the
43 authority to a person or entity under an economic incentive program
44 administered by the authority for the purpose of stimulating
45 economic development or redevelopment in New Jersey, including

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:

¹Senate SEG committee amendments adopted June 13, 2022.

1 but not limited to a bond, grant, loan, loan guarantee, matching
2 fund, or tax credit or other tax expenditure.

3 "Economic incentive program" means any program administered
4 by the authority that offers a benefit or incentive to a person in
5 order to stimulate economic development of new or existing
6 renewable energy or technology business in New Jersey.

7 "Fusion energy" means a form of power generation that
8 generates electricity either directly or by using heat from nuclear
9 fusion reactions.

10 "Fusion energy or fusion technology company" means a
11 corporation or other entity that has its headquarters or base of
12 operations in this State; that owns, has filed for, or has a valid
13 license to use protected, proprietary intellectual property; and that
14 employs some combination of the following: highly educated or
15 trained managers and workers, or both, employed in this State who
16 use sophisticated scientific research service or production
17 equipment, processes, or knowledge to discover, develop, test,
18 transfer, or manufacture a product or service related to fusion
19 energy or fusion technology.

20 "Fusion technology" means a technology that is developed to
21 permit the production of fusion energy or a technology developed to
22 create nuclear fusion reactions.

23 "Incentive agreement" means an agreement entered into by the
24 authority and a person or entity to establish rights and duties of both
25 parties through which the person or entity is entitled to receive a
26 benefit or incentive under an economic incentive program.

27 "New Jersey Commission on Science, Innovation and
28 Technology" means the New Jersey Commission on Science,
29 Innovation and Technology established pursuant to section 3 of
30 P.L.1984. c.102 (C.52:9X-3).

31

32 2. Section 1 of P.L.1999, c.140 (C. 34:1B-7.42b) is amended to
33 read as follows:

34 1. As used in P.L.1997, c.334 (C.34:1B-7.42a et al.):

35 "Authority" means the New Jersey Economic Development
36 Authority established pursuant to section 4 of P.L.1974, c.80
37 (C.34:1B-4).

38 "Biotechnology" means the continually expanding body of
39 fundamental knowledge about the functioning of biological systems
40 from the macro level to the molecular and sub-atomic levels, as
41 well as novel products, services, technologies and sub-technologies
42 developed as a result of insights gained from research advances that
43 add to that body of fundamental knowledge.

44 "Biotechnology company" means an emerging corporation that
45 has its headquarters or base of operations in this State; that owns,
46 has filed for, or has a valid license to use protected, proprietary
47 intellectual property; and that is engaged in the research,
48 development, production, or provision of biotechnology for the

1 purpose of developing or providing products or processes for
2 specific commercial or public purposes, including but not limited
3 to, medical, pharmaceutical, nutritional, and other health-related
4 purposes, agricultural purposes, and environmental purposes.

5 "Full-time employee" means a person employed by a new or
6 expanding emerging technology or biotechnology company for
7 consideration for at least 35 hours a week, or who renders any other
8 standard of service generally accepted by custom or practice as full-
9 time employment and whose wages are subject to withholding as
10 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-
11 1 et seq., or who is a partner of a new or expanding emerging
12 technology or biotechnology company who works for the
13 partnership for at least 35 hours a week, or who renders any other
14 standard of service generally accepted by custom or practice as full-
15 time employment, and whose distributive share of income, gain,
16 loss, or deduction, or whose guaranteed payments, or any
17 combination thereof, is subject to the payment of estimated taxes, as
18 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-
19 1 et seq. To qualify as a "full-time employee," an employee shall
20 also receive from the new or expanding emerging technology or
21 biotechnology company health benefits under a group health plan as
22 defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health
23 benefits plan as defined under section 1 of P.L.1992, c.162
24 (C.17B:27A-17), or a policy or contract of health insurance
25 covering more than one person issued pursuant to Article 2 of
26 chapter 27 of Title 17B of the New Jersey Statutes. "Full-time
27 employee" shall not include any person who works as an
28 independent contractor or on a consulting basis for the new or
29 expanding emerging technology or biotechnology company.

30 "Fusion energy" means a form of power generation that
31 generates electricity either directly or by using heat from nuclear
32 fusion reactions.

33 "Fusion technology" means a technology that is developed to
34 permit the production of fusion energy or a technology that involves
35 the creation of nuclear fusion reactions.

36 "New or expanding" means a technology or biotechnology
37 company that (1) on June 30 of the year in which the company files
38 an application for surrender of unused but otherwise allowable tax
39 benefits under P.L.1997, c.334 (C.34:1B-7.42a et al.) and on the
40 date of the exchange of the corporation business tax benefit
41 certificate, has fewer than 225 employees in the United States of
42 America; (2) on June 30 of the year in which the company files
43 such an application, has at least one full-time employee working in
44 this State if the company has been incorporated for less than three
45 years, has at least five full-time employees working in this State if
46 the company has been incorporated for more than three years but
47 less than five years, and has at least 10 full-time employees working
48 in this State if the company has been incorporated for more than

1 five years; and (3) on the date of the exchange of the corporation
2 business tax benefit certificate, the company has the requisite
3 number of full-time employees in New Jersey that were required on
4 June 30 as set forth in part (2) of this definition.

5 "Technology company" means an emerging corporation that has
6 its headquarters or base of operations in this State; that owns, has
7 filed for, or has a valid license to use protected, proprietary
8 intellectual property; and that employs some combination of the
9 following: highly educated or trained managers and workers, or
10 both, employed in this State who use sophisticated scientific
11 research service or production equipment, processes or knowledge
12 to discover, develop, test, transfer or manufacture a product or
13 service, including, but not limited to, fusion energy and fusion
14 technology products and services.

15 (cf: P.L.2010, c.10, s.2)

16

17 3. Section 2 of P.L.1997, c.349 (C.54:10A-5.29) is amended to
18 read as follows:

19 2. As used in sections 1 through 3 of P.L.1997, c.349
20 (C.54:10A-5.28 through C.54:10A-5.30):

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

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

23 "Fusion energy" means a form of power generation that
24 generates electricity either directly or by using heat from nuclear
25 fusion reactions.

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.

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

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

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

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

35 "Qualified investment" means the non-refundable transfer of
36 cash to a New Jersey emerging technology business or to a New
37 Jersey emerging technology business holding company by a
38 taxpayer that is not a related person of the New Jersey emerging
39 technology business or the New Jersey emerging technology
40 business holding company, the transfer of which is in connection
41 with either: a transaction between or among the taxpayer and the
42 New Jersey emerging technology business or the New Jersey
43 emerging technology holding company or both in exchange for
44 stock, interests in partnerships or joint ventures, licenses (exclusive
45 or non-exclusive), rights to use technology, marketing rights,
46 warrants, options, or any items similar to those included herein,
47 including, but not limited to, options or rights to acquire any of the
48 items included herein; or a purchase, production, or research

1 agreement between or among the taxpayer and the New Jersey
2 emerging technology business or the New Jersey emerging
3 technology holding company or both.

4 "Qualified research expenses" means qualified research
5 expenses, as defined in section 41 of the federal Internal Revenue
6 Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the
7 fields of advanced computing, advanced materials, biotechnology,
8 carbon footprint reduction technology, electronic device
9 technology, information technology, life sciences, medical device
10 technology, mobile communications technology, or renewable
11 energy technology.

12 "Related person" means:

13 a corporation, partnership, association or trust controlled by the
14 taxpayer;

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

17 a corporation, partnership, association or trust controlled by an
18 individual, corporation, partnership, association or trust that is in
19 the control of the taxpayer; or

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

21 "Renewable energy technology" means a technology involving
22 the generation of electricity from solar energy; wind energy; wave
23 or tidal action; geothermal energy; the combustion of gas from the
24 anaerobic digestion of food waste and sewage sludge at a biomass
25 generating facility; the combustion of methane gas captured from a
26 landfill; and a fuel cell powered by methanol, ethanol, landfill gas,
27 digester gas, biomass gas, fusion energy, or other renewable fuel
28 but not powered by a fossil fuel.

29 "Tax year" means the fiscal or calendar accounting period of a
30 taxpayer.

31 "Verified transfer of funds" means a non-refundable transfer of
32 funds equal to 100 percent of the taxpayer's qualified investment in
33 the New Jersey emerging technology business holding company to a
34 New Jersey emerging technology business by the New Jersey
35 emerging technology business holding company that is
36 accompanied by documentation, as required by the New Jersey
37 Economic Development Authority, which provides proof of a cash
38 transaction originating with a taxpayer and concluding with a New
39 Jersey emerging technology business, provided that the transactions
40 from origin to destination occur within the same tax year.

41 (cf: P.L.2017, c.40, s.1)

42

43 4. This act shall take effect immediately.