SENATE COMMITTEE SUBSTITUTE FOR

SENATE, Nos. 1898 and 1899



STATE OF NEW JERSEY

218th LEGISLATURE

ADOPTED FEBRUARY 22, 2018

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Senator A.R.Bucco

SYNOPSIS

Provides assistance to business accelerators and incubators and startup businesses located within those business accelerators and incubators.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Economic Growth Committee.



**An Act** concerning assistance to business accelerators and incubators and to startup businesses located within those business accelerators and incubators, supplementing P.L.1974, c.80 (C.34:1B-1 et seq.), Title 54 of the Revised Statutes, Title 54A of the New Jersey Statutes, and amending P.L.1997, c.349.

**Be It Enacted** *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) As used in P.L. , c. (C. ) (pending before the Legislature as this bill):

“Accelerator business” means a corporation, partnership, limited liability company, or sole proprietorship, located within the confines of a business accelerator, that is supported by private sources of capital, including, but not limited to, private equity, angel investment, or venture capital that:

a. is in the earliest formative stage of development;

b. is engaged in the design, development, and introduction of new biotechnology, information technology, logistics technology, re-manufacturing, advanced materials, processing engineering or electronic device technology products, or innovative manufacturing processes; and

c. meets any other requirements for an accelerator business as the authority shall develop as determined by the authority.

“Advanced computing,” “advanced materials,” “information technology,” and “life sciences” shall have the same meaning as provided in section 2 of P.L.1997, c.349 (C.54:10A-5.29).

“Advanced technology center” means programs or departments at the State’s public and private institutions of higher education which are provided financial support from those institutions of higher education to promote innovative technology research including those established pursuant to law, including, but not limited to, P.L.1985, c.102 (C.52:9X-1 et seq.), P.L.1985, c.103 (C.18A:64J-1 et seq.), P.L.1985, c.104 (C.18A:64J-8 et seq.), P.L.1985, c.105 (C.18A:64J-15 et seq.), and P.L.1985, c.106 (C.18A:64J-22 et seq.).

“Angel investment” means the non-refundable transfer of cash to an incubator business by an established business that is not a related person of the incubator business, the transfer of which is in connection with either:

a. a transaction in exchange for stock, interests in partnerships or joint ventures, exclusive or non-exclusive licenses, rights to use technology, marketing rights, warrants, options, or any items similar to those included herein, including but not limited to options or rights to acquire any of the items included herein; or

b. a purchase, production, or research agreement.

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

“Big data” shall have the same meaning as provided in section 1 of P.L.2014, c.33 (C.52:17C-3.4).

“Biotechnology,” “environmental technology,” “electronic device technology,” and “medical device technology,” shall have the same meaning as provided in section 2 of P.L.1996, c.26 (C.34:1B-125).

“Business accelerator” means a business development facility that is located within an urban transit hub or within one mile of a campus of a research institution that provides low-cost space and technical assistance, for short-term occupancy, to an accelerator business for a term of not more than six months. A “business accelerator” may include, but shall not be limited to, an advanced technology center or a technology extension service.

“Business incubator” means a business development facility that is located within an urban transit hub or within one mile of a campus of a research institution that provides low-cost space and technical assistance, for short-term occupancy, to an incubator business. A “business incubator” may include, but shall not be limited to, an advanced technology center or a technology extension service.

“Development program” means the “Startup Businesses in Business Incubators Development Program” established pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill).

“Eligible incubator business student hire” means an individual employed by the taxpayer for consideration whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and who is enrolled full-time in a science or technology business-related course of study at a research institution or has successfully completed a science or technology business-related course of study at a research institution not more than 360 days prior to the date the individual is employed by the taxpayer.

“Grant program” means the means the “Business Accelerator and Business Incubator Network Grant Program” established pursuant to section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill).

“Incubator business” means a corporation, partnership, limited liability company, or sole proprietorship, located within the confines of a business incubator, that is supported by private sources of capital, including, but not limited to, private equity, angel investment, or venture capital that:

a. is in a formative stage of development or has transferred directly from a business accelerator;

b. is engaged in the design, development, and introduction of new biotechnology, information technology, logistics technology, re-manufacturing, advanced materials, processing engineering or electronic device technology products, or innovative manufacturing processes; and

c. meets any other requirements for an incubator business as the authority shall develop as determined by the authority.

"New Jersey emerging technology business" shall have the same meaning as provided in section 2 of P.L.1997, c.349 (C.54:10A-5.29).

“Research institution” means an institution of higher education, as that term is defined in section 2 of P.L.1977, c.123 (C:18A:68-11.2), a research hospital, or any combination thereof.

“Secretary” means the Secretary of Higher Education appointed pursuant to section 2 of P.L.2009, c.208 (C.18A:3B-47).

“Support services” means the provision of publicly or privately-supported, low-cost, short-term occupancy, rental space and technology extension services wherein financial and other types of business or technical assistance is provided to an accelerator business or incubator business by a business accelerator or incubator.

“Technology extension service” means a program to accelerate the application and transfer of technological innovation by the research institutions to an accelerator business or incubator business, specifically to work with the State's accelerator businesses or incubator businesses to adapt these innovations to the requirements of individual business operations.

"Urban transit hub" shall have the same meaning as provided in section 2 of P.L.2007, c.346 (C.34:1B-208).

2. (New section) a. The authority, in consultation with the Secretary of Higher Education, shall establish and administer the “Startup Businesses in Business Incubators Development Program” for the purpose of providing financial assistance and support services, directly and through public-private partnerships with business accelerators and business incubators, to:

(1) an accelerator business located within a business accelerator that provides support services, mentoring, and physical space to the accelerator business; or

(2) an incubator business located within a business incubator that provides support services, guidance, physical space, access to capital, and collaborative programming with a research institution, including collaborations to accommodate eligible incubator business student hires, to the incubator business.

b. The authority shall provide financial assistance to a business accelerator or a business incubator in an amount that matches 20 percent of the amount of financial assistance and support services provided by a research institution, up to a total of $200,000, which may be applied to any aspect of an accelerator business or an incubator business operating within the business accelerator or business incubator.

c. In order to be eligible for financial assistance from the authority, in accordance with subsection b. of this section, a business accelerator or a business incubator, at the time of jointly submitting an application for development program eligibility, shall provide proof that it provides business development facilities and business development assistance to an accelerator business or an incubator business operating in one of the following fields:

(1) clean energy or environmental technology;

(2) life sciences, biotechnology, or medical device technology;

(3) advanced materials, engineering, or manufacturing;

(4) supply chain, transportation, or logistics;

(5) big data, advanced computing, or digital technology;

(6) defense or homeland security; or

(7) food and agriculture.

d. (1) The authority and the secretary shall, as they deem appropriate, promote and facilitate public-private partnerships between accelerator and incubator businesses, business accelerators and incubators, and research institutions.

(2) The authority and the secretary shall adopt rules and regulations to promote and facilitate public-private partnerships and to establish the parameters of public-private partnership agreements necessary for an accelerator business or an incubator business to qualify for tax credits pursuant to sections 7 or 8 of P.L. , c. (C. ) (pending before the Legislature as this bill).

(3) The rules and regulations shall include, but not be limited to, the following elements of public-private partnership agreements:

(a) requirements and guidelines for use of the expertise and research capabilities of research institutions by an accelerator business or an incubator business;

(b) requirements and guidelines for licensing rights authorizing a research institution to use research and technology produced by an accelerator business or an incubator business under a public-private partnership agreement;

(c) requirements and guidelines for incubator business employment opportunities for students enrolled in science and technology business programs at research institutions and eligible incubator business student hires; and

(d) requirements and guidelines for incubator business internships for students enrolled in science and technology business programs at research institutions and eligible incubator business student hires.

e. An accelerator business or an incubator business shall not qualify for tax credits pursuant to sections 7 or 8 of P.L. , c. (C. ) (pending before the Legislature as this bill) unless the agreement complies with the requirements and guidelines of paragraph (3) of subsection d. of this section.

3. (New section) a. An accelerator business or an incubator business seeking to participate in the development program shall, jointly with a business accelerator or a business incubator, submit an application in a form and manner as the authority shall require. The application shall include information the authority determines is necessary to administer the development program. An accelerator business or an incubator business seeking to participate in the development program shall, jointly with the hosting business accelerator or business incubator, submit to the authority documentation stating that participation in the development program will be a contributing factor towards the financial success of the accelerator business or incubator business.

b. The authority shall review and may approve an application for the development program. The authority shall approve an application for development program eligibility pursuant to an agreement with an accelerator business or an incubator business and the business accelerator or business incubator hosting the accelerator business or incubator business subject to the submission of proof by an approved development program applicant of the expenditures contributing to the success of an accelerator business or incubator business assisted by the business accelerator or incubator. An applicant who fails to comply with an agreement, as a condition of receiving financial assistance, shall repay any financial assistance received and, if so determined by the authority, shall pay a penalty not in excess of 10 percent of the amount of financial assistance.

4. (New section) a. The authority shall establish and maintain the “Startup Businesses in Business Incubators Development Program” established pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) with monies to be used by the authority for the purposes specified in P.L. , c. (C. ) (pending before the Legislature as this bill). Monies to be utilized by the development program shall include, but not be limited to:

(1) monies as may be available to the authority from other business development programs administered by the authority or other State agencies or authorities, and which the authority determines to be necessary in light of the volume of applications from accelerator businesses and incubator businesses for eligibility for the development program as necessary to implement the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill); and

(2) other monies as may be made available to the authority from public or private sources.

b. Monies in the development program which are not allocated for current responsibilities of the development program may be invested by the authority in any direct obligations as to which principal and interest are guaranteed by the United States of America or any other obligation deemed appropriate by the authority.

5. (New section) a. The authority shall establish and administer the “Business Accelerator and Business Incubator Network Grant Program” for the purpose of awarding grants to business accelerators or business incubators, based upon a competitive application and evaluation process.

b. In addition to the financial assistance provided pursuant to subsection b. of section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill), the authority shall annually, commencing with the calendar year next beginning after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), and for the six subsequent calendar years provide 10 business accelerator and business incubator network grants, equaling $100,000 each, to business accelerators or business incubators, which may be applied to:

(1) any aspect of the business accelerator or business incubator that provides support to incubator businesses in the business accelerator or business incubator as determined by the authority; or

(2) any aspect of an accelerator business or incubator business operating within the business accelerator or business incubator.

c. In order to be eligible for a grant, a business accelerator or business incubator at the time of application for program eligibility, must qualify to receive financial assistance provided pursuant to section subsection b. of section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill)

d. A business accelerator or business incubator seeking to participate in the grant program shall submit an application in a form and manner as the authority shall require. The application shall include information that the authority determines to be necessary to evaluate applications and administer the grant program.

e. The authority shall annually review and evaluate applications for the grant program, and make award decisions upon evaluating the:

(1) strength of a business accelerator’s or business incubator’s partnerships with, and ability to foster, innovative accelerator businesses or incubator businesses;

(2) strength of a business accelerator’s or business incubator’s partnerships with a research institution;

(3) comprehensiveness of the a business accelerator’s or business incubator’s support services and technology extension services; and

(4) strength of the business accelerator’s or business incubator’s partnerships with minority businesses and women’s businesses, as those terms are defined in section 2 of P.L.1986, c.195 (52:27H-21.18).

f. The authority shall issue payment of the grant amounts pursuant to a grant agreement with a business accelerator or business incubator as the authority may determine and shall subject the approval of the agreement to the submission of proof by an applicant of the expenditures contributing to the success of an accelerator business or an incubator business assisted by the business accelerator or business incubator. A grantee who fails to comply with a grant agreement made as a condition of a grant award shall repay any grant amount received and, if so determined by the authority, shall pay a penalty not in excess of 10 percent of the grant amount.

g. (1) The authority shall establish and maintain the grant program with monies to be used by the authority for the purposes specified in this section. Monies to be utilized by the development program shall include, but not be limited to:

(a) monies as may be available to the authority from other business development programs administered by the authority or other State agencies or authorities, and which the authority determines to be necessary in light of the volume of applications from accelerator businesses and incubator businesses for eligibility for the development program as necessary to implement the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill); and

(b) other monies as may be made available to the authority from public or private sources.

(2) Monies in the grant program which are not allocated for current responsibilities of the development program may be invested by the authority in any direct obligations as to which principal and interest are guaranteed by the United States of America or any other obligation deemed appropriate by the authority.

6. (New section) a. Within one year after the effective date of P.L.    , c.  (C.        ) (pending before the Legislature as this bill) and annually thereafter, the authority shall prepare a report on the “Startup Businesses in Business Incubators Development Program” and the “Business Accelerator and Business Incubator Network Grant Program,” and deliver the report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, and make the report available to the public on the authority’s Internet site. The report shall include the number, names, and types of accelerator businesses and incubator businesses and the names of the business accelerators and incubators participating in the development program and the grant program, the total amount of financial assistance provided to business accelerator and business incubator, the amount of financial assistance received per accelerator business or incubator business, the cumulative total value of tax credits provided to taxpayers for qualified investments in New Jersey emerging technology businesses under section 3 of P.L.1997, c.349 (C.54:10A-5.30) that are located in a business accelerator or a business incubator, and any other information as the authority determines is necessary to evaluate the progress of the development program.

b. In the sixth annual report submitted by the authority pursuant to this section, the authority shall include a recommendation to the Governor and the Legislature on whether to renew or discontinue:

(1) the grant program enacted pursuant to section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill); and

(2) the tax credits enacted pursuant to sections 7 and 8 of P.L. , c. (C. ) (pending before the Legislature as this bill).

7. (New section) a. For the privilege period next beginning after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), and for the six subsequent privilege periods, a taxpayer that is an accelerator business or incubator business, as defined pursuant to section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill), shall be allowed a credit for the privilege period against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 15 percent of the taxpayer’s business operating expenses during the taxpayer’s participation in the “Startup Businesses in Business Incubators Development Program,” as determined by the authority, pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), that is allowed for the privilege period. A taxpayer may carry forward an unused credit for use in the six privilege periods following the privilege period for which the credit is allowed, if necessary.

b. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law shall be prescribed by the director. The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with any other credits allowed by law, shall not exceed 50 percent of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). An amount of expense claimed as a credit pursuant to this section shall not be allowed as an amount calculated or claimed pursuant to any other credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

c. If the amount of credit allowed pursuant to subsection a. of this section for a privilege period, together with any other payments or credits against the tax, reduces the tax liability otherwise due for the privilege period to zero, the taxpayer may elect to claim the total amount of the credit remaining as an overpayment for the purposes of R.S.54:49-15 to be paid as a refund in an amount equal to 50 percent of the total amount claimed, provided, however, that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not apply.

8. (New section) a. For the taxable year next beginning after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), and for the six subsequent taxable years, a taxpayer that is an accelerator business or incubator business, as defined pursuant to section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill), shall be allowed a credit for the taxable year against the tax otherwise due for the taxable year pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in an amount equal to 15 percent of the taxpayer’s business operating expenses during the taxpayer’s participation in the “Startup Businesses in Business Incubators Development Program,” as determined by the authority, pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), that is allowedfor the taxable year. A taxpayer may, if necessary, carry forward an unused credit for use in the six taxable years following the taxable year for which the credit is allowed.

b. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law shall be prescribed by the director. The amount of the credit applied under this section against the tax imposed pursuant to “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., for a taxable year together with any other credits allowed by law, shall not exceed 50 percent of the tax liability otherwise due. An amount of expense claimed as a credit pursuant to this section shall not be allowed as an amount calculated or claimed pursuant to any other credit against the tax imposed pursuant to “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.

A business entity classified as a partnership for federal income tax purposes shall not be allowed a credit directly under the gross income tax, but the amount of the credit of a taxpayer in respect of a distributive share of partnership income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year.

A New Jersey S Corporation shall not be allowed a credit directly under the gross income tax, but the amount of the credit of a taxpayer in respect of a pro rata share of S Corporation income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending within or with the taxpayer's taxable year.

c. If the amount of credit allowed pursuant to subsection a. of this section for a taxable year, together with any other payments or credits against the tax, reduces the tax liability otherwise due for the taxable year to zero, the taxpayer may elect to claim the total amount of the credit remaining as an overpayment of tax pursuant to N.J.S.54A:9-7 to be paid as a refund in an amount equal to 50 percent of the total amount claimed; provided, however, that subsection (f) of that section, concerning the allowance of interest, shall not apply.

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

3. a. A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic Development Authority and in consultation with the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 10 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, or in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business, up to a maximum allowed credit of $500,000 for the tax year for each qualified investment made by the taxpayer.

b. A credit shall not be allowed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

Notwithstanding any other provision of law, the order of priority in which the credit allowed by this section and any other credits allowed by law may be taken shall be as prescribed by the director.

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

d. A taxpayer may not carry over any amount of credit allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

e. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations that are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and section 4 of P.L.2013, c.14 (C.54A:4-13), including, but not limited to: examples of and the determination of qualified investments of which applicants shall provide documentation with their tax credit application; the promulgation of procedures and forms necessary to apply for a credit; and provisions for credit applicants to be charged an initial application fee and ongoing service fees to cover the administrative costs related to the credit.

f. The amount of credits approved by the Executive Director of the New Jersey Economic Development Authority, and in consultation with the director, pursuant to subsection a. of this section and pursuant to section 4 of P.L.2013, c.14 (C.54A:4-13), shall not exceed a cumulative total of $25,000,000 in any calendar year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits under this section and section 4 of P.L.2013, c.14 (C.54A:4-13) are not in excess of the amount of credits available.

g. The Executive Director shall provide a cumulative total of at least $5,000,000 in tax credits approved pursuant to subsection f. of this section over a period of five calendar years next following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), to taxpayers for qualified investments in New Jersey emerging technology businesses that are located in a business accelerator or a business incubator, as those terms are defined in section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).

h. The Executive Director shall work with the Business Action Center in the Department of State to encourage qualified investments in New Jersey emerging technology businesses that are located in a business accelerator or a business incubator, as those terms are defined in section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).

(cf: P.L.2017, c.40, s.2)

10. This act shall take effect immediately, but shall remain inoperative for 60 days following the date of enactment. Sections 7 and 8 shall apply to privilege periods and taxable years beginning on or after the January 1 next following the date of enactment.