

ASSEMBLY, No. 2505

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Assemblywoman NANCY F. MUNOZ

District 21 (Morris, Somerset and Union)

SYNOPSIS

Authorizes EDA to provide financial assistance to certain business incubator facilities.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning New Jersey Economic Development Authority
2 assistance to certain business incubator facilities and
3 supplementing P.L.1974, c.80 (C.34:1B-1 et seq.).
4

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

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

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

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

19 b. a purchase, production, or research agreement.

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

23 "Business incubator facility" means a privately-supported, low-
24 cost, short-term occupancy, rental space wherein financial
25 assistance is provided by an established business to incubator
26 businesses located at the facility employing technologies under the
27 definition of incubator business herein.

28 "Business Incubator Assistance Program" or "program" means
29 the Incubator Assistance Program established pursuant to section 2
30 of P.L. , c. (C.) (pending before the Legislature as this
31 bill).

32 "Controlled group" means one or more chains of corporations
33 connected through stock ownership with a common parent
34 corporation if stock possessing at least 80 percent of the voting
35 power of all classes of stock of each of the corporations is owned
36 directly or indirectly by one or more of the corporations and the
37 common parent owns directly stock possessing at least 80 percent of
38 the voting power of all classes of stock of at least one of the other
39 corporations.

40 "Established business" means:

41 a. a corporation that is subject to the tax imposed pursuant to
42 section 5 of P.L.1945, c.162 (C.54:10A-5);

43 b. a corporation that is subject to the tax imposed pursuant to
44 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3),
45 section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5;

46 c. a partnership;

47 d. an S corporation;

48 e. a limited liability company; or

- 1 f. a non-profit corporation.
- 2 “Incubator business” means a corporation, partnership, limited
- 3 liability company, or sole proprietorship that is supported by private
- 4 sources of capital, including, but limited to, private equity, angel
- 5 investment, or venture capital that:
- 6 a. is in the formative stage of development;
- 7 b. is engaged in the design, development, and introduction of
- 8 new biotechnology, information technology, re-manufacturing,
- 9 advanced materials, processing engineering or electronic
- 10 technology products, or innovative manufacturing processes; and
- 11 c. meets any other requirements for an incubator business as
- 12 the authority shall develop.
- 13 "Prime rate" means the average predominant prime rate, as
- 14 determined by the Board of Governors of the Federal Reserve
- 15 System, quoted by commercial banks to large businesses as of the
- 16 first business day of the calendar quarter within which the payment
- 17 was due.
- 18 "Related person" means:
- 19 a. a corporation, partnership, association, or trust controlled by
- 20 the established business;
- 21 b. an individual, corporation, partnership, association, or trust
- 22 that is in the control of the established business;
- 23 c. a corporation, partnership, association, or trust controlled by
- 24 an individual, corporation, partnership, association, or trust that is
- 25 in the control of the established business; or
- 26 d. a member of the same controlled group as the established
- 27 business.
- 28
- 29 2. There is established a “Business Incubator Assistance
- 30 Program” within the New Jersey Economic Development Authority.
- 31 The purpose of the program is to provide assistance to a business
- 32 incubator facility in the form of loans used to assist incubator
- 33 businesses in operation at the business incubator facility pursuant to
- 34 the provisions of P.L. , c. (C.) (pending before the
- 35 Legislature as this bill).
- 36
- 37 3. a. In order to participate in the Business Incubator
- 38 Assistance Program, a business incubator facility shall satisfy the
- 39 following criteria:
- 40 (1) a business incubator facility shall be in compliance with all
- 41 State and federal worker protection and environmental laws and
- 42 regulations;
- 43 (2) a business incubator facility shall not owe past due State or
- 44 federal taxes or local property taxes; and
- 45 (3) upon completion of its first year in the program and
- 46 thereafter, the business incubator facility shall provide the
- 47 necessary information to the authority in order for the authority to

- 1 prepare the annual report required under section 5 of P.L. ,
2 c. (C.) (pending before the Legislature as this bill).
- 3 b. A business incubator facility submitting an application for
4 approval into the program, as part of the application, shall:
- 5 (1) agree to allow the authority to access any and all books and
6 records of the business incubator facility and any incubator business
7 that the authority may require to monitor compliance;
- 8 (2) certify to the authority that at least 15 percent of the business
9 incubator facility's operations are funded by an established
10 business; and
- 11 (3) agree to provide the authority with between three and five
12 percent of business incubator facility revenues received from
13 royalty payments from any intangible property, as that term is
14 defined in section 5 of P.L.2002, c.40 (C.54:10A-4.4), awarded to
15 any incubator business at the business incubator facility. Royalty
16 payments shall be used to pay off any loan principal or interest due
17 to the authority.
- 18 c. The application shall specify the consequences to a business
19 incubator facility for failure to comply with the provisions of
20 P.L. , c. (C.) (pending before the Legislature as this bill)
21 after receiving a loan from the authority, including one or more of
22 the following consequences:
- 23 (1) the suspension of the business incubator facility's
24 participation in the program for one or more years as specified in
25 the application;
- 26 (2) the termination of the business incubator facility's
27 participation in the program; or
- 28 (3) the proportional recovery of any loan given to a business
29 incubator facility under the program as specified in section 4 of
30 P.L. , c. (C.) (pending before the Legislature as this bill).
- 31 d. The following types of incubator businesses are prohibited
32 from operating at a business incubator facility participating in the
33 program:
- 34 (1) retail and wholesale businesses;
- 35 (2) restaurants;
- 36 (3) real estate brokers;
- 37 (4) law firms;
- 38 (5) medical or dental practices;
- 39 (6) real estate management companies;
- 40 (7) hospitality-related businesses;
- 41 (8) finance and financial services;
- 42 (9) businesses providing personal services;
- 43 (10) businesses providing business administrative or support
44 services;
- 45 (11) accounting firms; and
- 46 (12) businesses providing utility services or are otherwise
47 engaged in the generation or distribution of electricity, the

1 distribution of natural gas, or the production of steam associated
2 with the generation of electricity.

3
4 4. a. Loans may be made to a business incubator facility
5 deemed eligible for assistance from the Business Incubator
6 Assistance Program established pursuant to section 2 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill). Loan
8 funds may be applied to any aspect of the business incubator
9 facility that supports a business incubator facility's capital
10 purchases, employee training, and salaries for new positions, as
11 determined by the authority.

12 b. In order to receive a loan, a business incubator facility, at the
13 time of application, shall enter into a loan agreement with the
14 authority.

15 c. Loans provided under the program shall be of an amount not
16 to exceed \$600,000, be repaid over a period not to exceed two
17 years, bear interest at the prime rate or a lower rate, and contain
18 other terms and conditions considered appropriate by the authority
19 that are consistent with the purposes of P.L. , c. (C.)
20 (pending before the Legislature as this bill) and with rules and
21 regulations promulgated by the authority for the implementation of
22 the program.

23 d. The authority may, in its discretion, require a business
24 incubator facility that receives a loan under the program to submit
25 an audited financial statement to the authority.

26 e. The authority may establish terms governing the incidence
27 of default by an eligible business incubator facility that receives a
28 loan under the program.

29
30 5. The authority shall prepare an annual report on the Business
31 Incubator Assistance Program, deliver the report to the Governor
32 and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
33 Legislature, and make the report available on the authority's
34 website. The report shall include the number of business incubator
35 facility applicants, the number of business incubator facilities
36 approved for the program, the names and types of incubator
37 businesses located within business incubator facilities in the
38 program, the total amount of loans distributed, the loan amount
39 received per business incubator facility, the number of jobs created
40 overall and per business incubator facility, the amount of capital
41 investment made per business incubator facility, and any other
42 information as the authority determines is necessary to evaluate the
43 progress of the program.

44
45 6. If the authority determines that a business incubator facility
46 participating in the Business Incubator Assistance Program has
47 acted fraudulently in connection with its participation in the
48 program, the business incubator facility, shall be:

- 1 a. immediately terminated from the program;
- 2 b. subject to applicable criminal penalties, including, but not
- 3 limited to, the crime of offering a false instrument for filing
- 4 pursuant to N.J.S.2C:21-3; and
- 5 c. required in that year to pay back the total value of the loan
- 6 that the business incubator facility received up to the date of that
- 7 finding.

8

9 7. The authority shall adopt rules and regulations, pursuant to

10 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

11 seq.), necessary to implement the provisions of P.L. , c. (C.)

12 (pending before the Legislature as this bill).

13

14 8. This act shall take effect immediately, but shall remain

15 inoperative for 60 days following the date of enactment.

16

17

18 STATEMENT

19

20 This bill creates the "Business Incubator Assistance Program"

21 (program) within the New Jersey Economic Development Authority

22 (authority). The purpose of the program is to provide assistance to

23 a privately-supported business incubator facility in the form of

24 loans used to assist incubator businesses in operation at a facility.

25 Loans provided under the program are to be made pursuant to a loan

26 agreement, be of an amount not to exceed \$600,000, be repaid over

27 a period not to exceed two years, bear interest at the prime rate or a

28 lower rate, and contain other terms and conditions considered

29 appropriate by the authority that are consistent with the purposes of

30 the bill.

31 The bill defines business incubator facility as a privately-

32 supported, low-cost, short-term occupancy, rental space wherein

33 assistance is granted by an established business to a incubator

34 businesses located at the facility employing selected technologies.

35 An incubator business is defined in the bill as a corporation,

36 partnership, limited liability company, or sole proprietorship

37 supported by private sources of capital, including, but limited to,

38 private equity, "angel" investment, or venture capital that: 1) is in

39 the formative stage of development; or 2) is engaged in the design,

40 development, and introduction of new biotechnology, information

41 technology, re-manufacturing, advanced materials, processing,

42 engineering or electronic technology products, or innovative

43 manufacturing processes; and 3) meets any other requirements for

44 an incubator business as the authority may develop.

45 A business incubator facility accepted into the program: 1) is

46 required to be in compliance with all State and federal worker

47 protection and environmental laws and regulations; 2) may not owe

48 past due State or federal taxes or local property taxes; 3) is required

1 to provide the necessary information to the authority in order for the
2 authority to prepare an annual report on the program; 4) is to agree
3 to allow the authority to access any and all books and records of the
4 business incubator facility and incubator business the authority may
5 require to monitor compliance; 5) to certify to the authority that at
6 least 15 percent of the business incubator facility's operations are
7 funded by an established business; and 6) to agree to allow the
8 authority to be paid three to five percent of business incubator
9 facility revenues received from royalty payments from any
10 intangible property awarded to any incubator business at the
11 business incubator facility. Royalty payments are to be used to pay
12 off any loan principal or interest due to the authority.

13 The authority is to prepare an annual report on the program,
14 provide it to the Governor and Legislature, and make it available on
15 the authority's website. The report is to include the number of
16 business incubator facility applicants, the number of business
17 incubator facilities approved for the program, the names and types
18 of incubator businesses located within business incubator facilities
19 in the program, the total amount of loans distributed, the loan
20 amounts received per business incubator facility, the number of jobs
21 created overall and per business incubator facility, the amount of
22 capital investment made per business incubator facility, and any
23 other information as the authority determines is necessary to
24 evaluate the progress of the program.

25 A business incubator facility may be subject one or more of the
26 following consequences for failure to meet the provisions of the bill
27 after receiving a loan: 1) the suspension of the business incubator
28 facility's participation in the program for one or more years as
29 specified in the application; 2) the termination of the business
30 incubator facility's participation in the program; or 3) the
31 proportional recovery of any loan given to a business incubator
32 facility under the program. Certain types of businesses are
33 prohibited from operating at a business incubator facility that
34 participates in the program.

35 In the case of a business incubator facility or incubator business
36 that acted fraudulently, the facility or business, as appropriate,
37 would be immediately terminated from the program, be subject to
38 applicable criminal penalties including the crime of offering a false
39 instrument for filing in the first degree, and be required to pay back
40 the loan the facility received.