SENATE, No. 1623

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Senator NICHOLAS P. SCUTARI
District 22 (Middlesex, Somerset and Union)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

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

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

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

"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 pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

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

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

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

“Established business” means:

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

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

c. a partnership;

d. an S corporation;

e. a limited liability company; or

f. a non-profit corporation.

"Incubator business" means a corporation, partnership, limited liability company, or sole proprietorship that is supported by private sources of capital, including, but limited to, private equity, angel investment, or venture capital that:

a. is in the formative stage of development;

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

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

"Prime rate" means the average predominant prime rate, as determined by the Board of Governors of the Federal Reserve System, quoted by commercial banks to large businesses as of the first business day of the calendar quarter within which the payment was due.

"Related person" means:

a. a corporation, partnership, association, or trust controlled by the established business;

b. an individual, corporation, partnership, association, or trust that is in the control of the established business;

c. a corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in the control of the established business; or

d. a member of the same controlled group as the established business.

2. There is established a "Business Incubator Assistance Program" within the New Jersey Economic Development Authority. The purpose of the program is to provide assistance to a business incubator facility in the form of loans used to assist incubator businesses in operation at the business incubator facility pursuant to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).

3. a. In order to participate in the Business Incubator Assistance Program, a business incubator facility shall satisfy the following criteria:

(1) a business incubator facility shall be in compliance with all State and federal worker protection and environmental laws and regulations;

(2) a business incubator facility shall not owe past due State or federal taxes or local property taxes; and

(3) upon completion of its first year in the program and thereafter, the business incubator facility shall provide the necessary information to the authority in order for the authority to

prepare the annual report required under section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

b. A business incubator facility submitting an application for approval into the program, as part of the application, shall:

(1) agree to allow the authority to access any and all books and records of the business incubator facility and any incubator business that the authority may require to monitor compliance;

(2) certify to the authority that at least 15 percent of the business incubator facility's operations are funded by an established business; and

(3) agree to provide the authority with between three and five percent of business incubator facility revenues received from royalty payments from any intangible property, as that term is defined in section 5 of P.L.2002, c.40 (C.54:10A-4.4), awarded to any incubator business at the business incubator facility. Royalty payments shall be used to pay off any loan principal or interest due to the authority.

c. The application shall specify the consequences to a business incubator facility for failure to comply with the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) after receiving a loan from the authority, including one or more of the following consequences:

(1) the suspension of the business incubator facility's participation in the program for one or more years as specified in the application;

(2) the termination of the business incubator facility's participation in the program; or

(3) the proportional recovery of any loan given to a business incubator facility under the program as specified in section 4 of P.L. , c. (C.) (pending before the Legislature as this bill).

d. The following types of incubator businesses are prohibited from operating at a business incubator facility participating in the program:

(1) retail and wholesale businesses;

(2) restaurants;

(3) real estate brokers;

(4) law firms;

(5) medical or dental practices;

(6) real estate management companies;

(7) hospitality-related businesses;

(8) finance and financial services;

(9) businesses providing personal services;

(10) businesses providing business administrative or support services;

(11) accounting firms; and

(12) businesses providing utility services or are otherwise engaged in the generation or distribution of electricity, the

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

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

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

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

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

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

5. The authority shall prepare an annual report on the Business Incubator Assistance Program, 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 on the authority's website. The report shall include the number of business incubator facility applicants, the number of business incubator facilities approved for the program, the names and types of incubator businesses located within business incubator facilities in the program, the total amount of loans distributed, the loan amount received per business incubator facility, the number of jobs created overall and per business incubator facility, the amount of capital investment made per business incubator facility, and any other information as the authority determines is necessary to evaluate the progress of the program.

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

a. immediately terminated from the program;

b. subject to applicable criminal penalties, including, but not limited to, the crime of offering a false instrument for filing pursuant to N.J.S.2C:21-3; and

c. required in that year to pay back the total value of the loan that the business incubator facility received up to the date of that finding.

7. The authority shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to implement the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).

8. This act shall take effect immediately, but shall remain inoperative for 60 days following the date of enactment.

STATEMENT

This bill creates the “Business Incubator Assistance Program” (program) within the New Jersey Economic Development Authority (authority). The purpose of the program is to provide assistance to a privately-supported business incubator facility in the form of loans used to assist incubator businesses in operation at a facility. Loans provided under the program are to be made pursuant to a loan agreement, be of an amount not to exceed $600,000, be repaid over a period not to exceed two years, bear interest at the prime rate or a lower rate, and contain other terms and conditions considered appropriate by the authority that are consistent with the purposes of the bill.

The bill defines business incubator facility as a privately-supported, low-cost, short-term occupancy, rental space wherein assistance is granted by an established business to a incubator businesses located at the facility employing selected technologies. An incubator business is defined in the bill as a corporation, partnership, limited liability company, or sole proprietorship supported by private sources of capital, including, but limited to, private equity, “angel” investment, or venture capital that: 1) is in the formative stage of development; or 2) is engaged in the design, development, and introduction of new biotechnology, information technology, re-manufacturing, advanced materials, processing, engineering or electronic technology products, or innovative manufacturing processes; and 3) meets any other requirements for an incubator business as the authority may develop.

A business incubator facility accepted into the program: 1) is required to be in compliance with all State and federal worker protection and environmental laws and regulations; 2) may not owe past due State or federal taxes or local property taxes; 3) is required

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

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

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

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