

SENATE, No. 297

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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 b. As used in this section:

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

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

36 "Benefit or incentive" means financial incentive, awarded by the
37 authority to a person or entity under an economic incentive program
38 administered by the authority for the purpose of stimulating
39 economic development or redevelopment in New Jersey, including
40 but not limited to a bond, grant, loan, loan guarantee, matching
41 fund, or tax credit or other tax expenditure.

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

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.

1 "Fusion energy" means a form of power generation that
2 generates electricity either directly or by using heat from nuclear
3 fusion reactions.

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

14 "Fusion technology" means a technology that is developed to
15 permit the production of fusion energy or a technology developed to
16 create nuclear fusion reactions.

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

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

25
26 2. Section 1 of P.L.1999, c.140 (C. 34:1B-7.42b) is amended to
27 read as follows:

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

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

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

38 "Biotechnology company" means an emerging corporation that
39 has its headquarters or base of operations in this State; that owns,
40 has filed for, or has a valid license to use protected, proprietary
41 intellectual property; and that is engaged in the research,
42 development, production, or provision of biotechnology for the
43 purpose of developing or providing products or processes for
44 specific commercial or public purposes, including but not limited
45 to, medical, pharmaceutical, nutritional, and other health-related
46 purposes, agricultural purposes, and environmental purposes.

47 "Full-time employee" means a person employed by a new or
48 expanding emerging technology or biotechnology company for

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

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

27 "Fusion technology" means a technology that is developed to
28 permit the production of fusion energy or a technology that involves
29 the creation of nuclear fusion reactions.

30 "New or expanding" means a technology or biotechnology
31 company that (1) on June 30 of the year in which the company files
32 an application for surrender of unused but otherwise allowable tax
33 benefits under P.L.1997, c.334 (C.34:1B-7.42a et al.) and on the
34 date of the exchange of the corporation business tax benefit
35 certificate, has fewer than 225 employees in the United States of
36 America; (2) on June 30 of the year in which the company files
37 such an application, has at least one full-time employee working in
38 this State if the company has been incorporated for less than three
39 years, has at least five full-time employees working in this State if
40 the company has been incorporated for more than three years but
41 less than five years, and has at least 10 full-time employees working
42 in this State if the company has been incorporated for more than
43 five years; and (3) on the date of the exchange of the corporation
44 business tax benefit certificate, the company has the requisite
45 number of full-time employees in New Jersey that were required on
46 June 30 as set forth in part (2) of this definition.

47 "Technology company" means an emerging corporation that has
48 its headquarters or base of operations in this State; that owns, has

1 filed for, or has a valid license to use protected, proprietary
2 intellectual property; and that employs some combination of the
3 following: highly educated or trained managers and workers, or
4 both, employed in this State who use sophisticated scientific
5 research service or production equipment, processes or knowledge
6 to discover, develop, test, transfer or manufacture a product or
7 service, including, but not limited to, fusion energy and fusion
8 technology products and services.

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

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

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

15 "Advanced computing" means a technology used in the
16 designing and developing of computing hardware and software,
17 including innovations in designing the full spectrum of hardware
18 from hand-held calculators to super computers, and peripheral
19 equipment.

20 "Advanced materials" means materials with engineered
21 properties created through the development of specialized
22 processing and synthesis technology, including ceramics, high
23 value-added metals, electronic materials, composites, polymers, and
24 biomaterials.

25 "Biotechnology" means the continually expanding body of
26 fundamental knowledge about the functioning of biological systems
27 from the macro level to the molecular and sub-atomic levels, as
28 well as novel products, services, technologies, and sub-technologies
29 developed as a result of insights gained from research advances
30 which add to that body of fundamental knowledge.

31 "Carbon footprint reduction technology" means a technology
32 using equipment for the commercial, institutional, and industrial
33 sectors that: increases energy efficiency; develops and delivers
34 renewable or non-carbon-emitting energy technologies; develops
35 innovative carbon emissions abatement with significant carbon
36 emissions reduction potential; or promotes measurable electricity
37 end-use energy efficiency.

38 "Control" with respect to a corporation means ownership,
39 directly or indirectly, of stock possessing 80 percent or more of the
40 total combined voting power of all classes of the stock of the
41 corporation entitled to vote; and "control" with respect to a trust
42 means ownership, directly or indirectly, of 80 percent or more of
43 the beneficial interest in the principal or income of the trust. The
44 ownership of stock in a corporation, of a capital or profits interest in
45 a partnership or association or of a beneficial interest in a trust shall
46 be determined in accordance with the rules for constructive
47 ownership of stock provided in subsection (c) of section 267 of the

1 federal Internal Revenue Code of 1986 (26 U.S.C. s.267), other than
2 paragraph (3) of subsection (c) of that section.

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

11 "Director" means the Director of the Division of Taxation in the
12 Department of the Treasury.

13 "Electronic device technology" means a technology involving
14 microelectronics, semiconductors, electronic equipment and
15 instrumentation, radio frequency, microwave and millimeter
16 electronics, and optical and optic-electrical devices, or data and
17 digital communications and imaging devices.

18 "Fusion energy" means a form of power generation that
19 generates electricity either directly or by using heat from nuclear
20 fusion reactions.

21 "Information technology" means software publishing, motion
22 picture and video production, television production and post-
23 production services, telecommunications, data processing, hosting
24 and related services, custom computer programming services,
25 computer system design, computer facilities management services,
26 other computer related services, and computer training.

27 "Life sciences" means the production of medical equipment,
28 ophthalmic goods, medical or dental instruments, diagnostic
29 substances, biopharmaceutical products, or physical and biological
30 research.

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

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

43 "New Jersey emerging technology business" means a company
44 with fewer than 225 employees, of whom at least 75 percent are
45 filling a position in New Jersey, that is doing business, employing
46 or owning capital or property, or maintaining an office in this State
47 and: has qualified research expenses paid or incurred for research
48 conducted in this State; conducts pilot scale manufacturing in this

1 State; or conducts technology commercialization in this State in the
2 fields of advanced computing, advanced materials, biotechnology,
3 carbon footprint reduction technology, electronic device
4 technology, information technology, life sciences, medical device
5 technology, mobile communications technology, or renewable
6 energy technology.

7 "New Jersey emerging technology business holding company"
8 means any corporation, association, firm, partnership, trust, or other
9 form of business organization, but not a natural person, which
10 directly or indirectly, owns, has the power or right to control, or has
11 the power to vote, a controlling share of the outstanding voting
12 securities of a corporation or other form of a New Jersey emerging
13 technology business.

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

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

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

46 "Qualified research expenses" means qualified research
47 expenses, as defined in section 41 of the federal Internal Revenue
48 Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the

1 fields of advanced computing, advanced materials, biotechnology,
2 carbon footprint reduction technology, electronic device
3 technology, information technology, life sciences, medical device
4 technology, mobile communications technology, or renewable
5 energy technology.

6 "Related person" means:

7 a corporation, partnership, association or trust controlled by the
8 taxpayer;

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

11 a corporation, partnership, association or trust controlled by an
12 individual, corporation, partnership, association or trust that is in
13 the control of the taxpayer; or

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

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

23 "Tax year" means the fiscal or calendar accounting period of a
24 taxpayer.

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

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

36
37 4. This act shall take effect immediately.
38
39

40 STATEMENT

41
42 This bill provides that fusion energy and fusion technology
43 companies are eligible applicants under certain economic incentive
44 programs.

45 Under the bill, the New Jersey Economic Development Authority
46 (EDA) is required to adopt rules and regulations for the
47 administration of economic incentive programs to provide that any
48 reference or stipulation under a program related to the development

1 or production of renewable energy, the development of emerging
2 technologies, or to the expansion of targeted industries in this State
3 connected to the award of a benefit or incentive to a company is
4 deemed to include the development or production of fusion energy
5 or fusion technology in this State. The bill specifies that the rules
6 and regulations are to establish eligibility requirements applicable
7 to the different economic incentive programs and establish uniform
8 methodologies for determining qualifications of an individual
9 applicant that is a fusion energy or fusion technology company.

10 The bill includes within the scope of economic incentive
11 programs, any program administered by the EDA that offers a
12 benefit or incentive to a person in order to stimulate economic
13 development of new or existing renewable energy or technology
14 company in New Jersey.

15 The bill also makes direct corresponding changes to statutes
16 governing the State's corporation business tax benefit certificate
17 transfer program for emerging technology and biotechnology
18 companies and to the New Jersey Angel Investor Tax Credit Act.