SENATE, No. 1837

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:
Senator NILSA CRUZ-PEREZ
District 5 (Camden and Gloucester)

SYNOPSIS

Establishes loan program and provides corporation business tax and gross income tax credits for establishment of new vineyards and wineries.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning vineyards and wineries and supplementing P.L.1974, c.80 (C.34:1B-1 et seq.), P.L.1945, c.162 (C.54:10A-1 et seq.), and Title 54A of the New Jersey Statutes.

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

1. a. The New Jersey Economic Development Authority, in consultation with the Department of Agriculture, shall develop a 10-year pilot program to provide low interest loans to farmers for qualified costs associated with the installation of new vineyards in eligible counties. The purpose of the pilot program shall be to increase the acreage of commercial vineyards in those counties.

b. A person seeking to obtain a loan pursuant to this section shall apply to the authority, in a form and manner as determined by the authority, and shall include such information as the authority deems relevant. The authority shall review a completed application and approve the application within 30 days if it meets the requirements established by the authority pursuant to subsection f. of this section.

c. A loan made pursuant to this section may include up to 100 percent of an applicant's qualified costs, shall bear interest of not more than five percent per year, and shall be for a term of not more than 10 years. The loan shall be made pursuant to a loan agreement with the authority, which shall contain terms and conditions deemed appropriate by the authority. No loan shall be made after expiration of the pilot program.

d. The authority may, in its discretion, require a person that receives a loan pursuant to this section to submit an audited financial statement to the authority in order to ensure the continued viability of the person's farming operation.

e. The authority may, either through the adoption of rules and regulations, or through the terms and conditions of the loan agreement made pursuant to subsection c. of this section, establish terms and conditions governing the incidence of default by a person that receives a loan under the pilot program.

f. The authority, in cooperation with the department, shall submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, annually until expiration of the pilot program, a report summarizing each loan made pursuant to this section, and detailing the effectiveness of the pilot program in increasing the acreage of commercial vineyards in eligible counties.

g. The authority, in consultation with the department, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to effectuate the purposes of this section, including, but not limited to, criteria and procedures for the awarding of loans pursuant to this section and a list of qualified costs.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.).

"Department" means the Department of Agriculture.

"Eligible county" means a county classified as a county of the third class with a population greater than 150,000, according to the latest federal decennial census, of the fifth class, or of the sixth class pursuant to section N.J.S.40A:6-1, and that contains at least three wineries.

"Qualified cost" means the cost of preparing land for plant installation, purchasing vines and trees, and purchasing equipment and supplies for those purposes, as determined by the authority pursuant to subsection g. of this section. "Qualified cost" shall not include the cost of tractors, pick-up trucks, or wine-making equipment.

"Vineyard" means agricultural lands consisting of at least one contiguous acre dedicated to the growing of grapes that are used or are intended to be used in the production of wine by a winery in the State, as well as any plants or other improvements located thereon.

"Winery" means a commercial farm where the owner or operator of the commercial farm has been issued and is operating in compliance with a plenary winery license or farm winery license pursuant to R.S.33:1-10.

2. a. For privilege periods beginning on or after January 1, 2020, but before January 1, 2030, a taxpayer 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 25 percent of the qualified capital expenses, as certified by the Department of Agriculture pursuant to subsection b. of this section, incurred by the taxpayer in connection with:

(1) the establishment of a new vineyard or winery in an eligible county; or

(2) capital improvements made to an existing vineyard or winery in an eligible county.

b. To obtain a tax credit pursuant to this section, a taxpayer shall apply for a certification from the department that certifies: (1) that the taxpayer's expenses are qualified capital expenses pursuant to this section; and (2) the amount of the tax credit. The application shall be made in a form and manner as determined by the department, and include such information as the department deems relevant. Upon certification, the Secretary of Agriculture shall submit a copy thereof to the taxpayer and the director. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer shall include a copy of the certification issued by the secretary.

c. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period shall be as prescribed by the director. The amount of the credit applied pursuant to this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), shall not reduce a taxpayer's tax liability for a privilege period 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). Any credit shall be valid in the privilege period in which the certification is approved and any unused portion thereof may be carried forward into the next 15 privilege periods or until depleted, whichever is earlier.

d. The secretary, 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 necessary to carry out the provisions of this section, including, but not limited to, criteria and procedures for the certifications and issuance of tax credits pursuant to this section and a list of qualified capital expenses.

e. The secretary shall submit a report to the Governor, the State Treasurer, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, annually until expiration of the tax credit, on the effectiveness of the tax credit in increasing the acreage of commercial vineyards and the number of wineries in eligible counties.

f. As used in this section:

"Department" means the Department of Agriculture.

"Eligible county" means a county classified as a county of the third class with a population greater than 150,000, according to the latest federal decennial census, of the fifth class , or of the sixth class pursuant to section N.J.S.40A:6-1, and that contains at least three wineries.

"Qualified capital expense" means any expenditure made by the taxpayer for the purchase and installation of equipment or agricultural materials for use in the production of agricultural products at a vineyard, or in a winery, as designated by the secretary pursuant to subsection d. of this section.

"Secretary" means the Secretary of Agriculture.

"Vineyard" means agricultural lands consisting of at least one contiguous acre dedicated to the growing of grapes that are used or are intended to be used in the production of wine by a winery in the State, as well as any plants or other improvements located thereon.

"Winery" means a commercial farm where the owner or operator of the commercial farm has been issued and is operating in compliance with a plenary winery license or farm winery license pursuant to R.S.33:1-10.

3. a. For taxable years beginning on or after January 1, 2020, but before January 1, 2030, a taxpayer shall be allowed a credit against the New Jersey gross income tax due pursuant to N.J.S.54A:1-1 et seq., in an amount equal to 25 percent of the qualified capital expenses, as certified by the Department of

Agriculture pursuant to subsection b. of this section, incurred by the taxpayer in connection with:

(1) the establishment of a new vineyard or winery in an eligible county; or

(2) capital improvements made to an existing vineyard or winery in an eligible county.

b. To obtain a tax credit pursuant to this section, a taxpayer shall apply for a certification from the department that certifies: (1) that the taxpayer's expenses are qualified capital expenses pursuant to this section; and (2) the amount of the tax credit. The application shall be made in a form and manner as determined by the department, and include such information as the department deems relevant. Upon certification, the Secretary of Agriculture shall submit a copy thereof to the taxpayer and the director. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer shall include a copy of the certification issued by the secretary.

c. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed against the tax imposed pursuant to N.J.S.54A:1-1 et seq. for a taxable year shall be as prescribed by the director. The amount of the credit applied pursuant to this section against the tax imposed pursuant to N.J.S.54A:1-1 et seq., shall not reduce a taxpayer's tax liability for a taxable year to an amount less than zero. Any credit shall be valid in the taxable year in which the certification is approved and any unused portion thereof may be carried forward into the next 15 taxable years or until depleted, whichever is earlier.

d. A business entity that is classified as a partnership for federal income tax purposes shall not be allowed the credit directly under N.J.S.54A:1-1 et seq., but the amount of credit of the 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 taxpayer that is a New Jersey S corporation shall not be allowed the credit directly under N.J.S.54A:1-1 et seq., but the amount of 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 taxable year ending within or with the taxpayer's taxable year.

e. The secretary, 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 necessary to carry out the provisions of this section, including, but not limited to, criteria and procedures for the certifications and issuance of tax credits pursuant to this section and a list of qualified capital expenses.

f. The secretary shall submit a report to the Governor, the State Treasurer, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, annually until expiration of the tax credit, on the effectiveness of the tax credit in increasing the acreage of commercial vineyards and the number of wineries in eligible counties.

g. As used in this section:

"Department" means the Department of Agriculture.

"Eligible county" means a county classified as a county of the third class with a population greater than 150,000, according to the latest federal decennial census, of the fifth class , or of the sixth class pursuant to section N.J.S.40A:6-1, and that contains at least three wineries.

"Qualified capital expense" means any expenditure made by the taxpayer for the purchase and installation of equipment or agricultural materials for use in the production of agricultural products at a vineyard, or in a winery, as designated by the secretary pursuant to subsection e. of this section.

"Secretary" means the Secretary of Agriculture.

"Vineyard" means agricultural lands consisting of at least one contiguous acre dedicated to the growing of grapes that are used or are intended to be used in the production of wine by a winery in the State, as well as any plants or other improvements located thereon.

"Winery" means a commercial farm where the owner or operator of the commercial farm has been issued and is operating in compliance with a plenary winery license or farm winery license pursuant to R.S.33:1-10.

4. This act shall take effect immediately.

STATEMENT

This bill establishes a loan program and provides tax credits to persons for the establishment of new vineyards and wineries in eligible counties. The bill defines an eligible county as a county of the third class with a population greater than 150,000 according to the latest federal decennial census, a county of the fifth class, or a county of the sixth class, and that contains at least three wineries.

The bill requires the New Jersey Economic Development Authority (authority), in consultation with the Department of Agriculture (department), to develop a 10-year pilot program to provide low interest loans to farmers for qualified costs associated with the installation of new vineyards in eligible counties. Qualified costs include the cost of preparing land for plant installation, purchasing vines or trees, and purchasing equipment and supplies for those purposes. It does not include the cost of tractors, pick-up-trucks, or wine-making equipment.

A loan may cover up to 100 percent of the applicant's qualified costs, would bear interest of not more than five percent per year, and would be for a term of not more than 10 years. The loan would be made pursuant to a loan agreement with the authority, which would contain terms and conditions deemed appropriate by the authority. The bill permits the authority to require a person that receives a loan to submit an audited financial statement to the authority in order to ensure the continued viability of the person's farming operation, and may, either by regulation or through the terms and conditions of the loan agreement, establish terms and conditions governing the incidence of default by a person that receives a loan.

The authority would be required to submit a report, annually, to the Governor and the Legislature summarizing each loan made pursuant to the bill, and detailing the effectiveness of the pilot program in increasing the acreage of commercial vineyards in eligible counties.

The bill also allows eligible taxpayers to apply for a tax credit against either their corporation business tax or gross income tax liability in an amount equal to 25 percent of the qualified capital expenses incurred by taxpayers in connection with: (1) the establishment of a new vineyard or winery in an eligible county; or (2) capital improvements made to an existing vineyard or winery in an eligible county. A qualified capital expense is any expenditure made by the taxpayer for the purchase and installation of equipment or agricultural materials for use in the production of agricultural products at a vineyard or in a winery, as specified in regulations. An eligible taxpayer may apply to the department for the approval of a tax credit for a tax year beginning on or after January 1, 2020 but before January 1, 2030.

To obtain a tax credit under the bill, a taxpayer is required to apply for a certification from the department that certifies: (1) that the taxpayer's expenses are qualified capital expenses and (2) the amount of the tax credit. Upon certification, the Secretary of Agriculture (secretary) would submit a copy of the application to the taxpayer and the Director of the Division of Taxation. When filing a tax return that includes a claim for a credit under the bill, a taxpayer would include a copy of the certification issued by the secretary. Credits would be valid in the privilege period or taxable year in which the certification is approved, and any unused portions could be carried forward into the next 15 privilege periods or taxable years.

The secretary would be required to issue a report to the Governor, State Treasurer, and the Legislature, annually, on the effectiveness of the tax credit in increasing the acreage of commercial vineyards and the number of wineries in eligible counties.