

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 6 and 2213
STATE OF NEW JERSEY

Sponsored by Senators BUONO and VAN DREW

AN ACT establishing a grant program to stimulate certain capital investment and job creation in New Jersey during a limited period, supplementing P.L.1974, c.80 (C.34:1B-1 et seq.) and making appropriations.

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

1. This act shall be known and may be cited as the "InvestNJ Business Grant Program Act."

2. As used in this act:

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

"Business" means any entity including, but not limited to a corporation, an S corporation, limited liability corporation, partnership, limited liability partnership, and sole proprietorship, and shall include all entities related by common ownership or control.

"Capital investment" means expenses of at least \$5,000 incurred for the direct use and operation of a business for (1) the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property; and (2) obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility. Provided however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this

State by the business, determined in accordance with section 168 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.168). "Capital investment" shall also include remediation of a business facility site, but only to the extent the remediation has not received financial assistance from another federal, State or local government funding source.

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Eligible position" means a full-time position filled by an individual whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. An eligible position shall include only a position for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes. An eligible position shall not include an independent contractor or a consultant.

3. a. There is established the Invest in New Jersey Business Grant Program to be administered by the New Jersey Economic Development Authority. The program shall include an investment grant component to provide an incentive to businesses, during the current national economic crisis, to encourage capital investments by the award of grants of up to 7 percent of the qualifying capital investment made by a business in New Jersey during a limited period.

b. The Chief Executive Officer shall approve the issuance of a grant to a business that:

- (1) has operated continuously for at least two years prior to filing an application for a grant;
- (2) employs at least 5 full-time employees; and
- (3) makes a capital investment in New Jersey after the effective date of P.L. , c. (C.) (now pending before the Legislature as this bill) but prior to January 1, 2011.

c. A business seeking to participate in the investment grant component shall submit an application in such form as required by the Chief Executive Officer. Such application shall include such information as the officer shall determine is necessary to administer the grant program. All applications shall be submitted prior to January 1, 2011.

d. The Chief Executive Officer shall review and may approve an application for the grant program. The Chief Executive Officer shall issue payment of the grant amount pursuant to a series of scheduled payments as the Chief Executive Officer may determine and subject to the submission of proof by an approved applicant of

the expenditures contributing to the capital investment. A grantee that fails to comply with a grant agreement that shall be made as a condition of a grant award shall repay any grant amount received and, if so determined by the Chief Executive Officer, shall pay a penalty not in excess of ten percent of the grant amount.

e. The value of the grant shall be 7 percent of the capital investment provided that no grantee shall receive more than \$1,000,000 pursuant to this section. Provided further, that the sum of grants awarded pursuant to this section shall not exceed \$70,000,000 of which not more than \$20,000,000 shall be allocated for capital investment grants described under paragraph (2) of "capital investment" as defined in section 1 of this act.

f. For the purpose of determining eligibility for a grant pursuant to this section, the authority shall exclude any expenses incurred at a site for which the business is receiving a business employment incentive grant pursuant to the provisions of P.L.1996, c.26 (C.34:1B-124 et seq.), a business retention relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) or an urban transit hub tax credit pursuant to P.L.2007, c.346 (C.34:1B- 207 et seq.), and shall exclude any expenses covered by a retail sales purchase exemption pursuant to section 20 of P.L.1983, c.303 (52:27H-79), section 25 of P.L.1980, c.105 (C.54:32B-8.13), section 26 of P.L.1980, c.105 (C.54:32B-8.14), section 28 of P.L.1980, c.105 (C.54:32B-8.16), section 41 of P.L.1980, c.105 (C.54:32B-8.29), section 45 of P.L.1980, c.105 (C.54:32B-8.33), or section 11 of P.L.1981, c.546 (C.54:32B-8.36).

4. a. There is also established under the Invest in New Jersey Business Grant Program to be administered by the New Jersey Economic Development Authority, an employment grant component to provide an incentive to businesses, during the current national economic crisis, to create full-time jobs that are retained for at least one year by the award of a grant of \$3,000 to qualified businesses for each eligible position created.

b. The Chief Executive Officer shall approve the issuance of a grant to a business that:

(1) has operated continuously in this State for at least two years prior to filing an application for a grant;

(2) employs at least 5 full-time employees;

(3) adds an eligible position created in New Jersey after December 1, 2008 and before January 1, 2011, for a period of at least 12 consecutive months in this State; and

(4) the applicant has experienced a net increase in employment of eligible positions in this State during the same 12 consecutive months.

c. A business seeking to participate in the grant program shall submit an application in such form as required by the Chief

Executive Officer. Such application shall include such information as the Chief Executive Officer shall determine is necessary to administer the grant program. All applications shall be submitted prior to January 1, 2011.

d. The Chief Executive Officer shall review and may approve an application for the grant program. The Chief Executive Officer shall issue payment of the grant upon the submission of proof by an approved applicant of the employment of an individual in the eligible position during a period of at least 12 consecutive months in this State and proof of the other requirements set forth in subsection b. of this section. Such submission shall be subject to review and audit by the Department of Labor and Workforce Development.

e. The value of the grant shall be \$3,000 for each eligible position, provided that no grantee shall receive more than \$500,000 in grants pursuant to this section. Provided further, that the sum of grants awarded pursuant to this section shall not exceed \$50,000,000.

f. For the purpose of determining eligibility for a grant pursuant to this section, the authority shall not include any position that is included in the calculation of a business employment incentive grant pursuant to the provisions of P.L.1996, c.26 (C.34:1B-124 et seq.), a business retention relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) or an urban transit hub tax credit pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.).

5. The authority may promulgate rules and regulations necessary for the effective implementation of this P.L. , c. (C.) (now pending before the Legislature as this bill). Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the authority may adopt, immediately upon filing with the Office of Administrative Law, such regulations as are necessary to implement the provisions of P.L. , c. (C.) (now pending before the Legislature as this bill), which shall be effective for a period not to exceed 12 months following enactment, and may thereafter be amended, adopted, or readopted by the authority in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Such regulations may include, but shall not be limited to: examples of and the determination of capital investment; the determination of the limits, if any, on the expense or type of furnishings that may constitute capital investments; and the promulgation of procedures and forms necessary to apply for a benefit under P.L. , c. (C.) (now pending before the Legislature as this bill).

6. Notwithstanding the provisions of P.L.2008, c.22 (C.52:9H-2.1 et al.), there is appropriated from the Long Term Funding Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority a sum of up to \$400,000 for the purpose of defraying reasonable and necessary administrative expenses incurred in carrying out the provisions of this act, subject to the approval of the Director of the Division of Budget and Accounting.

7. Notwithstanding the provisions of P.L.2008, c.22 (C.52:9H-2.1 et al.), there are appropriated from the Long Term Funding Obligation and Capital Expenditure Fund to the New Jersey Economic Development Authority, such sums as are necessary, subject to the approval of the Director of the Division of Budget and Accounting in the Department of the Treasury, to effectuate the purposes of this act.

8. This act shall take effect immediately.

Establishes the InvestNJ Business Grant Program in NJEDA to stimulate certain capital investment and job creation in New Jersey during a limited period, makes appropriations.

NJ EDA Program Proposal New Jersey Main Street Business Assistance Program

Program 1: Main Street Business Assistance Program (Loan/Guarantee)

Eligibility:

- Originating bank must be an approved lender with the EDA
- Business located in NJ operating for at least 2 years
- In good standing with EDA, Federal/State agencies, and requesting bank
- No criminal history for owners, business, or guarantors
- Minimum credit score of 680 for at least one of the guarantors

Terms/Conditions:

- Interest Rate on EDA loan participation: 5% fixed rate
- Maximum term of 5 years; amortization may be longer based on purpose of loan
- Guarantee secured by business assets and/or personal assets. Collateral LTV not to exceed 100%
- Personal guarantees required for any person or entity with 10% or more ownership in Applicant
- 1.1X Debt Service Coverage Ratio (DSCR)
 - Based on two most current years of financial statements
 - Global debt service can be used
 - DSCR defined as Net Income plus Interest, Depreciation & Amortization minus owner distributions (plus add back in rent if rent will be replaced by loan payment) divided by principal and interest payments on existing debt plus new debt
- Collateral required for all loan participations and guarantees. Collateral can be in the form of fixed assets (real estate, equipment), liquid collateral, or a blanket lien on business assets. Loan to value (LTV) shall not exceed 100%. EDA collateral position shall be subordinate to the bank for participations, and pari passu with the bank for loan guarantee
- Business must demonstrate that funding through the Main Street Business Assistance Program is a material factor for maintaining existing jobs in NJ
- EDA completes underwriting within 1 week of receipt of application and bank's approval documents

Uses:

- ~~Emergency equipment purchases~~, Working Capital, Refinancings, Fixed Asset purchases, including real estate

Maximum/Limits:**Fixed Asset Loans:**

- Maximum EDA participation of 25% of bank loan not to exceed \$1,000,000
- Maximum EDA guarantee of 50% not to exceed \$2,000,000

Working Capital Loans:

- Maximum EDA participation of 25% of bank loan not to exceed \$750,000
- Maximum EDA guarantee of 50% not to exceed \$1,500,000

Aggregate EDA exposure under Main Street Business Assistance Program (combined participation and guarantee)

- Cannot exceed 50% of the bank loan amount up to \$2,000,000

EDA Fees:

- Standard EDA financing fees in effect at time of application

Required Documentation:

- EDA Application
- Tax Clearance Application
- Bank Approval Document
- Main Street Business Assistance Program Checklist with required information
- Participation and/or Guarantee agreement (provided by EDA)

Reporting Requirements:

- Annual submission of business and personal financial information
- Bank will notify EDA within 10 business days of all monetary and technical defaults that adversely impact the Borrower's good standing status with the bank

Program 2: Line of Credit Guarantee **(only available to EDA Preferred Lender Partners)**

Eligibility:

- Lines of Credit available through EDA Preferred Lenders ***only***
- Business located in NJ operating for at least 2 years
- In good standing with EDA, Federal/State agencies, and requesting bank
- No criminal history for owners, businesses, and guarantors
- Minimum credit score of 680 for at least one of the guarantors

Uses:

- Fixed Assets or Working Capital

Terms/Conditions:

- Guarantee up to 2 years based on the term of bank line
- Interest Rate set by Lending Institution
- Guarantees secured by business assets and/or personal assets
- Collateral LTV shall not exceed 100%
- Personal guarantees required for any person or entity with 10% or more ownership in Applicant.
- 1.1X Debt Service Coverage Ratio (DSCR)
 - Based on two most current years of financial statements
 - Global debt service can be used
 - DSCR defined as Net Income plus Interest, Depreciation & Amortization minus owner distributions (plus add back for rent if rent will be replaced by loan payment) divided by principal and interest payments on existing debt plus new debt.
- Preferred Lender Partner administers underwriting

Maximum/Limits:

Guarantee:

- Up to 50% of the line of credit amount - maximum of \$250,000

Aggregate EDA exposure under the Main Street Business Assistance Program (combined participation and guarantee – LOC and/or Term Loan):

- Cannot exceed 50% of the bank loan amount up to \$2,000,000

EDA Fees:

- Standard EDA financing fees in effect at time of application

Required Documentation:

- Preferred Lender Application
- Preferred Lender Application Checklist
- Tax Clearance Application
- Bank Approval Document
- Guarantee agreement (provided by EDA)

Reporting Requirements:

- Bank will notify EDA within 10 business days of all monetary and technical defaults that adversely impact the Borrower's good standing status with the bank
- Bank will provide annual financial statements (or financial spread sheets for the business) within 30 days of the end of the reporting period for all lines of credit having maturities that exceed one year