ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]
ASSEMBLY, No. 2076

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 24, 2024

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 2076 (1R).

As amended and reported, this bill amends and supplements the "New Jersey Aspire Program Act" (Aspire Program) and provides for certain related changes to the New Jersey Gross Income Tax and Corporation Business Tax. The bill also establishes the "Redevelopment Project Bridge Financing Program," as part of the Aspire Program, to offer additional financial assistance for redevelopment projects that have an outstanding project financing gap.

Aspire Program Definitions

The bill revises the definition of "aviation district" to include the Trenton-Mercer Airport and the area within a one-mile radius of the outermost boundary of the airport's terminal. The bill amends the definition of an "incentive area" to include an endorsed plan and removes certain transportation connectivity requirements that exist under current law. The bill defines a "mixed-use project" as a redevelopment project that includes a residential component and a nonresidential component.

The bill clarifies that the definition of the term "project cost" also applies to the term "eligible project cost." The bill provides that for a redevelopment project that is located in a government restricted municipality, the calculation of "project cost" or "eligible project cost" also includes land costs, capped at no more than 20 percent of the total project cost; building acquisition costs; carrying costs and interest expenses on construction loans and other financing up to project completion; professional services; environmental remediation; and infrastructure improvements.

This bill modifies the definition of "project financing gap" to provide that all other sources of capital to have been accounted for prior to the calculation of the project financing gap includes developer contributed capital equal to 20 percent of the "project cost," at minimum. Under current law, this provision includes developer contributed capital equal to 20 percent of the "total project cost," at minimum. Similarly, the bill revises the provision requiring a lower minimum, 10 percent of the "total project cost" for a project located in a government-restricted municipality, instead to require 10 percent of the "project cost."

The bill defines the term "special mission non-profit project" to mean a project located in a government-restricted municipality or in an enhanced area that: serves a special mission, as determined by the New Jersey Economic Development Authority (authority), to accomplish the public purpose of a non-profit that is a developer of or is affiliated with the project; and includes no more than 100 units of 100 percent affordable housing units and no more than 10,000 square feet of commercial space.

The bill defines the term "stranded asset" to mean any building previously used for commercial, retail, office space, manufacturing, or industrial purposes, which building is no longer used for such purposes, and which has been abandoned, experienced significant vacancies for at least two consecutive years, or has fallen into such disrepair as to be untenantable. The term includes vacant land that has been left fallow for at least two consecutive years because of environmental contamination.

The bill defines "targeted industry" to mean any industry identified from time to time by the authority, which industry shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses including food innovation, and other innovative industries that disrupt current technologies or business models.

Aspire Program Changes Concerning Residential Projects

The bill provides that the authority's housing affordability controls are to be consistent with those in the "Fair Housing Act," except not including the bedroom distribution requirements for three-bedroom housing units.

The bill provides that, in addition to the exemption for certain commercial tenants, commercial subtenants, or other commercial occupants with rights in a redevelopment project, any residential tenant of a redevelopment project is also exempt from the requirement to pay the prevailing wage rate for each worker's craft or trade when that worker is employed to perform building services work at the redevelopment project.

Sale of Buildings Under the Aspire Program

A developer is permitted, under the bill, to sell one or more buildings during the eligibility period if the sale is an arms-length sale, or is for an amount at least equal to fair market value, and is subject to the purchaser's assumption of all obligations under the Aspire Program.

Aspire Program Community Benefit Requirement

The bill amends current law to exempt the developers of certain projects from the requirements of a community benefits agreement once the host municipality certifies the approval letter or adopts the redevelopment agreement at a public meeting, which documents are required to state that the community benefit under a community benefits agreement has been met.

The bill amends current law to require, retaining the exception for a residential project located in a government-restricted municipality in which 100 percent of residential units constructed are reserved for low- and moderate-income households, that a redevelopment project whose "project cost" equals or exceeds $10 million enter a community benefits agreement in addition to the incentive award agreement. Under current law, the $10 million threshold for this requirement refers to "total project cost."

Aspire Program Occupancy Requirement

Beginning after the third year following the date of issuance of a final certificate of occupancy for a commercial project and through the eligibility period, the developer and any co-applicant are required to maintain at least 60 percent occupancy or to forfeit all tax credits for the tax period in which occupancy falls below this minimum requirement. Tax credits are allowed in full upon restoration of 60 percent or greater occupancy. Occupancy is to be measured by the average occupancy rate during the relevant tax period. Residential projects are exempt from this requirement.

Eligibility for Aspire Program

Among other conditions of eligibility under current law, a developer may qualify for an incentive award if the developer has not commenced any construction at the site for the redevelopment project prior to applying for the Aspire Program, with certain exceptions. The bill adds a condition that if demolition and site remediation activities were commenced prior to submitting an application that includes those demolition and site remediation costs as part of the eligible project cost, the developer is required to have paid all construction workers engaged in such work at the prevailing wage rate for their respective crafts or trades.

Under the bill, a developer is required to contribute capital of at least 20 percent of the "project cost," except that this requirement is reduced to 10 percent of the "project cost" for a project located in a government-restricted municipality. The bill amends this requirement under current law, which instead requires developer capital of each respective percentage of "total project cost."

Incentive Award Agreement

Under current law, an incentive award agreement is to include a requirement that the developer confirm that each contractor or subcontractor performing work on the project has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State. The bill adds to this requirement that the developer is required to confirm that each contractor or subcontractor performing work on the project is also not suspended or disqualified from the same activity. The bill further requires that a developer confirm that each contractor or subcontractor performing work on the project is not debarred, suspended, or disqualified by a federal agency from engaging in federally-funded construction projects or bidding on federal contracting opportunities.

Eligibility Period Under Aspire Program

The bill reduces the maximum duration of an eligibility period for a commercial project and mixed-use project to 10 years. Under current law, the maximum duration of an eligibility period for a commercial or mixed-use project is 15 years, and for a residential project is 10 years. The bill adds that the authority is required to reduce the eligibility period if this reduction would reduce the total value of tax credits needed to reimburse a developer for all or part of the project financing gap, enhance access to tax credit monetization, or otherwise enhance the effectiveness of the Aspire Program.

The bill provides that all conditions and requirements applicable during the eligibility period of a transformative project apply to each phase of the transformative project until the end of the eligibility period of each completed phase, rather than to the entire transformative project until the end of the eligibility period for the last phase.

Total Tax Credit Eligibility Under Aspire Program

The bill increases the amount of tax credits that may be awarded to a developer in certain circumstances. Specifically, the bill provides that a developer may be allowed each of the following enhancements to the developer's total tax credit award: (1) for a redevelopment project that includes redevelopment of a stranded asset, an increase of up to 10 percent of the project cost; (2) for a residential project meeting the three-bedroom distribution requirements of the Uniform Housing Affordability Controls, an increase of up to five percent of the project cost; or (3) for a redevelopment project meeting local first source hiring requirements for residents in the municipality or county in which the project is located and in surrounding municipalities, as appropriate, an increase of up to three percent of the project cost.

The bill provides that the maximum total tax credit allowed to a developer is to be the equivalent of a percentage of "eligible project cost," instead of "total project cost" as under current law. The developer of a special mission non-profit project may be allowed a tax credit that is equal in value to no more than 80 percent of the eligible project cost and that is no more than $120 million.

However, except for any redevelopment project that is located in a government restricted municipality, the bill limits a developer's total tax credits awarded under the Aspire Program, together with any program administered by the authority for a redevelopment project, to: 90 percent of the project cost for redevelopment projects that receive tax credits under the federal Low-Income Housing Tax Credit Program; and 80 percent of the project cost for all other redevelopment projects.

Aspire Program Tax Credit Carry Forward and Transfer

Under current law, a developer is required to apply tax credits during the tax periods approved by the authority. This bill authorizes a developer to apply tax credits in the tax period for which it was issued, in the tax period in which it was issued, or in any successive tax period, subject to certain conditions. The bill requires the authority to preliminarily determine whether an annual report is complete and to, within 90 days after preliminarily determining that the annual report is complete, either (1) approve the annual report, authorizing the issuance of a tax credit certificate and notifying the Director of the Division of Taxation in the Department of the Treasury (director) that a certificate is to be issued or (2) request more information from the developer. If the authority does not act within 90 days of its preliminary determination that an annual report is complete, the report is to be deemed approved and the developer is entitled to receive the tax credit certificate.

Similarly, under current law, a developer is authorized to transfer the tax credits. The bill changes when a transferee is authorized to use the tax credits. Under the bill, a transferee is authorized to use the tax credits in the tax period for which it was issued, in the tax period in which it was issued, or in any successive tax period, subject to certain conditions. The bill requires the authority to preliminarily determine whether an application for a tax credit transfer certificate is complete and to, within 90 days after preliminarily determining that an application is complete, either (1) approve the application, authorizing the issuance of a tax credit transfer certificate and notifying the director that a certificate is to be issued or (2) request more information from the developer. If the authority does not act within 90 days of its preliminary determination that an application is complete, the application is to be deemed approved and the developer is entitled to receive the tax credit transfer certificate.

Under the bill, a tax credit transfer certificate authorizes the holder of a tax credit certificate to transfer all or part of the tax credit amount at any time after the date of receipt of the tax credit certificate, subject to certain conditions.

The bill prohibits the proration of the tax credit for any year within the eligibility period of certain residential projects.

Transformative Projects Under Aspire Program

This bill amends current requirements for certain transformative projects. Under current law, a residential project with fewer than 700 new residential units is required to include the construction of: (1) not less than 200 new residential units if the project is located in a government-restricted municipality, 300 residential units if the project is located in an enhanced area, or 400 residential units for all other mixed-use projects; and (2) 50,000 square feet or more of commercial space to qualify as a transformative project. Under this bill, such residential projects are required to include the construction of at least 200 new residential units if the project is located in a government-restricted municipality, 300 new residential units if the project is located in an enhanced area, or 400 new residential units for all other mixed-use projects. However, if the residential project is not located in a government-restricted municipality or an enhanced area, construction is to include 20,000 square feet or more of commercial space, which may include retail space.

The bill provides that a developer may be allowed each of the following enhancements to the developer's total tax credit award, individually or in combination, subject to the demonstration of a project financing gap and the need for support: (1) for a transformative project that includes redevelopment of a stranded asset, an increase of up to 10 percent of the project cost; (2) for a residential transformative project meeting the three-bedroom distribution requirements of the Uniform Housing Affordability Controls, an increase of up to five percent of the project cost; or (3) for a transformative project meeting local first source hiring requirements for residents in the municipality or county in which the project is located and in surrounding municipalities, as appropriate, an increase of up to three percent of the project cost.

The bill provides that the maximum total tax credit allowed to a developer of a transformative project is to be the equivalent of a percentage of "eligible project cost," instead of "total project cost" as under current law.

Aspire Program Fees

The bill requires that the fees charged by the authority under the Aspire Program be proportional to the tax credit amount awarded for a redevelopment project. The authority is required to promulgate a schedule of fees that are limited to coverage of actual direct costs of administering the Aspire Program, coverage of reasonable indirect costs of administering the Aspire Program, and maintenance of reasonable reserves for administering the Aspire Program.

The bill provides that any application submitted or approved after January 1, 2023 is subject to the new requirements provided for in the bill, except for the fees imposed on applications that were submitted prior to the bill's effective date.

Redevelopment Project Bridge Financing Program Under Aspire Program

The bill provides for the establishment of a "Redevelopment Project Bridge Financing Program" (program) for the purpose of offering loans or loan guarantees, at the discretion of the authority, to the developers of redevelopment projects that have an outstanding project financing gap. The purpose of the program is to offer additional financing to the developer of a redevelopment project, prior to the issuance of tax credits under the Aspire Program, to ensure the completion of the project.

To apply for a loan under the program, the developer is required to submit to the authority a proposed loan and interest amount, a repayment plan, an accounting of the remaining project financing gap, and any other information the authority requires. To apply for a loan guarantee, the developer is required to submit to the authority a proposed loan guarantee amount and terms, an accounting of the remaining project gap, and any other information the authority requires. As a condition of requiring a loan or loan guarantee, the bill requires each worker employed to perform construction work on the redevelopment project to be paid not less than the prevailing wage rate for the worker's craft or trade.

The bill authorizes the authority to issue loans and loan guarantees using a "Redevelopment Project Bridge Financing Revolving Fund," into which all monies received from loan repayments are to be deposited. All monies received in the fund are to support the program until such time as the authority determines there remains no need for bridge financing, or until December 31, 2028, whichever occurs first, at which point the monies in the Redevelopment Project Bridge Financing Revolving Fund are to be deposited into the General Fund.

The bill requires that the authority recommend to the Governor and the Legislature an amount for appropriation, which amount is necessary for the administration of the program.

Aspire Program Tax Credit Redemption

The bill requires the Department of the Treasury to redeem unused tax credits surrendered for redemption for a cash payment equal to 90 percent of the amount of tax credits evidenced by the tax credit certificate or tax credit transfer certificate, provided that the issuance date of the certificate to the taxpayer surrendering the certificate occurred at least one year before the date of surrender and the certificate has not been sold or assigned previously. The tax credit redemptions are to be paid in the same manner as tax refunds.

Changes to Corporate Business Tax and Gross Income Tax

The bill amends current law to exclude gains from the transfer of tax credits issued pursuant to the "New Jersey Economic Recovery Act of 2020" from the calculation of "entire net income" under the New Jersey Corporate Business Tax and "gross income" under the New Jersey Gross Income Tax.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) revise the definitions of "aviation district" and "stranded asset";

(2) remove a provision that would have revised the definition of a "commercial project" to include industrial space that is predominantly used for warehouse distribution or fulfillment centers and has at least $10 million in environmental remediation costs;

(3) revise the definition of "project cost" and provide that the definition of the term "project cost" also applies to the term "eligible project cost" and revise the definition of "project cost" for a redevelopment project located in a government restricted municipality, which costs are also to include land costs, capped at no more than 20 percent of the total project costs, and carrying costs and interest expenses on construction loans and other financing up to project completion;

(4) change certain references to the term "project cost" to "total project cost";

(5) provide that beginning after the third year following the date of issuance of a final certificate of occupancy for a commercial project and through the conclusion of the eligibility period, certain tax credits may be forfeited if certain conditions are not met. As introduced, this provision applied beginning on the third year following the date of issuance of a final certificate of occupancy for a commercial project;

(6) add definitions for the terms "special mission non-profit project" and "targeted industry";

(7) remove a provision that would have amended current law so that the definition for "total project cost" instead would have applied to the term "total development cost" or "total redevelopment cost";

(8) provide that if demolition and site remediation activities were commenced prior to submission of an application that includes those demolition and site remediation costs as part of the eligible project cost, the developer is required to have paid all construction workers engaged in such work at the prevailing wage rate for their respective crafts or trades;

(9) amend the requirement that a developer contribute capital of at least 20 percent of the "total project cost," except that this requirement is reduced to 10 percent of the "total project cost" for a project located in a government-restricted municipality, instead requiring each respective percentage of the "project cost" as defined in the bill;

(10) require the authority to reduce the eligibility period if this reduction would reduce the total value of tax credits needed to reimburse a developer for all or part of the project financing gap, enhance access to tax credit monetization, or otherwise enhance the effectiveness of the Aspire Program, rather than to consider reducing the eligibility period;

(11) require that certain redevelopment projects with at least a $10 million "project cost," instead of a "total project cost" as under current law, enter into a community benefits agreement;

(12) provide that the maximum total tax credit allowed to a developer is to be the equivalent of a percentage of "eligible project cost," instead of "total project cost" as under current law;

(13) limit the value of tax credits awarded to the developer of a special mission non-profit project to a maximum of 80 percent of the eligible project cost, not to exceed the value of $120 million;

(14) require the authority to preliminarily determine whether an annual report is complete and to, within 90 days after preliminarily determining that the annual report is complete, either (a) approve the report, authorizing the issuance of a tax credit certificate and notifying the director that a certificate is to be issued or (b) request more information from the developer. If the authority does not act within 90 days from its preliminary determination that an annual report is complete, the report is to be deemed approved and the developer is entitled to receive the tax credit certificate;

(15) require the authority to preliminarily determine whether an application for a tax credit transfer certificate is complete and to, within 90 days after preliminarily determining that the application is complete, either (a) approve the application, authorizing the issuance of a tax credit transfer certificate and notifying the director that a certificate is to be issued or (b) request more information from the developer. If the authority does not act within 90 days from its preliminary determination that an application is complete, the application is to be deemed approved and the developer is entitled to receive the tax credit transfer certificate;

(16) remove provisions from the bill that would have authorized the use or transfer of tax credits within the three successive tax periods immediately following that in which the tax credit certificate is received by the developer;

(17) authorize a developer to use a tax credit in the tax period for which it was issued, in the tax period in which it was issued, or in any successive tax period, subject to the carry-forward provision of current law;

(18) authorize a transferee to use a tax credit in the tax period for which it was issued, in the tax period in which it was issued, or in any successive tax period, with a carry-forward provision for the use of unused credits in any of the next five successive tax periods;

(19) provide that no more than the amount of tax credits equal to the total credit amount divided by the duration of the tax credit term, in years, may be taken in any tax period;

(20) provide that the holder of a tax credit certificate may transfer all or part of the tax credit amount at any time after the date of receipt of the tax credit certificate, subject to certain conditions;

(21) require that a residential project, not located in a government-restricted municipality or an enhanced area, that contains fewer than 700 new residential units include 20,000 square feet or more of commercial space, which may include retail space;

(22) provide that the conditions and requirements applicable during an eligibility period are to apply to each phase of a transformative project until the end of the eligibility period of each completed phase, rather than to the entire transformative project until the end of the eligibility period for the last phase;

(23) remove a provision that would have provided for a parking component of a transformative project to be included in the calculation of total square footage of a project, under certain conditions;

(24) provide that applications submitted to or approved by the authority after January 1, 2023 are subject to the bill's provisions, except that applications submitted prior to the bill's effective date are subject to the same fees as were in effect immediately prior to the bill's effective date;

(25) prohibit proration of tax credit for any year within an eligibility period for certain residential projects;

(26) require the Department of the Treasury to redeem credits surrendered by a developer, rather than require the department to redeem such tax credits at such times as the department deems necessary;

(27) remove a provision that would have required tax credit redemption at such discounts as the State Treasurer deems appropriate but not to exceed 10 percent of the face value of tax credits. Instead, the bill requires that redemption be for a cash payment equal to 90 percent of the amount of tax credits evidenced by the certificate, provided that the issuance date of the certificate to the taxpayer surrendering the certificate occurred at least one year before the date of surrender and the certificate has not been sold or assigned previously;

(28) provide for a process by which a developer may surrender tax credits for redemption;

(29) remove a provision that allows the proceeds of the tax credit redemption to be issued over one or more tax periods, but not to exceed the applicable eligibility period;

(30) provide that the developer of a transformative project is eligible for certain enhancements to the total tax credit award,

individually or in combination, subject to the demonstration of a project financing gap and need for support; and

(31) make technical changes to the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill could result in annual increases in State expenditures and revenues associated with the authorization for the Department of the Treasury to purchase unused tax credits issued under the New Jersey Aspire Program at a discount.

The OLS also anticipates a reduction in State revenue collected under the New Jersey Gross Income Tax and the New Jersey Corporation Business Tax due to the income exclusion provided in the bill for any gain or income derived from the transfer of tax credits issued pursuant to the New Jersey Economic Recovery Act of 2020.

Additionally, the OLS concludes that the bill would result in annual expenditure and revenue increases for the New Jersey Economic Development Authority to create and administer the Redevelopment Project Bridge Financing Program.