ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 2076

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 16, 2024

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 2076 (2R).

As amended and reported, this bill amends and supplements the "New Jersey Aspire Program Act" (Aspire Program) and revises certain provisions concerning the surrender of tax credits issued under the "New Jersey Economic Recovery Act of 2020."

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 provides that the term "commercial project" includes any industrial space that is predominantly used for warehouse distribution or fulfillment centers if the eligible project cost includes at least $10,000,000 in environmental remediation costs.

The bill reduces the maximum eligibility period for all redevelopment projects to 10 years, as specified in an incentive award agreement, provided that a developer may elect a period not to exceed five years for a project in a government-restricted municipality or for a special mission non-profit project. The bill also allows the New Jersey Economic Development Authority (authority) to approve, in its discretion, an eligibility period that is shorter than the applicable maximum period.

The bill amends the term "government-restricted municipality" to include any municipality that: has a population greater than 50,000 and less than 60,000 according to the latest federal decennial census, is designated as the county seat of a county of the second class with a population greater than 800,000 according to the latest federal decennial census, and has a Municipal Revitalization Index (MRI) distress score of 62.1 (e.g., New Brunswick); has a population greater than 70,000 and less than 100,000 according to the latest federal decennial census, is designated as the county seat of a county of the second class with a population greater than 515,000 and less than 525,000 according to the latest federal decennial census, and has an

MRI distress score of 100 (e.g., Camden); or contains the intersection of Interstate 280 and the Garden State Parkway, and corresponding land areas occupied by such highways under the ownership or control of the federal government of the United States or of this State within its municipal boundary, and has an MRI distress score of 55.5 (e.g., East Orange).

The bill defines "MRI distress score" to mean a municipal revitalization index distress score, as documented in the 2023 Municipal Revitalization Index developed by the Department of Community Affairs.

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 eligible 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 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 supportive housing units for tenants requiring special needs or supportive services, and no more than 25,000 square feet of commercial space for the provision of on-site social service programs that require a license from the Department of Children and Families as a licensed child care center. The bill exempts special mission non-profit projects from the net benefit test requirement, affordable housing requirements, and the requirement to provide a market study as part of an application to the authority. The bill also provides that a special mission non-profit project is not required to be located in an incentive area in order to qualify for an incentive award.

Exemption from Prevailing Wage Requirements

The bill provides that the residential tenants or residential subtenants of a redevelopment project are exempt from the prevailing wage requirements for building service workers. This requirement applies to developers, commercial tenants, commercial subtenants, and other commercial occupants who hold certain leasehold interests or other occupancy rights in a redevelopment project.

Occupancy Requirements for Commercial Projects

The bill provides that, beginning on the fourth year of the eligibility period for a commercial project, and through the conclusion of the eligibility period, if the average occupancy rate of a commercial project is less than 60 percent during any applicable tax period, the developer and any co-applicant is required to forfeit all tax credits until the average occupant rate has reached or surpassed 60 percent.

Under the bill, occupancy is required to be measured by the average of the monthly occupancy during the relevant tax period. Residential projects are exempt from this requirement.

Sale of Buildings Under the Aspire Program

Under the bill, a developer is permitted to sell one or more buildings during the eligibility period, subject to such rules and regulations as may be adopted by the authority.

Aspire Program Community Benefit Agreements

Current law provides that the developers of certain redevelopment projects with project costs not less than $10 million are required to enter a community benefits agreement. However, there is an exception to this requirement 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. The bill provides that special mission non-profit projects are also exempt from this requirement.

Additionally, the bill provides that the county or municipality in which a development project is located is required to hold at least one previously advertised public hearing at which testimony from residents, community groups, and other stakeholders is required to have an opportunity to be heard on the needs of the community that a community benefits agreement should address. Furthermore, the bill requires the inclusion of the minutes of the meeting in the resolution of the governing body of the municipality or county adopting the community benefits agreement. The bill also requires the developer and the municipality or county to submit the executed community benefits agreement, redevelopment agreement, or approved resolution to the authority within the same time as all other conditions subsequent required in the approval letter.

Incentive Award Agreement

Under current law, an incentive award agreement is required to include a requirement that the developer confirm that each contractor or subcontractor performing work at the redevelopment 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 at 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.

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 not less than: (1) 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 of commercial space to qualify as a transformative project.

Under this bill, a residential project is required to include 700 or more new residential units to qualify as a transformative project. Additionally, a mixed-use residential project with fewer than 700 residential units is required to include the following elements to qualify as a transformative project: (1) the construction of at least 200 new residential units if the project is located in a government-restricted municipality, at least 300 new residential units if the project is located in an enhanced area, or at least 400 new residential units for all other mixed-use projects; and (2) the construction of 30,000 square feet or more of commercial space, which may include retail space.

Calculation of Tax Credit Amount

The bill increases the amount of tax credits that may be awarded to redevelopment projects, including transformative projects, that are located in certain government-restricted municipalities. Under current law, a project located in a government-restricted municipality is allowed a total tax credit award not to exceed 80 percent of the total project costs. Under the bill, any project that is located in a municipality, which qualified as government-restricted municipality before the enactment of this bill, is allowed a total tax credit award not to exceed 85 percent of the eligible project costs. Any project that is located in a municipality, which newly qualifies as government-restricted municipality under this bill, is allowed a total tax credit award not to exceed 80 percent of the eligible project costs.

The bill provides that a special mission non-profit project is allowed a total tax credit award not to exceed 85 percent of the eligible project costs, up to $120 million. The bill also specifies that all tax credit awards are to be based on a designated percentage of the eligible project costs of the project.

The bill also prohibits the authority from resizing or reducing the tax credit at project completion based on the executed financing commitments or the updated projected cash flow. However, the authority is required to use the commitments and cash flow to calculate the return on investment required under the program.

Evaluation of Rate of Return on Investment

The bill requires the authority to evaluate the developer’s rate of return on investment and compare that rate of return on investment to the reasonable and appropriate rate of return at the time of board approval both at project certification and at the end of the seventh year of the eligibility period. However, when the eligibility period of a project is less than 10 years, the bill allows the authority to adjust the time in which this evaluation is made. The bill also prohibits the authority from reducing or recapturing any tax credits at project certification or at the end of the seventh year of the eligibility period solely due to an increase to the return on investment.

Under current law, if the actual rate of return on investment exceeds the reasonable and appropriate rate of return on investment at the time of board approval by more than 15 percent, the authority is to require the developer to pay up to 20 percent of the amount in excess of the reasonable and appropriate rate of return on investment. However, under the bill, a developer is required to pay 50 percent of the amount in excess of the reasonable and appropriate rate of return on investment if a tax credit certificate or tax credit transfer certificate is surrendered for redemption, as provided in the bill, after the sixth year of the eligibility period. For any year during the eligibility period in which the director purchases a tax credit certificate or tax credit transfer certificate issued for a redevelopment project, the bill provides that the developer is instead required to make a payment if the actual rate of return on investment exceeds the reasonable and appropriate rate of return on investment at the time of board approval by more than 10 percent.

The bill provides that for any payment amount calculated at project certification, the developer is required to make equal annual payments, which in aggregate equal the calculated payment amount, with each annual report for the first seven years of the eligibility period. At the end of the seventh year of the eligibility period, the developer is required to pay the authority any additional amount required. When the eligibility period of a project is less than 10 years, the bill allows the authority to adjust the time in which these contributions may be required.

Condition for Receiving Tax Credits

Under current law, the developer of a redevelopment project may not apply tax credits during any year of the eligibility period until after the authority has reviewed a report submitted by the developer and issued a certificate of compliance to the developer. The bill provides that the authority is not permitted to require a developer to include a permanent certificate of occupancy in the first annual report submitted by the developer. Instead, the bill provides that the developer is required to include the permanent certificate of occupancy in the next annual report after it is received.

Additionally, the bill provides that, subject to forfeiture, reduction, or other action for failure to comply with a program requirement, within 120 days after the authority preliminarily determines whether the annual report submitted by the developer is complete, the authority is required to either: (1) approve the annual report, authorizing the issuance of a tax credit certificate or tax credit transfer certificate and notifying the Director of the Division of Taxation in the Department of the Treasury (director) that a tax credit certificate is to be issued; or (2) request more information from the developer. If the authority does not act within 120 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.

Application of Tax Credits

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 in the eligibility period, without the need to amend the tax return for the tax period for which the credit was issued. The bill also limits the amount of tax credits that may be claimed in any tax period to the total tax credit amount, divided by the duration of the tax credit term, in years.

Under the bill, the holder of a tax credit certificate may transfer all or part of the tax credit amount on or after the date of issuance of the tax credit transfer certificate, for use by the transferee in the tax period for which it was issued, in the tax period in which it was issued, or in any of the next three successive tax periods. The tax certificate holder or transferee may first use the credit against tax liabilities in the tax period in which it was issued or in a succeeding tax period without the need to amend the tax return for the tax period for which the credit was issued.

State Purchase of Tax Credits

Under current law, the director is permitted to purchase unused tax credits awarded under the Aspire Program, including tax credit transfer certificates, in an amount not to exceed 75 percent of the tax credit amount. This bill authorizes the director to purchase tax credit certificates and tax credit transfer certificates issued under the Aspire Program for an amount equal to 85 percent of the credit amount, provided that: (1) the issuance date of the certificate occurred at least one year prior to the date of application to the director; and (2) if the application is submitted after the sixth year of the eligibility period, the amount in excess of the reasonable and appropriate rate of return on investment that the developer is required to is increased to 50 percent.

In addition, the bill authorizes the director to purchase unused tax credits, including tax credit transfer certificates, awarded under the "Cultural Arts Incentives Program Act" for an amount equal to 85 percent of the credit amount, provided that the issuance date of the tax credit certificate or tax credit transfer certificate to the developer or holder occurred at least one year prior to the date of application to the director.

Previously Approved Projects

Under the bill, any redevelopment project approved under the Aspire Program after the effective date of P.L.2020, c.156 (i.e., January 7, 2021) is subject to the following provisions of the bill: (1) the average occupancy rate requirements of commercial projects; (2) any lower fees promulgated by the authority on or after this bill's effective date, except that such lower fees do not apply to any fees already paid to the authority; (3) the requirements concerning the execution of community benefits agreements; (4) the requirements concerning the authority's review of annual reports submitted by developers; (5) the requirements related to the entrance and review of incentive award agreements; and (6) any other terms and conditions of an incentive award that the authority determines will make the administration of the program consistent with the provisions of the program, as amended and supplemented this bill, provided that terms and conditions may not have a materially adverse impact on a project approved before the enactment of this bill.

The bill also provides that any project approved by the authority after the effective date of P.L.2020, c.156 may not be subject to any proration of tax credits for any year of the eligibility period.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) remove "an Endorsed Plan" from the list of areas that may qualify as an "incentive area" under the bill. The bill would have added this term to the list of areas in the definition of "incentive area";

(2) remove the definitions of "mixed-use project," "stranded asset," and "targeted industry" that the bill would have added to current law;

(3) provide that the term "commercial project" also includes any industrial space that is predominantly used for warehouse distribution or fulfillment centers if the eligible project cost includes at least $10,000,000 in environmental remediation costs;

(4) reduce the maximum eligibility period for all redevelopment projects to 10 years, as specified in an incentive award agreement, provided that a developer may elect a period not to exceed five years for a project in a government-restricted municipality or for a special mission non-profit project. The amendments also allow the authority to approve, in its discretion, an eligibility period that is shorter than the applicable maximum period, rather than require the authority to reduce the eligibility period under certain circumstances, as previously provided in the bill;

(5) expand the definition of the term "government-restricted municipality" to include any municipality that: (i) has a population

greater than 50,000 and less than 60,000 according to the latest federal decennial census, is designated as the county seat of a county of the second class with a population greater than 800,000 according to the latest federal decennial census, and has an MRI distress score of 62.1; (ii) has a population greater than 70,000 and less than 100,000 according to the latest federal decennial census, is designated as the county seat of a county of the second class with a population greater than 515,000 and less than 525,000 according to the latest federal decennial census, and has an MRI distress score of 100; or (iii) contains the intersection of Interstate 280 and the Garden State Parkway, and corresponding land areas occupied by such highways under the ownership or control of the federal government of the United States or of this State within its municipal boundary, and has an MRI distress score of 55.5;

(6) add a definition for "MRI distress score";

(7) provide that for a development project located in a government-restricted municipality, "eligible project cost" also includes land costs in an amount up to 20 percent of the eligible project cost. Previously, the bill would have allowed various other costs to be included for these projects;

(8) change the definition of a "special mission non-profit project" to require the inclusion of up to 100 units of 100 percent supportive housing units for tenants requiring special needs or social services, which social services may include licensed social workers, and no more than 25,000 square feet of commercial space within the project for the provision of on-site social service programs that require a license from the Department of Children and Families as a licensed child care center. Previously, the bill would have required these types of projects to include 100 units of 100 percent affordable housing and would have limited commercial space to 10,000 square feet within the project;

(9) exempt special mission non-profit projects from the net benefit test requirement, affordable housing requirements, and the requirement to provide a market study as part of an application to the authority;

(10) provide that a special mission non-profit project is not required to be located in an incentive area in order to qualify for an incentive award;

(11) clarify references to "project cost," "eligible project cost," and "total project cost" throughout the bill;

(12) remove an exception from bedroom distribution requirements, which the bill would have provided with respect to affordability controls on residential units constructed for occupancy by low- and moderate-income households under the program;

(13) remove certain provisions of the bill related to the requirement to pay prevailing wage for certain construction workers. The amendments also clarify that the residential tenants or residential subtenants of a redevelopment project are not subject to the prevailing

wage requirements applied to commercial tenants, commercial subtenants, or other commercial occupants who hold certain leasehold interests or other occupancy rights in a redevelopment project;

(14) clarify that the average occupancy rate requirements apply beginning on the fourth year of the eligibility period, rather than beginning after the third year following the date of issuance of a final certificate of occupancy for a commercial project;

(15) permit a developer to sell one or more buildings during the eligibility period, subject to such rules and regulations as may be adopted by the authority, rather than subject to additional provisions previously included in the bill;

(16) prohibit the authority from resizing or reducing the tax credit at project completion based on the executed financing commitments or the updated projected cash flow, except that the authority is required to use the commitments and cash flow to calculate the return on investment required under the program;

(17) require the authority to evaluate the developer's rate of return on investment and compare that rate of return on investment to the reasonable and appropriate rate of return at the time of board approval at project certification, in addition to at the end of the seventh year of the eligibility period, as required under current law;

(18) provide that, for any year during the eligibility period in which the director purchases a tax credit certificate or tax credit transfer pursuant to the provisions of the bill, the developer is required to make a payment to the authority, if the actual rate of return on investment exceeds the reasonable and appropriate rate of return on investment at the time of board approval by more than 10 percent. The required payment is to equal 20 percent of the excess rate of return if the application is submitted to the director before the seventh year of the eligibility period, or 50 percent of the excess rate of return if the application is submitted after the sixth year of the eligibility period;

(19) require a developer, for any payment amount calculated at project certification, to make equal annual payments, which in aggregate equal the calculated payment amount, with each annual report for the first seven years of the eligibility period. At the end of the seventh year of the eligibility period, the developer is required to pay the authority any additional amount required;

(20) revise the requirements of law concerning the execution of community benefits agreements. The amendments exempt the developers of a special mission non-profit project from this requirement. The amendments also provide that the county or municipality in which a development project is located is required to hold at least one previously advertised public hearing at which testimony is taken from residents, community groups, and other stakeholders that are required to have an opportunity to be heard concerning the needs of the community that a community benefits agreement should address. Under current law, these public hearings

are not required to have been previously advertised. Furthermore, the amendments require the inclusion of the minutes of the meeting in the resolution of the governing body of the municipality or county adopting the community benefits agreement. The amendments also require the developer and the municipality or county to submit the executed community benefits agreement, redevelopment agreement, or approved resolution to the authority within the same time as all other conditions subsequent required in the approval letter. Lastly, the amendments restore certain requirements of existing law concerning the certification of an approval letter by a municipality, which requirements would have changed under the bill;

(21) remove the allowance for enhancements to certain developers' total tax credit awards based on a project meeting certain conditions;

(22) remove a provision of the bill that would have limited the total tax credits awarded for certain redevelopment projects, other than those located in government-restricted municipalities, to 90 percent of the project costs for projects receiving federal low-income housing tax credits or 80 percent of the project costs for all other projects;

(23) provide that a mixed-use residential project containing fewer than 700 new residential units is required to contain the following elements to qualify as a transformative project: (i) the construction of 30,000 square feet or more of commercial space, which commercial space may include retail space; and (ii) certain minimum amounts of new residential units, based on the location of the project;

(24) remove a provision of the bill that would have revised current law concerning the applicability of terms and conditions during the entire transformative project until the end of the eligibility period for each completed phase;

(25) remove the provisions of the bill that would have established the "Redevelopment Project Bridge Financing Program";

(26) remove provisions that would have limited the fees that may be charged by the authority to the coverage of certain actual direct costs under Aspire Program. The amendments also remove a requirement for any fees charged by the authority under the program to be proportional to the tax credit amount awarded for a redevelopment project;

(27) provide that the authority may not require a developer to include a permanent certificate of occupancy in the first annual report submitted during the eligibility period. The amendments require the developer to include the certificate in the next annual report after it is received;

(28) extend the period of time, from 90 days to 120 days after preliminarily determining that a developer's annual report is complete, in which the authority is required, subject to forfeiture, reduction, or other action for failure to comply with a program requirement, to either approve the annual report and notify the director to issue the tax

credit certificate or request more information from the developer to finalize approval. The amendments also provide that the report is to be deemed approved if no action is taken within 120 days of the submission, rather than 90 days as previously provided in the bill;

(29) remove provisions of that bill that would have amended current law to exclude gains from the transfer of tax credits issued pursuant to the "New Jersey Economic Recovery Act of 2020" from taxable income under the New Jersey Corporate Business Tax and New Jersey Gross Income Tax;

(30) specify that the holder of tax credit certificate issued under the Aspire Program may apply the credit in the tax period for which it was issued, in the tax period in which it was issued, or in any tax period during the eligibility period, but not in any successive tax period after the credit was issued;

(31) clarify that the holder of a tax credit certificate may transfer all or part of the tax credit amount on or after the date of issuance of the tax credit transfer certificate, for use by the transferee in the tax period for which it was issued, in the tax period in which it was issued, or in any of the next three successive tax periods. The amendments also limit the tax periods in which the transferee may first use the credit to include the tax period in which it was issued, or any of the next three succeeding tax periods, rather than any successive tax period;

(32) revise the provisions of the bill concerning the surrender of unused tax credits under the Aspire Program with an authorization for the director to purchase such credits for an amount equal to 85 percent of the credit amount, provided that the issuance date of the credits occurred at least one year prior to the date of application to the director, and further provided that, if the application to the director is submitted after the sixth year of the eligibility period, the amount in excess of the reasonable and appropriate rate of return on investment that the developer is required to is increased to 50 percent;

(33) authorize the director to purchase unused tax credits awarded under the "Cultural Arts Incentives Program Act" for an amount equal to 85 percent of the credit amount, provided that the issuance date of the credits occurred at least one year prior to the date of application to the director;

(34) provide that any project approved by the authority after the effective date of P.L.2020, c.156 (i.e., January 7, 2021) are subject to the following provisions of the bill: (i) the average occupancy rate requirements of commercial projects; (ii) any lower fees promulgated by the authority on or after this bill's effective date, except that such lower fees do not apply to any fees already paid to the authority; (iii) certain requirements concerning the execution of community benefits agreements; (iv) certain requirements concerning the authority's review of annual reports submitted by developers; (v) certain requirements related to the entrance and review of incentive award

agreements; and (vi) any other terms and conditions that the authority determines will make the administration of the program consistent with the provisions of the program, as amended and supplemented this bill, provided that terms and conditions may not have a materially adverse impact on a project approved before the enactment of this bill;

(35) prohibit the proration of Aspire Program tax credits; and

(36) make technical corrections to the bill, including updating the title and synopsis to reflect changes to the bill.

FISCAL IMPACT:

Fiscal information is currently unavailable for this bill.