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end

§§3,4
C.34:1B-308.1
and 34:1B-308.2
§5
Repealer

P.L. 2022, CHAPTER 47, *approved June 30, 2022*
Senate, No. 2921

1 AN ACT concerning the Food Desert Relief Program and amending,
2 supplementing, and repealing various parts of P.L.2020, c.156.

3

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

6

7 1. Section 37 of P.L.2020, c.156 (C.34:1B-305) is amended to
8 read as follows:

9 37. As used in sections 35 through 42 of P.L.2020, c.156
10 (C.34:1B-303 through C.34:1B-310) and sections 3 and 4 of P.L. ,
11 c. (C.) (pending before the Legislature as this bill):

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

15 "Department" means the Department of Agriculture.

16 "Director" means the Director of the Division of Taxation in the
17 Department of the Treasury.

18 "Eligible equipment costs" means expenditures for the
19 procurement of such equipment as is needed to allow a
20 supermarket, grocery store, mid-sized food retailer, small food
21 retailer, or other eligible entity to store, refrigerate, transport, or
22 otherwise maintain nutritious foods, including fresh fruits and
23 vegetables, for retail purposes, but within a standard range based
24 upon industry standards, as determined by the authority.

25 "Eligible technology costs" means expenditures for the
26 procurement or upgrade of technology systems to support online
27 ordering and e-commerce, including but not limited to computer
28 hardware, software, internet connectivity, and database systems.

29 "First or second new supermarket or grocery store" means the
30 first and second new supermarket or grocery store within each food
31 desert community to be approved for tax credits under the program
32 by the authority, except that a supermarket or grocery store may
33 lose the designation of first or second new supermarket or grocery
34 store if the project does not meet milestones designated by the
35 authority in a timely manner, as determined by the authority.

36 "Food desert community" means a physically contiguous area in
37 the State in which residents have limited access to nutritious foods,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 such as fresh fruits and vegetables, and which has been designated
2 as a food desert community pursuant to subsection b. of section 38
3 of P.L.2020, c.156 (C.34:1B-306).

4 "Initial operating costs" means expenditures for the operation of
5 a supermarket or grocery store within the first three years after
6 opening to the public, but within a standard range based upon
7 industry standards, as determined by the authority.

8 "Mid-sized food retailer" means a medium-sized retail outlet
9 with at least 2,500 but less than 16,000 square feet, of which at least
10 75 percent is occupied by food and related products, which products
11 shall be based on industry standards, as determined by the authority,
12 except that the food and related products shall not include alcoholic
13 beverages and products related to the consumption of such
14 beverages.

15 "New supermarket or grocery store" means a supermarket or
16 grocery store that commenced construction, or commenced
17 rehabilitation of at least 75 percent of its square footage, after the
18 effective date of the "Food Desert Relief Act," as established by
19 sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through
20 C.34:1B-310).

21 "Program" means the Food Desert Relief Program established in
22 section 38 of P.L.2020, c.156 (C.34:1B-306).

23 "Project cost" means the costs incurred in connection with the
24 establishment of a supermarket or grocery store within a food desert
25 community by the developer until the opening of the supermarket or
26 grocery store to the public, including the costs relating to lands,
27 buildings, improvements, real or personal property, or any interest
28 therein, including leases discounted to present value, including
29 lands under water, riparian rights, space rights and air rights
30 acquired, owned, developed or redeveloped, constructed,
31 reconstructed, rehabilitated or improved, any environmental
32 remediation costs, plus costs not directly related to construction,
33 including capitalized interest paid to third parties, of an amount not
34 to exceed 20 percent of the total costs, and the cost of infrastructure
35 improvements, including ancillary infrastructure projects.

36 "Project financing gap" means the part of the total project cost,
37 including return on investment, that remains to be financed after all
38 other sources of capital have been accounted for, including, but not
39 limited to, developer-contributed capital, which shall not be less
40 than 20 percent of the total project cost, which may include the
41 value of any existing land and improvements in the project area
42 owned or controlled by the developer, and the cost of infrastructure
43 improvements in the public right-of-way, and investor or financial
44 entity capital or loans for which the developer, after making all
45 good faith efforts to raise additional capital, certifies that additional
46 capital cannot be raised from other sources on a non-recourse basis.

47 "Small food retailer" means a small retail outlet, with less than
48 2,500 square feet, that sells a limited selection of foods and other

1 products, such as a bodega, convenience store, corner store,
2 neighborhood store, small grocery, mobile food vendor, farmers'
3 market, food co-op, or small-scale store.

4 "Supermarket or grocery store" means a retail outlet with at least
5 16,000 square feet, of which at least ~~90~~ 80 percent is occupied by
6 food and related products, which products shall be based on
7 industry standards, as determined by the authority, except that the
8 food and related products shall not include alcoholic beverages and
9 products related to the consumption of such beverages.

10 "Tax credit" means credit against a tax liability pursuant to
11 section 1 of P.L.1950, c.231 (C.17:32-15), N.J.S.17B:23-5, section
12 5 of P.L.1945, c.162 (C.54:10A-5), and sections 2 and 3 of
13 P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3).

14 (cf: P.L.2021, c.160, s.13)

15

16 2. Section 38 of P.L.2020, c.156 (C.34:1B-306) is amended to
17 read as follows:

18 38. a. (1) There is established the Food Desert Relief Program
19 to be administered by the New Jersey Economic Development
20 Authority. The program shall include tax credit components, as
21 provided in sections 39 and 40 of P.L.2020, c.156 (C.34:1B-307
22 and C.34:1B-308), in order to incentivize businesses to establish
23 and retain new supermarkets and grocery stores in food desert
24 communities.

25 (2) The total value of tax credits approved by the authority
26 pursuant to sections 39 and 40 of P.L.2020, c.156 (C.34:1B-307 and
27 C.34:1B-308) shall not exceed the limitations set forth in section 98
28 of P.L.2020, c.156 (C.34:1B-362).

29 b. The authority, in consultation with the Department of
30 Agriculture and the Department of Community Affairs, shall
31 initially designate not more than 50 separate geographic areas that
32 have limited access to nutritious foods as food desert communities
33 in this State. The authority, in consultation with the Department of
34 Agriculture and the Department of Community Affairs, shall
35 develop criteria for the designation of food desert communities, but
36 each separate food desert community shall consist of a distinct
37 geographic area with a single defined border. The criteria shall, at a
38 minimum, incorporate analysis of municipal or census tract poverty
39 statistics, food desert information from the Economic Research
40 Service of the United States Department of Agriculture, healthier
41 food retail tract information from the federal Centers for Disease
42 Control and Prevention, and residents' access to nutritious foods,
43 such as fresh fruits and vegetables, through supermarkets and
44 grocery stores. The authority, in consultation with the departments,
45 may also consider in making food desert community designations
46 pursuant to this subsection, data related to municipal or census tract
47 population size and population density, the number of residents who
48 receive Supplemental Nutrition Assistance Program (SNAP)

1 benefits within a municipality, the extent to which a municipality's
2 residents have access to a personal vehicle, and a municipality's
3 Municipal Revitalization Index distress score, obesity rate, and
4 unemployment rate. The authority, in consultation with the
5 departments, shall continuously evaluate areas previously
6 designated as food desert communities and assess whether they still
7 meet the criteria for designation as a food desert community and
8 may designate additional food desert communities once every three
9 years following the effective date of sections 35 through 42 of
10 P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310).

11 c. To receive a tax credit under section 39 or 40 of P.L.2020,
12 c.156 (C.34:1B-307 or C.34:1B-308), a taxpayer shall submit an
13 application to the authority in the form and manner prescribed by
14 the authority and in accordance with criteria established by the
15 authority, which at minimum will include a commitment to accept
16 benefits from federal nutrition assistance programs, such as the
17 Supplemental Nutrition Assistance Program (SNAP) and the
18 Special Supplemental Nutrition Program for Women, Infants, and
19 Children (WIC). Following the approval of an application, the
20 authority may, pursuant to an award agreement, award tax credits to
21 an eligible taxpayer that:

22 (1) develops and opens for business to the public the first or
23 second supermarket or grocery store in a designated food desert
24 community; or

25 (2) owns, leases, or subleases, and operates the first or second
26 new supermarket or grocery store in a designated food desert
27 community.

28 d. (1) The authority may sell all or a portion of the tax credits
29 made available in a fiscal year pursuant to subsection a. of this
30 section through a competitive auction process or a publicly
31 advertised solicitation for offers and dedicate the proceeds from
32 such sale to provide grants and loans to qualifying supermarkets,
33 grocery stores, mid-sized food retailers, small food retailers, and
34 any other eligible entity. The amount of any grant or loan provided
35 pursuant to this subsection shall be in accordance with the need of
36 the supermarket, grocery store, mid-sized food retailer, small food
37 retailer, or any other eligible entity, as determined by the authority.
38 The authority shall sell tax credits pursuant to this section in the
39 manner determined by the authority; provided, however, the
40 authority shall not sell tax credits for less than 85 percent of the tax
41 credit amount. Any credit sold shall be valid in the privilege period
42 in which the sale is completed, and any unused portion thereof may
43 be carried forward into the next seven privilege periods or until
44 exhausted, whichever is earlier. Grants and loans made available
45 pursuant to this subsection shall be awarded to entities that:

46 (a) **【are eligible for tax credits under subsection c. of this section**
47 **in lieu of tax credits】** operate a supermarket or grocery store that
48 meets criteria established by the authority, which criteria shall, at

1 minimum, include a commitment to accept benefits from federal
2 nutrition assistance programs, including, but not limited to, the
3 Supplemental Nutrition Assistance Program (SNAP) and the
4 Special Supplemental Nutrition Program for Women, Infants, and
5 Children (WIC), in a designated food desert community;

6 (b) own, lease, or sublease, and operate a mid-sized food retailer
7 or small food retailer that commits to selling nutritious foods,
8 including fresh fruits and vegetables, in a designated food desert
9 community; or

10 (c) at the discretion of the authority, support initiatives to
11 strengthen food security of residents in food desert communities.

12 (2) A supermarket, grocery store, mid-sized food retailer, small
13 food retailer, or other eligible entity shall submit an application to
14 the authority to receive a grant or loan pursuant to this subsection.
15 The application shall be submitted in the form and manner
16 prescribed by the authority and in accordance with criteria
17 established by the authority. An entity eligible for a grant or loan
18 under subparagraph (a) of paragraph (1) of this subsection shall not
19 be required to submit a separate application to the authority for the
20 grant or loan, provided that the entity has submitted an application
21 to the authority pursuant to subsection c. of this section.

22 (3) Prior to awarding a grant or loan to an applicant supermarket,
23 grocery store, mid-sized food retailer, small food retailer, or other
24 eligible entity pursuant to this subsection, the authority shall
25 confirm with the Department of Labor and Workforce
26 Development, the Department of Environmental Protection, and the
27 Department of the Treasury whether the applicant is in substantial
28 good standing with the respective department, or has entered into an
29 agreement with the respective department that includes a practical
30 corrective action plan for the applicant. The applicant shall certify
31 that any contractors or subcontractors that perform work at the
32 qualifying supermarket or grocery store: (1) are registered as
33 required by "The Public Works Contractor Registration Act,"
34 P.L.1999, c.238 (C.34:11-56.48 et seq.); (2) have not been debarred
35 by Department of Labor and Workforce Development from
36 engaging in or bidding on Public Works Contracts in the State; and
37 (3) possess a tax clearance certificate issued by the Division of
38 Taxation in the Department of the Treasury. The authority may also
39 contract with an independent third party to perform a background
40 check on the entity.

41 (4) An applicant supermarket, grocery store, mid-sized food
42 retailer, small food retailer, or other eligible entity shall, as required
43 at the discretion of the authority, submit to the authority satisfactory
44 information pertaining to the eligible equipment costs and eligible
45 technology costs, as certified by a certified public accountant,
46 certifications that all information provided by the applicant to the
47 authority is true, including information contained in the application,
48 any agreement pertaining to the award of grants or loans under the

1 program, any amendment to such an agreement, and any other
2 information submitted by the applicant to the authority pursuant to
3 sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through
4 C.34:1B-310), and evidence of the eligible equipment costs and
5 eligible technology costs of the applicant. The applicant, or an
6 authorized agent of the applicant, shall certify under the penalty of
7 perjury that the information provided pursuant to this subsection is
8 true.

9 e. The authority may establish a technical assistance fund to
10 assist any entity that is eligible for a tax credit, grant, or loan under
11 this section. The authority, through the technical assistance fund,
12 may make grants to entities to assist qualifying supermarkets,
13 grocery stores, mid-sized food retailers, small food retailers, or
14 other eligible entities in implementation of best practices for
15 increasing the accessibility of nutritious foods in food desert
16 communities. Technical assistance shall be provided either directly
17 by the authority or through a not-for-profit or for-profit entity and
18 made available in English as well as the two most commonly
19 spoken languages in New Jersey other than English. At the
20 discretion of the authority, funds to support technical assistance
21 may be provided in addition to, or in lieu of, any tax credit, grant,
22 or loan awarded under sections 35 through 42 of P.L.2020, c.156
23 (C.34:1B-303 through C.34:1B-310).

24 f. (1) The authority shall require that any tax credits, grants, or
25 loans awarded by the authority under the program be utilized by the
26 recipient for one or more of the following purposes, which shall be
27 set forth in the award agreement:

28 (a) to mitigate a project financing gap;

29 (b) to mitigate the initial operating costs of the supermarket or
30 grocery store; **[or]**

31 (c) to mitigate the eligible equipment costs or eligible technology
32 costs of the supermarket, grocery store, mid-sized food retailer,
33 small food retailer, or other eligible entity in order to make
34 nutritious foods more accessible and affordable to residents within
35 food **[deserts]** desert communities; or

36 (d) to support initiatives to ensure the food security of residents
37 in food desert communities.

38 (2) The value of tax credits, grants, or loans awarded to
39 individual entities under the program shall not exceed:

40 (a) in the case of an entity eligible under paragraph (1) of
41 subsection c. of this section, 40 percent of the total project cost for
42 the first supermarket or grocery store in a designated food desert
43 community, and 20 percent of the total project cost for the second
44 supermarket or grocery store in the food desert community; and

45 (b) in the case of an entity eligible under paragraph (2) of
46 subsection c. of this section, the initial operating costs of the first
47 supermarket or grocery store in a designated food desert

- 1 community, and one-half of the initial operating costs of the second
2 supermarket or grocery store in the food desert community; **[and]**
- 3 (c) in the case of an entity eligible for a grant or loan under
4 subparagraph (b) of paragraph (1) of subsection d. of this section,
5 the eligible equipment costs and eligible technology costs of the
6 supermarket, grocery store, mid-sized food retailer, small food
7 retailer, or other eligible entity; and
- 8 (d) in the case of an entity eligible for a grant or loan under
9 subparagraph (c) of paragraph (1) of subsection d. of this section,
10 the costs of initiatives to ensure the food security of residents in
11 food desert communities.
- 12 g. An entity that develops and opens **[a]** the first or second
13 new supermarket or grocery store in a designated food desert
14 community shall be eligible for a tax credit only if the entity
15 demonstrates to the authority at the time of application that: (1)
16 each worker employed to perform construction at the project shall
17 be paid not less than the prevailing wage rate for the worker's craft
18 or trade, as determined by the Commissioner of Labor and
19 Workforce Development pursuant to P.L.1963, c.150 (C.34:11-
20 56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.); (2)
21 without the tax credit award, the project is not economically
22 feasible; (3) a project financing gap exists; and (4) except for
23 demolition and site remediation activities, the entity has not
24 commenced any construction at the site of the project before
25 submitting an application, unless the authority determines that the
26 project would not be completed otherwise.
- 27 h. (1) Except as provided in paragraph (2) of this subsection, a
28 labor harmony agreement shall be required if the State has a
29 proprietary interest in a supermarket or grocery store and the
30 agreement shall remain in effect for as long as the State acts as a
31 market participant in the project. The provisions of this paragraph
32 shall apply to a supermarket or grocery store that will have more
33 than 10 employees.
- 34 (2) A labor harmony agreement under paragraph (1) of this
35 subsection shall not be required if the authority determines that the
36 supermarket or grocery store would not be feasible if a labor
37 harmony agreement is required. The authority shall support the
38 determination by a written finding, which provides the specific
39 basis for the determination.
- 40 (3) As used in this subsection, "labor harmony agreement" means
41 an agreement between a business that serves as the owner or
42 operator of a supermarket or grocery store and one or more labor
43 organizations, which requires, for the duration of the agreement:
44 that any participating labor organization and its members agree to
45 refrain from picketing, work stoppages, boycotts, or other economic
46 interference against the business; and that the business agrees to
47 maintain a neutral posture with respect to efforts of any
48 participating labor organization to represent employees at a

1 supermarket or grocery store, agrees to permit the labor
2 organization to have access to the employees, and agrees to
3 guarantee to the labor organization the right to obtain recognition as
4 the exclusive collective bargaining representatives of the employees
5 at a supermarket or grocery store by demonstrating to the New
6 Jersey State Board of Mediation, Division of Private Employment
7 Dispute Settlement, or a mutually agreed-upon, neutral, third-party,
8 that a majority of workers in the unit have shown their preference
9 for the labor organization to be their representative by signing
10 authorization cards indicating that preference. The labor
11 organization or organizations shall be from a list of labor
12 organizations that have requested to be on the list and that the
13 Commissioner of Labor and Workforce Development has
14 determined represent substantial numbers of supermarket or grocery
15 store employees in the State.

16 i. A recipient shall certify that all factual representations made
17 by the recipient in the application or award agreement are true
18 under the penalty of perjury. A material misrepresentation of fact
19 in either the application or award agreement may result in recession
20 and recapture of any grants or tax credits awarded, or acceleration
21 of any loans made, under sections 35 through 42 of P.L.2020, c.156
22 (C.34:1B-303 through C.34:1B-310).
23 (cf: P.L.2021, c.160, s.14)

24
25 3. (New section) a. A taxpayer may apply to the director and
26 the chief executive officer of the authority for a tax credit transfer
27 certificate, covering one or more years, in lieu of the taxpayer being
28 allowed any amount of the credit against the tax liability of the
29 taxpayer. The tax credit transfer certificate, upon receipt thereof by
30 the taxpayer from the director and the chief executive officer of the
31 authority, may be sold or assigned, in full or in part in an amount
32 not less than \$25,000, in the privilege period during which the
33 taxpayer receives the tax credit transfer certificate from the director,
34 to another person, who may apply the credit against a tax liability
35 pursuant to section 1 of P.L.1950, c.231 (C.17:32-15),
36 N.J.S.17B:23-5, section 5 of P.L.1945, c.162 (C.54:10A-5), and
37 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3).
38 The certificate provided to the taxpayer shall include a statement
39 waiving the taxpayer's right to claim the amount of the credit that
40 the taxpayer has elected to sell or assign against the taxpayer's tax
41 liability.

42 b. The taxpayer shall not sell or assign, including a collateral
43 assignment, a tax credit transfer certificate allowed under this
44 section for consideration received by the taxpayer of less than 85
45 percent of the transferred credit amount before considering any
46 further discounting to the present value which shall be permitted.
47 The tax credit transfer certificate issued to a taxpayer by the
48 director shall be subject to any limitations and conditions imposed

1 on the application of the original State tax credits issued pursuant to
2 the “Food Desert Relief Act,” sections 35 through 41 of P.L.2020,
3 c.156 (C.34:1B-303 through C.34:1B-309), and any other terms and
4 conditions that the director may prescribe.

5 c. A purchaser or assignee of a tax credit transfer certificate
6 pursuant to this section shall not make any subsequent transfers,
7 assignments, or sales of the tax credit transfer certificate.

8 d. The authority shall publish on its Internet website the
9 following information concerning each tax credit transfer certificate
10 approved by the authority and the director pursuant to this section:

- 11 (1) the name of the transferor;
- 12 (2) the name of the transferee;
- 13 (3) the value of the tax credit transfer certificate; and
- 14 (4) the consideration received by the transferor.

15
16 4. (New section) a. A taxpayer who has entered into a tax
17 credit award agreement may, upon notice to and written consent of
18 the authority and State Treasurer, pledge, assign, transfer, or sell
19 any or all of its right, title, and interest in and to the tax credit
20 award agreement and in the tax credit awards payable under the tax
21 credit award agreement, and the right to receive the tax credit
22 awards, along with the rights and remedies provided to the taxpayer
23 under the taxpayer award agreement. Any assignment shall be an
24 absolute assignment for all purposes, including the federal
25 bankruptcy code.

26 b. Any pledge of a tax credit award made by the taxpayer shall
27 be valid and binding from the time the pledge is made and filed in
28 the records of the authority. The tax credit award pledged and
29 thereafter received by the taxpayer shall immediately be subject to
30 the lien of the pledge without any physical delivery thereof or
31 further act, and the lien of any pledge shall be valid and binding
32 against all parties having claims of any kind in tort, contract, or
33 otherwise against the taxpayer irrespective of whether the parties
34 have notice thereof. As a condition of any tax credit grant, the
35 grantee, assignee, pledgee, or subsequent holder of the tax credit
36 grant shall immediately file notice of the same with the clerk of the
37 county in which the project is located.

38 c. The authority shall publish on its Internet website the
39 following information concerning each pledge, assignment, transfer,
40 or sale approved by the authority pursuant to this section:

- 41 (1) the name of the person or entity offering the pledge,
42 assignment, transfer, or sale of a right, title, or interest in a tax
43 credit award agreement;
- 44 (2) the name of the person or entity receiving the pledge,
45 assignment, transfer, or sale of a right, title, or interest in the tax
46 credit award agreement;
- 47 (3) the value of the right, title, or interest in the tax credit award
48 agreement; and

1 (4) the consideration received by the person or entity offering
2 the pledge, assignment, transfer, or sale of the right, title, or interest
3 in the tax credit award agreement.

4
5 5. Section 40 of P.L.2020, c.156 (C.34:1B-308) is repealed.

6
7 6. This act shall take effect immediately.

8
9
10 STATEMENT

11
12 This bill revises certain requirements of the Food Desert Relief
13 Program, through which the New Jersey Economic Development
14 Authority (EDA) provides incentives for the establishment of
15 supermarkets and grocery stores within food desert communities.

16 Notably, the bill provides several changes concerning the
17 provision of tax credits under the program. Specifically, the bill
18 permits the recipients of tax credits to transfer the credits to other
19 taxpayers or pledge the credits as collateral, except that the credits
20 may not be sold for less than 85 percent of the full amount of the
21 credits. Under the bill, the EDA would also be required to publish
22 certain information on its website concerning any program tax
23 credits that are transferred, pledged, or otherwise sold. The bill also
24 clarifies that program tax credits could not be applied against the
25 State's gross income tax.

26 Additionally, the bill clarifies that the tax credits would only be
27 made available to the first or second new supermarkets or grocery
28 stores located in a food desert community. The bill also provides
29 that if a first or second new supermarket or grocery store leases or
30 subleases the spaces that are used for such purposes, the
31 supermarket or grocery would still qualify for tax credits.
32 However, the bill also provides that in addition to the existing
33 requirement to pay prevailing wages, the supermarket or grocery
34 store may only qualify for tax credits if: (1) the project is not
35 economically feasible without the tax credit award; (2) a project
36 financing gap exists; and (3) except for demolition and site
37 remediation activities, the entity has not commenced any
38 construction at the site of the project before submitting an
39 application, unless the EDA determines that the project would not
40 be completed otherwise.

41 Under the bill, the term "first or second new supermarket or
42 grocery store" is defined as the first and second new supermarket or
43 grocery store in each food desert community to be approved for tax
44 credits under the program, except that a supermarket or grocery
45 store may lose this designation if the project does not meet certain
46 program milestones in a timely manner, as determined by the EDA.
47 The bill also defines the term "new supermarket or grocery store" to
48 include those entities that commenced construction, or commenced

1 rehabilitation of at least 75 percent of their square footage, after the
2 effective date of the “Food Desert Relief Act.”

3 Notably, the bill also revises the definition of “supermarket and
4 grocery store.” Under the bill, this term is defined as a retail outlet
5 with at least 16,000 square feet, of which at least 80 percent is
6 occupied by food and related products. Currently, this term is
7 limited to retail outlets with at least 16,000 square feet, of which at
8 least 90 percent is occupied by food and related products.
9 Additionally, the bill provides that when determining whether a
10 retail outlet meets the definition of a “supermarket or grocery store”
11 or “mid-sized food retailer,” the food and related products would be
12 based on industry standards, as determined by the EDA, except that
13 these products would not include alcoholic beverages and products
14 related to the consumption of such beverages.

15 The bill also revises the types of entities that may qualify for
16 grants and loans under the program. In addition to other eligibility
17 criteria, current law provides that if a supermarket or grocery store
18 qualifies for program tax credits, the entity would also qualify for a
19 program grant or loan. Under the bill, these supermarkets and
20 grocery stores would no longer automatically qualify for a grant or
21 loan. Instead, the bill provides that such eligibility would depend
22 on whether the supermarket or grocery store meets criteria
23 established by the EDA, which, at minimum, would include a
24 commitment to accept benefits from federal nutrition assistance
25 programs, such as the Supplemental Nutrition Assistance Program
26 (SNAP) and the Special Supplemental Nutrition Program for
27 Women, Infants, and Children (WIC), in a designated food desert
28 community. The bill also provides that if a mid-sized food retailer
29 or small food retailer leases or subleases the spaces that are used for
30 selling nutritious foods, the retailer would still qualify for a grant or
31 loan.

32 The bill also clarifies that when an entity receives a program
33 grant or loan to support the costs of initiatives to ensure the food
34 security of residents in food desert communities, the amount of the
35 grant or loan would be limited to the costs of such initiatives.

36 Lastly, the bill repeals section 40 of P.L.2020, c.156 (C.34:1B-
37 308), which was enacted as part of the “Food Desert Relief Act.”
38 This statute includes certain duplicative provisions of law
39 concerning the manner in which program tax credits can be
40 claimed.

41

42

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44

45

Revises various provisions of Food Desert Relief Program.

SENATE, No. 2921

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 27, 2022

Sponsored by:

Senator ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Senator NELLIE POU

District 35 (Bergen and Passaic)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Assemblyman WILLIAM W. SPEARMAN

District 5 (Camden and Gloucester)

Co-Sponsored by:

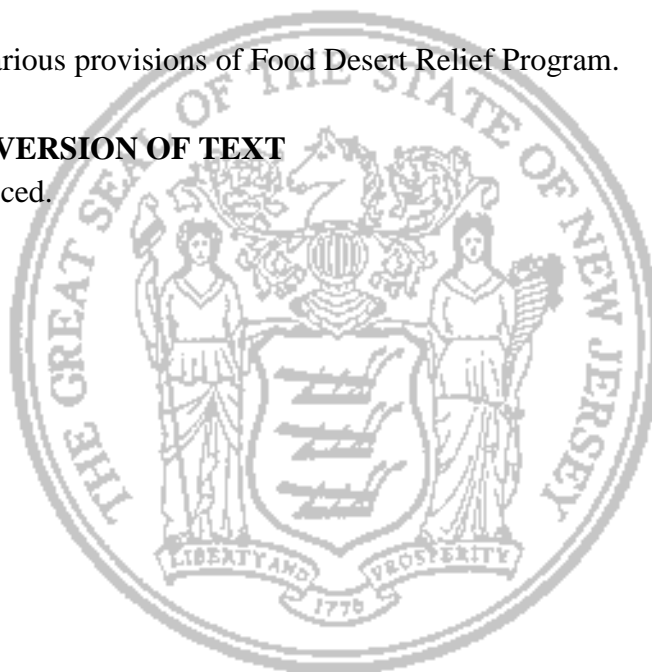
**Assemblyman Mukherji, Assemblywoman McKnight, Assemblymen
Wimberly and Freiman**

SYNOPSIS

Revises various provisions of Food Desert Relief Program.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/29/2022)

1 AN ACT concerning the Food Desert Relief Program and amending,
2 supplementing, and repealing various parts of P.L.2020, c.156.

3

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

6

7 1. Section 37 of P.L.2020, c.156 (C.34:1B-305) is amended to
8 read as follows:

9 37. As used in sections 35 through 42 of P.L.2020, c.156
10 (C.34:1B-303 through C.34:1B-310) and sections 3 and 4 of P.L. ,
11 c. (C.) (pending before the Legislature as this bill):

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

15 "Department" means the Department of Agriculture.

16 "Director" means the Director of the Division of Taxation in the
17 Department of the Treasury.

18 "Eligible equipment costs" means expenditures for the
19 procurement of such equipment as is needed to allow a
20 supermarket, grocery store, mid-sized food retailer, small food
21 retailer, or other eligible entity to store, refrigerate, transport, or
22 otherwise maintain nutritious foods, including fresh fruits and
23 vegetables, for retail purposes, but within a standard range based
24 upon industry standards, as determined by the authority.

25 "Eligible technology costs" means expenditures for the
26 procurement or upgrade of technology systems to support online
27 ordering and e-commerce, including but not limited to computer
28 hardware, software, internet connectivity, and database systems.

29 "First or second new supermarket or grocery store" means the
30 first and second new supermarket or grocery store within each food
31 desert community to be approved for tax credits under the program
32 by the authority, except that a supermarket or grocery store may
33 lose the designation of first or second new supermarket or grocery
34 store if the project does not meet milestones designated by the
35 authority in a timely manner, as determined by the authority.

36 "Food desert community" means a physically contiguous area in
37 the State in which residents have limited access to nutritious foods,
38 such as fresh fruits and vegetables, and which has been designated
39 as a food desert community pursuant to subsection b. of section 38
40 of P.L.2020, c.156 (C.34:1B-306).

41 "Initial operating costs" means expenditures for the operation of
42 a supermarket or grocery store within the first three years after
43 opening to the public, but within a standard range based upon
44 industry standards, as determined by the authority.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Mid-sized food retailer" means a medium-sized retail outlet
2 with at least 2,500 but less than 16,000 square feet, of which at least
3 75 percent is occupied by food and related products, which products
4 shall be based on industry standards, as determined by the authority,
5 except that the food and related products shall not include alcoholic
6 beverages and products related to the consumption of such
7 beverages.

8 "New supermarket or grocery store" means a supermarket or
9 grocery store that commenced construction, or commenced
10 rehabilitation of at least 75 percent of its square footage, after the
11 effective date of the "Food Desert Relief Act," as established by
12 sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through
13 C.34:1B-310).

14 "Program" means the Food Desert Relief Program established in
15 section 38 of P.L.2020, c.156 (C.34:1B-306).

16 "Project cost" means the costs incurred in connection with the
17 establishment of a supermarket or grocery store within a food desert
18 community by the developer until the opening of the supermarket or
19 grocery store to the public, including the costs relating to lands,
20 buildings, improvements, real or personal property, or any interest
21 therein, including leases discounted to present value, including
22 lands under water, riparian rights, space rights and air rights
23 acquired, owned, developed or redeveloped, constructed,
24 reconstructed, rehabilitated or improved, any environmental
25 remediation costs, plus costs not directly related to construction,
26 including capitalized interest paid to third parties, of an amount not
27 to exceed 20 percent of the total costs, and the cost of infrastructure
28 improvements, including ancillary infrastructure projects.

29 "Project financing gap" means the part of the total project cost,
30 including return on investment, that remains to be financed after all
31 other sources of capital have been accounted for, including, but not
32 limited to, developer-contributed capital, which shall not be less
33 than 20 percent of the total project cost, which may include the
34 value of any existing land and improvements in the project area
35 owned or controlled by the developer, and the cost of infrastructure
36 improvements in the public right-of-way, and investor or financial
37 entity capital or loans for which the developer, after making all
38 good faith efforts to raise additional capital, certifies that additional
39 capital cannot be raised from other sources on a non-recourse basis.

40 "Small food retailer" means a small retail outlet, with less than
41 2,500 square feet, that sells a limited selection of foods and other
42 products, such as a bodega, convenience store, corner store,
43 neighborhood store, small grocery, mobile food vendor, farmers'
44 market, food co-op, or small-scale store.

45 "Supermarket or grocery store" means a retail outlet with at least
46 16,000 square feet, of which at least **[90]** 80 percent is occupied by
47 food and related products, which products shall be based on
48 industry standards, as determined by the authority, except that the

1 food and related products shall not include alcoholic beverages and
2 products related to the consumption of such beverages.

3 "Tax credit" means credit against a tax liability pursuant to
4 section 1 of P.L.1950, c.231 (C.17:32-15), N.J.S.17B:23-5, section
5 5 of P.L.1945, c.162 (C.54:10A-5), and sections 2 and 3 of
6 P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3).
7 (cf: P.L.2021, c.160, s.13)

8
9 2. Section 38 of P.L.2020, c.156 (C.34:1B-306) is amended to
10 read as follows:

11 38. a. (1) There is established the Food Desert Relief Program to
12 be administered by the New Jersey Economic Development
13 Authority. The program shall include tax credit components, as
14 provided in sections 39 and 40 of P.L.2020, c.156 (C.34:1B-307
15 and C.34:1B-308), in order to incentivize businesses to establish
16 and retain new supermarkets and grocery stores in food desert
17 communities.

18 (2) The total value of tax credits approved by the authority
19 pursuant to sections 39 and 40 of P.L.2020, c.156 (C.34:1B-307 and
20 C.34:1B-308) shall not exceed the limitations set forth in section 98
21 of P.L.2020, c.156 (C.34:1B-362).

22 b. The authority, in consultation with the Department of
23 Agriculture and the Department of Community Affairs, shall
24 initially designate not more than 50 separate geographic areas that
25 have limited access to nutritious foods as food desert communities
26 in this State. The authority, in consultation with the Department of
27 Agriculture and the Department of Community Affairs, shall
28 develop criteria for the designation of food desert communities, but
29 each separate food desert community shall consist of a distinct
30 geographic area with a single defined border. The criteria shall, at a
31 minimum, incorporate analysis of municipal or census tract poverty
32 statistics, food desert information from the Economic Research
33 Service of the United States Department of Agriculture, healthier
34 food retail tract information from the federal Centers for Disease
35 Control and Prevention, and residents' access to nutritious foods,
36 such as fresh fruits and vegetables, through supermarkets and
37 grocery stores. The authority, in consultation with the departments,
38 may also consider in making food desert community designations
39 pursuant to this subsection, data related to municipal or census tract
40 population size and population density, the number of residents who
41 receive Supplemental Nutrition Assistance Program (SNAP)
42 benefits within a municipality, the extent to which a municipality's
43 residents have access to a personal vehicle, and a municipality's
44 Municipal Revitalization Index distress score, obesity rate, and
45 unemployment rate. The authority, in consultation with the
46 departments, shall continuously evaluate areas previously
47 designated as food desert communities and assess whether they still
48 meet the criteria for designation as a food desert community and

1 may designate additional food desert communities once every three
2 years following the effective date of sections 35 through 42 of
3 P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310).

4 c. To receive a tax credit under section 39 or 40 of P.L.2020,
5 c.156 (C.34:1B-307 or C.34:1B-308), a taxpayer shall submit an
6 application to the authority in the form and manner prescribed by
7 the authority and in accordance with criteria established by the
8 authority, which at minimum will include a commitment to accept
9 benefits from federal nutrition assistance programs, such as the
10 Supplemental Nutrition Assistance Program (SNAP) and the
11 Special Supplemental Nutrition Program for Women, Infants, and
12 Children (WIC). Following the approval of an application, the
13 authority may, pursuant to an award agreement, award tax credits to
14 an eligible taxpayer that:

15 (1) develops and opens for business to the public the first or
16 second supermarket or grocery store in a designated food desert
17 community; or

18 (2) owns, leases, or subleases, and operates the first or second
19 new supermarket or grocery store in a designated food desert
20 community.

21 d. (1) The authority may sell all or a portion of the tax credits
22 made available in a fiscal year pursuant to subsection a. of this
23 section through a competitive auction process or a publicly
24 advertised solicitation for offers and dedicate the proceeds from
25 such sale to provide grants and loans to qualifying supermarkets,
26 grocery stores, mid-sized food retailers, small food retailers, and
27 any other eligible entity. The amount of any grant or loan provided
28 pursuant to this subsection shall be in accordance with the need of
29 the supermarket, grocery store, mid-sized food retailer, small food
30 retailer, or any other eligible entity, as determined by the authority.
31 The authority shall sell tax credits pursuant to this section in the
32 manner determined by the authority; provided, however, the
33 authority shall not sell tax credits for less than 85 percent of the tax
34 credit amount. Any credit sold shall be valid in the privilege period
35 in which the sale is completed, and any unused portion thereof may
36 be carried forward into the next seven privilege periods or until
37 exhausted, whichever is earlier. Grants and loans made available
38 pursuant to this subsection shall be awarded to entities that:

39 (a) **are eligible for tax credits under subsection c. of this**
40 **section in lieu of tax credits** operate a supermarket or grocery store
41 that meets criteria established by the authority, which criteria shall,
42 at minimum, include a commitment to accept benefits from federal
43 nutrition assistance programs, including, but not limited to, the
44 Supplemental Nutrition Assistance Program (SNAP) and the
45 Special Supplemental Nutrition Program for Women, Infants, and
46 Children (WIC), in a designated food desert community;

47 (b) own, lease, or sublease, and operate a mid-sized food retailer
48 or small food retailer that commits to selling nutritious foods,

1 including fresh fruits and vegetables, in a designated food desert
2 community; or

3 (c) at the discretion of the authority, support initiatives to
4 strengthen food security of residents in food desert communities.

5 (2) A supermarket, grocery store, mid-sized food retailer, small
6 food retailer, or other eligible entity shall submit an application to
7 the authority to receive a grant or loan pursuant to this subsection.
8 The application shall be submitted in the form and manner
9 prescribed by the authority and in accordance with criteria
10 established by the authority. An entity eligible for a grant or loan
11 under subparagraph (a) of paragraph (1) of this subsection shall not
12 be required to submit a separate application to the authority for the
13 grant or loan, provided that the entity has submitted an application
14 to the authority pursuant to subsection c. of this section.

15 (3) Prior to awarding a grant or loan to an applicant
16 supermarket, grocery store, mid-sized food retailer, small food
17 retailer, or other eligible entity pursuant to this subsection, the
18 authority shall confirm with the Department of Labor and
19 Workforce Development, the Department of Environmental
20 Protection, and the Department of the Treasury whether the
21 applicant is in substantial good standing with the respective
22 department, or has entered into an agreement with the respective
23 department that includes a practical corrective action plan for the
24 applicant. The applicant shall certify that any contractors or
25 subcontractors that perform work at the qualifying supermarket or
26 grocery store: (1) are registered as required by "The Public Works
27 Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et
28 seq.); (2) have not been debarred by Department of Labor and
29 Workforce Development from engaging in or bidding on Public
30 Works Contracts in the State; and (3) possess a tax clearance
31 certificate issued by the Division of Taxation in the Department of
32 the Treasury. The authority may also contract with an independent
33 third party to perform a background check on the entity.

34 (4) An applicant supermarket, grocery store, mid-sized food
35 retailer, small food retailer, or other eligible entity shall, as required
36 at the discretion of the authority, submit to the authority satisfactory
37 information pertaining to the eligible equipment costs and eligible
38 technology costs, as certified by a certified public accountant,
39 certifications that all information provided by the applicant to the
40 authority is true, including information contained in the application,
41 any agreement pertaining to the award of grants or loans under the
42 program, any amendment to such an agreement, and any other
43 information submitted by the applicant to the authority pursuant to
44 sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through
45 C.34:1B-310), and evidence of the eligible equipment costs and
46 eligible technology costs of the applicant. The applicant, or an
47 authorized agent of the applicant, shall certify under the penalty of

1 perjury that the information provided pursuant to this subsection is
2 true.

3 e. The authority may establish a technical assistance fund to
4 assist any entity that is eligible for a tax credit, grant, or loan under
5 this section. The authority, through the technical assistance fund,
6 may make grants to entities to assist qualifying supermarkets,
7 grocery stores, mid-sized food retailers, small food retailers, or
8 other eligible entities in implementation of best practices for
9 increasing the accessibility of nutritious foods in food desert
10 communities. Technical assistance shall be provided either directly
11 by the authority or through a not-for-profit or for-profit entity and
12 made available in English as well as the two most commonly
13 spoken languages in New Jersey other than English. At the
14 discretion of the authority, funds to support technical assistance
15 may be provided in addition to, or in lieu of, any tax credit, grant,
16 or loan awarded under sections 35 through 42 of P.L.2020, c.156
17 (C.34:1B-303 through C.34:1B-310).

18 f. (1) The authority shall require that any tax credits, grants, or
19 loans awarded by the authority under the program be utilized by the
20 recipient for one or more of the following purposes, which shall be
21 set forth in the award agreement:

22 (a) to mitigate a project financing gap;

23 (b) to mitigate the initial operating costs of the supermarket or
24 grocery store; **[or]**

25 (c) to mitigate the eligible equipment costs or eligible
26 technology costs of the supermarket, grocery store, mid-sized food
27 retailer, small food retailer, or other eligible entity in order to make
28 nutritious foods more accessible and affordable to residents within
29 food **[deserts]** desert communities; or

30 (d) to support initiatives to ensure the food security of residents
31 in food desert communities.

32 (2) The value of tax credits, grants, or loans awarded to
33 individual entities under the program shall not exceed:

34 (a) in the case of an entity eligible under paragraph (1) of
35 subsection c. of this section, 40 percent of the total project cost for
36 the first supermarket or grocery store in a designated food desert
37 community, and 20 percent of the total project cost for the second
38 supermarket or grocery store in the food desert community; and

39 (b) in the case of an entity eligible under paragraph (2) of
40 subsection c. of this section, the initial operating costs of the first
41 supermarket or grocery store in a designated food desert
42 community, and one-half of the initial operating costs of the second
43 supermarket or grocery store in the food desert community; **[and]**

44 (c) in the case of an entity eligible for a grant or loan under
45 subparagraph (b) of paragraph (1) of subsection d. of this section,
46 the eligible equipment costs and eligible technology costs of the
47 supermarket, grocery store, mid-sized food retailer, small food
48 retailer, or other eligible entity; and

1 (d) in the case of an entity eligible for a grant or loan under
2 subparagraph (c) of paragraph (1) of subsection d. of this section,
3 the costs of initiatives to ensure the food security of residents in
4 food desert communities.

5 g. An entity that develops and opens **[a]** the first or second
6 new supermarket or grocery store in a designated food desert
7 community shall be eligible for a tax credit only if the entity
8 demonstrates to the authority at the time of application that: (1)
9 each worker employed to perform construction at the project shall
10 be paid not less than the prevailing wage rate for the worker's craft
11 or trade, as determined by the Commissioner of Labor and
12 Workforce Development pursuant to P.L.1963, c.150 (C.34:11-
13 56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.); (2)
14 without the tax credit award, the project is not economically
15 feasible; (3) a project financing gap exists; and (4) except for
16 demolition and site remediation activities, the entity has not
17 commenced any construction at the site of the project before
18 submitting an application, unless the authority determines that the
19 project would not be completed otherwise.

20 h. (1) Except as provided in paragraph (2) of this subsection, a
21 labor harmony agreement shall be required if the State has a
22 proprietary interest in a supermarket or grocery store and the
23 agreement shall remain in effect for as long as the State acts as a
24 market participant in the project. The provisions of this paragraph
25 shall apply to a supermarket or grocery store that will have more
26 than 10 employees.

27 (2) A labor harmony agreement under paragraph (1) of this
28 subsection shall not be required if the authority determines that the
29 supermarket or grocery store would not be feasible if a labor
30 harmony agreement is required. The authority shall support the
31 determination by a written finding, which provides the specific
32 basis for the determination.

33 (3) As used in this subsection, "labor harmony agreement"
34 means an agreement between a business that serves as the owner or
35 operator of a supermarket or grocery store and one or more labor
36 organizations, which requires, for the duration of the agreement:
37 that any participating labor organization and its members agree to
38 refrain from picketing, work stoppages, boycotts, or other economic
39 interference against the business; and that the business agrees to
40 maintain a neutral posture with respect to efforts of any
41 participating labor organization to represent employees at a
42 supermarket or grocery store, agrees to permit the labor
43 organization to have access to the employees, and agrees to
44 guarantee to the labor organization the right to obtain recognition as
45 the exclusive collective bargaining representatives of the employees
46 at a supermarket or grocery store by demonstrating to the New
47 Jersey State Board of Mediation, Division of Private Employment
48 Dispute Settlement, or a mutually agreed-upon, neutral, third-party,

1 that a majority of workers in the unit have shown their preference
2 for the labor organization to be their representative by signing
3 authorization cards indicating that preference. The labor
4 organization or organizations shall be from a list of labor
5 organizations that have requested to be on the list and that the
6 Commissioner of Labor and Workforce Development has
7 determined represent substantial numbers of supermarket or grocery
8 store employees in the State.

9 i. A recipient shall certify that all factual representations made
10 by the recipient in the application or award agreement are true
11 under the penalty of perjury. A material misrepresentation of fact
12 in either the application or award agreement may result in recession
13 and recapture of any grants or tax credits awarded, or acceleration
14 of any loans made, under sections 35 through 42 of P.L.2020, c.156
15 (C.34:1B-303 through C.34:1B-310).

16 (cf: P.L.2021, c.160, s.14)

17
18 3. (New section) a. A taxpayer may apply to the director and
19 the chief executive officer of the authority for a tax credit transfer
20 certificate, covering one or more years, in lieu of the taxpayer being
21 allowed any amount of the credit against the tax liability of the
22 taxpayer. The tax credit transfer certificate, upon receipt thereof by
23 the taxpayer from the director and the chief executive officer of the
24 authority, may be sold or assigned, in full or in part in an amount
25 not less than \$25,000, in the privilege period during which the
26 taxpayer receives the tax credit transfer certificate from the director,
27 to another person, who may apply the credit against a tax liability
28 pursuant to section 1 of P.L.1950, c.231 (C.17:32-15),
29 N.J.S.17B:23-5, section 5 of P.L.1945, c.162 (C.54:10A-5), and
30 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3).
31 The certificate provided to the taxpayer shall include a statement
32 waiving the taxpayer's right to claim the amount of the credit that
33 the taxpayer has elected to sell or assign against the taxpayer's tax
34 liability.

35 b. The taxpayer shall not sell or assign, including a collateral
36 assignment, a tax credit transfer certificate allowed under this
37 section for consideration received by the taxpayer of less than 85
38 percent of the transferred credit amount before considering any
39 further discounting to the present value which shall be permitted.
40 The tax credit transfer certificate issued to a taxpayer by the
41 director shall be subject to any limitations and conditions imposed
42 on the application of the original State tax credits issued pursuant to
43 the "Food Desert Relief Act," sections 35 through 41 of P.L.2020,
44 c.156 (C.34:1B-303 through C.34:1B-309), and any other terms and
45 conditions that the director may prescribe.

46 c. A purchaser or assignee of a tax credit transfer certificate
47 pursuant to this section shall not make any subsequent transfers,
48 assignments, or sales of the tax credit transfer certificate.

1 d. The authority shall publish on its Internet website the
2 following information concerning each tax credit transfer certificate
3 approved by the authority and the director pursuant to this section:

- 4 (1) the name of the transferor;
- 5 (2) the name of the transferee;
- 6 (3) the value of the tax credit transfer certificate; and
- 7 (4) the consideration received by the transferor.

8
9 4. (New section) a. A taxpayer who has entered into a tax
10 credit award agreement may, upon notice to and written consent of
11 the authority and State Treasurer, pledge, assign, transfer, or sell
12 any or all of its right, title, and interest in and to the tax credit
13 award agreement and in the tax credit awards payable under the tax
14 credit award agreement, and the right to receive the tax credit
15 awards, along with the rights and remedies provided to the taxpayer
16 under the taxpayer award agreement. Any assignment shall be an
17 absolute assignment for all purposes, including the federal
18 bankruptcy code.

19 b. Any pledge of a tax credit award made by the taxpayer shall
20 be valid and binding from the time the pledge is made and filed in
21 the records of the authority. The tax credit award pledged and
22 thereafter received by the taxpayer shall immediately be subject to
23 the lien of the pledge without any physical delivery thereof or
24 further act, and the lien of any pledge shall be valid and binding
25 against all parties having claims of any kind in tort, contract, or
26 otherwise against the taxpayer irrespective of whether the parties
27 have notice thereof. As a condition of any tax credit grant, the
28 grantee, assignee, pledgee, or subsequent holder of the tax credit
29 grant shall immediately file notice of the same with the clerk of the
30 county in which the project is located.

31 c. The authority shall publish on its Internet website the
32 following information concerning each pledge, assignment, transfer,
33 or sale approved by the authority pursuant to this section:

- 34 (1) the name of the person or entity offering the pledge,
35 assignment, transfer, or sale of a right, title, or interest in a tax
36 credit award agreement;
- 37 (2) the name of the person or entity receiving the pledge,
38 assignment, transfer, or sale of a right, title, or interest in the tax
39 credit award agreement;
- 40 (3) the value of the right, title, or interest in the tax credit award
41 agreement; and
- 42 (4) the consideration received by the person or entity offering
43 the pledge, assignment, transfer, or sale of the right, title, or interest
44 in the tax credit award agreement.

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46 5. Section 40 of P.L.2020, c.156 (C.34:1B-308) is repealed.

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48 6. This act shall take effect immediately.

STATEMENT

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This bill revises certain requirements of the Food Desert Relief Program, through which the New Jersey Economic Development Authority (EDA) provides incentives for the establishment of supermarkets and grocery stores within food desert communities.

Notably, the bill provides several changes concerning the provision of tax credits under the program. Specifically, the bill permits the recipients of tax credits to transfer the credits to other taxpayers or pledge the credits as collateral, except that the credits may not be sold for less than 85 percent of the full amount of the credits. Under the bill, the EDA would also be required to publish certain information on its website concerning any program tax credits that are transferred, pledged, or otherwise sold. The bill also clarifies that program tax credits could not be applied against the State’s gross income tax.

Additionally, the bill clarifies that the tax credits would only be made available to the first or second new supermarkets or grocery stores located in a food desert community. The bill also provides that if a first or second new supermarket or grocery store leases or subleases the spaces that are used for such purposes, the supermarket or grocery would still qualify for tax credits. However, the bill also provides that in addition to the existing requirement to pay prevailing wages, the supermarket or grocery store may only qualify for tax credits if: (1) the project is not economically feasible without the tax credit award; (2) a project financing gap exists; and (3) except for demolition and site remediation activities, the entity has not commenced any construction at the site of the project before submitting an application, unless the EDA determines that the project would not be completed otherwise.

Under the bill, the term “first or second new supermarket or grocery store” is defined as the first and second new supermarket or grocery store in each food desert community to be approved for tax credits under the program, except that a supermarket or grocery store may lose this designation if the project does not meet certain program milestones in a timely manner, as determined by the EDA. The bill also defines the term “new supermarket or grocery store” to include those entities that commenced construction, or commenced rehabilitation of at least 75 percent of their square footage, after the effective date of the “Food Desert Relief Act.”

Notably, the bill also revises the definition of “supermarket and grocery store.” Under the bill, this term is defined as a retail outlet with at least 16,000 square feet, of which at least 80 percent is occupied by food and related products. Currently, this term is limited to retail outlets with at least 16,000 square feet, of which at least 90 percent is occupied by food and related products. Additionally, the bill provides that when determining whether a

1 retail outlet meets the definition of a “supermarket or grocery store”
2 or “mid-sized food retailer,” the food and related products would be
3 based on industry standards, as determined by the EDA, except that
4 these products would not include alcoholic beverages and products
5 related to the consumption of such beverages.

6 The bill also revises the types of entities that may qualify for
7 grants and loans under the program. In addition to other eligibility
8 criteria, current law provides that if a supermarket or grocery store
9 qualifies for program tax credits, the entity would also qualify for a
10 program grant or loan. Under the bill, these supermarkets and
11 grocery stores would no longer automatically qualify for a grant or
12 loan. Instead, the bill provides that such eligibility would depend
13 on whether the supermarket or grocery store meets criteria
14 established by the EDA, which, at minimum, would include a
15 commitment to accept benefits from federal nutrition assistance
16 programs, such as the Supplemental Nutrition Assistance Program
17 (SNAP) and the Special Supplemental Nutrition Program for
18 Women, Infants, and Children (WIC), in a designated food desert
19 community. The bill also provides that if a mid-sized food retailer
20 or small food retailer leases or subleases the spaces that are used for
21 selling nutritious foods, the retailer would still qualify for a grant or
22 loan.

23 The bill also clarifies that when an entity receives a program
24 grant or loan to support the costs of initiatives to ensure the food
25 security of residents in food desert communities, the amount of the
26 grant or loan would be limited to the costs of such initiatives.

27 Lastly, the bill repeals section 40 of P.L.2020, c.156 (C.34:1B-
28 308), which was enacted as part of the “Food Desert Relief Act.”
29 This statute includes certain duplicative provisions of law
30 concerning the manner in which program tax credits can be
31 claimed.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2921

STATE OF NEW JERSEY

DATED: JUNE 27, 2022

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2921.

This bill revises certain requirements of the Food Desert Relief Program, through which the New Jersey Economic Development Authority (EDA) provides incentives for the establishment of supermarkets and grocery stores within food desert communities.

Notably, the bill provides several changes concerning the provision of tax credits under the program. Specifically, the bill permits the recipients of tax credits to transfer the credits to other taxpayers or pledge the credits as collateral, except that the credits may not be sold for less than 85 percent of the full amount of the credits. Under the bill, the EDA would also be required to publish certain information on its website concerning any program tax credits that are transferred, pledged, or otherwise sold. The bill also clarifies that program tax credits could not be applied against the State's gross income tax.

Additionally, the bill clarifies that the tax credits would only be made available to the first or second new supermarkets or grocery stores located in a food desert community. The bill also provides that if a first or second new supermarket or grocery store leases or subleases the spaces that are used for such purposes, the supermarket or grocery would still qualify for tax credits. However, the bill also provides that in addition to the existing requirement to pay prevailing wages, the supermarket or grocery store may only qualify for tax credits if: (1) the project is not economically feasible without the tax credit award; (2) a project financing gap exists; and (3) except for demolition and site remediation activities, the entity has not commenced any construction at the site of the project before submitting an application, unless the EDA determines that the project would not be completed otherwise.

Under the bill, the term "first or second new supermarket or grocery store" is defined as the first and second new supermarket or grocery store in each food desert community to be approved for tax credits under the program, except that a supermarket or grocery store may lose this designation if the project does not meet certain program milestones in a timely manner, as determined by the EDA. The bill also defines the term "new supermarket or grocery store" to include those entities that commenced construction, or commenced

rehabilitation of at least 75 percent of their square footage, after the effective date of the “Food Desert Relief Act.”

Notably, the bill also revises the definition of “supermarket and grocery store.” Under the bill, this term is defined as a retail outlet with at least 16,000 square feet, of which at least 80 percent is occupied by food and related products. Currently, this term is limited to retail outlets with at least 16,000 square feet, of which at least 90 percent is occupied by food and related products. Additionally, the bill provides that when determining whether a retail outlet meets the definition of a “supermarket or grocery store” or “mid-sized food retailer,” the food and related products would be based on industry standards, as determined by the EDA, except that these products would not include alcoholic beverages and products related to the consumption of such beverages.

The bill also revises the types of entities that may qualify for grants and loans under the program. In addition to other eligibility criteria, current law provides that if a supermarket or grocery store qualifies for program tax credits, the entity would also qualify for a program grant or loan. Under the bill, these supermarkets and grocery stores would no longer automatically qualify for a grant or loan. Instead, the bill provides that such eligibility would depend on whether the supermarket or grocery store meets criteria established by the EDA, which, at minimum, would include a commitment to accept benefits from federal nutrition assistance programs, such as the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), in a designated food desert community. The bill also provides that if a mid-sized food retailer or small food retailer leases or subleases the spaces that are used for selling nutritious foods, the retailer would still qualify for a grant or loan.

The bill also clarifies that when an entity receives a program grant or loan to support the costs of initiatives to ensure the food security of residents in food desert communities, the amount of the grant or loan would be limited to the costs of such initiatives.

Lastly, the bill repeals section 40 of P.L.2020, c.156 (C.34:1B-308), which was enacted as part of the “Food Desert Relief Act.” This statute includes certain duplicative provisions of law concerning the manner in which program tax credits can be claimed.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill would result in a marginal expenditure increase for the EDA associated with the requirement to publish certain information on its website concerning the transfer, pledge, or sale of tax credits under the Food Desert Relief Program.

The bill also allows the recipients of tax credits under the Food Desert Relief Program to transfer the credits to other taxpayers or

pledge the credits as collateral. Although this provision would not impact the total value of the tax credits that are awarded under this program, this allowance may increase the rate at which these credits are applied against actual tax liabilities. Accordingly, the bill may also result in a potential decrease in State revenues.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2921
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JULY 5, 2022

SUMMARY

Synopsis: Revises various provisions of Food Desert Relief Program.

Type of Impact: Marginal increase in State expenditures; potential decrease in State revenues.

Agencies Affected: New Jersey Economic Development Authority and Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual Impact</u>
Marginal State Cost Increase	Indeterminate
Potential State Revenue Decrease	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill would result in a marginal expenditure increase for the New Jersey Economic Development Authority (EDA) associated with the requirement to publish certain information on its website concerning the transfer, pledge, or sale of tax credits under the Food Desert Relief Program.
- The bill also allows the recipients of tax credits under the Food Desert Relief Program to transfer the credits to other taxpayers or pledge the credits as collateral. Although this provision would not impact the total value of tax credits that are awarded under the program, this allowance may increase the rate at which these credits are applied against actual tax liabilities. Accordingly, the bill may also result in a potential decrease in State revenues.

BILL DESCRIPTION

This bill revises certain requirements of the Food Desert Relief Program, through which the EDA provides incentives for the establishment of supermarkets and grocery stores within food desert communities.

Notably, the bill provides several changes concerning the provision of tax credits under the program. Specifically, the bill permits the recipients of tax credits to transfer the credits to other taxpayers or pledge the credits as collateral, except that the credits may not be sold for less than

85 percent of the full amount of the credits. Under the bill, the EDA would also be required to publish certain information on its website concerning any program tax credits that are transferred, pledged, or otherwise sold. The bill also clarifies that program tax credits could not be applied against the State's gross income tax.

Additionally, the bill clarifies that the tax credits would only be made available to the first or second new supermarkets or grocery stores located in a food desert community. The bill provides that if a first or second new supermarket or grocery store leases or subleases the spaces that are used for such purposes, the supermarket or grocery store would still qualify for tax credits. However, the bill also provides that in addition to the existing requirement to pay prevailing wages, the supermarket or grocery store may only qualify for tax credits if: (1) the project is not economically feasible without the tax credit award; (2) a project financing gap exists; and (3) except for demolition and site remediation activities, the entity has not commenced any construction at the site of the project before submitting an application, unless the EDA determines that the project would not be completed otherwise.

The bill adds and revises various definitions relating supermarkets, grocery stores, and food retailers.

The bill also revises the types of entities that may qualify for grants and loans under the program. In addition to other eligibility criteria, current law provides that if a supermarket or grocery store qualifies for program tax credits, the entity would also qualify for a program grant or loan. Under the bill, these supermarkets and grocery stores would no longer automatically qualify for a grant or loan. Instead, the bill provides that such eligibility would depend on whether the supermarket or grocery store meets criteria established by the EDA, which, at minimum, would include a commitment to accept benefits from federal nutrition assistance programs, such as the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), in a designated food desert community. The bill also provides that if a mid-sized food retailer or small food retailer leases or subleases the spaces that are used for selling nutritious foods, the retailer would still qualify for a grant or loan.

The bill also clarifies that when an entity receives a program grant or loan to support the costs of initiatives to ensure the food security of residents in food desert communities, the amount of the grant or loan would be limited to the costs of such initiatives.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill would result in a marginal expenditure increase for the EDA associated with the requirement to publish certain information related to the transfer, pledge, or sale of tax credits under the Food Desert Relief Program. Additionally, the bill may also reduce certain State revenues by allowing the recipients of tax credits to transfer those credits to other taxpayers.

Under current law, the EDA administers the Food Desert Relief Program, which provides incentives for the establishment of supermarkets and grocery stores within food desert communities. Although the bill revises various aspects of the program, including which entities are eligible for assistance under the program, most of these revisions are not expected to impact

total program expenditures or associated revenue losses. However, by allowing the recipients of program tax credits to sell the credits to other taxpayers or to pledge the credits as collateral, the bill is expected to impact State expenditures and revenues.

Specifically, the bill provides that when a program tax credit has been transferred to another taxpayer or pledged as collateral, the EDA would be required to publish information on its website concerning the transfer or pledge of credits. As a result, the EDA is expected to incur marginal expenditure increases associated with maintaining and publishing this information. However, the OLS assumes that the EDA would be able to fulfill these responsibilities without hiring additional staff.

Although allowing the transfer or securitization of tax credits would not impact the total value of credits that are awarded under the program, the OLS notes that this allowance may increase the rate at which these credits are applied against actual tax liabilities. For example, absent the ability to transfer unused credits, if a tax credit recipient does not incur sufficient tax liabilities against which to claim the credits during certain tax years, the recipient may be unable to claim a portion of their approved credits. However, by allowing the recipient to sell all or some of the credits to interested taxpayers, the bill increases the probability that all program credits will be applied against actual tax liabilities. Accordingly, the bill may result in a potential decrease in State revenues. However, given the discretionary nature of such transfers, the OLS is unable to predict the degree to which this allowance would reduce State revenue collections.

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Joseph A. Pezzulo
Senior Research Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4365

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 16, 2022

Sponsored by:

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Assemblyman WILLIAM W. SPEARMAN

District 5 (Camden and Gloucester)

Co-Sponsored by:

**Assemblyman Mukherji, Assemblywoman McKnight, Assemblymen
Wimberly and Freiman**

SYNOPSIS

Revises various provisions of Food Desert Relief Program.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/29/2022)

1 AN ACT concerning the Food Desert Relief Program and amending,
2 supplementing, and repealing various parts of P.L.2020, c.156.

3

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

6

7 1. Section 37 of P.L.2020, c.156 (C.34:1B-305) is amended to
8 read as follows:

9 37. As used in sections 35 through 42 of P.L.2020, c.156
10 (C.34:1B-303 through C.34:1B-310) and sections 3 and 4 of P.L. ,
11 c. (C.) (pending before the Legislature as this bill):

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

15 "Department" means the Department of Agriculture.

16 "Director" means the Director of the Division of Taxation in the
17 Department of the Treasury.

18 "Eligible equipment costs" means expenditures for the
19 procurement of such equipment as is needed to allow a
20 supermarket, grocery store, mid-sized food retailer, small food
21 retailer, or other eligible entity to store, refrigerate, transport, or
22 otherwise maintain nutritious foods, including fresh fruits and
23 vegetables, for retail purposes, but within a standard range based
24 upon industry standards, as determined by the authority.

25 "Eligible technology costs" means expenditures for the
26 procurement or upgrade of technology systems to support online
27 ordering and e-commerce, including but not limited to computer
28 hardware, software, internet connectivity, and database systems.

29 "First or second new supermarket or grocery store" means the
30 first and second new supermarket or grocery store within each food
31 desert community to be approved for tax credits under the program
32 by the authority, except that a supermarket or grocery store may
33 lose the designation of first or second new supermarket or grocery
34 store if the project does not meet milestones designated by the
35 authority in a timely manner, as determined by the authority.

36 "Food desert community" means a physically contiguous area in
37 the State in which residents have limited access to nutritious foods,
38 such as fresh fruits and vegetables, and which has been designated
39 as a food desert community pursuant to subsection b. of section 38
40 of P.L.2020, c.156 (C.34:1B-306).

41 "Initial operating costs" means expenditures for the operation of
42 a supermarket or grocery store within the first three years after
43 opening to the public, but within a standard range based upon
44 industry standards, as determined by the authority.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Mid-sized food retailer" means a medium-sized retail outlet
2 with at least 2,500 but less than 16,000 square feet, of which at least
3 75 percent is occupied by food and related products, which products
4 shall be based on industry standards, as determined by the authority,
5 except that the food and related products shall not include alcoholic
6 beverages and products related to the consumption of such
7 beverages.

8 "New supermarket or grocery store" means a supermarket or
9 grocery store that commenced construction, or commenced
10 rehabilitation of at least 75 percent of its square footage, after the
11 effective date of the "Food Desert Relief Act," as established by
12 sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through
13 C.34:1B-310).

14 "Program" means the Food Desert Relief Program established in
15 section 38 of P.L.2020, c.156 (C.34:1B-306).

16 "Project cost" means the costs incurred in connection with the
17 establishment of a supermarket or grocery store within a food desert
18 community by the developer until the opening of the supermarket or
19 grocery store to the public, including the costs relating to lands,
20 buildings, improvements, real or personal property, or any interest
21 therein, including leases discounted to present value, including
22 lands under water, riparian rights, space rights and air rights
23 acquired, owned, developed or redeveloped, constructed,
24 reconstructed, rehabilitated or improved, any environmental
25 remediation costs, plus costs not directly related to construction,
26 including capitalized interest paid to third parties, of an amount not
27 to exceed 20 percent of the total costs, and the cost of infrastructure
28 improvements, including ancillary infrastructure projects.

29 "Project financing gap" means the part of the total project cost,
30 including return on investment, that remains to be financed after all
31 other sources of capital have been accounted for, including, but not
32 limited to, developer-contributed capital, which shall not be less
33 than 20 percent of the total project cost, which may include the
34 value of any existing land and improvements in the project area
35 owned or controlled by the developer, and the cost of infrastructure
36 improvements in the public right-of-way, and investor or financial
37 entity capital or loans for which the developer, after making all
38 good faith efforts to raise additional capital, certifies that additional
39 capital cannot be raised from other sources on a non-recourse basis.

40 "Small food retailer" means a small retail outlet, with less than
41 2,500 square feet, that sells a limited selection of foods and other
42 products, such as a bodega, convenience store, corner store,
43 neighborhood store, small grocery, mobile food vendor, farmers'
44 market, food co-op, or small-scale store.

45 "Supermarket or grocery store" means a retail outlet with at least
46 16,000 square feet, of which at least **[90]** 80 percent is occupied by
47 food and related products, which products shall be based on
48 industry standards, as determined by the authority, except that the

1 food and related products shall not include alcoholic beverages and
2 products related to the consumption of such beverages.

3 "Tax credit" means credit against a tax liability pursuant to
4 section 1 of P.L.1950, c.231 (C.17:32-15), N.J.S.17B:23-5, section
5 5 of P.L.1945, c.162 (C.54:10A-5), and sections 2 and 3 of
6 P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3).
7 (cf: P.L.2021, c.160, s.13)

8
9 2. Section 38 of P.L.2020, c.156 (C.34:1B-306) is amended to
10 read as follows:

11 38. a. (1) There is established the Food Desert Relief Program to
12 be administered by the New Jersey Economic Development
13 Authority. The program shall include tax credit components, as
14 provided in sections 39 and 40 of P.L.2020, c.156 (C.34:1B-307
15 and C.34:1B-308), in order to incentivize businesses to establish
16 and retain new supermarkets and grocery stores in food desert
17 communities.

18 (2) The total value of tax credits approved by the authority
19 pursuant to sections 39 and 40 of P.L.2020, c.156 (C.34:1B-307 and
20 C.34:1B-308) shall not exceed the limitations set forth in section 98
21 of P.L.2020, c.156 (C.34:1B-362).

22 b. The authority, in consultation with the Department of
23 Agriculture and the Department of Community Affairs, shall
24 initially designate not more than 50 separate geographic areas that
25 have limited access to nutritious foods as food desert communities
26 in this State. The authority, in consultation with the Department of
27 Agriculture and the Department of Community Affairs, shall
28 develop criteria for the designation of food desert communities, but
29 each separate food desert community shall consist of a distinct
30 geographic area with a single defined border. The criteria shall, at a
31 minimum, incorporate analysis of municipal or census tract poverty
32 statistics, food desert information from the Economic Research
33 Service of the United States Department of Agriculture, healthier
34 food retail tract information from the federal Centers for Disease
35 Control and Prevention, and residents' access to nutritious foods,
36 such as fresh fruits and vegetables, through supermarkets and
37 grocery stores. The authority, in consultation with the departments,
38 may also consider in making food desert community designations
39 pursuant to this subsection, data related to municipal or census tract
40 population size and population density, the number of residents who
41 receive Supplemental Nutrition Assistance Program (SNAP)
42 benefits within a municipality, the extent to which a municipality's
43 residents have access to a personal vehicle, and a municipality's
44 Municipal Revitalization Index distress score, obesity rate, and
45 unemployment rate. The authority, in consultation with the
46 departments, shall continuously evaluate areas previously
47 designated as food desert communities and assess whether they still
48 meet the criteria for designation as a food desert community and

1 may designate additional food desert communities once every three
2 years following the effective date of sections 35 through 42 of
3 P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310).

4 c. To receive a tax credit under section 39 or 40 of P.L.2020,
5 c.156 (C.34:1B-307 or C.34:1B-308), a taxpayer shall submit an
6 application to the authority in the form and manner prescribed by
7 the authority and in accordance with criteria established by the
8 authority, which at minimum will include a commitment to accept
9 benefits from federal nutrition assistance programs, such as the
10 Supplemental Nutrition Assistance Program (SNAP) and the
11 Special Supplemental Nutrition Program for Women, Infants, and
12 Children (WIC). Following the approval of an application, the
13 authority may, pursuant to an award agreement, award tax credits to
14 an eligible taxpayer that:

15 (1) develops and opens for business to the public the first or
16 second supermarket or grocery store in a designated food desert
17 community; or

18 (2) owns, leases, or subleases, and operates the first or second
19 new supermarket or grocery store in a designated food desert
20 community.

21 d. (1) The authority may sell all or a portion of the tax credits
22 made available in a fiscal year pursuant to subsection a. of this
23 section through a competitive auction process or a publicly
24 advertised solicitation for offers and dedicate the proceeds from
25 such sale to provide grants and loans to qualifying supermarkets,
26 grocery stores, mid-sized food retailers, small food retailers, and
27 any other eligible entity. The amount of any grant or loan provided
28 pursuant to this subsection shall be in accordance with the need of
29 the supermarket, grocery store, mid-sized food retailer, small food
30 retailer, or any other eligible entity, as determined by the authority.
31 The authority shall sell tax credits pursuant to this section in the
32 manner determined by the authority; provided, however, the
33 authority shall not sell tax credits for less than 85 percent of the tax
34 credit amount. Any credit sold shall be valid in the privilege period
35 in which the sale is completed, and any unused portion thereof may
36 be carried forward into the next seven privilege periods or until
37 exhausted, whichever is earlier. Grants and loans made available
38 pursuant to this subsection shall be awarded to entities that:

39 (a) **are eligible for tax credits under subsection c. of this**
40 **section in lieu of tax credits** operate a supermarket or grocery store
41 that meets criteria established by the authority, which criteria shall,
42 at minimum, include a commitment to accept benefits from federal
43 nutrition assistance programs, including, but not limited to, the
44 Supplemental Nutrition Assistance Program (SNAP) and the
45 Special Supplemental Nutrition Program for Women, Infants, and
46 Children (WIC), in a designated food desert community;

47 (b) own, lease, or sublease, and operate a mid-sized food retailer
48 or small food retailer that commits to selling nutritious foods,

1 including fresh fruits and vegetables, in a designated food desert
2 community; or

3 (c) at the discretion of the authority, support initiatives to
4 strengthen food security of residents in food desert communities.

5 (2) A supermarket, grocery store, mid-sized food retailer, small
6 food retailer, or other eligible entity shall submit an application to
7 the authority to receive a grant or loan pursuant to this subsection.
8 The application shall be submitted in the form and manner
9 prescribed by the authority and in accordance with criteria
10 established by the authority. An entity eligible for a grant or loan
11 under subparagraph (a) of paragraph (1) of this subsection shall not
12 be required to submit a separate application to the authority for the
13 grant or loan, provided that the entity has submitted an application
14 to the authority pursuant to subsection c. of this section.

15 (3) Prior to awarding a grant or loan to an applicant
16 supermarket, grocery store, mid-sized food retailer, small food
17 retailer, or other eligible entity pursuant to this subsection, the
18 authority shall confirm with the Department of Labor and
19 Workforce Development, the Department of Environmental
20 Protection, and the Department of the Treasury whether the
21 applicant is in substantial good standing with the respective
22 department, or has entered into an agreement with the respective
23 department that includes a practical corrective action plan for the
24 applicant. The applicant shall certify that any contractors or
25 subcontractors that perform work at the qualifying supermarket or
26 grocery store: (1) are registered as required by "The Public Works
27 Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et
28 seq.); (2) have not been debarred by Department of Labor and
29 Workforce Development from engaging in or bidding on Public
30 Works Contracts in the State; and (3) possess a tax clearance
31 certificate issued by the Division of Taxation in the Department of
32 the Treasury. The authority may also contract with an independent
33 third party to perform a background check on the entity.

34 (4) An applicant supermarket, grocery store, mid-sized food
35 retailer, small food retailer, or other eligible entity shall, as required
36 at the discretion of the authority, submit to the authority satisfactory
37 information pertaining to the eligible equipment costs and eligible
38 technology costs, as certified by a certified public accountant,
39 certifications that all information provided by the applicant to the
40 authority is true, including information contained in the application,
41 any agreement pertaining to the award of grants or loans under the
42 program, any amendment to such an agreement, and any other
43 information submitted by the applicant to the authority pursuant to
44 sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through
45 C.34:1B-310), and evidence of the eligible equipment costs and
46 eligible technology costs of the applicant. The applicant, or an
47 authorized agent of the applicant, shall certify under the penalty of

1 perjury that the information provided pursuant to this subsection is
2 true.

3 e. The authority may establish a technical assistance fund to
4 assist any entity that is eligible for a tax credit, grant, or loan under
5 this section. The authority, through the technical assistance fund,
6 may make grants to entities to assist qualifying supermarkets,
7 grocery stores, mid-sized food retailers, small food retailers, or
8 other eligible entities in implementation of best practices for
9 increasing the accessibility of nutritious foods in food desert
10 communities. Technical assistance shall be provided either directly
11 by the authority or through a not-for-profit or for-profit entity and
12 made available in English as well as the two most commonly
13 spoken languages in New Jersey other than English. At the
14 discretion of the authority, funds to support technical assistance
15 may be provided in addition to, or in lieu of, any tax credit, grant,
16 or loan awarded under sections 35 through 42 of P.L.2020, c.156
17 (C.34:1B-303 through C.34:1B-310).

18 f. (1) The authority shall require that any tax credits, grants, or
19 loans awarded by the authority under the program be utilized by the
20 recipient for one or more of the following purposes, which shall be
21 set forth in the award agreement:

22 (a) to mitigate a project financing gap;

23 (b) to mitigate the initial operating costs of the supermarket or
24 grocery store; **[or]**

25 (c) to mitigate the eligible equipment costs or eligible
26 technology costs of the supermarket, grocery store, mid-sized food
27 retailer, small food retailer, or other eligible entity in order to make
28 nutritious foods more accessible and affordable to residents within
29 food **[deserts]** desert communities; or

30 (d) to support initiatives to ensure the food security of residents
31 in food desert communities.

32 (2) The value of tax credits, grants, or loans awarded to
33 individual entities under the program shall not exceed:

34 (a) in the case of an entity eligible under paragraph (1) of
35 subsection c. of this section, 40 percent of the total project cost for
36 the first supermarket or grocery store in a designated food desert
37 community, and 20 percent of the total project cost for the second
38 supermarket or grocery store in the food desert community; and

39 (b) in the case of an entity eligible under paragraph (2) of
40 subsection c. of this section, the initial operating costs of the first
41 supermarket or grocery store in a designated food desert
42 community, and one-half of the initial operating costs of the second
43 supermarket or grocery store in the food desert community; **[and]**

44 (c) in the case of an entity eligible for a grant or loan under
45 subparagraph (b) of paragraph (1) of subsection d. of this section,
46 the eligible equipment costs and eligible technology costs of the
47 supermarket, grocery store, mid-sized food retailer, small food
48 retailer, or other eligible entity; and

1 (d) in the case of an entity eligible for a grant or loan under
2 subparagraph (c) of paragraph (1) of subsection d. of this section,
3 the costs of initiatives to ensure the food security of residents in
4 food desert communities.

5 g. An entity that develops and opens **[a]** the first or second
6 new supermarket or grocery store in a designated food desert
7 community shall be eligible for a tax credit only if the entity
8 demonstrates to the authority at the time of application that: (1)
9 each worker employed to perform construction at the project shall
10 be paid not less than the prevailing wage rate for the worker's craft
11 or trade, as determined by the Commissioner of Labor and
12 Workforce Development pursuant to P.L.1963, c.150 (C.34:11-
13 56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.); (2)
14 without the tax credit award, the project is not economically
15 feasible; (3) a project financing gap exists; and (4) except for
16 demolition and site remediation activities, the entity has not
17 commenced any construction at the site of the project before
18 submitting an application, unless the authority determines that the
19 project would not be completed otherwise.

20 h. (1) Except as provided in paragraph (2) of this subsection, a
21 labor harmony agreement shall be required if the State has a
22 proprietary interest in a supermarket or grocery store and the
23 agreement shall remain in effect for as long as the State acts as a
24 market participant in the project. The provisions of this paragraph
25 shall apply to a supermarket or grocery store that will have more
26 than 10 employees.

27 (2) A labor harmony agreement under paragraph (1) of this
28 subsection shall not be required if the authority determines that the
29 supermarket or grocery store would not be feasible if a labor
30 harmony agreement is required. The authority shall support the
31 determination by a written finding, which provides the specific
32 basis for the determination.

33 (3) As used in this subsection, "labor harmony agreement"
34 means an agreement between a business that serves as the owner or
35 operator of a supermarket or grocery store and one or more labor
36 organizations, which requires, for the duration of the agreement:
37 that any participating labor organization and its members agree to
38 refrain from picketing, work stoppages, boycotts, or other economic
39 interference against the business; and that the business agrees to
40 maintain a neutral posture with respect to efforts of any
41 participating labor organization to represent employees at a
42 supermarket or grocery store, agrees to permit the labor
43 organization to have access to the employees, and agrees to
44 guarantee to the labor organization the right to obtain recognition as
45 the exclusive collective bargaining representatives of the employees
46 at a supermarket or grocery store by demonstrating to the New
47 Jersey State Board of Mediation, Division of Private Employment
48 Dispute Settlement, or a mutually agreed-upon, neutral, third-party,

1 that a majority of workers in the unit have shown their preference
2 for the labor organization to be their representative by signing
3 authorization cards indicating that preference. The labor
4 organization or organizations shall be from a list of labor
5 organizations that have requested to be on the list and that the
6 Commissioner of Labor and Workforce Development has
7 determined represent substantial numbers of supermarket or grocery
8 store employees in the State.

9 i. A recipient shall certify that all factual representations made
10 by the recipient in the application or award agreement are true
11 under the penalty of perjury. A material misrepresentation of fact
12 in either the application or award agreement may result in recession
13 and recapture of any grants or tax credits awarded, or acceleration
14 of any loans made, under sections 35 through 42 of P.L.2020, c.156
15 (C.34:1B-303 through C.34:1B-310).

16 (cf: P.L.2021, c.160, s.14)

17
18 3. (New section) a. A taxpayer may apply to the director and
19 the chief executive officer of the authority for a tax credit transfer
20 certificate, covering one or more years, in lieu of the taxpayer being
21 allowed any amount of the credit against the tax liability of the
22 taxpayer. The tax credit transfer certificate, upon receipt thereof by
23 the taxpayer from the director and the chief executive officer of the
24 authority, may be sold or assigned, in full or in part in an amount
25 not less than \$25,000, in the privilege period during which the
26 taxpayer receives the tax credit transfer certificate from the director,
27 to another person, who may apply the credit against a tax liability
28 pursuant to section 1 of P.L.1950, c.231 (C.17:32-15),
29 N.J.S.17B:23-5, section 5 of P.L.1945, c.162 (C.54:10A-5), and
30 sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3).
31 The certificate provided to the taxpayer shall include a statement
32 waiving the taxpayer's right to claim the amount of the credit that
33 the taxpayer has elected to sell or assign against the taxpayer's tax
34 liability.

35 b. The taxpayer shall not sell or assign, including a collateral
36 assignment, a tax credit transfer certificate allowed under this
37 section for consideration received by the taxpayer of less than 85
38 percent of the transferred credit amount before considering any
39 further discounting to the present value which shall be permitted.
40 The tax credit transfer certificate issued to a taxpayer by the
41 director shall be subject to any limitations and conditions imposed
42 on the application of the original State tax credits issued pursuant to
43 the "Food Desert Relief Act," sections 35 through 41 of P.L.2020,
44 c.156 (C.34:1B-303 through C.34:1B-309), and any other terms and
45 conditions that the director may prescribe.

46 c. A purchaser or assignee of a tax credit transfer certificate
47 pursuant to this section shall not make any subsequent transfers,
48 assignments, or sales of the tax credit transfer certificate.

1 d. The authority shall publish on its Internet website the
2 following information concerning each tax credit transfer certificate
3 approved by the authority and the director pursuant to this section:

- 4 (1) the name of the transferor;
- 5 (2) the name of the transferee;
- 6 (3) the value of the tax credit transfer certificate; and
- 7 (4) the consideration received by the transferor.

8
9 4. (New section) a. A taxpayer who has entered into a tax
10 credit award agreement may, upon notice to and written consent of
11 the authority and State Treasurer, pledge, assign, transfer, or sell
12 any or all of its right, title, and interest in and to the tax credit
13 award agreement and in the tax credit awards payable under the tax
14 credit award agreement, and the right to receive the tax credit
15 awards, along with the rights and remedies provided to the taxpayer
16 under the taxpayer award agreement. Any assignment shall be an
17 absolute assignment for all purposes, including the federal
18 bankruptcy code.

19 b. Any pledge of a tax credit award made by the taxpayer shall
20 be valid and binding from the time the pledge is made and filed in
21 the records of the authority. The tax credit award pledged and
22 thereafter received by the taxpayer shall immediately be subject to
23 the lien of the pledge without any physical delivery thereof or
24 further act, and the lien of any pledge shall be valid and binding
25 against all parties having claims of any kind in tort, contract, or
26 otherwise against the taxpayer irrespective of whether the parties
27 have notice thereof. As a condition of any tax credit grant, the
28 grantee, assignee, pledgee, or subsequent holder of the tax credit
29 grant shall immediately file notice of the same with the clerk of the
30 county in which the project is located.

31 c. The authority shall publish on its Internet website the
32 following information concerning each pledge, assignment, transfer,
33 or sale approved by the authority pursuant to this section:

- 34 (1) the name of the person or entity offering the pledge,
35 assignment, transfer, or sale of a right, title, or interest in a tax
36 credit award agreement;
- 37 (2) the name of the person or entity receiving the pledge,
38 assignment, transfer, or sale of a right, title, or interest in the tax
39 credit award agreement;
- 40 (3) the value of the right, title, or interest in the tax credit award
41 agreement; and
- 42 (4) the consideration received by the person or entity offering
43 the pledge, assignment, transfer, or sale of the right, title, or interest
44 in the tax credit award agreement.

45
46 5. Section 40 of P.L.2020, c.156 (C.34:1B-308) is repealed.

47
48 6. This act shall take effect immediately.

STATEMENT

1

2

3 This bill revises certain requirements of the Food Desert Relief
4 Program, through which the New Jersey Economic Development
5 Authority (EDA) provides incentives for the establishment of
6 supermarkets and grocery stores within food desert communities.

7 Notably, the bill provides several changes concerning the
8 provision of tax credits under the program. Specifically, the bill
9 permits the recipients of tax credits to transfer the credits to other
10 taxpayers or pledge the credits as collateral, except that the credits
11 may not be sold for less than 85 percent of the full amount of the
12 credits. Under the bill, the EDA would also be required to publish
13 certain information on its website concerning any program tax
14 credits that are transferred, pledged, or otherwise sold. The bill also
15 clarifies that program tax credits could not be applied against the
16 State's gross income tax.

17 Additionally, the bill clarifies that the tax credits would only be
18 made available to the first or second new supermarkets or grocery
19 stores located in a food desert community. The bill also provides
20 that if a first or second new supermarket or grocery store leases or
21 subleases the spaces that are used for such purposes, the
22 supermarket or grocery would still qualify for tax credits.
23 However, the bill also provides that in addition to the existing
24 requirement to pay prevailing wages, the supermarket or grocery
25 store may only qualify for tax credits if: (1) the project is not
26 economically feasible without the tax credit award; (2) a project
27 financing gap exists; and (3) except for demolition and site
28 remediation activities, the entity has not commenced any
29 construction at the site of the project before submitting an
30 application, unless the EDA determines that the project would not
31 be completed otherwise.

32 Under the bill, the term "first or second new supermarket or
33 grocery store" is defined as the first and second new supermarket or
34 grocery store in each food desert community to be approved for tax
35 credits under the program, except that a supermarket or grocery
36 store may lose this designation if the project does not meet certain
37 program milestones in a timely manner, as determined by the EDA.
38 The bill also defines the term "new supermarket or grocery store" to
39 include those entities that commenced construction, or commenced
40 rehabilitation of at least 75 percent of their square footage, after the
41 effective date of the "Food Desert Relief Act."

42 Notably, the bill also revises the definition of "supermarket and
43 grocery store." Under the bill, this term is defined as a retail outlet
44 with at least 16,000 square feet, of which at least 80 percent is
45 occupied by food and related products. Currently, this term is
46 limited to retail outlets with at least 16,000 square feet, of which at
47 least 90 percent is occupied by food and related products.
48 Additionally, the bill provides that when determining whether a

1 retail outlet meets the definition of a “supermarket or grocery store”
2 or “mid-sized food retailer,” the food and related products would be
3 based on industry standards, as determined by the EDA, except that
4 these products would not include alcoholic beverages and products
5 related to the consumption of such beverages.

6 The bill also revises the types of entities that may qualify for
7 grants and loans under the program. In addition to other eligibility
8 criteria, current law provides that if a supermarket or grocery store
9 qualifies for program tax credits, the entity would also qualify for a
10 program grant or loan. Under the bill, these supermarkets and
11 grocery stores would no longer automatically qualify for a grant or
12 loan. Instead, the bill provides that such eligibility would depend
13 on whether the supermarket or grocery store meets criteria
14 established by the EDA, which, at minimum, would include a
15 commitment to accept benefits from federal nutrition assistance
16 programs, such as the Supplemental Nutrition Assistance Program
17 (SNAP) and the Special Supplemental Nutrition Program for
18 Women, Infants, and Children (WIC), in a designated food desert
19 community. The bill also provides that if a mid-sized food retailer
20 or small food retailer leases or subleases the spaces that are used for
21 selling nutritious foods, the retailer would still qualify for a grant or
22 loan.

23 The bill also clarifies that when an entity receives a program
24 grant or loan to support the costs of initiatives to ensure the food
25 security of residents in food desert communities, the amount of the
26 grant or loan would be limited to the costs of such initiatives.

27 Lastly, the bill repeals section 40 of P.L.2020, c.156 (C.34:1B-
28 308), which was enacted as part of the “Food Desert Relief Act.”
29 This statute includes certain duplicative provisions of law
30 concerning the manner in which program tax credits can be
31 claimed.

ASSEMBLY STATE AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4365

STATE OF NEW JERSEY

DATED: JUNE 22, 2022

The Assembly State and Local Government Committee reports favorably Assembly Bill No. 4365.

This bill revises certain requirements of the Food Desert Relief Program, through which the New Jersey Economic Development Authority (EDA) provides incentives for the establishment of supermarkets and grocery stores within food desert communities. Under current law, a “food desert community” means a physically contiguous area in the State in which residents have limited access to nutritious foods, such as fresh fruits and vegetables, and which has been designated as a food desert community pursuant to subsection b. of section 38 of P.L.2020, c.156 (C.34:1B-306).

The bill provides several changes concerning the provision of tax credits under the program. Specifically, the bill permits the recipients of tax credits to transfer the credits to other taxpayers or pledge the credits as collateral, except that the credits may not be sold for less than 85 percent of the full amount of the credits. Under the bill, the EDA is required to publish certain information on its website concerning any program tax credits that are transferred, pledged, or otherwise sold. The bill also clarifies that program tax credits could not be applied against the State’s gross income tax.

Additionally, the bill clarifies that the tax credits would only be made available to the first or second new supermarkets or grocery stores located in a food desert community. The bill also provides that if a first or second new supermarket or grocery store leases or subleases the spaces that are used for such purposes, the supermarket or grocery would still qualify for tax credits. However, the bill also provides that, in addition to the existing requirement to pay prevailing wages, the supermarket or grocery store will only qualify for tax credits if: (1) the project is not economically feasible without the tax credit award; (2) a project financing gap exists; and (3) except for demolition and site remediation activities, the entity has not commenced any construction at the site of the project before submitting an application, unless the EDA determines that the project would not be completed otherwise.

Under the bill, the term “first or second new supermarket or grocery store” is defined as the first and second new supermarket or

grocery store in each food desert community to be approved for tax credits under the program, except that a supermarket or grocery store may lose this designation if the project does not meet certain program milestones in a timely manner, as determined by the EDA. The bill also defines the term “new supermarket or grocery store” to include those entities that commenced construction, or commenced rehabilitation of at least 75 percent of their square footage, after the effective date of the “Food Desert Relief Act.”

The bill also revises the definition of “supermarket and grocery store.” Under the bill, this term is defined as a retail outlet with at least 16,000 square feet, of which at least 80 percent is occupied by food and related products. Currently, this term is limited to retail outlets with at least 16,000 square feet, of which at least 90 percent is occupied by food and related products. Additionally, the bill provides that when determining whether a retail outlet meets the definition of a “supermarket or grocery store” or “mid-sized food retailer,” the food and related products would be based on industry standards, as determined by the EDA, except that these products would not include alcoholic beverages and products related to the consumption of such beverages.

The bill also revises the types of entities that may qualify for grants and loans under the program. In addition to other eligibility criteria, current law provides that if a supermarket or grocery store qualifies for program tax credits, the entity would also qualify for a program grant or loan. Under the bill, these supermarkets and grocery stores would no longer automatically qualify for a grant or loan. Instead, the bill provides that such eligibility would depend on whether the supermarket or grocery store meets criteria established by the EDA, which, at minimum, would include a commitment to accept benefits from federal nutrition assistance programs, such as the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), in a designated food desert community. The bill also provides that if a mid-sized food retailer or small food retailer leases or subleases the spaces that are used for selling nutritious foods, the retailer would still qualify for a grant or loan.

The bill also clarifies that when an entity receives a program grant or loan to support the costs of initiatives to ensure the food security of residents in food desert communities, the amount of the grant or loan would be limited to the costs of such initiatives.

Lastly, the bill repeals section 40 of P.L.2020, c.156 (C.34:1B-308), which was enacted as part of the “Food Desert Relief Act.” This statute includes certain duplicative provisions of law concerning the manner in which program tax credits can be claimed.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4365

STATE OF NEW JERSEY

DATED: JUNE 23, 2022

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4365.

This bill revises certain requirements of the Food Desert Relief Program, through which the New Jersey Economic Development Authority (EDA) provides incentives for the establishment of supermarkets and grocery stores within food desert communities.

Notably, the bill provides several changes concerning the provision of tax credits under the program. Specifically, the bill permits the recipients of tax credits to transfer the credits to other taxpayers or pledge the credits as collateral, except that the credits may not be sold for less than 85 percent of the full amount of the credits. Under the bill, the EDA would also be required to publish certain information on its website concerning any program tax credits that are transferred, pledged, or otherwise sold. The bill also clarifies that program tax credits could not be applied against the State's gross income tax.

Additionally, the bill clarifies that the tax credits would only be made available to the first or second new supermarket or grocery stores located in a food desert community. The bill also provides that if a first or second new supermarket or grocery store leases or subleases the spaces that are used for such purposes, the supermarket or grocery would still qualify for tax credits. However, the bill also provides that in addition to the existing requirement to pay prevailing wages, the supermarket or grocery store may only qualify for tax credits if: (1) the project is not economically feasible without the tax credit award; (2) a project financing gap exists; and (3) except for demolition and site remediation activities, the entity has not commenced any construction at the site of the project before submitting an application, unless the EDA determines that the project would not be completed otherwise.

Under the bill, the term "first or second new supermarket or grocery store" is defined as the first and second new supermarket or grocery store in each food desert community to be approved for tax credits under the program, except that a supermarket or grocery store may lose this designation if the project does not meet certain program milestones in a timely manner, as determined by the EDA. The bill also defines the term "new supermarket or grocery store" to include those entities that commenced construction, or commenced

rehabilitation of at least 75 percent of their square footage, after the effective date of the “Food Desert Relief Act.”

Notably, the bill also revises the definition of “supermarket and grocery store.” Under the bill, this term is defined as a retail outlet with at least 16,000 square feet, of which at least 80 percent is occupied by food and related products. Currently, this term is limited to retail outlets with at least 16,000 square feet, of which at least 90 percent is occupied by food and related products. Additionally, the bill provides that when determining whether a retail outlet meets the definition of a “supermarket or grocery store” or “mid-sized food retailer,” the food and related products would be based on industry standards, as determined by the EDA, except that these products would not include alcoholic beverages and products related to the consumption of such beverages.

The bill also revises the types of entities that may qualify for grants and loans under the program. In addition to other eligibility criteria, current law provides that if a supermarket or grocery store qualifies for program tax credits, the entity would also qualify for a program grant or loan. Under the bill, these supermarkets and grocery stores would no longer automatically qualify for a grant or loan. Instead, the bill provides that such eligibility would depend on whether the supermarket or grocery store meets criteria established by the EDA, which, at minimum, would include a commitment to accept benefits from federal nutrition assistance programs, such as the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), in a designated food desert community. The bill also provides that if a mid-sized food retailer or small food retailer leases or subleases the spaces that are used for selling nutritious foods, the retailer would still qualify for a grant or loan.

The bill also clarifies that when an entity receives a program grant or loan to support the costs of initiatives to ensure the food security of residents in food desert communities, the amount of the grant or loan would be limited to the costs of such initiatives.

Lastly, the bill repeals section 40 of P.L.2020, c.156 (C.34:1B-308), which was enacted as part of the “Food Desert Relief Act.” This statute includes certain duplicative provisions of law concerning the manner in which program tax credits can be claimed.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill would result in a marginal expenditure increase for the EDA associated with the requirement to publish certain information on its website concerning the transfer, pledge, or sale of tax credits under the Food Desert Relief Program.

The bill also allows the recipients of tax credits under the Food Desert Relief Program to transfer the credits to other taxpayers or

pledge the credits as collateral. Although this provision would not impact the total value of the tax credits that are awarded under this program, this allowance may increase the rate at which these credits are applied against actual tax liabilities. Accordingly, the bill may also result in a potential decrease in State revenues.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 4365
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JUNE 27, 2022

SUMMARY

Synopsis: Revises various provisions of Food Desert Relief Program.

Type of Impact: Marginal increase in State expenditures; potential decrease in State revenues.

Agencies Affected: New Jersey Economic Development Authority and Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual Impact</u>
Marginal State Cost Increase	Indeterminate
Potential State Revenue Decrease	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill would result in a marginal expenditure increase for the New Jersey Economic Development Authority (EDA) associated with the requirement to publish certain information on its website concerning the transfer, pledge, or sale of tax credits under the Food Desert Relief Program.
- The bill also allows the recipients of tax credits under the Food Desert Relief Program to transfer the credits to other taxpayers or pledge the credits as collateral. Although this provision would not impact the total value of tax credits that are awarded under the program, this allowance may increase the rate at which these credits are applied against actual tax liabilities. Accordingly, the bill may also result in a potential decrease in State revenues.

BILL DESCRIPTION

This bill revises certain requirements of the Food Desert Relief Program, through which the EDA provides incentives for the establishment of supermarkets and grocery stores within food desert communities.

Notably, the bill provides several changes concerning the provision of tax credits under the program. Specifically, the bill permits the recipients of tax credits to transfer the credits to other taxpayers or pledge the credits as collateral, except that the credits may not be sold for less than

85 percent of the full amount of the credits. Under the bill, the EDA would also be required to publish certain information on its website concerning any program tax credits that are transferred, pledged, or otherwise sold. The bill also clarifies that program tax credits could not be applied against the State's gross income tax.

Additionally, the bill clarifies that the tax credits would only be made available to the first or second new supermarkets or grocery stores located in a food desert community. The bill provides that if a first or second new supermarket or grocery store leases or subleases the spaces that are used for such purposes, the supermarket or grocery store would still qualify for tax credits. However, the bill also provides that in addition to the existing requirement to pay prevailing wages, the supermarket or grocery store may only qualify for tax credits if: (1) the project is not economically feasible without the tax credit award; (2) a project financing gap exists; and (3) except for demolition and site remediation activities, the entity has not commenced any construction at the site of the project before submitting an application, unless the EDA determines that the project would not be completed otherwise.

The bill adds and revises various definitions relating supermarkets, grocery stores, and food retailers.

The bill also revises the types of entities that may qualify for grants and loans under the program. In addition to other eligibility criteria, current law provides that if a supermarket or grocery store qualifies for program tax credits, the entity would also qualify for a program grant or loan. Under the bill, these supermarkets and grocery stores would no longer automatically qualify for a grant or loan. Instead, the bill provides that such eligibility would depend on whether the supermarket or grocery store meets criteria established by the EDA, which, at minimum, would include a commitment to accept benefits from federal nutrition assistance programs, such as the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), in a designated food desert community. The bill also provides that if a mid-sized food retailer or small food retailer leases or subleases the spaces that are used for selling nutritious foods, the retailer would still qualify for a grant or loan.

The bill also clarifies that when an entity receives a program grant or loan to support the costs of initiatives to ensure the food security of residents in food desert communities, the amount of the grant or loan would be limited to the costs of such initiatives.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill would result in a marginal expenditure increase for the EDA associated with the requirement to publish certain information related to the transfer, pledge, or sale of tax credits under the Food Desert Relief Program. Additionally, the bill may also reduce certain State revenues by allowing the recipients of tax credits to transfer those credits to other taxpayers.

Under current law, the EDA administers the Food Desert Relief Program, which provides incentives for the establishment of supermarkets and grocery stores within food desert communities. Although the bill revises various aspects of the program, including which entities are eligible for assistance under the program, most of these revisions are not expected to impact

total program expenditures or associated revenue losses. However, by allowing the recipients of program tax credits to sell the credits to other taxpayers or to pledge the credits as collateral, the bill is expected to impact State expenditures and revenues.

Specifically, the bill provides that when a program tax credit has been transferred to another taxpayer or pledged as collateral, the EDA would be required to publish information on its website concerning the transfer or pledge of credits. As a result, the EDA is expected to incur marginal expenditure increases associated with maintaining and publishing this information. However, the OLS assumes that the EDA would be able to fulfill these responsibilities without hiring additional staff.

Although allowing the transfer or securitization of tax credits would not impact the total value of credits that are awarded under the program, the OLS notes that this allowance may increase the rate at which these credits are applied against actual tax liabilities. For example, absent the ability to transfer unused credits, if a tax credit recipient does not incur sufficient tax liabilities against which to claim the credits during certain tax years, the recipient may be unable to claim a portion of their approved credits. However, by allowing the recipient to sell all or some of the credits to interested taxpayers, the bill increases the probability that all program credits will be applied against actual tax liabilities. Accordingly, the bill may result in a potential decrease in State revenues. However, given the discretionary nature of such transfers, the OLS is unable to predict the degree to which this allowance would reduce State revenue collections.

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Joseph A. Pezzulo
Senior Research Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Takes Action on Legislation

06/30/2022

TRENTON – Today, Governor Phil Murphy signed the following bills into law:

2944/A-4162 (Sarlo, Ruiz/Freiman, Mosquera, Jaffer, Moriarty, Tully, Swain) - Credits \$5.2 billion to “New Jersey Debt Defeasance and Prevention Fund”; appropriates \$2.9 billion to NJ Schools Development Authority, NJ DOT, and NJT; and establishes process for authorizing future appropriations for debt defeasance and capital projects

S-1929/A-3668 (Gopal, Pennacchio/McKeon, Tully, Conaway) - Makes FY 2022 supplemental appropriation to provide State military impact aid to certain school districts

A-4403/S-2915 (Pintor Marin, Wimberly/Sarlo, Cunningham) - Makes FY 2022 supplemental appropriations of \$71,786,000

ACS for A-1522/S-2914 (Moriarty, Mosquera, Jaffer, Freiman, Lampitt, Greenwald/Madden, Gopal) - Establishes annual sales tax holiday for certain retail sales of computers, school computer supplies, school supplies, school art supplies, school instructional materials and sport or recreational equipment.

A-4401/S-2860 (Jaffer, Moriarty, Tully/Gopal, Pou) - Provides one-year waiver of certain MVC fees imposed for driver’s licenses and non-driver identification cards.

S-2861/A-4400 (Madden, Pou/Mosquera, Swain, Wimberly) - Waives fees for marriage and civil union licenses in Fiscal Year 2023; appropriates \$2 million

S-2523/ACS for A-3852 (Ruiz, Cunningham/Reynolds-Jackson, Freiman, Jaffer, Moriarty, Mosquera, Wimberly) - Provides child tax credit under gross income tax

S-2476wGR/A-4179 (Ruiz, Vitale/Coughlin, Jasey, Sumter, Quijano) - Establishes Thriving By Three Act to award competitive grants for infant and toddler child care programs; appropriates \$28 million

A-2359/S-2034 (Tucker, Moen, Haider/Cruz-Perez, Pou) - Provides for streamlining of SNAP application process and establishes SNAP application call center; appropriates \$750,000

A-2360/S-2035 (Reynolds-Jackson, Mukherji, Speight/Cunningham, Ruiz) - Eliminates requirement that participation in NJ SNAP Employment and Training Program is mandatory for certain recipients

A-2361/S-2016 (Jimenez, Sumter, Timberlake/Zwicker, Ruiz) - Requires DHS to maintain SNAP outreach plan and to conduct additional outreach programs

A-2362/S-2036 (Freiman, Mosquera, Quijano/Johnson, Ruiz) - Requires DHS to submit federal waiver request regarding time limits for certain SNAP recipients under certain circumstances

A-2363/S-2033 (Stanley, Mejia, Lopez/Pou, Ruiz) - Concerns SNAP services provided at county boards of social services and county welfare agencies; appropriates \$250,000

A-2364/S-2017 (Spearman, Pintor Marin, Atkins/Greenstein, Ruiz) - Appropriates \$813,000 to DHS to implement use of electronic benefit transfer cards in Senior Farmers’ Market Nutrition Program

A-2366/SCS for S-2156 (McKnight, Carter, Verrelli/Lagana, Pou) - Establishes State SNAP Minimum Benefit Program; appropriates \$18 million to DHS

A-2008/S-352 (Conaway, Verrelli, Benson/Gopal, Madden) - Requires health insurance carriers to provide coverage for treatment of mental health conditions and substance use disorders through collaborative care

S-2872/A-4399 (Scutari, Ruiz/Carter, Reynolds-Jackson, Murphy, Wimberly) - Establishes Behavioral Healthcare Provider Loan Redemption Program within Higher Education Student Assistance Authority; appropriates \$5 million

SCS for S-311/ACS for A-2036 (Vitale, Gopal/Benson, Verrelli, Conaway) - Establishes Statewide behavioral health crisis system of care

SCS for S-722 and 785/ACS for A-998 (Codey, Singleton/Reynolds-Jackson, Stanley, Jaffer) - Codifies and expands ARRIVE Together Pilot Program to make certain mental health services available to police responding to certain emergencies; appropriates \$2 million

S-2909/ACS for A-4374 (Diegnan/Benson, Pintor Marin, McKnight) - Authorizes DOT to compensate contractors and subcontractors affected by supply chain shortages; appropriates \$10 million

A-4405/S-2943 (Benson, Wimberly, Moen/Diegnan) - Concerns New Jersey Transportation Trust Fund Authority; increases Transportation Trust Fund spending limit by \$600 million

A-674/S-1646 (Verrelli, McKnight, McKeon/Ruiz, Pou) - Establishes New Jersey Easy Enrollment Health Insurance Program

A-3733/S-488 (Haider, Stanley, Benson/Scutari, Beach) - Authorizes student attending institution of higher education to earn credit towards graduation for serving as poll worker

ACS for A-3990/SCS for S-2593 (Stanley, Tully, Karabinchak/Diegnan, Corrado) - Provides temporary one-year extension of service life of school buses for 2022-2023 school year; authorizes chief administrator to allow one-year extension in subsequent two school years

A-4208/S-2791 (Pintor Marin, Quijano, Speight/Ruiz, Cruz-Perez) - Provides sales and use tax exemption for certain purchases made by all supermarkets and grocery stores located within urban enterprise zones

A2426/S513 (Wimberly, Reynolds-Jackson, Schaer/Cryan, Turner) - Establishes rebuttable presumption of pretrial detention for defendants who commit certain firearm offenses under Graves Act

A-4385/S-2933 (Conaway/Cryan) - Makes various revisions to law pertaining to electronic medical records and recording patients' demographic information

S-2807/A-246 (Stack, Sacco, Cunningham/McKnight, Sampson, Chaparro) - Establishes Liberty State Park Design Task Force

S-2917/A-4395 (Cruz-Perez, Stack/Pintor Marin, Freiman, Reynolds-Jackson) - Expands allowance for developers to carry forward unused tax credits under New Jersey Aspire Program

S-2921/A-4365 (Zwicker, Pou/Coughlin, Verrelli, Spearman) - Revises various provisions of Food Desert Relief Program

S-2945/ACS for A-4392 (Scutari/Pintor Marin, Sumter, Quijano, McKnight) - Concerns economic incentives for certain cannabis businesses

S-2023/A-4402 (Sarlo, Cunningham/Pintor Marin, Wimberly) - LINE ITEM - Appropriates \$50,638,729,000 in State funds and \$24,082,639,850 in federal funds for the State budget for fiscal year 2022-2023

[Copy of Statement](#)

Governor Murphy signed the following bills today, which were sent to his desk yesterday, conditionally vetoed, and then passed in concurrence with the Governor's recommendations:

S-2476/A-4179 (Ruiz, Vitale/Coughlin, Jasey, Sumter, Quijano) – CONDITIONAL - Establishes Thriving By Three Act to award competitive grants for infant and toddler child care programs; appropriates \$28 million

[Copy of Statement](#)

A-4403/S-2915 (Pintor Marin, Wimberly/Sarlo, Cunningham) – CONDITIONAL - Makes FY 2022 supplemental appropriations of \$71,786,000

[Copy of Statement](#)