SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 1323

STATE OF NEW JERSEY

DATED: MAY 16, 2024

The Senate Economic Growth Committee reports favorably Senate Bill No. 1323.

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

Aspire Program Definitions

The bill revises the definition of a "commercial project" to include industrial space that is predominantly used for warehouse distribution or fulfillment centers and has at least $10 million in environmental remediation costs. The bill amends the definition of an "incentive area" to include an endorsed plan and removes certain transportation connectivity requirements that exist under current law. The bill defines a "mixed-use project" as a redevelopment project including a residential component and a nonresidential component.

The bill clarifies that the definition of the term "project cost" also applies to the term "total project cost." The definition for "total project cost" under current law instead applies for the term "total development cost" or "total redevelopment cost" under the bill.

Under the bill, a "stranded asset" is defined as any building previously used for commercial, retail, office space, manufacturing, or industrial purposes, which building is no longer used for such purposes, and which has been abandoned, experienced significant vacancies for at least two consecutive years, or has fallen into such disrepair as to be untenantable.

The bill provides that for a redevelopment project located in a government restricted municipality, the calculation of "project cost" or "total project cost" also includes the costs of land and building acquisition, professional services, environmental remediation, and infrastructure improvements.

Aspire Program Changes Concerning Residential Projects

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

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

Sale of Buildings Under the Aspire Program

A developer is permitted, under the bill, to sell one or more buildings during the eligibility period if the sale is an arms-length sale or a sale for fair market value based on an appraisal conducted within one year, and is subject to the purchaser's assumption of all obligations under the Aspire Program.

Aspire Program Community Benefit Requirement

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

Aspire Program Occupancy Requirement

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

Eligibility for Aspire Program

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

Incentive Award Agreement

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

Eligibility Period Under Aspire Program

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

Total Tax Credit Eligibility Under Aspire Program

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

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

Aspire Program Tax Credit Carry Forward and Transfer

Under current law, a developer is required to apply tax credits during the tax periods approved by the authority. This bill additionally authorizes a developer to apply tax credits within the three successive tax periods immediately following the tax period in which the tax credit certificate is received by the developer. Under current law, the developer is authorized to carry forward credits for up to seven privilege periods following that in which the credits are awarded. This bill instead permits carry forward for the seven privilege periods following that in which the credits are applied.

Additionally, under current law, a developer is authorized to transfer all or part of the tax credit amount on or after the date of issuance to the developer. Under the bill, the developer is authorized to transfer the tax credits, and a transferee is authorized to use the tax credits, within the three successive tax periods immediately following the tax period in which the tax credit certificate is received by the developer or transferee as applicable. The transferee is also authorized under the bill to carry the tax credits forward in any of the five tax periods next following the tax period in which they were used.

Transformative Projects Under Aspire Program

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

Additionally, the bill requires a parking component to be included in the calculation of the total square footage of a transformative project, but only if constructed in agreement with local zoning, planning, or similar requirements, or up to the amount required by the Residential Site Improvement Standards, regardless of whether the Residential Site Improvement Standards apply to the parking component. Portions of a parking component that exceed local parking requirements or the Residential Site Improvement Standards are not to be included in these calculations. However, if the project is located within a government restricted municipality, the entire parking component is required to be included in the calculation of square footage requirements for a transformative project, regardless of agreement with local requirements or Residential Site Improvement Standards.

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

Aspire Program Fees

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

The bill provides that any application submitted on or after the date six months prior to the bill's effective date is subject to the new requirements provided for in the bill, except for the fees imposed on applications that precede the effective date of the bill.

Redevelopment Project Bridge Financing Program Under Aspire Program

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

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

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

The bill requires that the authority recommend to the Governor and the Legislature an amount for appropriation, which amount is necessary for the administration of the "Redevelopment Project Bridge Financing Program."

Aspire Program Tax Credit Redemption

The bill requires the Department of the Treasury to redeem unused tax credits, as the department deems necessary. The bill authorizes the department to purchase such certificates at a discount of their face value, which discount may not exceed 10 percent. The tax credit redemptions are to be paid in the same manner as tax refunds, except that the proceeds of the redemption may be issued over one or more tax periods, but not to exceed the eligibility period.

Changes to Corporate Business Tax and Gross Income Tax

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

Additionally, current law authorizes the exclusion of certain gains from the transfer of other tax credits awarded by the authority from gross income under the New Jersey Gross Income Tax. This bill removes a condition that the tax credits are required to have been approved by the authority prior to July 1, 2018 in order to be excluded from gross income.

This bill was prefiled for introduction in the 2024-2025 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.