

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 4023

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 2023

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 4023, with committee amendments.

As amended and reported, this bill provides various changes to the New Jersey Aspire Program (Aspire Program), which is administered by the New Jersey Economic Development Authority (EDA) and was enacted as part of the “New Jersey Economic Recovery Act of 2020.”

Under the Aspire Program, the EDA awards tax credits to the developers of certain redevelopment projects, which projects would not be economically feasible absent such subsidies, and which projects meet certain other requirements. In turn, these developers are required to comply with certain additional requirements concerning the development of these projects, including, but not limited to, the dedication of affordable housing in new residential projects. Under current law, the total tax credits awarded for any redevelopment project may not exceed certain statutory limitations, except that the EDA may provide larger tax credit awards for “transformative projects,” which meet certain eligibility criteria, and which are also subject to statutory limitations on tax credit awards.

The bill also revises other provisions of the “New Jersey Economic Recovery Act of 2020,” including extending the period in which other economic development programs, including the Emerge Program, would remain in operation and authorizing the transfer of certain tax credits otherwise available for the Aspire Program and Emerge Program.

Limitations on Tax Credit Awards

The bill revises the maximum amounts of tax credits that may be awarded to redevelopment projects and transformative projects under the Aspire Program.

Under current law, the developer of a redevelopment project may receive tax credits under the Aspire Program up to the following amounts, subject to certain other limitations: (1) 60 percent of the total project costs for any residential project that also receives federal four-percent low income housing tax credits (LIHTCs), up

to \$60 million; (2) 50 percent of total project costs for any commercial project located in a government-restricted municipality, up to \$60 million; and (3) 45 percent of total project costs for any other project, up to \$60 million if the project is located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index distress score of at least 50, or up to \$42 million if located elsewhere.

Instead, the bill provides that a redevelopment project may receive tax credits up to the following amounts, subject to certain other limitations: (1) 80 percent of total project costs for any project located in a government-restricted municipality, up to \$120 million; (2) 60 percent of total project costs for any residential project that also receives LIHTCs or any redevelopment project located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50, up to \$90 million; and (3) 50 percent of total project costs for any other project, up to \$60 million.

Similarly, the bill provides that transformative projects may receive tax credits equal to the lesser of \$400 million, the total value of the project financing gap, or the following amounts: (1) 80 percent of total project costs for any transformative project located in a government-restricted municipality; (2) 60 percent of the total project costs for any residential transformative project that also receives LIHTCs or any transformative project located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50; or (3) 50 percent of total project costs for any other transformative project. Under current law, all transformative projects are entitled to receive tax credits up to 40 percent of the total project costs, the total value of the project financing gap, or \$350 million, whichever is less.

Eligibility Requirements for Commercial Projects

The bill revises certain eligibility requirements for commercial projects under the Aspire Program. Currently, a commercial project is required to contain at least 100,000 square feet of commercial or industrial space to qualify for the program. The bill reduces these square footage requirements to at least 25,000 square feet for any commercial project located in a government-restricted municipality or 50,000 square feet for any other commercial project, except in the case of health care or health services centers.

The bill also revises the eligibility criteria applicable to commercial projects that include a health care or health services center. Notably, the bill amends the existing definition of “health care or health services center” to require these establishments to: (1) contain not less than 10,000 square feet devoted to health care or health services, where patients may be admitted for or seek medical examination and treatment; and (2) be located within a

municipality with a Municipal Revitalization Index distress score or at least 50, a distressed municipality, or a qualified incentive tract. Notwithstanding the default square footage requirements for commercial projects, the bill also provides that any redevelopment project that is comprised solely of a health care or health services center, and which contains not less than 10,000 square feet devoted to health care or health services, would also qualify as a commercial project under the Aspire Program. The bill also provides that if a commercial project is comprised solely of a health care or health services center, the health care or health services center is required to comply with certain requirements concerning total project cost in order for the project to qualify for a tax credit.

Requirements for Residential Projects

The bill revises certain requirements of the Aspire Program concerning the approval of residential projects, including the affordability controls that would be required within these projects.

Under current law, the developer of a new residential project is required under the Aspire Program to reserve certain residential units for low- and moderate-income housing. Current law requires these residential units to be subject to affordability controls, as required under the State's "Fair Housing Act," which affordability controls have been adopted by the New Jersey Housing and Mortgage Finance Agency (HMFA) and are known as the "Uniform Housing Affordability Controls" (UHAC rules). However, these rules do not apply to residential projects that receive federal LIHTCs. As a result, residential projects that receive funding through both the Aspire Program and the federal LIHTC Program are generally not required to comply with the UHAC rules.

The bill revises the affordability controls that would apply to residential projects under the Aspire Program. Specifically, the bill requires the EDA, in consultation with the HMFA, to adopt rules and regulations concerning the establishment and administration of affordability controls for residential projects under the program, including, but not limited to, residential projects that utilize federal LIHTCs. At a minimum, these affordability controls would be required to comply with the requirements of the UHAC rules, as in effect upon the date of enactment of this bill, including any requirements concerning the bedroom distributions, affordability averages, affirmative marketing, and the long-term deed restriction of residential units. However, the bill provides an exemption for these bedroom distribution requirements for any residential project that receives the federal historic rehabilitation tax credit or a State tax credit under the "Historic Property Reinvestment Act."

The bill also provides that when all residential units constructed in a residential project are reserved for occupancy by low- and moderate-income households, the calculation of total project costs

for the project would also include the developer fees paid before acquiring permanent financing, as well as the deferred developer fees pursuant to the rules established by the agency.

Transformative Projects

The bill revises several requirements of the Aspire Program concerning the eligibility and approval of transformative projects.

Under current law, a redevelopment project is required to meet the following criteria in order to qualify as a transformative project: (1) have a project financing gap; (2) incur total project costs of at least \$100 million; (3) contain 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space, except for projects which may include 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production (“film-related space”); and (4) demonstrate a “special economic importance” to the State, as measured by certain State priorities determined by the EDA.

The bill establishes reduced square footage requirements for certain transformative projects, as follows: (1) 200,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in a government-restricted municipality; and (2) 300,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in an enhanced area. The bill maintains the existing square footage requirements for any transformative projects that do not meet these criteria.

Additionally, the bill increases the total project cost requirements for transformative projects from \$100 million to \$150 million. The bill also provides that only commercial projects would be required to demonstrate a “special economic importance” in order to qualify as transformative projects. However, when a redevelopment project is located entirely on land designated as a brownfield development area, and the project includes at least \$15 million in environmental remediation costs, the bill provides that the redevelopment project would be deemed to constitute a “special economic importance.”

Under current law, a residential project or mixed-use project that qualifies as a transformative project is required to contain a minimum number of residential units, which amounts vary depending on the location of the project. The bill reduces the number of residential units that are required to be included in these projects. The bill also reduces the amount of commercial space, from 100,000 square feet to 50,000 square feet, that is required to be constructed within a residential project that includes fewer than 700 new residential units.

Under the bill, all transformative projects would be required to be completed, and the developer would be required to receive a

certificate of occupancy for the project, within five years of executing the incentive award agreement, except that the EDA may, in its discretion, extend this period by up to one additional year. However, for a transformative project completed in phases, the developer is required to complete the project and receive a certificate of occupancy for all phases of the project within 10 years of executing either the incentive award agreement or the first transformative phase agreement. Currently, all redevelopment projects are required to be completed and receive certificates of occupancy within four years, except that transformative projects that are completed in phases are required to be completed within eight years.

The bill removes the limitation on the number of transformative projects that may be located within one municipality. Currently, the EDA cannot award tax credits to more than two transformative projects located within the same municipality.

Additional Conditions of Incentive Award

The bill revises several requirements of the Aspire Program, which the developer of a redevelopment project may be required to satisfy as a condition of receiving an incentive award.

Notably, the bill revises the circumstances in which a developer would be exempt from the requirement to enter into a community benefits agreement. Under current law, a developer that is otherwise required to enter into a community benefits agreement is exempt from this requirement when the developer provides the EDA with an approval letter or redevelopment agreement, which is certified by the municipality in which the project is located and which includes provisions that meet or exceed the standards required for community benefits agreements. Under the bill, the developer would be considered to have met the requirements of the community benefits agreement if the developer submits a resolution to the EDA, which resolution was adopted by the governing body of the municipality in which the redevelopment project is located after at least one public hearing. Specifically, the resolution would be required to state that the governing body has determined that the redevelopment project will provide economic and social benefits to the community that fulfill certain purposes, which benefits render a separate community benefits agreement unnecessary, and explain the reasons supporting the governing body's determination. The bill also exempts any residential project that is located in a government-restricted municipality, and in which 100 percent of the residential units constructed in the residential project are reserved for occupancy by low- and moderate-income households, from the requirement to enter into a community benefits agreement.

Additionally, the bill expands the allowance for certain redevelopment projects to demonstrate a reduced net positive

benefit to the State. Currently, the developer of a redevelopment project is required to demonstrate to the EDA that the award of tax credits will result in a net positive benefit to the State in an amount determined by the EDA, except not less than the amount of requested tax credits. However, current law allows this net benefit requirement to be reduced by up to 35 percentage points for any project that is located in a government-restricted municipality. Under the bill, this reduction in the net benefit requirement would also apply to: (1) any commercial project that contains 50,000 or more square feet of space devoted to research or technology focused incubator and conferencing facilities for one or more institutions of higher education or non-profit organizations, and which has a total project cost of not less than \$50 million; (2) any redevelopment project that is predominantly commercial and that receives a federal historic rehabilitation tax credit or a State tax credit under the “Historic Property Reinvestment Act”; and (3) any commercial project that is located on land owned by the federal government on or before December 31, 2005.

The bill also provides that the EDA may set a reduced net benefit requirement for any redevelopment project that is undertaken by a major cultural institution to renovate existing space or expand services into additional space, and in which the major cultural institution realizes all returns from the redevelopment project. As defined in the bill, a “major cultural institution” includes any public or nonprofit institution, except for an institution of higher education, within this State that engages in the cultural, intellectual, scientific, environmental, educational, or artistic enrichment of the people of this State, and which institution is designated by the board of the EDA as a major cultural institution.

The bill also revises certain provisions of the Aspire Program concerning the prevailing wage requirement for persons employed to perform building services work. Under the bill, this requirement would not apply to workers who are employed to perform building services work by a commercial tenant, commercial subtenant, or other commercial occupant that has a leasehold interest or other occupancy right in a redevelopment project, which leasehold interest or other occupancy right encompasses less than 5,000 square feet of space. The bill also requires all leases, subleases, or other commercial occupancy agreements applicable to a redevelopment program to include a provision, in a form acceptable to the EDA, which sets forth the prevailing wage requirement.

Additionally, the bill provides that if a commercial tenant, commercial subtenant, or other commercial occupant violates the provision of the lease, sublease, or other commercial occupancy agreement due to the underpayment of the prevailing wage rate, then the developer and any co-applicant of the redevelopment project may be required to forfeit all or part of the tax credit award,

depending on the tax period in which the violation is cured and documentation of such correction has been reviewed and approved by Commissioner of Labor and Workforce Development and verified by the EDA. Specifically, the bill provides that if a violation is not cured, or is not capable of being cured, within one year of receipt of notice of the violation, the developer and any co-applicant would be required to forfeit 50 percent of the tax credits otherwise authorized for the tax period in which the notice of violation was issued. Thereafter, if the violation is not cured on or before the conclusion of that tax period, the developer and any co-applicant would be required to forfeit up to 100 percent of the tax credits otherwise authorized, as determined by the EDA, in each subsequent tax period until the violation has been cured, and documentation of such correction has been reviewed and approved by Commissioner of Labor and Workforce Development and verified by the EDA.

Miscellaneous Program Changes

The bill amends several other provisions of law governing the Aspire Program, including expanding the scope of eligible incentive areas under the program. Specifically, the bill amends the definition of “incentive area” to include: any area designated as a brownfield site pursuant to the “Brownfield and Contaminated Site Remediation Act”; and an area of not less than 100 acres for which a licensed site remediation professional has certified environmental remediation costs, as defined in this bill and in accordance with the “Site Remediation Reform Act,” in an amount not less than \$10 million, provided that any portion of such area is located in an area that otherwise qualifies as an incentive area.

The bill also clarifies certain provisions of law governing the duration of eligibility periods under the Aspire Program. Under current law, after the EDA has approved an application for the Aspire Program, the EDA is responsible for entering into an incentive award agreement with the developer of the redevelopment project. The incentive award agreement specifies the amount of the tax credit award and the duration of the eligibility period, which period may not exceed 15 years for a commercial or mixed-use project or 10 years for a residential project. To reduce the total value of tax credits needed to reimburse a developer for all or part of the project financing gap of a redevelopment project, the bill permits the EDA, in its discretion, to approve a duration for the eligibility period that is shorter than the applicable maximum periods.

Additionally, the bill requires the incentive award agreement to include one or more provisions, as determined by the EDA, concerning the terms and conditions for default and the remedies for the developer of a redevelopment project in the event of default.

However, the EDA would not be permitted to declare a cross-default when the developer of a redevelopment project, including any business affiliate of the developer or any other entity with common principals as the developer, defaults on any other assistance program administered by the EDA.

The bill also amends current law to define the term “reasonable and appropriate return on investment” under the Aspire Program, which concept is used to determine a developer’s project financing gap. In general, the bill defines this term in a manner consistent with existing regulations. However, for any residential project that utilizes federal LIHTCs and generates returns on equity other than federal or local grants or proceeds from the sale of federal or local tax credits, the bill provides that the calculation of “reasonable and appropriate return on investment” would be based on both: (1) the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment; and (2) with respect only to the units financed with LIHTCs, the approval of deferred developer fees pursuant to the rules established by the HMFA.

The bill also directs the Chief Executive Officer of the EDA to adopt rules and regulations to implement the provisions of the Aspire Program, as modified by this bill. Under the bill, these rules and regulations would take effect immediately upon filing with the Office of Administrative Law and would remain in effect for one year. Thereafter, before the expiration of these rules and regulations, the EDA would be required to amend, adopt, or readopt rules and regulations in accordance with the “Administrative Procedure Act.”

Additionally, the bill permits the holders of tax credit transfer certificates to transfer all or part of the tax credit amount for use by a transferee, which transferee may claim the transferred tax credits over a maximum of six years, subject to certain annual limitations set forth in the bill.

The bill also requires the EDA to submit a report to the Governor and Legislature, on or before December 31, 2023, concerning the effectiveness of the program in encouraging development in government-restricted municipalities. At a minimum, the report would be required to include recommendations to incentivize additional development in government-restricted municipalities through financial assistance or other incentives that the authority determines are appropriate.

Applicability to Prior and Future Applications

Except in certain circumstances, the bill provides that all Aspire Program applications completed after the date of enactment of this bill would be subject to the provisions of this bill, including any rules and regulations adopted by the EDA thereunder. In contrast, all program applications completed on or before the enactment of

the bill would be subject to the existing provisions of law and regulation governing the Aspire Program, except in certain circumstances.

However, if a completed application for a residential project was submitted within 121 days after the date of enactment, the applicant receives all applicable approvals for the project under the “Municipal Land Use Law” within such period, and the applicant submits written notice to the EDA before the EDA’s decision on the application, the bill provides that the application would be subject to some, but not all, of the provisions of this bill. In this event, the bill requires the application to be reviewed, approved, and administered in accordance with the existing provisions of law and regulation governing the Aspire Program, except for: (1) the determination of “reasonable and appropriate return on investment,” as defined in the bill; and (2) the limitations on total tax credit awards, as increased by the bill.

Additionally, the bill permits certain applicants to withdraw pending applications for the Aspire Program. Specifically, an applicant may withdraw any completed application that is pending approval by the EDA on the date of enactment of this bill at any time before the EDA approves or denies the application. In this event, the EDA would be required to return all application fees paid by the applicant, and the withdrawal may not serve to prejudice the consideration of any program application submitted by the applicant thereafter.

Other Changes to “New Jersey Economic Recovery Act of 2020”

The bill also provides additional changes to the “New Jersey Economic Recovery Act of 2020,” which established the Aspire Program, as well as several other economic development programs. Under current law, the total value of tax credits awarded under these economic development programs is limited to \$11.5 billion over a seven-year period. The law also limits the amount of tax credits that may be annually awarded under each of these programs during certain years within this seven-year period.

Notably, the bill amends the “New Jersey Economic Recovery Act of 2020” to increase the duration of this period from seven years to nine years, thereby extending the period of operation of these programs. As a part of this change, the bill also extends the statutory deadline to apply for tax credits under the Emerge Program from March 1, 2027 to March 1, 2029.

Additionally, the bill permits the EDA to annually transfer certain tax credits otherwise allocated to the Aspire Program and Emerge Program. Under current law, the total value of tax credits to be awarded under the Aspire Program and Emerge Program, not including transformative projects, may not exceed \$1.1 billion per year over a six-year period, subject to certain carry-forward

authorizations. Current law also provides that the total value of tax credits to be awarded for transformative projects under the Aspire Program may not exceed an aggregate balance of \$2.5 billion.

Specifically, the bill provides that beginning in State Fiscal Year 2024, the EDA may transfer, from the annual allotment of tax credits for the Aspire Program and Emerge Program, an amount not to exceed \$500 million in tax credits for transformative projects under the Aspire Program, provided that: (1) the remaining allocation of tax credits otherwise available for transformative projects is less than \$1 billion; and (2) the board of the EDA determines that the transfer of tax credits is warranted based on such criteria as the authority deems appropriate. However, if the EDA elects to transfer these tax credits, the bill requires the EDA to award no greater than 65 percent of the transferred tax credits to transformative projects located in the northern counties of the State and no greater than 35 percent of the transferred tax credits to transformative projects located in the southern counties of the State.

COMMITTEE AMENDMENTS:

The committee amendments provide the following changes to the bill:

(1) increase the amount of tax credits that may be awarded to a redevelopment project or transformative project that is located within a government-restricted municipality from 70 percent to 80 percent of the total project costs;

(2) allow the EDA, in its discretion, to extend the deadline for the completion of certain transformative projects, which are not completed in phases, by up to one additional year;

(3) revise the definition of “health care or health services center” to require the establishment to be located within a municipality with a Municipal Revitalization Index distress score of at least 50, a distressed municipality, or a qualified incentive tract. As introduced, the bill would have required these establishments to be located within a municipality that lacks adequate access to health care services, as annually determined by the Commissioner of Health;

(4) revise the definition of “incentive area” to include: any area designated as a brownfield site pursuant to the “Brownfield and Contaminated Site Remediation Act”; and an area of not less than 100 acres for which a licensed site remediation professional has certified environmental remediation costs, as defined in this bill and in accordance with the “Site Remediation Reform Act,” in an amount not less than \$10 million, provided that any portion such area is located in an area that otherwise qualifies as an incentive area;

(5) allow a reduction to the net benefit requirement of up to 35 percentage points for any commercial project that is located on land owned by the federal government on or before December 31, 2005;

(6) revise certain provisions of the Aspire Program concerning the prevailing wage requirement for persons employed to perform building services work, including: (i) requiring all leases, subleases, or other commercial occupancy agreements to include a provision setting forth this requirement; (ii) providing that if a commercial tenant, commercial subtenant, or other commercial occupant violates this requirement, the developer and any co-applicant may be required to forfeit all or part of the tax credit award, depending on when the violation is cured and documentation of such correction has been reviewed and approved by Commissioner of Labor and Workforce Development and verified by the EDA; and (iii) clarifying that the exemption from this requirement, as proposed in the bill, would apply to any commercial tenant, commercial subtenant, or other commercial occupant that has a leasehold interest or other occupancy right in a redevelopment project, which leasehold interest or other occupancy right encompasses less than 5,000 square feet of space within the project;

(7) eliminate the requirement applicable to certain residential transformative projects, which include fewer than 700 new residential units and at least 50,000 square feet of commercial space, for a majority of the commercial space to be non-retail space;

(8) exempt any residential project that is located in a government-restricted municipality, and in which 100 percent of the residential units constructed in the residential project are reserved for occupancy by low- and moderate-income households, from the requirement to enter into a community benefits agreement;

(9) require the EDA to submit a report to the Governor and Legislature, on or before December 31, 2023, concerning the effectiveness of the program in encouraging development in government-restricted municipalities;

(10) allow the holders of tax credit transfer certificates to transfer all or part of the tax credit amount for use by a transferee, which transferee may claim the transferred tax credits over a maximum of six years, subject to certain annual limitations set forth in the bill; and

(11) provide technical changes to the bill.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.