

CHAPTER 47

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

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

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

C.34:1B-305 Definitions.

37. As used in sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310) and sections 3 and 4 of P.L.2022, c.47 (C.34:1B-308.1 and C.34:1B-308.2):

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

"Department" means the Department of Agriculture.

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

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

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

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

"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).

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

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

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

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

"Project cost" means the costs incurred in connection with the establishment of a supermarket or grocery store within a food desert community by the developer until the

opening of the supermarket or grocery store to the public, including the costs relating to lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, any environmental remediation costs, plus costs not directly related to construction, including capitalized interest paid to third parties, of an amount not to exceed 20 percent of the total costs, and the cost of infrastructure improvements, including ancillary infrastructure projects.

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

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

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

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

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

C.34:1B-306 Food Desert Relief Program.

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

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

b. The authority, in consultation with the Department of Agriculture and the Department of Community Affairs, shall initially designate not more than 50 separate geographic areas that have limited access to nutritious foods as food desert communities in this State. The authority, in consultation with the Department of Agriculture and the Department of Community Affairs, shall develop criteria for the designation of food desert communities, but each separate food desert community shall consist of a distinct geographic area with a single defined border. The criteria shall, at a minimum, incorporate analysis of municipal or census tract poverty statistics, food desert information from the Economic Research Service of the United States Department

of Agriculture, healthier food retail tract information from the federal Centers for Disease Control and Prevention, and residents' access to nutritious foods, such as fresh fruits and vegetables, through supermarkets and grocery stores. The authority, in consultation with the departments, may also consider in making food desert community designations pursuant to this subsection, data related to municipal or census tract population size and population density, the number of residents who receive Supplemental Nutrition Assistance Program (SNAP) benefits within a municipality, the extent to which a municipality's residents have access to a personal vehicle, and a municipality's Municipal Revitalization Index distress score, obesity rate, and unemployment rate. The authority, in consultation with the departments, shall continuously evaluate areas previously designated as food desert communities and assess whether they still meet the criteria for designation as a food desert community and may designate additional food desert communities once every three years following the effective date of sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310).

c. To receive a tax credit under section 39 or 40 of P.L.2020, c.156 (C.34:1B-307 or C.34:1B-308), a taxpayer shall submit an application to the authority in the form and manner prescribed by the authority and in accordance with criteria established by the authority, which at minimum will 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). Following the approval of an application, the authority may, pursuant to an award agreement, award tax credits to an eligible taxpayer that:

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

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

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

(a) operate a supermarket or grocery store that meets criteria established by the authority, which criteria shall, at minimum, include a commitment to accept benefits from federal nutrition assistance programs, including, but not limited to, the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), in a designated food desert community;

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

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

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

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

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

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

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

- (a) to mitigate a project financing gap;
- (b) to mitigate the initial operating costs of the supermarket or grocery store;

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

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

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

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

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

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

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

g. An entity that develops and opens the first or second new supermarket or grocery store in a designated food desert community shall be eligible for a tax credit only if the entity demonstrates to the authority at the time of application that: (1) each worker employed to perform construction at the project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.); (2) without the tax credit award, the project is not economically feasible; (3) a project financing gap exists; and (4) 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 authority determines that the project would not be completed otherwise.

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

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

(3) As used in this subsection, "labor harmony agreement" means an agreement between a business that serves as the owner or operator of a supermarket or grocery store and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a

neutral posture with respect to efforts of any participating labor organization to represent employees at a supermarket or grocery store, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees at a supermarket or grocery store by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations that have requested to be on the list and that the Commissioner of Labor and Workforce Development has determined represent substantial numbers of supermarket or grocery store employees in the State.

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

C.34:1B-308.1 Tax credit transfer certificate, application.

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

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

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

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

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

C.34:1B-308.2 Tax credit award agreement; taxpayer ability to pledge, assign, transfer, sell right, title, interest.

4. a. A taxpayer who has entered into a tax credit award agreement may, upon notice to and written consent of the authority and State Treasurer, pledge, assign, transfer, or sell any or all of its right, title, and interest in and to the tax credit award agreement and in the tax credit awards payable under the tax credit award agreement, and the right to receive the tax credit awards, along with the rights and remedies provided to the taxpayer under the taxpayer award agreement. Any assignment shall be an absolute assignment for all purposes, including the federal bankruptcy code.

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

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

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

Repealer.

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

6. This act shall take effect immediately.

Approved June 30, 2022.