

SENATE, No. 3233

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 26, 2018

Sponsored by:

Senator NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Senator TROY SINGLETON

District 7 (Burlington)

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Senator T.Kean

SYNOPSIS

“Food Desert Elimination Act”; provides incentives to supermarkets and grocery stores that locate in “food deserts.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/1/2019)

1 AN ACT providing incentives to supermarkets and grocery stores in
2 certain areas and supplementing P.L.1974, c.80 (C.34:1B-
3 1 et seq.) and P.L.2013, c.63 (C.33:1-12.50 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. This act shall be known, and may be cited, as the “Food
9 Desert Elimination Act.”
10

11 2. a. The Legislature finds and declares that: (1) there are
12 certain urban areas of the State, known as “food desert”
13 communities, in which residents are unable to obtain reasonable and
14 adequate access to nutritious foods and, in particular, to fresh fruits
15 and vegetables; (2) the inaccessibility of nutritious food in urban
16 food desert communities has been attributed, in large part, to the
17 absence of supermarkets and grocery stores in those communities;
18 (3) low-income families are more likely than others to live in urban
19 food desert communities and to lack the transportation or financial
20 resources necessary to reach distant wholesome markets; and (4) the
21 establishment of financial incentives to supermarkets and grocery
22 stores is a reasonable means by which to ensure that residents of
23 urban food desert communities in the State are provided with
24 reasonable access to nutritious, fresh, and delicious produce, and
25 are afforded the opportunity thereby to make healthier eating
26 choices for themselves and for their families.

27 b. The Legislature therefore determines that it is both
28 reasonable and necessary to authorize the New Jersey Economic
29 Development Authority to establish a program that provides
30 incentives to supermarkets and grocery stores to establish and retain
31 locations in urban food desert communities in order to provide a
32 consistent, and easily accessible, source of fresh produce to
33 residents in those communities.
34

35 3. As used in P.L. , c. (C.) (pending before the
36 Legislature as this bill):

37 “Authority” means the New Jersey Economic Development
38 Authority.

39 “Department” means the Department of Agriculture.

40 “Program” means the Food Desert Elimination Program
41 established in section 4 of P.L. , c. (C.) (pending before the
42 Legislature as this bill).

43 “Special retail distribution permit” means a nontransferable
44 permit to sell any alcoholic beverages for consumption of the
45 permitted premises as described in section 10 of
46 P.L. , c. (C.) (pending before the Legislature as this bill).

1 “Supermarket or grocery store” means a retail facility of at least
2 18,000 square feet, of which at least 90 percent is occupied by a
3 full-service supermarket or grocery store.

4 “Urban food desert community” or “community” means a
5 physically contiguous urban area in the State in which residents
6 have limited access to nutritious foods, such as fresh fruits and
7 vegetables, through supermarkets and grocery stores as designated
8 pursuant to subsection b. of section 4 of P.L. , c. (C.)
9 (pending before the Legislature as this bill).

10
11 4. a. There is established the Food Desert Elimination
12 Program to be administered by the New Jersey Economic
13 Development Authority. The program shall include tax credit
14 components, as provided in sections 5 and 6 of
15 P.L. , c. (C. and C.) (pending before the Legislature as
16 this bill), and a retail alcoholic beverage permit component, as
17 provided in sections 7 and 10 of P.L. , c. (C. and C.)
18 (pending before the Legislature as this bill), in order to incentivize
19 businesses to establish and then retain new supermarkets and
20 grocery stores in urban food desert communities.

21 b. The authority, in consultation with the Department of
22 Agriculture, shall designate the physically contiguous urban areas
23 that qualify as urban food desert communities in this State.

24
25 5. a. For privilege periods beginning on or after January 1
26 next following the effective date of P.L. , c. (C.)
27 (pending before the Legislature as this bill), a taxpayer that
28 establishes and opens for business to the public a supermarket or
29 grocery store in an urban food desert community, and that meets the
30 requirements of this section and the rules and regulations adopted
31 pursuant thereto, and for the three privilege periods next following
32 the initial opening, shall be allowed a credit against the tax due
33 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount
34 equal to the total amount the taxpayer is assessed in property taxes
35 by the municipality in which the supermarket or grocery store is
36 located during the full privilege period for the property where that
37 supermarket or grocery store is open for business to the public.

38 b. (1) To qualify for the tax credit allowed pursuant to this
39 section, a taxpayer shall apply to the authority for a certification,
40 and the application shall include the following:

41 (a) from the department, a certification that the taxpayer
42 qualifies as a supermarket or grocery store, as defined in section 3
43 of P.L. , c. (C.) (pending before the Legislature as this
44 bill), and is located in an urban food desert community designated
45 pursuant to subsection b. of section 4 of P.L. , c. (C.)
46 (pending before the Legislature as this bill); and

47 (b) from the municipality in which the supermarket or grocery
48 store is located, a certification of the amount of property tax the

1 taxpayer is assessed for the applicable privilege period pursuant to
2 subsection a. of this section.

3 (2) The order of priority of the application of the credit allowed
4 pursuant to this section and any other credits allowed against the tax
5 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for
6 a privilege period shall be as prescribed by the Director of the
7 Division of Taxation in the Department of the Treasury. The
8 amount of the credit applied pursuant to this section against the tax
9 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
10 shall not reduce a taxpayer's tax liability for a privilege period to an
11 amount less than the statutory minimum provided in subsection (e)
12 of section 5 of P.L.1945, c.162 (C.54:10A-5). Any credit shall be
13 valid in the privilege period in which the certification is approved
14 and any unused portion thereof may be carried forward into the next
15 10 privilege periods or until depleted, whichever is earlier.

16

17 6. a. For taxable years beginning on or after January 1 next
18 following the effective date of P.L. , c. (C.) (pending
19 before the Legislature as this bill), a taxpayer that establishes and
20 opens for business to the public a supermarket or grocery store in an
21 urban food desert community, and that meets the requirements of
22 this section and the rules and regulations adopted pursuant thereto,
23 and for the three taxable years next following the initial opening,
24 shall be allowed a credit against the tax due pursuant to
25 N.J.S.54A:1-1 et seq., in an amount equal to the total amount the
26 taxpayer is assessed in property taxes by the municipality in which
27 the supermarket or grocery store is located during the full tax year
28 for the property where that supermarket or grocery store is open for
29 business to the public.

30 b. (1) To qualify for the tax credit allowed pursuant to this
31 section, a taxpayer shall apply to the authority for a certification,
32 and the application shall include the following:

33 (a) from the department, a certification that the taxpayer
34 qualifies as a supermarket or grocery store, as defined in section 3
35 of P.L. , c. (C.) (pending before the Legislature as this
36 bill), and is located in an urban food desert community designated
37 pursuant to subsection b. of section 4 of P.L. , c. (C.)
38 (pending before the Legislature as this bill); and

39 (b) from the municipality in which the supermarket or grocery
40 store is located, a certification of the amount of property tax the
41 taxpayer is assessed for the applicable taxable year pursuant to
42 subsection a. of this section.

43 (2) The order of priority of the application of the credit allowed
44 pursuant to this section and any other credits allowed against the tax
45 imposed pursuant to N.J.S.54A:1-1 et seq. for a taxable year shall
46 be as prescribed by the Director of the Division of Taxation in the
47 Department of the Treasury. The amount of the credit applied
48 pursuant to this section against the tax imposed pursuant to

1 N.J.S.54A:1-1 et seq. shall not reduce a taxpayer's tax liability for a
2 taxable year to an amount less than zero. Any credit shall be valid
3 in the taxable year in which the certification is approved and any
4 unused portion thereof may be carried forward into the next 10
5 taxable years or until depleted, whichever is earlier.

6 c. A business entity that is classified as a partnership for
7 federal income tax purposes shall not be allowed the credit directly
8 under N.J.S.54A:1-1 et seq., but the amount of credit of the
9 taxpayer in respect of a distributive share of partnership income
10 shall be determined by allocating to the taxpayer that proportion of
11 the credit acquired by the partnership that is equal to the taxpayer's
12 share, whether or not distributed, of the total distributive income or
13 gain of the partnership for its taxable year ending within or with the
14 taxpayer's taxable year.

15 A taxpayer that is a New Jersey S corporation shall not be
16 allowed the credit directly under N.J.S.54A:1-1 et seq., but the
17 amount of credit of a taxpayer in respect of a pro rata share of S
18 corporation income shall be determined by allocating to the
19 taxpayer that proportion of the credit acquired by the New Jersey S
20 corporation that is equal to the taxpayer's share, whether or not
21 distributed, of the total pro rata share of S corporation income of the
22 New Jersey S corporation for its taxable year ending within or with
23 the taxpayer's taxable year.

24

25 7. After consultation with the Division of Alcoholic Beverage
26 Control in the Department of Law and Public Safety, the Division
27 of State Police, and the municipality in which a supermarket or
28 grocery store that qualifies for incentives under the program is
29 located, the New Jersey Economic Development Authority may
30 direct the Director of the Division of Alcoholic Beverage Control to
31 issue, consistent with section 10 of P.L. , c. (C.) (pending
32 before the Legislature as this bill), a special retail distribution
33 permit to one or more individual corporations or other types of legal
34 entities operating a supermarket or grocery store that qualifies for
35 incentives under the program.

36

37 8. The authority, in consultation with the department, the
38 Director of the Division of Taxation in the Department of the
39 Treasury, the Superintendent of State Police, and the Director of the
40 Division of Alcoholic Beverage Control shall adopt, pursuant to the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
42 seq.), rules and regulations necessary to carry out the provisions of
43 P.L. , c. (C.) (pending before the Legislature as this bill).

44

45 9. Within one year of the effective date of
46 P.L. , c. (C.) (pending before the Legislature as this bill)
47 and for the next three years thereafter, the authority shall annually
48 submit a report to the Governor, the State Treasurer, and, pursuant

1 to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, on
2 the effectiveness of the tax credit in establishing supermarkets and
3 grocery stores in urban food desert communities.

4
5 10. a. The Director of the Division of Alcoholic Beverage
6 Control, upon the direction of the New Jersey Economic
7 Development Authority and the approval of the municipal
8 governing body by ordinance, may issue a special retail distribution
9 permit to an individual corporation or other type of legal entity for
10 use in connection with the operation of a supermarket or grocery
11 store established and located within an “urban food desert
12 community” designated pursuant to subsection b. of section 4 of
13 P.L. , c. (C.) (pending before the Legislature as this bill).
14 The permit shall entitle the holder to sell alcoholic beverages in
15 original containers for consumption off the premises of the
16 supermarket or grocery store.

17 A permit issued pursuant to this section shall not be transferred
18 for use in connection with another premises.

19 b. The restriction concerning the number of plenary retail
20 distribution licenses that may be issued in a municipality pursuant
21 to section 2 of P.L.1947, c.94 (C.33:1-12.14) and the limitation on
22 the acquisition of alcoholic beverages licenses pursuant to section 1
23 of P.L.1962, c.152 (C.33:1-12.31) shall not be applicable to a
24 permit issued pursuant to this section.

25 c. The fee for the initial issuance of a permit issued pursuant to
26 this section shall be based upon the average sales price of plenary
27 retail distribution licenses in the municipality during the five years
28 immediately preceding the enactment of P.L. , c. (C.)
29 (pending before the Legislature as this bill). If less than three
30 plenary retail distribution licenses have been sold in the
31 municipality within the previous five years, the municipality shall
32 obtain an appraisal, at the applicant's expense, to determine the
33 appropriate fair market value of the permit. The appraisal process
34 shall include an examination of previous transactions in the
35 municipality, as the case may be, and shall reflect what a willing
36 buyer, under no pressure to buy, would pay a willing seller, under
37 no pressure to sell, for a plenary retail distribution license in the
38 municipality. The initial issuance fee established pursuant to this
39 section for a special retail distribution permit shall be reduced by
40 the fair market value of the limitation on transferability, as set forth
41 in subsection a. of this section.

42 d. A special retail distribution permit issued pursuant to this
43 section shall not be issued to any person who would not qualify as a
44 plenary retail distribution licensee pursuant to Title 33 of the
45 Revised Statutes and rules and regulations of the director.

46 e. Except as otherwise provided by this section, a permit shall
47 be used in a manner consistent with a plenary retail distribution

1 license issued pursuant to R.S.33:1-12 and shall be subject to any
2 other fees and regulations promulgated by the director.

3
4 11. This act shall take effect on the first day of the seventh
5 month next following enactment, except that the New Jersey
6 Economic Development Authority and the Division of Alcoholic
7 Beverage Control may take administrative action in advance as
8 necessary to effectuate the bill.

9
10
11 STATEMENT

12
13 This bill, the “Food Desert Elimination Act,” establishes the
14 Food Desert Elimination Program (program) and requires the New
15 Jersey Economic Development Authority (authority) to administer
16 the program. The bill requires the authority, in consultation with
17 the Department of Agriculture, to designate the physical boundaries
18 of urban food desert communities in the State.

19 The program provides certain tax credits to supermarkets and
20 grocery stores that newly open in urban food desert communities in
21 order to provide a consistent, and easily accessible, source of fresh
22 produce to residents in those communities. Under the program, a
23 taxpayer that opens for business to the public a supermarket or
24 grocery store, that meets program requirements, in an urban food
25 desert community after the bill’s effective date is to be allowed a
26 credit against certain taxes due, in an amount equal to the total
27 amount the taxpayer is assessed in property taxes by the
28 municipality in which the supermarket or grocery store is located,
29 during the first full tax year for the property where the supermarket
30 or grocery store is open for business to the public, and for the three
31 subsequent tax years after opening.

32 Under the program, the authority may also direct the Director of
33 the Division of Alcoholic Beverage Control in the Department of
34 Law and Public Safety to issue a special retail distribution permit to
35 supermarkets and grocery stores located in urban food desert
36 communities after the bill’s effective date to allow the supermarket
37 or grocery store to sell alcoholic beverages. Under the bill, the
38 Director of the Division of Alcoholic Beverage Control, upon the
39 direction of authority and the approval of the municipal governing
40 body, is permitted to issue a special permit to an individual
41 corporation or other type of legal entity for use in connection with
42 the operation of a supermarket or grocery store that is located
43 within an urban food desert community. The permit entitles the
44 holder to sell alcoholic beverages in original containers for
45 consumption off the premises of the supermarket or grocery store
46 and is not transferrable for use in connection with another premises.
47 The bill provides that the special retail distribution permit is to be
48 used in a manner consistent with a plenary retail distribution license

1 issued pursuant to current law and is to be subject to any other fees
2 and regulations promulgated by the director.

3 Under current law, a municipality may only issue one plenary
4 retail distribution license for every 7,500 persons residing in that
5 municipality. This limitation on the number of plenary retail
6 distribution licenses would not apply to the issuance of a special
7 retail distribution permit under the program. In addition, current
8 law prohibits a person from holding an interest in more than two
9 retail licenses unless that person held more than two retail licenses
10 prior to August 3, 1962. This limitation also would not apply to the
11 issuance of a special retail distribution permit.

12 The special retail distribution permit's initial issuance fee is
13 based upon the average sales price of plenary retail distribution
14 licenses during the five years preceding the bill's enactment in the
15 municipality in which the supermarket or grocery store is located.
16 If less than three licenses have been sold in the municipality within
17 the previous five years, the municipality is required to obtain an
18 appraisal, at the applicant's expense, to determine the appropriate
19 fair market value of the permit. The initial issuance fee is to be
20 reduced by the fair market value of the limitation on the permit's
21 transferability.

22 The bill takes effect on the first day of the seventh after
23 enactment, but the authority and the Division of Alcoholic Beverage
24 Control are permitted to take administrative action in advance as
25 necessary to effectuate the bill.