

ASSEMBLY, No. 1287

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

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

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

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

38 “Department” means the Department of Agriculture.

39 “Food desert community” or “community” means a physically
40 contiguous area in the State in which residents have limited access
41 to nutritious foods, such as fresh fruits and vegetables, through
42 supermarkets and grocery stores and which has been designated as a
43 food desert community pursuant to subsection b. of section 4 of
44 P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

5 “Supermarket or grocery store” means a retail facility of at least
6 18,000 square feet, of which at least 90 percent is occupied by a
7 full-service supermarket or grocery store.

8
9 4. a. There is established the Food Desert Elimination
10 Program to be administered by the New Jersey Economic
11 Development Authority. The program shall include tax credit
12 components, as provided in sections 5 and 6 of
13 P.L. , c. (C. and C.) (pending before the Legislature as
14 this bill), and a retail alcoholic beverage permit component, as
15 provided in sections 7 and 10 of P.L. , c. (C. and C.)
16 (pending before the Legislature as this bill), in order to incentivize
17 businesses to establish and then retain new supermarkets and
18 grocery stores in food desert communities.

19 b. The authority, in consultation with the Department of
20 Agriculture and the Department of Community Affairs, shall
21 initially designate not more than 75 separate geographic areas that
22 are most in need of a supermarket or grocery store as food desert
23 communities in this State. The authority shall develop criteria for
24 the designation of food desert communities, but each separate food
25 desert community shall consist of a distinct geographic area with a
26 single defined border. The criteria shall, at a minimum, incorporate
27 analysis of municipal or census tract poverty statistics, food desert
28 information from the United States Department of Agriculture’s
29 Economic Research Service, and healthier food retail tract
30 information from the federal Centers for Disease Control and
31 Prevention. The authority may also consider data related to
32 municipal or census tract population size and population density in
33 making food desert community designations pursuant to this
34 section. The authority may designate additional food desert
35 communities once every three years following the effective date of
36 P.L. , c. (C.) (pending before the Legislature as this bill).

37
38 5. a. For privilege periods beginning on or after January 1
39 next following the effective date of P.L. , c. (C.)
40 (pending before the Legislature as this bill), a taxpayer that
41 establishes and opens for business to the public the first
42 supermarket or grocery store in a designated food desert
43 community, and that meets the requirements of this section and the
44 rules and regulations adopted pursuant thereto, and for the three
45 privilege periods next following the initial opening, shall be
46 allowed a credit against the tax due pursuant to section 5 of
47 P.L.1945, c.162 (C.54:10A-5) in an amount equal to the total
48 amount the taxpayer is assessed in property taxes by the

1 municipality in which the supermarket or grocery store is located
2 during the full privilege period for the property where that
3 supermarket or grocery store is open for business to the public.

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

7 (a) from the department, a certification that the taxpayer
8 qualifies as a supermarket or grocery store, as defined in section 3
9 of P.L. , c. (C.) (pending before the Legislature as this
10 bill), is located in a food desert community designated pursuant to
11 subsection b. of section 4 of P.L. , c. (C.) (pending
12 before the Legislature as this bill), and is the first supermarket or
13 grocery store to be established and opened for business in that
14 designated food desert community after the effective date of P.L. ,
15 c. (C.) (pending before the Legislature as this bill); and

16 (b) from the municipality in which the supermarket or grocery
17 store is located, a certification of the amount of property tax the
18 taxpayer is assessed for the applicable privilege period pursuant to
19 subsection a. of this section.

20 (2) The order of priority of the application of the credit allowed
21 pursuant to this section and any other credits allowed against the tax
22 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for
23 a privilege period shall be as prescribed by the Director of the
24 Division of Taxation in the Department of the Treasury. The
25 amount of the credit applied pursuant to this section against the tax
26 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
27 shall not reduce a taxpayer's tax liability for a privilege period to an
28 amount less than the statutory minimum provided in subsection (e)
29 of section 5 of P.L.1945, c.162 (C.54:10A-5). Any credit shall be
30 valid in the privilege period in which the certification is approved
31 and any unused portion thereof may be carried forward into the next
32 10 privilege periods or until depleted, whichever is earlier.

33
34 6. a. For taxable years beginning on or after January 1 next
35 following the effective date of P.L. , c. (C.) (pending
36 before the Legislature as this bill), a taxpayer that establishes and
37 opens for business to the public the first supermarket or grocery
38 store in a designated food desert community, and that meets the
39 requirements of this section and the rules and regulations adopted
40 pursuant thereto, and for the three taxable years next following the
41 initial opening, shall be allowed a credit against the tax due
42 pursuant to N.J.S.54A:1-1 et seq., in an amount equal to the total
43 amount the taxpayer is assessed in property taxes by the
44 municipality in which the supermarket or grocery store is located
45 during the full tax year for the property where that supermarket or
46 grocery store is open for business to the public.

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

4 (a) from the department, a certification that the taxpayer
5 qualifies as a supermarket or grocery store, as defined in section 3
6 of P.L. , c. (C.) (pending before the Legislature as this
7 bill), is located in a food desert community designated pursuant to
8 subsection b. of section 4 of P.L. , c. (C.) (pending
9 before the Legislature as this bill), and is the first supermarket or
10 grocery store to be established and opened for business in that
11 designated food desert community after the effective date of P.L. ,
12 c. (C. and C.) (pending before the Legislature as this
13 bill); and

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

18 (2) The order of priority of the application of the credit allowed
19 pursuant to this section and any other credits allowed against the tax
20 imposed pursuant to N.J.S.54A:1-1 et seq. for a taxable year shall
21 be as prescribed by the Director of the Division of Taxation in the
22 Department of the Treasury. The amount of the credit applied
23 pursuant to this section against the tax imposed pursuant to
24 N.J.S.54A:1-1 et seq. shall not reduce a taxpayer's tax liability for a
25 taxable year to an amount less than zero. Any credit shall be valid
26 in the taxable year in which the certification is approved and any
27 unused portion thereof may be carried forward into the next 10
28 taxable years or until depleted, whichever is earlier.

29 c. A business entity that is classified as a partnership for
30 federal income tax purposes shall not be allowed the credit directly
31 under N.J.S.54A:1-1 et seq., but the amount of credit of the
32 taxpayer in respect of a distributive share of partnership income
33 shall be determined by allocating to the taxpayer that proportion of
34 the credit acquired by the partnership that is equal to the taxpayer's
35 share, whether or not distributed, of the total distributive income or
36 gain of the partnership for its taxable year ending within or with the
37 taxpayer's taxable year.

38 A taxpayer that is a New Jersey S corporation shall not be
39 allowed the credit directly under N.J.S.54A:1-1 et seq., but the
40 amount of credit of a taxpayer in respect of a pro rata share of S
41 corporation income shall be determined by allocating to the
42 taxpayer that proportion of the credit acquired by the New Jersey S
43 corporation that is equal to the taxpayer's share, whether or not
44 distributed, of the total pro rata share of S corporation income of the
45 New Jersey S corporation for its taxable year ending within or with
46 the taxpayer's taxable year.

1 7. The New Jersey Economic Development Authority shall
2 direct the Director of the Division of Alcoholic Beverage Control to
3 issue, consistent with section 10 of P.L. , c. (C.) (pending
4 before the Legislature as this bill), a special retail distribution
5 permit to one or more individual corporations or other types of legal
6 entities operating the first supermarket or grocery store established
7 and opened for business in each designated food desert community
8 after the effective date of P.L. , c. (C. and C.) (pending
9 before the Legislature as this bill) that qualifies for incentives under
10 the program.

11

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

19

20 9. Within one year of the effective date of
21 P.L. , c. (C.) (pending before the Legislature as this bill)
22 and for the next three years thereafter, the authority shall annually
23 submit a report to the Governor, the State Treasurer, and, pursuant
24 to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, on
25 the effectiveness of the tax credit in establishing supermarkets and
26 grocery stores in food desert communities.

27

28 10. a. The Director of the Division of Alcoholic Beverage
29 Control, upon the direction of the New Jersey Economic
30 Development Authority, pursuant to section 7 of
31 P.L. , c. (C.) (pending before the Legislature as this bill),
32 shall issue a special retail distribution permit to an individual
33 corporation or other type of legal entity for use in connection with
34 the operation of a supermarket or grocery store established and
35 located within a "food desert community" designated pursuant to
36 subsection b. of section 4 of P.L. , c. (C.) (pending before
37 the Legislature as this bill). The permit shall entitle the holder to
38 sell alcoholic beverages in original containers for consumption off
39 the premises of the supermarket or grocery store.

40 A permit issued pursuant to this section shall be restricted to the
41 premises of the supermarket or grocery store for which the permit
42 was issued, and shall not be transferred for use in connection with
43 another premises.

44 b. The restriction concerning the number of plenary retail
45 distribution licenses that may be issued in a municipality pursuant
46 to section 2 of P.L.1947, c.94 (C.33:1-12.14) and the limitation on
47 the acquisition of alcoholic beverages licenses pursuant to section 1

1 of P.L.1962, c.152 (C.33:1-12.31) shall not be applicable to a
2 permit issued pursuant to this section.

3 c. The fee for the initial issuance of a permit issued pursuant to
4 this section shall be based upon the average sales price of plenary
5 retail distribution licenses in the municipality during the five years
6 immediately preceding the enactment of P.L. , c. (C.)
7 (pending before the Legislature as this bill). If less than three
8 plenary retail distribution licenses have been sold in the
9 municipality within the previous five years, the municipality shall
10 obtain an appraisal, at the applicant's expense, to determine the
11 appropriate fair market value of the permit. The appraisal process
12 shall include an examination of previous transactions in the
13 municipality, as the case may be, and shall reflect what a willing
14 buyer, under no pressure to buy, would pay a willing seller, under
15 no pressure to sell, for a plenary retail distribution license in the
16 municipality. The initial issuance fee established pursuant to this
17 section for a special retail distribution permit shall be reduced by
18 the fair market value of the limitation on transferability, as set forth
19 in subsection a. of this section.

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

24 e. Except as otherwise provided by this section, a permit shall
25 be used in a manner consistent with a plenary retail distribution
26 license issued pursuant to R.S.33:1-12 and shall be subject to any
27 other fees and regulations promulgated by the director.

28

29 11. This act shall take effect on the first day of the seventh
30 month next following enactment, except that the New Jersey
31 Economic Development Authority and the Division of Alcoholic
32 Beverage Control may take administrative action in advance as
33 necessary to effectuate the bill.

34

35

36 STATEMENT

37

38 This bill, the "Food Desert Elimination Act," establishes the Food
39 Desert Elimination Program (program) and requires the New Jersey
40 Economic Development Authority (authority) to administer the
41 program. The bill further requires the authority, in consultation with
42 the Department of Agriculture, to initially designate no more than 75
43 physical boundaries of food desert communities in the State.

44 The program provides tax credits to certain supermarkets and
45 grocery stores that newly open in food desert communities. Under the
46 program, a taxpayer that opens the first supermarket or grocery store in
47 each designated food desert community after the bill's effective date
48 will be allowed a credit against certain taxes due, in an amount equal

1 to the total amount the taxpayer is assessed in property taxes by the
2 municipality in which the supermarket or grocery store is located,
3 during the first full tax year for the property where the supermarket or
4 grocery store is open for business to the public, and for the three
5 subsequent tax years after opening.

6 Under the program, the authority will also be required to direct the
7 Director of the Division of Alcoholic Beverage Control in the
8 Department of Law and Public Safety to issue a special retail
9 distribution permit to the first supermarket or grocery store that is
10 established in each food desert community after the bill's effective
11 date. The permit holder would be entitled to sell alcoholic beverages
12 in original containers for consumption off the premises of the
13 supermarket or grocery store. The permit would be restricted to the
14 premises of the supermarket or grocery store for which the permit was
15 issued, and will not be transferrable for use in connection with another
16 premises. The bill provides that the special retail distribution permit is
17 to be used in a manner consistent with a plenary retail distribution
18 license issued pursuant to current law, and is to be subject to any other
19 fees and regulations promulgated by the director.

20 Under current law, a municipality may only issue one plenary
21 retail distribution license for every 7,500 persons residing in that
22 municipality. This limitation on the number of plenary retail
23 distribution licenses would not apply to the issuance of a special retail
24 distribution permit under the program. In addition, current law
25 prohibits a person from holding an interest in more than two retail
26 licenses unless that person held more than two retail licenses prior to
27 August 3, 1962. This limitation also would not apply to the issuance of
28 a special retail distribution permit.

29 The special retail distribution permit's initial issuance fee is based
30 upon the average sales price of plenary retail distribution licenses
31 during the five years preceding the bill's enactment in the municipality
32 in which the supermarket or grocery store is located. If less than three
33 licenses have been sold in the municipality within the previous five
34 years, the municipality is required to obtain an appraisal, at the
35 applicant's expense, to determine the appropriate fair market value of
36 the permit. The initial issuance fee is to be reduced by the fair market
37 value of the limitation on the permit's transferability.

38 The bill takes effect on the first day of the seventh month after
39 enactment, but the authority and the Division of Alcoholic Beverage
40 Control are permitted to take administrative action in advance of the
41 effective date, as necessary to effectuate the bill.