

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## **SENATE, No. 3600**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 22, 2021

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3600 (1R), with committee amendments.

As amended, this bill would restore and reform the State Urban Enterprise Zone (UEZ) Program. The bill proposes to recast the manner in which the State allocates the amounts it spends in support of the UEZ program in a manner to best reflect the legislative intent behind the UEZ program.

The bill would enable currently designated UEZs and UEZ-businesses to continue in the UEZ program for a limited period of time.

The bill would change the composition of the UEZ Authority (UEZA) by making the chair of the UEZA the Commissioner of Community Affairs, instead of the leader of the New Jersey Economic Development Authority, and by adding the Chief Executive Officer of the New Jersey Redevelopment Authority as a member of the UEZA instead of one of the public members, thereby reducing the number of public members from five to four. The bill would require the appointment of the new public members, to staggered terms of office, following the reconstitution of the UEZA.

The bill would phase out the "UEZ-impacted business district" component of the UEZ program, and would prohibit new applications for the UEZ employee tax credit and for the UEZ corporation business tax exemption.

The bill would modify the process for qualifying municipalities to adopt zone development plans and achieve UEZ designations. Under the bill, the UEZA's certification of a zone development plan would constitute the UEZA's designation or re-designation of the municipality as an enterprise zone. A zone development plan would have a five-year life, and a municipality would be required to follow the process set forth in the bill to renew plan approval (and UEZ designation) to protect against lapse of enterprise zone designation. A zone development plan would be the plan according to which the UEZ program is administered in that zone. Under the bill, each municipality that had a zone development plan approved

more than five years prior to the effective date of the bill must submit an updated preliminary zone development plan. The bill includes a provision protecting existing qualified businesses from losing eligibility for certain UEZ-related tax exemptions, even if the municipality in which the business is located loses its UEZ designation.

The bill modifies the process and criteria for designation of UEZs but allows currently designated zones to retain UEZ designation for 10 years.

The bill would change the boundaries of each zone, on the bill's effective date, to make zone boundaries coterminous with the borders of the municipality in which the zone is located. The bill specifies that an area located within a UEZ after the bill's effective date will not be considered sufficient for the determination that the area is in need of redevelopment under the Local Redevelopment and Housing Law, P.L.1992, c.79 (C.40A:12A-1 et seq.), for the purpose of granting tax exemptions or tax abatements, unless the area is located within a UEZA-certified "eligible block group."

The bill defines the term "eligible block group" as a block group that is located in an enterprise zone upon the enactment of this bill. The bill also defines the term "Economic Distress Index" as a standardized score developed and maintained by the Department of Community Affairs (DCA) that equally incorporates the block group unemployment rate and median household income according to the most recent five-year estimate by the United States Census Bureau.

The bill would alter the current method for distributing sales tax revenues generated within UEZs by replacing the current system (which allows each zone access to a percentage of the sales tax revenue generated within that zone) with a new system (which would distribute a percentage of the total monies appropriated annually to the UEZ Fund, based upon a statutory formula). The new formula would apply a 50 percent weight to each UEZ municipality's Municipal Revitalization Index Distress Score, the average number of unemployed persons in each UEZ municipality and number of commercial and industrial parcels located in each UEZ municipality, and would apply a 50 percent weight to the gross taxable sales in the municipality subject to reduced sales tax.

The bill would also alter the permissible uses of these funds by replacing the current statutory criteria with a new term: "qualified assistance fund expenses," and defining that term as any reasonable expense, which will lead to the creation of new jobs and increased economic activity within the zone, related to:

- (1) a construction project improving, altering, or repairing the real property of a qualified business located in an enterprise zone;

(2) full or part time economic and community development positions in the municipality, other governmental, or not-for-profit organization, or marketing;

(3) loans, grants, and guarantees to businesses;

(4) payroll expenses and equipment purchases primarily for the provision of law enforcement, fire protection, or emergency medical services within commercial and transportation corridors located exclusively in an enterprise zone;

(5) planning and other professional services related to economic and community development;

(6) cleaning and maintenance of commercial and transportation corridors;

(7) the improvement of public infrastructure in a commercial or transportation corridor;

(8) the improvement of public infrastructure related to a commercial, industrial, mixed use, or multi-family residential property;

(9) employment and training programs; or

(10) events meant to support and draw activity into the enterprise zone, including fairs, festivals, and concerts.

Under the bill, a municipality cannot appropriate or expend more than 25 percent of the amount annually credited to its enterprise zone assistance fund for public safety purposes, or more than 10 percent of the amount annually credited to its enterprise zone assistance fund for administrative expenses.

The bill makes several changes to the incentives and exemptions available under the UEZ program. In so doing, the bill defines three new terms: UZ-2 certification, UZ-4 certification, and UZ-5 certification, which refer to types of certification to be issued under the bill by the UEZA.

Under the bill:

“UZ-2 certification” means a certification provided to a qualified business that allows the qualified business a 50 percent sales tax exemption for sales made by the business within the UEZ;

“UZ-4 certification” means a certification provided to a qualified business that allows a contractor to make tax-free purchases of materials, supplies, and services for the exclusive use of substantially improving, altering or repairing the real property of a qualified business located in an enterprise zone; and

“UZ-5 certification” means a certification provided to a qualified business allowing the business to make tax-free purchases of personal property (other than motor vehicles and motor vehicle parts and supplies) for the business’s exclusive use or consumption on its premises within a UEZ. This exemption also applies to delivery charges and charges for services performed for a qualified business on its premises within a UEZ.

With regard to the 50 percent sales tax exemption for sales made by the holder of a UZ-2 certificate, the bill would allow a business to deliver merchandise (which receives this exemption) to a location outside a UEZ provided the sale is physically transacted within the zone. The bill would restrict eligibility for this exemption to sales made by a qualified business from an “eligible block group.”

The bill would retain provisions of current law that require a UEZ municipality and its zone development corporation to jointly adopt proposed uses of UEZ funds, by joint resolution, but would remove provisions of law that currently require the UEZA to review and approve each proposed use of funds. The bill would add provisions that address the escheat of a UEZs unencumbered or unexpended funds, after allowing carry-forwards for a number of years. The bill would also require DCA to review each UEZ’s expenditures of UEZ funds, and require DCA, upon finding that a zone improperly expended UEZ funds, to withhold future funding from the enterprise zone until the enterprise zone enters into and complies with a corrective action plan developed by DCA.

The bill provides the combined State tax expenditures in State Fiscal Year 2022 for the Urban Enterprise Zone Special Sales Tax Rate and Urban Enterprise Zone Exempt Business Purchases, as expressed in the Fiscal Year 2022 State of New Jersey Tax Expenditure Report, would be the “ZAF base fund amount.” In State Fiscal Year 2023, the amount appropriated to the enterprise zone assistance fund would be determined as follows: The State Treasurer, in consultation with the UEZ Authority, would determine the combined State tax expenditures for the Urban Enterprise Zone Special Sales Tax Rate and Urban Enterprise Zone Exempt Business Purchases in the six-month period beginning January 1, 2022 and ending June 30, 2022. The combined State tax expenditures for the Urban Enterprise Zone Special Sales Tax Rate and Urban Enterprise Zone Exempt Business Purchases for the six-month period beginning January 1, 2022 and ending June 30, 2022, would be multiplied by two and then subtracted from the ZAF base fund amount. The difference would be the State Fiscal Year 2023 appropriation to the enterprise zone assistance fund.

Beginning in State Fiscal Year 2024 and in each State fiscal year thereafter, the amount appropriated to the enterprise zone assistance fund would be determined as follows: After January 1 but prior to June 30, the State Treasurer, in consultation with the UEZ Authority, would develop a methodology to compare the combined State tax expenditures for the Urban Enterprise Zone Special Sales Tax Rate and Urban Enterprise Zone Exempt Business Purchases in the prior State fiscal year with the ZAF base fund amount to calculate the savings achieved by the bill. The savings determined would be the amount appropriated to the enterprise zone assistance fund for the State fiscal year.

Under the bill, for the State Fiscal Year 2023 and thereafter, the amount appropriated to the enterprise zone assistance fund would not exceed \$82,500,000, and in Fiscal Year 2024, and in each year thereafter, \$82,500,000 as adjusted annually based on the percentage change in the 12-month Consumer Price Index from June 30 to July 1 of each year, and would be no less than \$60,000,000. If the application of the formulas results in an appropriation to the enterprise zone assistance fund that is less than \$60,000,000 in any State fiscal year, then the State Treasurer, in consultation with the UEZ Authority, would impose a limit on the receipts from retail sales of tangible personal property and sales of services to a qualified business that are exempt from the sales and use tax; provided, however, that no less than the receipts from the first \$50,000 of retail sales of tangible personal property and sales of services to a qualified business would be exempt from the sales and use tax.

The bill provides that the amount to be deposited into the zone assistance fund under the bill's new funding mechanism will be gradually phased out over a 10-year period.

The bill also provides that a qualified business' certification will lapse at the end of the 10th State fiscal year following the State fiscal year in which the business had first been certified. The certification for a business that has been certified for more than 10 State fiscal years prior to the effective date of this bill would lapse on January 1, 2022. A business whose certification has lapsed would not be eligible to seek a new certification.

The bill would modify a provision of law that governs the computation of "payments in lieu of taxes" during the period of a short-term property tax abatement, which may be awarded to incentivize residential development within a UEZ, in order to afford UEZ municipalities greater discretion over the amount of taxes abated during each year of a five-year abatement period. Current law requires 20 percent of the amount of property tax attributable to the new development to be staggered in each year so that the full amount of taxes owed is paid in the sixth year. The bill would remove the provision that requires 20 percent to be staggered in each year but retain the provision requiring the full amount of taxes owed to be paid in the sixth and each subsequent year.

The bill would require the State Treasurer to provide the UEZA an annual report of the aggregate amount, expressed in dollars, of the incentives provided under the UEZ program to qualified businesses and municipalities. The bill would require the UEZA to conduct an annual review to assess the UEZ program's progress. The bill would also require the UEZA and the Department of Labor and Workforce Development to enter into a Memorandum of Understanding to assist in data gathering and information sharing between the two agencies to further the UEZA's ability to evaluate

enterprise zone performance, compliance, and initiate enforcement actions as applicable.

The bill would take effect immediately; provided however, that section 8 and the amendments made by the bill to section 20 of P.L.1983, c.303 (C.52:27H-79), would apply to sales and uses on and after January 1, 2022.

#### COMMITTEE AMENDMENTS:

The committee amendments:

- Add personnel and services to the list of qualified public safety expenses.
- Add events meant to support and draw activity into the enterprise zone, including fairs, festivals, and concerts, to the list of qualified assistance fund expenses.
- Specify that to receive a UZ-4 certification, substantial improvement, altering, or repair of a structure or building has to occur.
- Remove definitions and references to major job center, industrial hub, industrial business, and adjacent parcel throughout the bill.
- Remove the provision that approval by the authority of the zone development plan for an enterprise zone coterminous with the borders of a municipality would not be considered sufficient for the determination that the area is in need of redevelopment.
- Provide that a zone development corporation or governing body of a municipality without a zone development plan in place, which can demonstrate to the UEZ Authority an actionable and feasible plan to carry out a project eligible for zone assistance funds, and which can demonstrate a reliance on zone assistance funding, may petition the authority for a distribution from that municipality's zone assistance fund account prior to the authority's approval of an updated preliminary zone development plan.
- Provide that receipts from the first \$100,000 of retail sales of tangible property to a qualified business for the exclusive use or consumption of such business within an enterprise zone are exempt from the taxes imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.); provided, however, a supermarket or grocery store located in a food desert community, would be eligible for such tax exemption, notwithstanding the limit imposed under the bill.
- Provide that receipts from the first \$100,000 of retail sales of materials, supplies, and services for the exclusive use of erecting structures or buildings on, or improving, altering or repairing the real property of a qualified business, or a contractor hired by the qualified business to make such

improvements, alterations, or repairs, are exempt from the taxes imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.); provided, however, receipts from retail sales of materials, supplies, and services for the exclusive use of erecting new structures or buildings on, or substantially improving, altering or repairing the real property of a qualified business would be eligible for such tax exemption notwithstanding the limit imposed under the bill.

- Define “substantially improving, altering, or repairing” to mean any reconstruction, rehabilitation, addition, or other improvement to a structure, of which the total cost equals to or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. The UEZ Authority may, from time to time, alter this definition through regulation to respond to changing market conditions.
- Provide that from the amounts allocated to the zone assistance fund in each State fiscal year, there would be deposited annually to the account in the authority's name, \$2,500,000 beginning in State Fiscal Year 2022, for the administration of the Urban Enterprise Zone program, and for providing grants, investments, loans, or other guaranties related to qualified assistance fund expenses. This amount would be adjusted annually by the percentage change in the 12-month Consumer Price Index from June 30 to July 1.
- Add that a municipality would not appropriate or expend more than 10 percent of the amount annually credited to its enterprise zone assistance fund for administrative expenses.
- Provide if in a State fiscal year the amount allocated to the enterprise zone assistance fund is less than the amount required to be allocated, the Legislature would appropriate to the enterprise zone assistance fund the amount that was not allocated in such State fiscal year in a succeeding State fiscal year along with the funds required to be allocated in that State fiscal year.
- Specify that the State Treasurer would use a weighted formula that would apply 50 percent weight to a zone’s municipality’s number of commercial and industrial parcels, the municipality’s Municipal Revitalization Index Distress Score, and the average number of unemployed persons in the municipality, and 50 percent weight to the gross taxable sales in the municipality subject to reduced sales tax.
- Remove the creation of an Urban Enterprise Zone Fund and the percentage calculation of how UEZ funds are distributed with specific amounts to be appropriated by State fiscal year as described under the bill.
- Provide for State Fiscal Year 2023 and thereafter, the amount appropriated to the enterprise zone assistance fund would not

exceed \$82,500,000, and in Fiscal Year 2024, and in each year thereafter, \$82,500,000 as adjusted annually based on the percentage change in the 12-month Consumer Price Index from June 30 to July 1 of each year, and would be no less than \$60,000,000.

- Remove language in the bill that provided ways for a business to continue to qualify for certain UEZ program benefits even if the business was not located in an eligible block group.
- Appropriate \$42,500,000 from the General Fund to the enterprise zone assistance fund for the purposes and for the uses of that fund.
- Specify that section 8 and the amendments made by the bill to section 20 of P.L.1983, c.303 (C.52:27H-79) are to apply to sales and uses on and after January 1, 2022.
- Make technical corrections to the bill.

#### FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill would result in (1) an indeterminate State expenditure increase due to administrative expenses; (2) an indeterminate increase in State revenue due to modifying Urban Enterprise Zone (UEZ) designation criteria and potentially phasing out currently designated zones after 10 years; (3) an indeterminate State revenue decrease due to a complete tax exemption for certain businesses for two specific types of retail sales up to \$100,000 each and for certain businesses that allow for certain tax-free purchases; (4) an indeterminate local expenditure increase due to administrative costs associated with certain municipalities needing to submit an updated preliminary zone development plan; and (5) an indeterminate local revenue increase due to the ability to receive assistance for costs associated with formulating a preliminary zone development plan.

Under the bill, a variety of administrative expenses would be imposed on the State through additional requirements for the Department of Community Affairs, the Department of the Treasury, and the Department of Labor and Workforce Development.

According to documents provided to the OLS, the State currently forgoes an estimated \$300 million per year in tax expenditures through the UEZ program in 37 municipalities. This figure would maintain through the continuation of the UEZ program and this amount would increase due to a tax exemption for certain businesses for two specific types of retail sales up to \$100,000 each and for certain businesses that allow for tax-free purchases related to building or modifying real property and purchases of business related equipment.

Each UEZ municipality that had a zone development plan approved more than five years prior to the effective date of the bill would be required to submit an updated preliminary zone development plan. However, the bill would create a funding stream to assist



municipalities in formulating these preliminary zone development plans.

Current law provides a five-year property tax abatement period to be awarded to incentivize residential development within a UEZ. Current law requires 20 percent of the amount of property tax attributable to the new development to be staggered in each year so that the full amount of taxes owed is paid in the sixth year. The bill would remove the provision that requires 20 percent to be staggered in each year, but retain the provision requiring the full amount of taxes owed to be paid in the sixth and each subsequent year.

The bill also appropriates \$42.5 million from the General Fund to the enterprise zone assistance fund for the purposes and for the uses of that fund.