

ASSEMBLY, No. 5900

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED DECEMBER 14, 2023

Sponsored by:

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

SYNOPSIS

Authorizes HMFA to issue tax credits for certain purposes.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning the issuance of certain tax credits, amending
2 P.L.2020, c.156, and supplementing P.L.1983, c.530 (C.55:14K-1
3 et seq.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 98 of P.L.2020, c.156 (C.34:1B-362) is amended to
9 read as follows:

10 98. a. The combined value of all tax credits awarded under the
11 "Historic Property Reinvestment Act," sections 2 through 8 of
12 P.L.2020, c.156 (C.34:1B-270 through 34:1B-276); the "Brownfields
13 Redevelopment Incentive Program Act," sections 9 through 19 of
14 P.L.2020, c.156 (C.34:1B-277 through 34:1B-287); the "New Jersey
15 Innovation Evergreen Act," sections 20 through 34 of P.L.2020,
16 c.156 (C.34:1B-288 through 34:1B-302); the "Food Desert Relief
17 Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303
18 through 34:1B-310); the "New Jersey Community-Anchored
19 Development Act," sections 43 through 53 of P.L.2020, c.156
20 (C.34:1B-311 through 34:1B-321); the "New Jersey Aspire Program
21 Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322
22 through 34:1B-335); the "Emerge Program Act," sections 68 through
23 81 of P.L.2020, c.156 (C.34:1B-336 et al.); and section 6 of P.L.2010,
24 c.57 (C.34:1B-209.4) shall not exceed an overall cap of \$11.5 billion
25 over a nine-year period, subject to the conditions and limitations set
26 forth in this section. Of this \$11.5 billion, \$2.5 billion shall be
27 reserved for transformative projects approved under the Aspire
28 Program.

29 b. (1) The total value of tax credits awarded under any
30 constituent program of the "New Jersey Economic Recovery Act of
31 2020," P.L.2020, c.156 (C.34:1B-269 et al.) shall be subject to the
32 following annual limitations, except as otherwise provided in
33 subsection c. of this section:

34 (a) for tax credits awarded under the "Historic Property
35 Reinvestment Act," sections 2 through 8 of P.L.2020, c.156
36 (C.34:1B-270 through 34:1B-276), the total value of tax credits
37 annually awarded during each of the first six years of the nine-year
38 period shall not exceed \$50 million;

39 (b) for tax credits awarded under the "Brownfields
40 Redevelopment Incentive Program Act," sections 9 through 19 of
41 P.L.2020, c.156 (C.34:1B-277 through 34:1B-287), the total value of
42 tax credits annually awarded during each of the first six years of the
43 nine-year period shall not exceed \$50 million;

44 (c) for tax credits awarded under the "New Jersey Innovation
45 Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 288 through 34:1B-302), the total value of tax credits annually
2 awarded during each of the first six years of the nine-year period shall
3 not exceed \$60 million and the total value of tax credits awarded over
4 the entirety of the nine-year period shall not exceed \$300,000,000;

5 (d) for tax credits awarded under the "Food Desert Relief Act,"
6 sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through
7 34:1B-310), the total value of tax credits annually awarded during
8 each of the first six years of the nine-year period shall not exceed \$40
9 million;

10 (e) for tax credits awarded under the "New Jersey Community-
11 Anchored Development Act," sections 43 through 53 of P.L.2020,
12 c.156 (C.34:1B-311 through 34:1B-321), the total value of tax credits
13 annually awarded during each of the first six years of the nine-year
14 period shall not exceed \$200 million, except that during each of the
15 first six years of the nine-year period, the authority shall annually
16 award tax credits valuing no greater than \$130 million for projects
17 located in the 13 northern counties of the State, and the authority
18 shall annually award tax credits valuing no greater than \$70 million
19 for projects located in the eight southern counties of the State. If
20 during any of the first six years of the nine-year period, the authority
21 awards tax credits in an amount less than the annual limitation for
22 projects located in northern counties or southern counties, as
23 applicable, the uncommitted portion of the annual limitation shall be
24 **【**available to be deployed by the authority in a subsequent year,
25 provided that the uncommitted portion of tax credits shall be awarded
26 for projects located in the applicable geographic area, except that (i)
27 after the completion of the third year of the nine-year period, the
28 authority may deploy 50 percent of the uncommitted portion of tax
29 credits from any previous year without consideration to the county in
30 which a project is located; and (ii) after the completion of the sixth
31 year of the nine-year period, the authority may deploy all available
32 tax credits, including the uncommitted portion of the annual
33 limitation for any previous year, without consideration to the county
34 in which a project is located**】** reallocated to the New Jersey Housing
35 and Mortgage Finance Agency, established pursuant to P.L.1983,
36 c.530 (C.55:14K-1 et seq.), for the purposes authorized in
37 P.L. , c. (C.) (pending before the Legislature as this bill).
38 Notwithstanding any provision of law or regulation to the contrary,
39 the tax credits reallocated to the New Jersey Housing and Mortgage
40 Finance Agency shall not be subject to any requirements or
41 conditions of the "New Jersey Economic Recovery Act of 2020,"
42 P.L.2020, c.156 (C.34:1B-269 et al.), as amended or supplemented;

43 (f) for tax credits awarded under the "New Jersey Aspire Program
44 Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322
45 through 34:1B-335), and the "Emerge Program Act," sections 68
46 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax
47 credits awarded for transformative projects, the total value of tax
48 credits annually awarded during each of the first six years of the nine-

1 year period shall not exceed \$1.1 billion. If the authority awards tax
2 credits in an amount less than the annual limitation, then the
3 uncommitted portion of the annual limitation shall be made available
4 for qualified offshore wind projects awarded under section 6 of
5 P.L.2010, c.57 (C.34:1B-209.4), pursuant to subparagraph (h) of this
6 paragraph, or New Jersey studio partners and New Jersey film-lease
7 production companies awarded under sections 1 and 2 of P.L.2018,
8 c.56 (C.54:10A-5.39b and C.54A:4-12b), pursuant to subparagraph
9 (i) of this paragraph and subsection d. of this section. During each
10 of the first six years of the nine-year period, the authority shall
11 annually award tax credits valuing no greater than \$715 million for
12 projects located in the northern counties of the State, and the
13 authority shall annually award tax credits valuing no greater than
14 \$385 million for projects located in the southern counties of the State
15 under the "New Jersey Aspire Program Act," sections 54 through 67
16 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the
17 "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156
18 (C.34:1B-336 et al.). If during any of the first six years of the nine-
19 year period, the authority awards tax credits under the "New Jersey
20 Aspire Program Act," sections 54 through 67 of P.L.2020, c.156
21 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act,"
22 sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), in an
23 amount less than the annual limitation for projects located in northern
24 counties or southern counties, as applicable, the uncommitted portion
25 of the annual limitation shall be available to be deployed by the
26 authority in a subsequent year, provided that the uncommitted portion
27 of tax credits shall be awarded for projects located in the applicable
28 geographic area, except that (i) after the completion of the third year
29 of the nine-year period, the authority may deploy 50 percent of the
30 uncommitted portion of tax credits for any previous year without
31 consideration to the county in which a project is located; and (ii) after
32 the completion of the sixth year of the nine-year period, the authority
33 may deploy all available tax credits, including the uncommitted
34 portion of the annual limitation for any previous year, without
35 consideration to the county in which a project is located;

36 (g) except as provided in subparagraph (j) of this paragraph, for
37 tax credits awarded for transformative projects under the "New
38 Jersey Aspire Program Act," sections 54 through 67 of P.L.2020,
39 c.156 (C.34:1B-322 through 34:1B-335), the total value of tax credits
40 awarded during the nine-year period shall not exceed \$2.5 billion.
41 The total value of tax credits awarded for transformative projects in
42 a given year shall not be subject to an annual limitation, except that
43 the total value of tax credits awarded to any transformative project
44 shall not exceed \$400 million;

45 (h) from the tax credits made available, pursuant to subparagraph
46 (f) of this paragraph, to the "New Jersey Aspire Program Act,"
47 sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through
48 34:1B-335), and the "Emerge Program Act," sections 68 through 81

1 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits
2 awarded for transformative projects, an amount not to exceed
3 \$350,000,000 shall be made available for qualified offshore wind
4 projects awarded a credit pursuant to section 6 of P.L.2010, c.57
5 (C.34:1B-209.4) during the first three years of the nine-year period;

6 (i) beginning in fiscal year 2023, from the tax credits made
7 available, pursuant to subparagraph (f) of this paragraph, to the "New
8 Jersey Aspire Program Act," sections 54 through 67 of P.L.2020,
9 c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program
10 Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.),
11 not including tax credits awarded for transformative projects,
12 additional amounts shall be made available for New Jersey studio
13 partners and New Jersey film-lease production companies pursuant
14 to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-
15 12b); and

16 (j) beginning in fiscal year 2024, from the tax credits made
17 available, pursuant to subparagraph (f) of this paragraph, to the "New
18 Jersey Aspire Program Act," sections 54 through 67 of P.L.2020,
19 c.156 (C.34:1B-322 through 34:1B-335) and the "Emerge Program
20 Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.),
21 not including tax credits awarded for transformative projects, an
22 amount not to exceed \$500,000,000 may be annually transferred for
23 the award to transformative projects under the "New Jersey Aspire
24 Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-
25 322 through 34:1B-335), provided that: (i) the remaining allocation
26 of tax credits otherwise available for transformative projects,
27 pursuant to subparagraph (g) of this paragraph, is less than
28 \$1,000,000,000; and (ii) the authority board determines that the
29 transfer of tax credits is warranted based on such criteria as the
30 authority deems appropriate, which may include the criteria set forth
31 in paragraph (2) of this subsection. If a transfer of tax credits is made
32 pursuant to this subparagraph, the authority shall award no greater
33 than 65 percent of the tax credits transferred pursuant to this
34 subparagraph to transformative projects located in the northern
35 counties of the State and no greater than 35 percent of the tax credits
36 transferred pursuant to this subparagraph to transformative projects
37 located in the southern counties of the State.

38 (2) The authority may in any given year determine that it is in the
39 State's interest to approve an amount of tax credits in excess of the
40 annual limitations set forth in paragraph (1) of this subsection, but in
41 no event more than \$200,000,000 in excess of the annual limitation,
42 upon a determination by the authority board that such increase is
43 warranted based on specific criteria that may include:

44 (i) the increased demand for opportunities to create or retain
45 employment and investment in the State as indicated by the volume
46 of project applications and the amount of tax credits being sought by
47 those applications;

- 1 (ii) the need to protect the State's economic position in the event
2 of an economic downturn;
- 3 (iii) the quality of project applications and the net economic
4 benefit to the State and municipalities associated with those
5 applications;
- 6 (iv) opportunities for project applications to strengthen or protect
7 the competitiveness of the State under the prevailing market
8 conditions;
- 9 (v) enhanced access to employment and investment for
10 underserved populations in distressed municipalities and qualified
11 incentives tracts;
- 12 (vi) increased investment and employment in high-growth
13 technology sectors and in projects that entail collaboration with
14 education institutions in the State;
- 15 (vii) increased development proximate to mass transit
16 facilities;
- 17 (viii) any other factor deemed relevant by the authority.
- 18 c. In the event that the authority in any year approves projects
19 for tax credits in an amount less than the annual limitations set forth
20 in paragraph (1) of subsection b. of this section, then the
21 uncommitted portion of the annual limitation shall be available to be
22 deployed by the authority in future years for projects under the same
23 program; provided however, that in no event shall the aggregate
24 amount of tax credits approved be in excess of the overall cap of
25 \$11.5 billion, and in no event shall the uncommitted portion of the
26 annual limitation for any previous year be deployed after the
27 conclusion of the nine-year period.
- 28 d. Notwithstanding the provisions of any other law to the
29 contrary, the uncommitted balance of the total value of tax credits
30 authorized for award by the authority pursuant to subparagraph (f) of
31 paragraph (1) of subsection b. of this section to the "New Jersey
32 Aspire Program Act," sections 54 through 67 of P.L.2020, c.156
33 (C.34:1B-322 et seq.), and the "Emerge Program Act," sections 68
34 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), shall be made
35 available for tax credits allowed to New Jersey studio partners and
36 New Jersey film-lease production companies pursuant to sections 1
37 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b). The
38 value of tax credits, including tax credits allowed through the
39 granting of tax credit transfer certificates, made available to New
40 Jersey studio partners and New Jersey film-lease production
41 companies pursuant to this subsection shall be as follows:
- 42 (1) in fiscal year 2023, \$250,000,000 for New Jersey studio
43 partners and \$250,000,000 for New Jersey film-lease production
44 companies;
- 45 (2) in fiscal year 2024, \$250,000,000 for New Jersey studio
46 partners and \$250,000,000 for New Jersey film-lease production
47 companies; and

1 (3) in fiscal year 2025, \$250,000,000 for New Jersey studio
2 partners and \$250,000,000 for New Jersey film-lease production
3 companies.

4 If the value of tax credits, including tax credits allowed through
5 the granting of tax credit transfer certificates, approved to New Jersey
6 studio partners and New Jersey film-lease production companies in
7 any fiscal year pursuant to this subsection is less than the cumulative
8 total amount of tax credits permitted to be approved in that fiscal
9 year, the authority shall certify the amount of the remaining tax
10 credits available for approval to each such category in that fiscal year,
11 and shall increase the cumulative total amount of tax credits
12 permitted to be approved for New Jersey studio partners and New
13 Jersey film-lease production companies in the subsequent fiscal year
14 by the certified amount remaining for each such category from the
15 prior fiscal year.

16 (cf: P.L.2023, c.98, s.13)

17

18 2. (New section) As used in sections 2 through 5 of P.L. , c.
19 (C.) (pending before the Legislature as this bill):

20 “Agency” means the New Jersey Housing and Mortgage Finance
21 Agency, established pursuant to P.L.1983, c.530 (C.55:14K-1 et
22 seq.).

23 “Director” means the Director of the Division of Taxation in the
24 Department of the Treasury.

25 “Low income housing tax credit” means a tax credit provided
26 through the federal Low Income Housing Tax Credit program
27 pursuant to section 42 of the Internal Revenue Code (26 U.S.C. s.42).

28 “Project financing gap” means the same as the term is defined in
29 section 55 of P.L.2020, c.156 (C.34:1B-323).

30 “Qualified project” means a housing project that satisfies all
31 eligibility requirements, as determined by the agency, for the receipt
32 of a nine-percent low income housing tax credit, notwithstanding the
33 availability or unavailability of such funds.

34

35 3. (New section) a. Notwithstanding any provision of law or
36 regulation to the contrary, the agency may award the total amount of
37 tax credits allocated to the agency pursuant to subparagraph (e) of
38 paragraph (1) of subsection b. of section 98 of P.L.2020, c.156
39 (C.34:1B-362) in accordance with the provisions of this section.

40 b. The agency may award project financing tax credits to the
41 developers of qualified projects, which tax credits shall supplement
42 the value of any four-percent low income housing tax credits
43 previously awarded to the developer for the qualified project, subject
44 to the provisions of section 4 of P.L. , c. (C.) (pending before
45 the Legislature as this bill).

46 c. In addition to any other eligibility requirements that the
47 agency may deem appropriate, the tax credits authorized under this
48 section shall be available to any developer of a qualified project that:

1 (1) received a four-percent low income housing tax credit for the
2 qualified project from the agency due to the total demand for nine-
3 percent low income housing tax credits exceeding the total value of
4 such tax credits available for distribution by the agency, as made
5 available to the agency pursuant to section 42 of the Internal Revenue
6 Code of 1986 (26 U.S.C. s.42); and

7 (2) demonstrates the existence of a project financing gap for the
8 qualified project.

9 d. The total value of tax credits awarded to a developer shall
10 equal the lesser of:

11 (1) the amount necessary to ensure that the qualified project
12 receives a total subsidy in an amount equivalent to the receipt of a
13 nine-percent low-income housing tax credit for the qualified project;

14 or

15 (2) the amount of the project financing gap for the qualified
16 project.

17 e. (1) All tax credits authorized pursuant to this section shall be
18 awarded upon application to the agency, which applications shall be
19 submitted in a form and manner prescribed by the agency.
20 Notwithstanding any provision of law or regulation to the contrary,
21 the agency may award some or all of the tax credits authorized under
22 this section as part of an existing program operated by the agency on
23 or before the effective date of P.L. , c. (C.) (pending before
24 the Legislature as this bill) or through the establishment of a new
25 program to effectuate the provisions of P.L. , c. (C.)
26 (pending before the Legislature as this bill).

27 (2) Upon approval of any application for tax credits pursuant to
28 this section, and upon the satisfaction of such additional requirements
29 as the agency deems appropriate, the agency shall provide the tax
30 credit recipient and the director with a certificate of compliance
31 indicating the amount of tax credits that the recipient may apply
32 against the recipient's tax liability, subject to the provisions of
33 section 4 of P.L. , c. (C.) (pending before the Legislature as
34 this bill).

35
36 4. (New section) a. The tax credits issued by the agency
37 pursuant to section 3 of P.L. , c. (C.) (pending before the
38 Legislature as this bill) may be applied against a developer's tax
39 liability under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2
40 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of
41 P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. To claim the tax
42 credit amount for a privilege period, the developer shall submit to the
43 director the certificate of compliance issued by the agency pursuant
44 to paragraph (2) of subsection e. of section 3 of P.L. , c. (C.)
45 (pending before the Legislature as this bill).

46 b. (1) The director shall prescribe the order of priority of the
47 application of the tax credit allowed under this section, together with
48 any other credits allowed by law, against the tax imposed under

1 section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period. The
2 amount of the tax credit applied under this section against the tax
3 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a
4 privilege period, together with any other credits allowed by law, shall
5 not reduce the tax liability to an amount less than the statutory
6 minimum provided in subsection (e) of section 5 of P.L.1945, c.162
7 (C.54:10A-5).

8 (2) A developer may carry forward any unused tax credit
9 resulting from the limitations of paragraph (1) of this subsection or
10 from the insufficiency of a tax liability, as applicable, for use in the
11 five privilege periods next following the privilege period for which
12 the credits are awarded.

13 (3) Credits granted to a partnership shall be passed through to the
14 partners, members, or owners, respectively, pro-rata, or pursuant to
15 an executed agreement among the partners, members, or owners
16 documenting an alternate distribution method provided to the director
17 accompanied by any additional information as the director may
18 prescribe.

19 c. (1) A developer may apply to the director and the agency for
20 a tax credit transfer certificate, covering one or more years, in lieu of
21 the developer being allowed any amount of the credit against the tax
22 liability of the developer. An application for a tax credit transfer
23 certificate shall not be approved unless the agency affirmatively
24 determines, based on such considerations as the agency deems
25 appropriate, that the sale or assignment of the tax credit transfer
26 certificate is socially beneficial to the State.

27 (2) Upon approval of a developer's application for a tax credit
28 transfer certificate, and upon receipt thereof by the developer from
29 the director and the agency, the tax credit transfer certificate may be
30 sold or assigned, in full or in part, for an amount not less than
31 \$25,000, in the privilege period during which the developer receives
32 the tax credit transfer certificate to another person, who may apply
33 the credit against a tax liability pursuant to section 5 of P.L.1945,
34 c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-
35 2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or
36 N.J.S.17B:23-5, subject to the carry-forward authorizations set forth
37 in paragraph (2) of subsection b. of this section. The certificate
38 provided to the developer shall include a statement waiving the
39 developer's right to claim the amount of the tax credit that the
40 developer has elected to sell or assign against the developer's tax
41 liability.

42 (3) The developer shall not sell or assign, including a collateral
43 assignment, a tax credit transfer certificate allowed under this section
44 for consideration received by the developer of less than 85 percent of
45 the transferred credit amount before considering any further
46 discounting to present value that shall be permitted.

1 (4) A purchaser or assignee of a tax credit transfer certificate
2 pursuant to this section shall not make any subsequent transfers,
3 assignments, or sales of the tax credit transfer certificate.
4

5 5. (New section) Notwithstanding the provisions of the
6 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
7 seq.) to the contrary, the agency may adopt, immediately, upon filing
8 with the Office of Administrative Law, such rules and regulations as
9 the agency deems necessary to implement the provisions of P.L. ,
10 c. (C.) (pending before the Legislature as this bill), which
11 regulations shall be effective for a period not to exceed 180 days from
12 the date of the filing. Thereafter, the agency shall amend, adopt, or
13 readopt the regulations in accordance with the requirements of the
14 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
15 seq.).
16

17 6. This act shall take effect immediately.
18
19

20 STATEMENT
21

22 This bill authorizes the New Jersey Housing and Mortgage
23 Finance Agency (HMFA) to issue project financing tax credits to
24 support the development of certain housing projects.

25 Under the bill, the uncommitted portion of tax credits otherwise
26 authorized to be awarded by the New Jersey Economic Development
27 Authority under the Community-Anchored Development Program
28 are to be annually reallocated to the HMFA to support the purposes
29 set forth in this bill.

30 Specifically, the bill permits the HMFA to award project financing
31 tax credits to the developers of certain qualified projects that: (1)
32 have received a four-percent federal low income housing tax credit
33 (LIHTC) when the total demand for nine-percent LIHTC exceeds the
34 total value available for distribution; and (2) have a project financing
35 gap demonstrated by the developer at the time of application. The
36 total tax credit award is not to exceed the lesser of: (1) the amount
37 necessary to ensure that the qualified project receives a total subsidy
38 in an amount equivalent to the receipt of a nine-percent LIHTC for
39 the qualified project; or (2) the amount of the project financing gap
40 for a qualified project.

41 The bill provides that the HMFA may award some or all of these

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1 tax credits as part of an existing program operated by the HMFA or
2 through the establishment of a new program to effectuate the
3 provisions of this bill. The bill also provides that certain of these tax
4 credits may be sold or transferred by the recipient, subject to certain
5 restrictions specified in the bill.