

**SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

BILL NUMBER:

A-1122

DATE OF INTRODUCTION:

January 8, 2002

SPONSOR:

Assemblywoman Quigley
Assemblyman Impreveduto

DATE OF RECOMMENDATION:

March 26, 2002

IDENTICAL BILL:

COMMITTEE:

Assembly Commerce and Economic Development

DESCRIPTION:

The Bill amends and supplements the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et. seq. to direct the New Jersey Urban Enterprise Zone Authority to designate a municipality as an expansion area of an existing enterprise zone if the municipality meets certain population and population density requirements and is in a county of the first class having a population less than 700,000 and borders a municipality with an existing enterprise zone and the contiguous municipality meets certain population and population density requirements.

ANALYSIS:

This Bill is proposed to amend the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60, et. seq., to direct the New Jersey Urban Enterprise Zone Authority to designate a municipality as an expansion area of an existing enterprise zone if the municipality meets certain population and population density requirements and is in a county of the first class having a population less than 700,000 and borders a municipality with an existing enterprise zone and the contiguous municipality meets certain population and population density requirements.

The Bill does not effectuate its intended purpose of assisting distressed communities that are adjacent to an existing enterprise zone because no municipality in New Jersey meets the population and population density requirements set forth in the proposal to be designated as an expansion area of an existing enterprise zone. The only county of the first class with a population of less than 700,000 is Hudson County. However, according to the most recent decennial census, no municipalities in Hudson County fit the qualifications imposed in the Bill. Although the proposal is defective, there is concern that the language in the Bill, although specific and limited to one municipality, could establish a dangerous precedent leading to other special legislation being introduced to

further expand the Urban Enterprise Zone program. This is problematic due to the difficulty the Division of Taxation has experienced in administering the Urban Enterprise Zone program. Many assertions of abuses and unfairness have been reported to the Division of Taxation, legislative representatives, and to the Commerce and Economic Development Commission.

Expanding existing enterprise zones will lead to multiple problems. The greater the number of municipalities and expansion areas that have 3% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity. Expanding an urban enterprise zone creates a new urban enterprise zone with new borders. These borders are contiguous to new areas which may create a slippery slope because the bordering municipalities may be lead to also seek similar tax exemptions. This domino effect defeats the original purpose of the Urban Enterprise Zone Program.

Moreover, varying tax rates from municipality to municipality threatens economic neutrality and horizontal equity within the State. The doctrine of economic neutrality promotes a system of taxation that has a limited effect or impact on the marketplace and avoids policy that benefits one segment of the market at the expense of another. The goal, upon which the Urban Enterprise Zones Act is based, is to bring new businesses and consumers to selected economically depressed areas. In doing this, the surrounding municipalities from which business and consumers are drawn suffer negative economic effects. Horizontal equity refers to the concept that tax treatment should be uniform from one transaction to another. The Act creates a lower sales tax rate for certain sales transactions within the expansion zones. This disparate treatment of certain transactions violates this doctrine. Permitting more municipalities to collect reduced sales would exacerbate the already tenuous foundation upon which the Act is based.

The Urban Enterprise Zone program has expanded in ways that the original drafters never intended. For instance, prior to 1994, ten towns in eleven municipalities were designated as Urban Enterprise Zones; however, in 1994, legislation authorized the creation of ten additional zones and in 1995, legislation added seven more zones. Recent legislation added three more zones to that list. Recently, Urban Enterprise Zone-impacted business districts, areas that have been "negatively impacted" by the presence of two or more adjacent urban enterprise zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient then the amendments set forth in the Bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone program has actually

been a benefit to the participating communities, yet the program is being constantly amended and expanded. Given the ease with which the Urban Enterprise Zone program is being expanded, it is conceivable that all municipalities in New Jersey will be able to credibly and successfully press for Urban Enterprise Zone status. As originally conceived, the program was to be limited and its benefits restricted to the most dire cases. This Bill does not establish that its provisions would further that purpose.

Since New Jersey has already established Urban Enterprise Zone-impacted business districts, this Bill seems duplicative and unnecessary. It appears that many of the concerns addressed in this proposal were already addressed by the legislation that created the Urban Enterprise Zone-impacted business districts. Reduced sales tax collection is available in the newly created Urban Enterprise Zone-impacted districts, but other rules and programs are different from the Urban Enterprise Zone program. Adding an expansion zone will only add more confusion to the public, businesses, and government administrators involved as more rules and policies will have to be implemented.

The bill does not provide an economic study to justify the creation of expansion areas. It does not provide any information that would demonstrate that such expansion areas would reverse the economic decline of the affected municipalities or attract businesses or customers to those municipalities. Conversely, it does not demonstrate that if enacted, it would not draw businesses or customers from other depressed municipalities, or if it would do so, then such an effect is economically justified.

The adoption of this proposal further perpetuates a potential federal constitutional problem. New Jersey imposes use tax on items that are purchased out-of-state for use in New Jersey but sales tax was not collected or was collected at a rate less than the New Jersey sales tax rate. Constitutionally, the use tax in an area must be imposed at the same rate as the sales tax is imposed within the same area. Therefore, if certain businesses in a zone may charge 3% sales tax, a payer of use tax within the zone may assert that the use tax must be imposed at 3%, instead of 6%.

Finally, expanding the Urban Enterprise Zone program would further alter the broad-based nature of the sales and use tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and "fair." When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. Expanding the already existing urban enterprise zones would save an individual taxpayer and vendor a fairly insignificant sum every year. However, the cumulative loss of revenue to the State is substantial, leaving

the State to find other means of generating the money lost as a result of expanding the program. This loss of revenue would be considerable because the 3% sales tax collected by qualified vendors would be remitted to the municipality in which the urban enterprise zone is located and not to the State's General Fund. Thus, the State would lose the entire 6% sales tax that is currently collected on sales of items in the expansion area of the urban enterprise zone. This would be a particularly burdensome loss to the State in regard to big-ticket items.

RECOMMENDATION:

The Commission does not recommend enactment of this Bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 0

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