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Deciphering the New Jersey Economic Recovery Act of 2020: Part I

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To incentivize investment and compete with neighboring states to attract jobs, New Jersey has passed the New Jersey Economic Recovery Act of 2020 (ERA),[1] under which the State is once again providing incentive tools to assist on challenged projects. The ERA offers a comprehensive tax incentive overhaul, replacing certain controversial prior programs that expired in July of 2019. It also offers a broad swath of new economic incentive programs designed to foster policy objectives, including historic preservation, brownfields redevelopment, assistance to small business, alleviation of food deserts, partnerships with community-anchored non-profits and education, health care and institutions and innovative and emerging technologies.[2]

This article provides a preliminary overview of the ERA, with a specific focus on the programs with the broadest reach and most extensive incentives available, known as Aspire and Emerge. It is part one of a series that Wilentz attorneys are preparing to discuss the various provisions of the ERA in greater detail, offering explanation and insights concerning the range of benefits available to developers and businesses, as well as the types of projects and locations throughout the State that may be eligible for these incentives.

The Act authorizes up to $14.4 billion dollars primarily through tax credits over the next six years, with $2.5 billion reserved for transformative projects, such as the Amazon headquarters for which New Jersey competed, and $2.6 billion reserved to encourage development of the film industry over the next 13 years. The Aspire and Emerge programs encompass the broadest geographic applicability and account for $6.6 billion of the total allocation of tax credits, capped at $1.1 billion per year over the next six years.[3] These new programs retain many of the desirable features of the prior the Economic Redevelopment and Growth Grant (ERG) and Grow NJ programs, respectively, but have been expanded to include new eligible incentive areas and project types. In addition, they are designed to address critiques of those programs by adding stronger oversight to better ensure that net economic benefits of the programs will be realized in New Jersey. Most notably, the ERA provides for the creation of a Chief Compliance Officer position with the Economic Development Authority (EDA) and for the appointment of an independent Inspector General within the EDA.

The Aspire Program

The Aspire program provides essential gap funding for projects that further the smart growth goals of the State Development and Redevelopment Plan. It is similar to the ERG program, which was also continued under the ERA with an additional allocation of $200 million. Aspire provides gap financing in the form of tax credits which may either be utilized directly by the recipient or assigned to a third party, with EDA approval, for no less than 85% (75% in some cases) of the credit value. [4] Aspire awards may provide funding for a period of 15 years for a commercial or mixed-use project and a period of 10 years for a residential project.[5] Projects are eligible for tax credits of up to 45% of project costs, and up to $32 million, or 50% and $50 million for projects in government-restricted and certain distressed municipalities.[6]

EDA is required to evaluate the applicant's evidence that confirms the existence of a financing gap,[7] and the Act requires a reduction of the credits if the gap is smaller than determined at the time of the EDA approval. The program is designed to ensure that projects proceed despite the financing gap if certain State objectives are being met through the project, such as transit-oriented development (defined to include projects within ½ mile of train, ferry and high frequency bus stops), inclusionary affordable housing projects, and projects located in designated incentive areas.[8]

The Aspire program requirements also apply to up to 10 total “transformative projects” which have specially earmark funding of $2.5 billion, as noted above.[9] These are either: (1) large commercial developments with substantial project costs that are “of special economic importance as measured by the level of new jobs, new capital investment, opportunities to leverage leadership in a high-priority targeted industry;” or (2) residential or mixed-use projects with over 1,000 housing units, with 20% of such units required to be affordable and 5% workforce housing, unless the project is the subject of an approved affordable housing plan or judgment of repose.[10]

The Aspire program addresses accountability and oversight concerns through the auspices of a Chief Compliance Officer and the independent Inspector General within the EDA.[11] As such, incentive award agreements through Aspire include a need-based reassessment, which may require recipients to return all or a portion of their award in the event the project outperforms its initial projected rate of return at the end of the third year of the award period.[12]

Aspire also requires payment of prevailing wages.[13] Additionally, if an Aspire commercial or mixed-use property in which the State has a proprietary interest and as long as the State acts as a market participant in the redevelopment project, where the project includes a retail or hospitality establishment with more than 10 employees or a distribution center with more than 20 employees, any business that serves as the owner or operator of the retail, hospitality or distribution entity shall enter into a labor harmony agreement with a labor organization that represents retail, hospitality or distribution center employees for such project.[14] The EDA may waive this obligation, however, if it determines that the project would not go forward if a labor harmony agreement was required.

Projects exceeding $10 million in project costs require a community benefits agreement with the EDA and the municipality or county in which the project is located. These agreements will include provisions for employment, training, youth and community services and provide for an advisory board comprised of a diverse group of local stakeholders to oversee the implementation and success of the agreement.[15] Projects already subject to a redevelopment agreement certified by the municipality are exempt from this requirement.[16]

The Emerge Program

The Emerge program is designed to attract and create jobs and investment, providing base tax credits of between $500 and $4,000 per job, per year and bonus tax credits to businesses based on the number of new and retained full-time jobs. Retained jobs are only entitled to half the amount of the credits that a new job would be awarded,[17] and provisions in the new law are designed to provide oversight to ensure that all jobs promised are delivered. Entitlement to bonus credits of up to $8,000 per job, per year is based on features of the projects such as level of municipal distress (MRI Index) in the project area, training programs, targeted industries, business incubators, child care facilities, solar energy, energy savings, and businesses featuring under- represented communities. In order to ensure a return on the State’s investment, the program requires that the creation and retention of full-time jobs yield a net positive benefit to the State equaling at least 400% of the awarded amount, or as low as 200% in certain incentive areas.[18] In addition, Emerge has enhanced the EDA’s oversight with respect to determining that the tax incentives are a material factor in the business decision to provide such jobs in the State, job creation reporting and disclosure requirements, and provides for greater discretion by the EDA to evaluate and modify its awards based upon its assessment of effectiveness year over year.[19]

In order to ensure that labor is benefitted by Emerge tax credits, the jobs must pay at least $15 per hour or 120% of the state minimum wage rate, whichever is higher. With few exceptions, new projects will also require each worker performing construction or building services work to be paid the prevailing wage rate in accordance with N.J.S.A. 34:11-56.25 et seq.[20]

For Emerge projects exceeding $10 million in project costs, a community benefits agreement with the EDA and the municipality or county in which the project is located is required, similar to that required for such projects under the Aspire program.[21] Projects already subject to a project agreement certified by the municipality are exempt from this requirement.[22]

With a substantial potential for supportive tax credits, passage of the ERA has reaffirmed New Jersey's commitment to smart growth redevelopment and development planning and labor protections. These statutes provide for a significant level of oversight and accountability to ensure state incentives are actively driving results. State-based credits now stand available to a dramatically expanded array of projects across New Jersey.

Stay tuned for additional articles, providing our attorneys' detailed analysis of each of the specific programs, outlining the potential benefits available under each program and eligibility requirements, to assist in determining whether a project or business expansion or investment plans may be eligible. Our next article will feature a closer look at the Aspire program.

About the Authors

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Footnotes

[1] https://1e7pr71cey5c3ol2neoaoz31-wpengine.netdna-ssl.com/wp-content/uploads/2021/02/A4_R1-NJERA-PL-2020-c156.pdf

[2] https://www.njeda.com/economicrecoveryact/#Programs

[3] See Section 98(a); (b)(1)(f); Section 122, amending Section 5 (b)(1), which also authorizes an additional $200M in funding under the former Economic Redevelopment Growth Grant Program.

[4] See Section 63(b)

[5] See Section 60(b)

[6] See Section 61(b)

[7] see Section 56(2) & (4)

[8] See Section 55. The incentive areas include Planning Area 1 (Metropolitan) and areas within Planning Area 2 (Suburban) or Designated Centers located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of rail, bus, ferry station, or a high frequency bus stops.

[9] See Section 98(a)

[10] See Section 65

[11] See Sections 101, 102

[12] See Section 60(c)

[13] See Section 57(a)(7)

[14] See Sections 60(e) (1) & (2). The labor harmony agreement shall remain in effect so long as the State acts as a "market participant" in the project.

[15] See Sec. 60 (f) (1)

[16] See Section 60(f) (4)

[17] see Section 75(f)

[18] See Section 71(a)

[19] See Sections 77 and 75(g)

[20] See Section 71 (a) (8)

[21] See Sec. 73

[22] Section 73(b) (4)