January 13, 2021

Governor Murphy Signs New Jersey Economic Recovery Act of 2020

On January 7, Governor Murphy signed the New Jersey Economic Recovery Act of 2020 (NJERA, or the Act), which restructures the corporate tax incentive programs administered by the New Jersey Economic Development Authority (NJEDA). The Act establishes multiple new tax credit programs for project financing gaps related to (i) redevelopment projects, (ii) rehabilitation of historic properties, (iii) remediation costs for brownfield redevelopment projects, and (iv) establishing and retaining new supermarkets and grocery stores in "food desert communities." The Act also establishes a program to assist small businesses impacted by COVID-19 and a new private investment program to encourage investments in emerging industries and provide startup rent grants to collaborative workspaces.

Notably, the Act requires some participating projects to comply with prevailing wage requirements and also creates a recapture mechanism for noncompliant recipients. Last, the Act establishes a tax credit transfer program to enable business entities with unused tax credits to exchange the credits for private financial assistance prior to the expiration of the credits.

The following highlights some of the tax credit programs established under the Act.

New Jersey Aspire Program Act

This program awards tax credits to redevelopment projects for certain project financing gap costs. To qualify, a developer must demonstrate that (i) without the tax credit, the redevelopment project is not economically feasible and (ii) a project financing gap exists. Additionally, the redevelopment project must comply with minimum environmental standards, affirmative action requirements and prevailing wage requirements.

A commercial project requires a letter from the municipal governing body supporting the project, developer equity participation of at least 20 percent of the total project costs and that the incremental increase of state revenue realized from the completed project exceeds the amount necessary to reimburse the developer for its project financing gap.

A residential project, in addition to other requirements outlined in the Act, must (1) meet certain project cost thresholds, depending on the municipal population; (2) set aside at least 20 percent but not more than 50 percent of the units for affordable housing; and (3) set aside at least 5 percent of the units for workforce housing unless the municipality has received substantive certification (or a judgment of repose) and such a reservation is not required under the approved affordable housing plan.

Emerge Program Act

This program awards tax credits to private companies to encourage economic development, job creation and job retention. Tax credits are awarded for each new and retained full-time job.

To qualify, a business must demonstrate that:

- The business will make, acquire or lease a capital investment at the qualified business facility equal to or greater than applicable amounts outlined in the Act.
- The business will create or retain new and retained full-time jobs at the qualified business facility in a number equal to or greater than the numbers outlined in the Act.

- The qualified business facility is located in a qualified incentive area.
- The award of tax credits will be a material factor in the business's decision to create or retain the number of new and retained full-time jobs set forth in its application.
- The award of tax credits, the capital investment resultant from the tax credit award, and the resultant creation and retention of new and retained full-time jobs will yield a net positive benefit equaling at least 400 percent of the requested tax credit allocation amount, with certain exceptions.
- More than half of the new and retained full-time employees can be accommodated and not less than 80 percent of the new and retained full-time jobs are held by employees subject to the New Jersey Gross Income Tax Act.

Additionally, the business must comply with minimum environmental standards, affirmative action requirements and prevailing wage requirements.

Historic Property Reinvestment Act

This program provides companies that rehabilitate certain historic sites with a tax credit for an amount up to 40 percent of the cost of rehabilitation. To qualify, an applicant must demonstrate that (i) without the tax credit, the rehabilitation project is not economically feasible and (ii) a project financing gap exists. Note that some projects will be subject to prevailing wage requirements.

Brownfields Redevelopment Incentive Program Act

This program provides a tax credit for the cost of remediation associated with the redevelopment of brownfield sites. The NJEDA will consider the (1) project's economic feasibility, (2) benefit to the community in which it is located, (3) degree to which the project enhances job creation and economic development and reduces environmental or public health stressors, and (4) diversity of the developer's board of directors.

To qualify, an applicant must demonstrate that (i) the developer has not yet commenced any remediation or cleanup at the site, except for preliminary assessments and investigations, but intends to remediate and redevelop the site immediately upon the approval of tax credits; (ii) the redevelopment project is located on a brownfield site; (iii) without the tax credit, the redevelopment project is not economically feasible; (iv) a project financing gap exists; (v) the developer obtains a letter of support from the municipal governing body; and (vi) prevailing wage will be paid to all workers employed in the remediation.

New Jersey Innovation Evergreen Act

This program permits NJEDA to auction up to $300 million in tax credits, in annual amounts, for cash to seasoned investors committing to provide services to qualified startup businesses that will receive funding under an investment fund also established under this program.

To qualify for the auction, a potential purchaser must (i) specify the amount of tax credits requested, not to be less than $1 million; (ii) specify the "purchase price" for the amount of tax credits requested, which cannot be less than 85 percent of the requested dollar amount of tax credits; and (iii) commit to serve on the New Jersey Innovation Evergreen Advisory Board and to otherwise provide mentorship, networking and collaboration opportunities to qualified businesses that receive funding under the program.

New Jersey Food Desert Relief Act

This program awards tax credits and grants to developers and operators of supermarkets, grocery stores, midsized food retailers and small food retailers in food desert communities.

To qualify, an applicant must (i) develop and open the first or second supermarket or grocery store in a designated food desert community or (ii) own and operate the first or second supermarket or grocery store in a food desert community. The applicant must also accept benefits from federal nutrition assistance programs and pay prevailing wage.

A selected developer or operator will receive tax credits in an amount up to 40 percent of the total project cost for the first supermarket or grocery store and 20 percent of the total project cost for the second supermarket or grocery store in the respective desert community. The amount of grants awarded will not exceed the initial operating costs of the first supermarket or grocery store and 50 percent of the initial operating costs of the second supermarket or grocery store.

New Jersey Community-Anchored Development Act

This program awards tax credits to "anchor institutions" as a way to incentivize the expansion of targeted industries and the continued development of certain areas. An anchor institution is a governmental or nonprofit entity such as a comprehensive health care system, a public or private research university, a major research institution, or a public college.

Requirements to qualify for tax credits include demonstrating that the project will result in a capital investment in certain designated areas like an opportunity zone and that there will be significant economic, social, planning, employment, environmental, fiscal and other benefits that would accrue to the state, county or municipality from the community-anchored project.

If you have any questions concerning these tax incentive programs, or real estate matters in general, please contact the authors of this alert or any member of the Day Pitney Real Estate team.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

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