GENOVA BURNS
GIANTOMASI WEBSTER
ATTORNEYS-AT-LAW

Major New Jersey Economic Incentive Legislation Advances

By: William F. Harrison, Esq. and Erin K. Phalon, Esq.

Legislation that will significantly expand economic development incentive programs will soon become law. The legislation merges five existing economic development incentive programs into two economic development incentive programs. On September 9, the Assembly agreed to accept the Governor's changes to the legislation and the Senate is scheduled to vote to accept the changes on September 12. It is anticipated that Governor Chris Christie will sign the bill into law shortly thereafter.

The legislation, A-3680, phases out the Business Retention and Relocation Assistance Grant Program (BRRAG), the Business Employment Incentive Program (BEIP), and the Urban Transit Hub Tax Credit Program (UTH) by December 31, 2013, while significantly expanding the Grow New Jersey Assistance Program (GROW) and the Economic Redevelopment and Growth Grant Program (ERG). The bill sunsets GROW and ERG on July 1, 2019. The bill extends GROW and ERG eligibility to greater geographic areas to include most of the State and significantly lowers their eligibility thresholds. The size of the tax credit varies based on where the project is located.

The bill creates the Garden State Growth Zone (GSGZ) area designation for the cities of Camden, Passaic, Paterson, and Trenton and provides incentives to increase ERG and GROW award amounts for projects within GSGZs. Every development entity that owns property within a GSGZ, and undertakes clearing, replanning, development, or redevelopment, is granted a property tax exemption on improvements to the property for new construction, improvements, or substantial rehabilitation of structures on the property for a period of 20 years from receiving a final certificate of occupancy; provided that the municipality located within the GSGZ, by ordinance, opts in to the program within 90 calendar days of the enactment of the bill. In addition, a business in a GSGZ may assign its ability to apply for a tax credit to certain nonprofit organizations.

The bill modifies the GROW program to increase the State's capacity to offer economic development incentive packages to New Jersey businesses. The legislation sets minimum capital investments for GROW based upon the type of project. There is a $20 per square foot minimum capital investment for industrial rehabilitation projects; a $60 per square foot minimum capital investment for industrial new construction projects; a $40 per square foot minimum capital investment for non-industrial rehabilitation projects; and a $120 per square foot minimum capital investment for non-industrial construction projects. The bill expands the geographic boundaries within which businesses can qualify for GROW tax credits and reduces capital investment and employment eligibility requirements. The bill allows EDA to award bonus tax credits to drive development into certain smart growth areas. A business that received incentives under BRRAG, BEIP, or other State business incentive program may not qualify under GROW until the business satisfies its obligations under those programs. Further, a business that applied for GROW eligibility before the enactment of the bill may amend the application to receive more favorable terms under GROW as revised by the bill. GROW may provide tax credits to eligible businesses for an eligibility period not to exceed 10 years. To be eligible for tax credits under GROW, a business must demonstrate that the capital investment resultant from the award of tax credits and the resultant creation and retention of full-time jobs will yield a net positive benefit to the State, equaling at least 110 percent of the requested tax credit allocation amount.

Maximum GROW award amounts range from $25 million to $300 million, depending on the type and location of the project and the number of full-time employees. The award is for up to 10 years and is based on the number of new employees that will be added and the number of existing employees that will be retained. The maximum base award amount per new employee is $5,000 per year, and the maximum base award amount for each retained employee is $2,500 per year. Maximum awards are reserved for projects within Newark, Elizabeth, East Orange, Paterson, Jersey City, Hoboken, New Brunswick, Trenton, Camden, Passaic, areas within a one-mile radius of the Atlantic City International Airport, areas within an approximately 25-mile radius of the Statue of Liberty and areas within a 15-mile radius of each marine terminal facility in South Jersey. Additional bonuses from $250 to $2,000 per year per new employee ($125 to $1,000 per year per retained employee) are granted based on several factors which include location, size and type of business, use of solar technology and substantial environmental remediation of the site.

Eligible businesses must provide a minimum number of new or retained jobs. Technology startup and manufacturing companies must create 10 new jobs or retain 25 at-risk jobs; businesses in targeted industries such as transportation, defense, energy, logistics, life sciences, health, and finance must create 25 jobs or retain 35 at-risk jobs; and all other businesses must create 35 jobs or retain 50 at-risk jobs. The legislation requires that the new or retained jobs must be maintained for 1.5 times the length of the incentive award, e.g. if the award is for 10 years, the jobs must be maintained for 15 years.

GROW has been expanded to include tax credits for businesses in areas impacted by Hurricane Sandy, the GSGZ area and the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem. The minimum capital investment requirements are reduced by one-third in those areas, and the minimum number of employees required are one-fourth lower in those areas.

The bill designates ERG as the State's sole redeveloper incentive program. It rescales ERG to close project financing gaps and incentivize the building of public infrastructure critical to redevelopment projects. The bill equips ERG with a bonus award capacity for redevelopment in certain smart growth areas. The bill's ERG bonus awards incentivize redevelopment that may bring fresh produce to urban "food deserts" and rebuild tourism destinations damaged by Hurricane Sandy.

The bill reconfigures ERG's fiscal limits. It establishes a $600 million cap for ERG residential projects, while non-residential ERG projects have no cap. It also limits the incentive grant agreement eligibility period to 20 years. Developers receiving tax credits are eligible to receive a tax credit transfer certificate to sell or assign the credit to another entity with a tax liability. The bill requires a cap of 30 percent of total project costs on the amount of a State incentive grant, except for projects located in a GSGZ, where the cap is 40 percent of total project costs. For a local incentive grant, the cap is 30 percent of total project costs, 40 percent of total project costs for a project in a GSGZ, and 100 percent of total project costs if the developer is a municipal government or municipal redevelopment agency. A business that applied before enactment of the bill may amend the application to receive more favorable terms under the revised ERG. In addition, a developer may terminate an existing incentive grant agreement to participate in an incentive grant agreement under the bill.

To view the legislation, please click here.

For more detailed information on how this complex legislation would apply to a specific project, contact William F. Harrison, Esq. in the Commercial Real Estate & Redevelopment and Land Use & Approvals Practice Groups at wharrison@genovaburns.com or (973) 535-4430.