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THE ECONOMIC REDEVELOPMENT AND GROWTH GRANT (ERG)

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Introduction: The Good and the Bad

On June 22, 2009, the New Jersey Legislature adopted the New Jersey Economic Stimulus Act of 2009. The Governor signed the law July 27, 2009 and that law is effective as of the date of the Governor's signature. The provisions discussed in this article, however, will not be implemented until November 1, 2009.

ne of the key elements of the Economic Stimulus Act 2009 is the creation of the Economic edevelopment and Growth Grant program (ERG). ıe passage of ERG brings some good news and ɔme bad news. On the plus side, the legislation akes resources available to provide gap financing r projects within Planning Areas 1 and 2, Designated enters, Transit Villages, and Federal bases subject to osure pursuant to action of the Federal Base ealignment Closing Commission. Notably, the area ed not be deemed in need of redevelopment, ɒursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. Another positive feature is that the legislation creates largely parallel incentive financing mechanisms at both the State and the local level.

However, what the Legislature has given on one hand, it has taken away on the other hand in some instances. The amount of the incentive grant is capped at twenty percent of the total project cost, exclusive of public infrastructure. Another change is the abolition of tax increment financing (TIF), formerly available under the Revenue Allocation District Financing Act, N.J.S.A. 52:25D-459, et seq. (and so referred to as "RAD" in New Jersey), and the limitation of the incentive grant to assisting a particular project with the revenues generated only from that particular project. The TIF or RAD would involve a larger area which could have been as much as fifteen or twenty percent of the total assessed value of a municipality, and all incremental real property taxes from that area could be utilized to pay for RAD programs beyond a specific project. Thus, some of the leveraging elements have been reduced.

It should be noted that the while ERG is a relatively flexible and useful tool to assist in gap financing for development projects within the designated areas, there is no impact on home rule norms. Thus, this program is only helpful to builders in municipalities that are embracing the development and further wish to support and assist in the effectuation of the project. ERG is a tool available where the municipality perceives the benefits of the project and recognizes that the developer's success is the municipality's success.

The Substance

The ERG provides incentive grants to developers to capture new State and local incremental taxes generated from a project's development to fill gaps in financing for projects, which might not otherwise be feasible but are perceived to be of benefit to the State and municipality.

The New Jersey Economic Development Agency (EDA), in consultation with the Treasurer of New Jersey, may enter into a redevelopment incentive grant agreement with a developer for any qualifying redevelopment project located in an "economic redevelopment and growth grant incentive area". Such an agreement must be approved by municipal ordinance. A municipality may similarly enter such agreements. Up to seventy-five percent of the incremental increase in approved State and/or local revenues that are directly realized from businesses operating on the redevelopment project premises may be then paid to the developer. Thus, the program is a pledge for reimbursement upon which pledge gap financing may be obtained.

The term of both State and local redevelopment incentive grant agreements may extend for up to 20 years, but the combined amount of the

reimbursements cannot exceed 20 percent of the total cost of the project, exclusive of publicly owned infrastructure. Additionally, a developer would be required to contribute its own capital for at least twenty percent of the total project cost.

For both State and local incremental tax revenues proposed to be pledged for the incentive grant, the EDA and State Treasurer (in the case of a State grant), and the municipal CFO and the Local Finance Board of the Department of Community Affairs (in the case of a local grant), would conduct a fiscal analysis to determine (i) the redevelopment project costs, (ii) evaluate and validate the project financing gap estimated by the developer, and (iii) determine whether the overall public assistance provided to the project will result in net benefits to the State and municipality where the project is located.

Notably, the municipality and developer may determine to proceed without the participation of a State level grant program. That is, the municipality and developer may determine that sufficient gap financing can be provided from increments generated only at the local level. In this case, however, Local Finance Board approval is still required for the program. This would probably result in a simplified process and is worth consideration depending upon the amount of the financing gap and the ability to produce incremental revenues at the local level consistent with the twenty percent maximum grant limitation.

As a practical matter, having the State participate can be useful to a development because it provides the municipality cover and the value of the State also coming to the table with a pledge of meaningful State revenues to support what is perceived as an important project to both local government and the State. Thus, the State is indicating to the local government that it agrees that the project will stimulate economic investment and job creation and help the local economy and the vitality of the municipality.

Under a State incentive grant, the EDA – in consultation with the State Treasurer – would enter into a redevelopment incentive grant agreement with a developer, whereby up to seventy-five percent of the incremental increase (compared to a base year) in State revenues that are directly realized from businesses operating on the redevelopment project premises may be paid to the developer from the following sources:

- Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:IOA-1 et seq.)
- Tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq.
- Tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.)
- Public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed on sewerage and water corporations pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.)
- Tax derived from net profits from business, a distributive share of partnership income, or a pro rata share of S corporation income under the "New Jersey Cross Income Tax Act", N.J.S.54A:I-1 et seq.
- Tax derived from a business at the site of a redevelopment project that is required to collect the tax pursuant to the "Sales and Use Tax Act", P.L.1966, c.30 (C.54:32B-1 et seq.)
- Tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) from the purchase of materials used for the remediation, the construction of new structures, or the construction of new residences at the site of a redevelopment project
- Hotel and motel occupancy fee imposed pursuant to section I of P.L.2003, c.114 (C.54:32D1); and
- Portion of Realty Transfer Fee imposed pursuant to section 3 of P1.1968, c.49 (C.46:15-7) derived from the sale of real property at the site of the redevelopment project and paid to the State, that is not credited to the "Shore Protection Fund" or the "Neighborhood Preservation Non=lapsing Revolving Fund" (New Jersey Affordable Housing Trust Fund) pursuant to section 4 of P.L.1968, c.49 (C.46:15-8).

Similarly, where a Redevelopment Incentive Grant Agreement is established between a municipality and a developer, which may be undertaken with or without a State grant, the municipality may pledge eligible revenues to fund the incentive grant.

Municipalities may pledge their incremental revenue increases from the following sources:

- Incremental payments in lieu of taxes, with respect to property located in the district, pursuant to the "Five Year Exemption and Abatement Law", P.L. 1991, c.441 (C.40A:21-1, et seq.), or the "Long Term Tax Exemption Law", P.L. 1991, c.431 (C.40A:20-1 et seq.)(1)
- Incremental revenue collected from payroll taxes, with respect to business activities carried on within the area, pursuant to section 15 of P.L. 1970, c.326 (C.40:408C-15)
- Incremental revenue from lease payments made to the municipality, the developer or the developer's successors with respect to property located in the area
- Incremental revenue collected from parking taxes derived from parking facilities located within the area pursuant to section 7 of P.L. 1970, c.326 (C.40:48C-7)
- Incremental admissions and sales taxes derived from the operation of a public facility within the area pursuant to section 1 of P.L. 2007, c.302 (C.40:48G-1)
- Incremental sales and excise taxes which are derived from activities within the area and which are rebated to or retained by the municipality pursuant to the "New Jersey Urban Enterprise Zones Act", P.L. 1983, c.303 (C.52:27H-60 et seq.) or any other law providing for such rebate or retention
- Within Planning Area 1 (Metropolitan) under the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act", sections 1 through 12 of P.L. 1985, c.398 (C.52:18A-196 et seq.), a

municipality may impose the entire State sales tax on business activities within a redevelopment project located in an urban enterprise zone that would ordinarily be entitled to collect reduced rate revenues under section 21 of P.L. 1983 c.303 (C.52:27H-80), and pledge the excess revenues to a local redevelopment incentive grant agreement
- Incremental parking revenue collected, pursuant to section 3 of P.L. 1970, c.326 (C.40:48C-7), from public parking facilities built as part of a redevelopment project, except for public parking facilities owned by parking authorities pursuant to the "Parking Authority Law", P.L. 1948, c.198 (C.40:11A-1 et seq.)
- Incremental revenues collected, pursuant to section 3 of P.L. 2003, c.114 (C.40:48F-1), P.L.1981, c.77 (C.40:48E-1 et seq.), or P.L. 1947, c.71 (C.40:48-8.15 et seq.), from hotel and motel taxes
- Upon approval by the Local Finance Board, other incremental municipal revenues that may become available; and
- The property tax increment.

It is the property tax increment that is, of course, the most substantial revenue source under all of these options at the municipal level. The options have been substantially expanded from the original RAD or TIF legislation. However, it should be noted that in some instances, some of these incremental revenue streams are only available in municipalities of a certain size or municipalities that have received specific statutory authorization to impose such taxes.

In any case, the aggregate of all payments made pursuant to a local municipal redevelopment grant and State grant cannot exceed twenty percent of the total project cost. Therefore, if a project costs fifty million dollars, there must be ten million dollars in the developer's equity and there can be no more than ten million dollars in aggregate payments under the total of the ERG grant agreements. There is value in this income stream to the developer or an institutional lender in that these funds could be used to pay down any mortgage or project financing.

Also notable is the fact that a developer that submits an application for a local incentive grant is not required to seek approval by the EDA. However, the EDA is one of the most entrepreneurial economic investment drivers in the State and the EDA's participation at the Local Finance Board level should not be overlooked as it brings a respect and experience factor. Additionally, and assuming that it supports the project, the EDA may be an advocate before the Local Finance Board.

As noted with respect to oversight, the Local Finance Board must approve any local grant agreement. The EDA and Treasury must approve the State grant. Bear in mind that you could have a local grant without a State grant or a State grant without a local grant. In either case, however, the municipality must approve the grant program by ordinance. Also, the terms of any local grant program must be made known to the State and vice versa.(2)

For each type of incentive grant application, a developer shall certify information concerning:

- Status of control of the entire redevelopment site
- All required State and Federal government permits that have been issues for the redevelopment project or will be issued pending resolution of financing issues
- Local planning and zoning board approvals, as required, for the redevelopment project
- Estimates of the revenue increment base and eligible revenues for the project and the assumptions upon which those estimates are made.

In deciding whether to enter into a redevelopment incentive grant agreement with the developer, the EDA shall consider the following factors, including:

1. The economic feasibility of the redevelopment project
2. The extent of economic and related social distress in the municipality, and the area to be effected by the redevelopment project
3. The degree to which the redevelopment project will advance State, regional and local development and planning strategies
4. The likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for project costs incurred as provided in the redevelopment incentive grant agreement
5. The relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality
6. The need of the redevelopment incentive grant agreement to the viability of the redevelopment project
7. Compliance with the provisions of the New Jersey Economic Stimulus Act of 2009; and
8. The degree to which the redevelopment project enhances and promotes job creation and economic development.

These standards apply for the EDA's determination with respect to a State incentive grant, and are the criteria to be applied by the Local Finance Board with respect to a local incentive grant.

Notably, projects built with support of incentive grants are encouraged to adhere to the Green Building Manual prepared by the Department of Community Affairs, pursuant to section 1 of P.L. 2007, c.132 (C.52:27D-130.6) regarding the use of renewable energy, energy efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction. The EDA is directed to establish standards for redevelopment projects seeking State or local incentive grants based on the Green Building Manual.

Significantly, upon notice to and consent by the EDA and State Treasurer (in the case of the State grant), and by the municipality (in the case of a local incentive grant), a redevelopment incentive grant agreement may be assigned and a

developer is entitled to pledge its incentive grants upon filing with the EDA or the municipality, as appropriate. Thus, the revenue stream generated from the incremental taxes or other sources of funds can be a basis for third party, institutional, or even EDA loans.

The ERG program replaces the Revenue Allocation District Financing (RAD) Act and new RADs will no longer be created. With respect to the one RAD that was authorized and implemented in the City of Millville, the Economic Stimulus Act clarifies that the aggregate amount of the ratable increments in a RAD are excluded when calculating the net valuation on which both school and county taxes are apportioned.

One area of concern is that while ERG provides that ratable increments in approved projects are excluded when calculating the net valuation on which both school and county taxes are apportioned, that exclusion is not effective "until such time that the Director of the Division of Taxation in the Department of Treasury can certify that property tax management systems are capable of handling the technical and legal requirements of treating parcels in areas of redevelopment as exempt from county and regional school apportionment". This raises the specter of committing incremental real property taxes to a developer, but still requiring the municipality to fund its share of local and regional school taxes until the Director of the Division Taxation has rendered the requisite certification regarding management systems. The legislation provides no deadline for such action.

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1. Note that the payments in lieu of taxes under the Long Term Tax Exemption Law are only available in areas deemed to be an area in need of redevelopment pursuant to N.J.S.A. 40A:12A -1, et seq.

2. This is in all likelihood an outgrowth of the ENCAP debacle where the developers obtained significant financing from DEP and EDA without disclosure to the municipalities and sought to obtain significant additional financing from the municipalities without disclosure to State agencies.