The New Jersey Economic Recovery Act of 2020: An Overview of the New Jersey Community-Anchored Development Program

Client Alert

3.04.21

By: Steven G. Mlenak and James A. Robertson

The New Jersey Economic Recovery Act of 2020, a seven-year, $14 billion package of incentive programs intended to encourage New Jersey job growth, property development and redevelopment, community partnerships, and numerous other economic development initiatives, was signed into law by Governor Phil Murphy on January 7, 2021.

This Client Alert focuses on the New Jersey Community-Anchored Development Program, which was enacted under the new legislation to provide tax credits to "anchor institutions" to encourage the expansion of targeted industries in certain areas of New Jersey.

Incentivizing Anchor Institutions

The New Jersey Community-Anchored Development Program aims to incentivize anchor institutions in the areas of education, healthcare, culture, community development, and economic development to act as investors in large-scale development projects within New Jersey. Under the program, an anchor institution will utilize proceeds from the sale of state tax credits, and the New Jersey Economic Development Authority (EDA) will receive a negotiated current or deferred economic return on the tax credit investment made by the anchor institution and, ultimately, the return of the amount initially received.

Anchor institutions will be eligible for tax credits of up to $200 million annually to aid and promote targeted development, with $130 million allocated to northern NJ counties and $70 million to southern NJ counties. The total tax credit allowed per project cannot exceed $75 million, and the total investment of all state resources in a project (not including rent payments) cannot exceed 40% of the total cost of the project.

The goal of the program is to overcome cost-of-occupancy differences between New Jersey and other less expensive jurisdictions, and to encourage anchor institutions to expand beyond their host communities and

invest in areas that lack anchor institutions. Additionally, the legislation hopes to further New Jersey's objectives to attract high-value employers and provide economic stimulus, as well as permit other beneficial uses such as housing, public amenities, parking, mixed-uses, and facilities of an anchor institution itself.

Application Criteria

To take advantage of the Community-Anchored Development Program, anchor institutions must complete and submit to the EDA a competitive program application that would result in the completion of a community-anchored project either in a New Jersey opportunity zone or, if the project is primarily designed to result in the economic expansion of a targeted industry, in an area designated as a Planning Area I, or in a municipality with a Municipal Revitalization Index distress score of at least 50.

When making its application, the anchor institution must demonstrate the following:

1. The structure and terms of the investments to be utilized to successfully complete and then operate the project;
2. That the anchor institution has not commenced any construction at the site of the project prior to submitting the application, unless the EDA determines the project would not be completed otherwise or if the requested tax credit converts only phases of construction which had not yet commenced;
3. The value of the tax credit that is necessary in each year of the eligibility period;
4. The total aggregate value of the tax credit for the entire eligibility period that is necessary;
5. The award of tax credits under the program that will be converted into an investment by the EDA into the project, and the anticipated current and deferred returns on that investment;
6. That the project will comply with the standards established by the EDA through regulation based on the green building manual;
7. That the project will comply with the EDA's affirmative action requirements;
8. A description of the significant economic, social, planning, employment, environmental, fiscal, and other benefits that would accrue to the state, county, or municipality;
9. That the anchor institution will partner with one or more local community organizations that provide support and services to Work First New Jersey program recipients;
10. The extent to which the development will result in the expansion of a targeted industry in New Jersey;
11. That the timing of the award and investment of tax credits under the program will allow for the successful completion and operation of the project; and
12. That the project is viable, and that the anchor institution is a credible partner.

The project must result in a capital investment of at least $10 million. The anchor institution receiving tax credits must then use the proceeds derived from the sale or financing of the tax credits to make an equity investment in, or provide a loan or other financial support for, the community-anchored project.

The tax credits will be issued and utilized according to an agreement which includes standards relating to the anticipated economic results of the anchor institution's project as well as consequences for failing to meet the requirements of the agreement. The tax credit agreement will detail the terms by which the anchor institution will convert the tax credits into an investment.

The tax credits may be sold or transferred by the anchor institution or, alternatively, the credits may be used to finance the completion of the project. The sale proceeds must then be used to make an equity investment in or to provide a loan or other financial support for a community-anchored project. This is particularly important given many anchor institutions are nonprofit corporations that would be otherwise unable to utilize such credits.

Scoring System for Approval

The EDA's approval process will review and rank applications on the basis of a scoring system based on criteria which includes but is not limited to:

1. The amount of tax credit requested compared to the overall investments required for completion, along with the amount of the potential return on the EDA's investment;
2. The financial benefit of the project to the community where it will be located;
3. Apprenticeships or workforce programs to be offered because of the project;
4. The ability of the project to absorb and adapt to changing environmental conditions;
5. How the project will advance state, regional, and local development and planning strategies;
6. The relationship of the project to a comprehensive local development strategy;
7. The degree to which the project enhances and promotes job creation and economic development;
8. The extent of economic and related social distress in the area surrounding the project;
9. The extent to which the project provides for the development of workforce housing and housing for individuals with special needs;
10. The extent to which the project constitutes the expansion of the institution to different areas of the state;
11. The extent to which the project provides for infrastructure, parking, retail, green space, or other public amenities creating a mixed-use project;
12. The inclusion of a qualified business accelerator or incubator facility as part of the project;
13. The length of the commitment period for the project;
14. The quality and number of new full-time jobs that will be created by the anchor institution;
15. The quality and number of existing full-time jobs that will be retained by the anchor institution; and
16. The extent to which the board of directors of the anchor institution is diverse and representative of the community in which the project is located.

The EDA will continue to evaluate the program to ensure that it will, at least, recapture the value of the tax credits awarded to all anchor institutions and will realize additional returns on investment under the program.

Comprehensive regulations are expected to be promulgated by the EDA in furtherance of the New Jersey Community-Anchored Development Program. We will keep you updated on these rules and other developments related to the New Jersey Economic Recovery Act of 2020.

The New Jersey Economic Recovery Act of 2020: An Overview of the New Jersey Innovation Evergreen Act
March 1, 2021
Greenbaum, Rowe, Smith & Davis LLP Client Alert

The New Jersey Economic Recovery Act of 2020: An Overview of the New Jersey Aspire Program
February 25, 2021
Greenbaum, Rowe, Smith & Davis LLP Client Alert

Greenbaum, Rowe, Smith & Davis LLP Announces Launch of Financial Incentives & Economic Development Practice Group
February 23, 2021
Greenbaum, Rowe, Smith & Davis LLP Press Release

Related Attorneys

Steven G. Mlenak

Partner
732.476.2526
Email

James A. Robertson

Partner
973.577.1784
Email