New Jersey Law Journal

VOL. CXCVIII - NO.2 - INDEX 179 OCTOBER 12, 2009 ESTABLISHED 1878

IN PRACTICE

LOCAL GOVERNMENT

NJ Economic Stimulus Act Of 2009 Provides Capital To Spur Statewide Growth

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Governor Jon Corzine signed the New Jersey Economic Stimulus Act of 2009 on July 27, as a multifaceted approach to address the impact of the current economic downturn on the state of New Jersey. The Stimulus Act suspends nonresidential development fees and uses tax increment financing, tax credits and dedicated economic revenue streams to spur development and redevelopment, generate revenue for local and state government and encourage investment in higher education, technology and alternative energy.

Three key initiatives implemented through the Stimulus Act offer incentives particularly targeted towards New Jersey's real estate development community: (1) the new Economic Redevelopment Growth Grant Program; (2) the expansion of the Urban Transit Hub Tax Credit; and (3) the elimination of nonresidential development fees to fund affordable housing. The combination of these mechanisms could potentially bring sufficient public capital and tax incentives to reinvigorate real estate development, particularly in New Jersey's urban areas and designated centers for growth.

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Economic Redevelopment Growth Grants

The Economic Redevelopment Growth Grant (ERGG) Program is the centerpiece of the Stimulus Act and is designed to encourage redevelopment projects by making both municipal and state incentive grants available to developers to reimburse them for up to 20 percent of the total cost of a project. On the state level, the New Jersey Economic Development Authority (EDA) in conjunction with the state treasurer will review, approve and administer all applications for state grants while local finance boards will be charged with the administration of municipal grants. An ERGG applicant can apply for both state and municipal-level grants as long as the applicant discloses the joint application to both reviewing authorities and the combined grants does not exceed 20 percent of the total project cost.

ERGGs will be available to the developer of a "redevelopment project" in a "qualifying economic redevelopment and growth grant incentive areas" (Qualifying Areas). The Stimulus Act defines a "Redevelopment Project" as "a specific work or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer within a project area." "Qualifying Areas" include Planning Area 1 (metropolitan), Planning Area 2 (suburban), transit villages, designated center under the State Planning Act and federally owned land approved for closure under a federal Base Realignment Closing Commission action. ERGGs are intended to provide financing for "project financing gaps," which the Stimulus Act defines as "the part of the total redevelopment project cost, including return on investment, that remains to be financed after all other sources of capital have been accounted for[.]"

The Stimulus Act requires an ERGG applicant to contribute no less than 20 percent of its own capital and further requires that applicant to certify that it has exercised all good-faith efforts to raise additional capital from other investors and financial entities. An ERGG applicant must certify as to the control of the redevelopment project site; the status of required state and federal government permits and local planning and zoning board approvals; and estimates

of the revenue increment base and projected eligible revenues and the assumptions upon which those estimates are made. The reviewing authority will then examine the redevelopment project costs, evaluate and validate the project financing gap estimated by the developer and conduct a fiscal impact analysis to ensure that the overall public assistance provided to the project will result in net benefits to the state. The Stimulus Act provides that the grants may be implemented through Redevelopment Incentive Grant Agreements (RIGA) between the state and/or municipality and the developer. Amongst other functions, RIGASs will provide for the pay out of the grant (up to 20 years) and may be pledged by the developer as additional collateral for financing.

The Stimulus Act provides that ERGGs will be financed through incremental state and municipal revenues based on earmarked tax revenue sources. Sources of incremental revenue include tax revenue generated from the Corporation Business Tax Act, the Savings Institution Tax Act and the public utility franchise tax (on the state level) and incremental payments in lieu of taxes (PILOTS) made pursuant to the Five-Year Exemption and Abatement Law or the Long Term Tax Exemption Law, incremental revenue from payroll taxes pursuant to N.J.S.A. 40:48C-15 and the property tax increment (on the municipal level).

Expansion of the Urban Transit Hub Tax Credit

The Stimulus Act also amends the Urban Transit Hub Tax Credit Act (UTHTCA), which was enacted by the Legislature in January 2008 to foster economic development in urban centers by providing tax credits to businesses that make capital investments in, and increase employment around, targeted urban rail transit hubs. To cover the costs of investing in facilities within a designated urban transit hub, UTHTCA previously provided up to $75 million in tax credits to businesses that employ at least 250 people. Tenants in qualified business facilities could also be eligible for tax credits if they occupy space that represents at least $25 million of the capital investment in the facility and they employ 250 full-time employees at the facility. The UTHTCA as originally enacted, however, contained several restrictions on the amount and availability of these tax credits to businesses and tenants. The Stimulus Act relaxes these restrictions through the following amendments: (1) the definition of an "urban transit hub" is expanded to include all light rail stations; (2) A business applying under the UTHTCA before January 1, 2010, will not have its tax credits reduced if it relocates to an urban transit hub from another location or locations within the same municipality; and (3) The capital improvement threshold for an owner of a qualified business facility is reduced from $75 million to $50 million.

Tenants can qualify for the tax credit upon occupying a leased area of a qualified business with a capital improvement value of $17.5 million (reduced from $25 million). The amendments also provide that a tenant could reach the 250-employee requirement by aggregating its employee count with two other tenants in the same qualified business facility.

Suspension of Nonresidential Development Fee

To encourage the construction of projects that are either in the process of obtaining municipal approval or have already obtained such approval but were scuttled due to the recent economic downturn, the Stimulus Act proposes ameliorative legislation to put money back in the developers' coffers.

The Stimulus Act amends the Statewide Non-Residential Fee Act (the Fee Act), which was enacted by the Legislature in July 2008 and usurped municipalities' authority to impose fees on nonresidential development to fund affordable housing in favor of a statewide development fee of 2.5 percent on all nonresidential development. While the Fee Act exempted projects that had received a Certificate of Occupancy by the Fee Act's effective date, the 2.5 percent fee was imposed on all other pending projects that did not meet one of the act's narrowly tailored exemptions.

The Stimulus Act abolishes the Fee Act's application to nonresidential property that, prior to July 1, 2010, has received either preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 or final site plan approval pursuant to N.J.S.A. 40:55D-50, provided that a permit for the construction of the building has been issued by the local enforcing agency having jurisdiction prior to July 1, 2011. Developers that are entitled to a refund of the 2.5 percent fee must file a written claim to the entity to whom the funds were paid within 120 days of the Stimulus Act's effective date.

As with the federal stimulus legislation, the success of the Stimulus Act will depend on the speed and implementation of the various provisions, as well as the private sector's willingness to meet these initiatives with private investment. With regard to the ERGGs, municipal action (with regard to adoption of requisite ordinances) and cooperation are required as well. The expansive and sometimes opaque legislation will require the collaboration of governmental officials, attorneys and business people to bring the concepts to fruition.

Although the Stimulus Act provides new opportunities for the New Jersey business community, detractors of the legislation raise a wide array of concerns. Environmental groups express concerns that the Stimulus Act does not sufficiently delineate redevelopment areas and could permit the use of ERGGs to develop land that should be preserved. Similarly, the Stimulus Act fails to emphasize the reuse and redevelopment of existing but underutilized property. Other groups note that there are insufficient watchdog mechanisms to prevent corruption in how the financing mechanisms will be allocated. This issue is of particular concern due to the recent New Jersey public corruption scandal.■