The New Jersey Economic Recovery Act of 2020: An Overview of the New Jersey Emerge Program

The New Jersey Economic Recovery Act of 2020 (ERA), 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 Emerge Program, enacted as part of the ERA to provide tax credit incentives to encourage job creation and the retention of significant numbers of jobs in imminent danger of leaving New Jersey.

Administration and Awards

The New Jersey Emerge Program is being administered by the New Jersey Economic Development Authority (EDA). Applications will be reviewed and decided by the Board of the EDA in accordance with statutory requirements and regulations to be promulgated by the EDA, with oversight provisions to be implemented to ensure that all jobs promised are delivered. The ERA has appropriated a combined total of $11.5 billion, over a seven-year period, for the Emerge Program and the **New Jersey Aspire Program**.

The total value of tax credits awarded annually during each of the first six years of the Emerge Program (not including what the legislation defines as "Transformative Projects") will be capped at $715 million for projects located in northern counties of the state, and $385 million for projects located in southern counties of the state. For Transformative Projects, the ERA appropriates $2.5 billion over the seven years of the program (comprised of up to 10 projects awarded tax credits of up to $250 million each).

The program provides base tax credits between $250 and $4,000 per retained or newly created job per year (up to 7 years). In addition, bonus annual tax credits are available based upon the location of the project, the use of the project, the number of new full-time jobs created, and other criteria.

Eligibility and Application

To be eligible for incentive awards under the Emerge Program, the following criteria must be satisfied through an application made by the business's chief executive officer, or equivalent officer:

> Note: For items 2) and 3) listed above, the business's capital investment and number of jobs created or retained requirement must be satisfied within 3 years of the date of approval from the EDA, subject to extensions.
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> For item 5) listed above, to assist the authority in determining whether the award of tax credits is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program, the chief executive officer of the authority shall require the eligible business to submit, as part of its application:

The chief executive officer of the authority may further consider the costs associated with opening and maintaining a business in New Jersey, competitive proposals that the eligible business has received from other states, the prevailing economic conditions, and any other factors that the chief executive officer of the authority deems relevant to assist the authority in determining whether an award of tax credits is a material factor in the eligible business's decision.

In addition, the business has to comply with all requirements for filing tax and information returns and for paying or remitting required state taxes and fees by submitting, as part of the application, a tax clearance certificate. Further, the business may not be more than 24 months in arrears at the time of application.

Following approval by the EDA, but before the issuance of tax credits, the EDA shall require the business to enter into a project agreement on the terms set forth in the ERA. For any project that exceeds $10 million in total project costs, the developer will be required to enter into a community benefits agreement with the EDA and the county and municipality.

The application for the Emerge Program has not yet been released, as regulations are still being promulgated. However, we do know that the application process will require the developer to satisfy its eligibility as set forth above. In addition, the Emerge Program requires that the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Environmental Protection, and the New Jersey Department of the Treasury each report to the EDA that the developer is in substantial good standing.

Next Steps

Comprehensive regulations are expected to be promulgated by the EDA in furtherance of the New Jersey Emerge Program. Even without the addition of those regulations, however, the Emerge Program is incredibly nuanced and therefore does not lend itself to being summarized in a succinct fashion within the limited parameters of this overview. We therefore recommend that interested parties consult with an attorney regarding their individual business's eligibility for the Emerge Program.

We will keep you updated on pending regulations and other developments related to the New Jersey Economic Recovery Act of 2020. Please contact the author of this Alert, **Steven G. Mlenak** smlenak@greenbaumlaw.com | 732.476.2526 with questions concerning the incentives outlined in this overview or to discuss your specific business circumstances. Mr. Mlenak is Chair of the firm's **Financial Incentives & Economic Development Practice Group**.

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