TRADITION. INNOVATION. DISTINCTION.

WINDELS MARX

New Jersey Economic Recovery Act of 2020

(P.L. 2020, c. 152)

Aspire Program At-a-Glance

(§§ 54 – 67)

Purpose	To encourage redevelopment projects in an incentive area through the provision of tax credit awards to reimburse developers for a project financing gap. Incentive areas are (i) State Planning Area 1 (Metro), and (2) Planning Area 2 (Suburban) or Designated Center if located within ½ mile of a rail or bus or ferry station.
Tax Incentive	**For most projects, the maximum tax credit award will be up to 45% of the total project costs.** Commercial projects in a Government Restricted Municipality (GRM) can obtain up to 50%. Atlantic City, Paterson and Trenton are GRMs. Aspire Transformative Projects receive 30% of total project costs.
Project Cap	There is a per project tax credit cap of $32 million, except for projects in special locations are capped at $50 million: (i) GRM, (ii) qualified incentive tract (i.e., low income census tracts), or (iii) municipality with a Municipal Revitalization Index distress score of at least 50. Aspire Transformative Projects have a project cap of $250 million.
Program Life	EDA may award grants to projects prior to March 1, 2027 on the order in which "complete, qualifying applications" are received.
Project Financing Gap and Net Benefits	All Aspire projects must show a project financing gap – the amount after taking into account 20% developer equity, a reasonable return on investment, and good faith efforts on obtaining loan and capital on a non-recourse basis. Commercial Projects and Commercial Transformative Projects require a State Impact Analysis of the Net Positive Benefit to the State.
Commercial Projects (Section 58)	**Commercial Project:** means a building which is predominantly commercial and contains 100,000 or more SF of office, retail, industrial space, or film studios or related spaces, for purchase or lease, and may include a parking component. **The developer must demonstrate that the incremental increase of State revenues will exceed amount necessary to reimburse developer for project financing gap.** EDA will conduct a State fiscal impact analysis to ensure that the overall public assistance will result in a net benefit to the State.

Residential Projects (Section 57)	**Residential Project:** means a redevelopment project that is predominantly residential, intended for multi-family residency, and may include a parking component. There is no net benefit test for residential projects. There are minimum total project costs based on location: (1) \$17,500,000 if located in municipality with population greater than 200,000; (2) \$10,000,000 if located in municipality with population less than 200,000; or (3) \$5,000,000 if located in a qualified incentive tract or GRM. There is a requirement for at least 20% but no more than 50% of units for low and moderate income households <u>and</u> 5% workforce housing.
Transformative Projects (Sections 65-66)	**Transformative projects may qualify for up to 30% of project costs subject to a \$250 million cap. A Transformative Project must the following criteria:** (1) a total project cost of at least \$100 million, <u>and</u> (2) includes at least 500,000 SF of new or substantially renovated industrial, commercial or residential space, **or** at least 250,000 SF of infrastructure space for film production **and** "which is of special economic importance as measured by the level of new jobs, new capital investment, opportunities to leverage leadership in a high priority target industry, or other State priorities". No more than 10 transformative projects shall be awarded, with no more than 2 in any municipality. A transformative project must be located in (i) a distressed municipality, (ii) a GRM, or (iii) an urban transit hub; except that a project with 250,000 SF of film studios and related space, may be located in other municipalities. **A Transformative Project award shall be the lesser of the amount of the financing gap, 30% of project costs, or \$250 million.** **EDA will conduct a fiscal impact analysis to ensure that the overall public assistance will result in a net positive benefit to the State** (excluding the value of any taxes exempted, abated rebated or retained under a PILOT or UEZ). **Projects that are predominantly residential are excluded from this requirement.**

Application Requirements (Section 57)	1. **Need for Tax Credits:** Without the tax credits, the redevelopment project is not economically feasible; 2. **Financing Gap:** A project financing gap exists or will generate a below-market rate of return; 3. **Location:** Redevelopment project is located in Planning Area 1 (Metropolitan) or in either a Planning Area 2 (Suburban) or a Designated Center that is located within a one-half mile radius of the mid-point of a rail, bus, light rail, or ferry station, or a high frequency bus stop; 4. **Construction has not begun:** Developer has not commenced any construction at the redevelopment project site unless otherwise determined that the redevelopment project would not be completed otherwise or the requested tax credit award is limited to only phases for which construction has not yet commenced; 5. **Green Building:** Redevelopment project shall comply with minimum environmental and sustainability standards; 6. **Affirmative Action:** Redevelopment project shall comply with the authority's affirmative action requirements; 7. **Prevailing Wage:** During eligibility period, each worker employed to perform construction work or building services shall be paid not less than prevailing wage. If a tenant undertakes a redevelopment project and occupies more than 55% of the building owned or controlled by the developer, the requirement shall apply to the entire building; 8. **4-Year Completion Period:** Redevelopment project shall be completed, and a certificate of occupancy shall be issued by the applicable enforcing agency, within four years of executing the incentive award agreement for the redevelopment project; 9. **Tax Clearance:** A tax clearance certificate demonstrating that Developer has complied with all requirements for filing tax and information returns and for paying or remitting the required State taxes and fees; and 10. Developer is not more than 24 months in arrears at the time of application.

Incentive Agreement (Section 60)	Developer shall enter into a tax credit agreement with the EDA for an eligibility period of no more than 10 years for residential projects and 15 years for commercial projects. Key provisions of the Incentive Agreement include: 1. **Rescission:** If sufficient progress toward completion is not made. If rescission occurs in the same calendar year as the award, EDA may assign the award to another applicant. 2. **Verifications: EDA may require** (i) verification of financing gap at time of execution of financing commitments, and (ii) verification of projected cash flow at time of certification of completion. 3. **Reduction or Forfeiture of Award:** If financing gap is smaller than at approval, EDA shall reduce the award on a pro rata basis. If there is no financing gap, then the award shall be forfeited. This test shall be conducted at the end of the third year of the eligibility period based on projected and actual cash flow. **For a commercial project**, if cash flow exceeds the projected cash flow at approval by more than 15%, developer shall pay up to 15% of the excess to the State. **For a residential project**, the developer's return on investment shall be subject to the limitations in the NJHMFA statute: NJHMFA sets return on investment that projects may take in their regulatory agreements at the time of construction loan closing. Every time a project wants to distribute money to its owners, it must submit an application to NJHMFA and the distribution must be approved. Per N.J.A.C. 5:80-3.3(e), the ROI amount is a maximum of 12% Per N.J.A.C. 5:80-3.3(f) the actual amount is calculated based on the affordability levels of the units. 4. **Compliance Reports from State Agencies:** DEP, DWLWP, and Treasury shall submit report regarding whether there is substantial good standing with that agency. If the reports are not received, the award shall be forfeited for that year. 5. **Labor Harmony Agreement:** for certain projects with retail and in which the State has a proprietary interest. 6. **Community Benefits Agreement:** for a project with costs equal to or over $10M, a community benefits agreement which may include requirements for training, employment and youth development and free services to underserved communities; creation of a community advisory committee; annual certification of compliance with the agreement. There is an exception for projects with a redevelopment agreement certified by the municipality submitted to EDA.

CPA Certification	Within 6 months of completion must certify projects costs by CPA.
Reporting Obligations	Annual reports during eligibility period.
No or Limited Carry Forward of Tax Credits (Section 62)	A developer shall not carry forward an unused credit unless the developer was unable to use the credit because the project was impacted by a natural disaster, state or national emergency, or a situation out the developer's control, in which case a 2-year carry forward is permitted.
Sale of Tax Credits (Section 63)	A developer can sell tax credits for no less than 85% of the face value of the transfer certificate before considering discounting to present value which shall be permitted, except for residential projects also receiving LIHT may sell tax credits for no less than 75%. The sales will be posted on EDA's website. **No subsequent sales of transfer certificates is permitted.**
Pledge of Tax Credits (Section 64)	Upon written consent of EDA and Treasurer, a developer may pledge, assign, transfer or sell any or all of its rights in the incentive award and in the incentive award payable. Information on all such pledges, etc., shall be published in the EDA website.
Overall Tax Incentive Cap (Section 98)	All of the incentive projects under P.L. 2020 Chapter 52 have a total combined cap of $11.5 billion for the 7-year life of the programs. Of that amount, $2.5 billion is reserves for transformative projects approved under Aspire or Emerge programs.