BULLISH ON NEW JERSEY

The Economic Opportunity Act of 2013 is designed to drive development across the state.

By Charles Liebling and Julie Tattoni

Almost a year in the making, last fall New Jersey gift-wrapped a supersized package of tax incentives to jump start businesses of all sizes as well as both residential and commercial development. The Economic Opportunity Act of 2013 (EOA 2013) was designed to create new jobs and real estate development throughout the state, particularly in certain priority areas which are afforded the most generous portion of incentives. In December, the New Jersey Economic Development Authority (EDA) unveiled its online application process for the two expanded programs and has already approved the first few projects in the pipeline, with more expected each month. The EDA will take a relatively short time period to process an application (30 to 60 days for Grow New Jersey and 60 to 90 days for Economic Redevelopment and Growth Grant program); however, if approved, the tax incentives are not received by the business or developer until the project is completed, which will generally take at least 18 months to two years. EDA will require that a project be completed within three years of date of the approval.

Grow New Jersey. As the name implies, the program is designed to grow jobs in the state — with an emphasis on new, higher wage positions with health benefits.[1] Grow NJ offers businesses an annual per-employee tax credit for up to 10 years.[2] The credits may be applied to corporate business tax and insurance premium tax liabilities and may be transferred and sold.

The pre-existing Grow NJ program had steep capital investment ($20 million minimum) and job creation requirements (100 full-time employees). EOA 2013 lowered both requirements in order to include more businesses, to incentivize targeted industries, promote urban core and distressed localities, and to encourage green projects. The capital investment requirement is now measured on a square-foot basis (of gross leasable area), ranging from $20 per square foot for renovations of industrial premises to $120 for new office construction. The required minimum number of jobs created or retained (saving at-risk jobs) to be eligible for the Grow New Jersey program depends upon the type of business. Tech start-ups and manufacturing businesses require as few as 10 new or 25 retained positions, targeted industries[3] require 25 new or 35 retained positions, and most other businesses require 35 new or 50 retained positions. Businesses in a Garden State Growth Zone municipality (Camden, Trenton, Passaic and Paterson) or located in southern counties have lower capital investment and jobs eligibility minimums.[4]

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Once a business satisfies these minimum requirements, the amount of tax credits that a business may be eligible to earn is determined by a base plus bonus credit formula. Base annual tax credits per employee range from a high of $5,000 for Mega Projects[5] and projects within Garden State Growth Zones or Urban Transit Hubs to a low of $500 for projects in low-priority areas (State Planning Areas 3 and 4). There are 16 bonus categories incentivizing criteria such as "transit oriented developments," substantial capital in industrial premises, salaries in excess of the county average, creation of large numbers of jobs, targeted industries, exceeding Silver LEED certification, and solar energy construction. The maximum annual per-employee tax credit that can be earned is $15,000 (for Mega and Growth Zone Projects), with lower caps depending upon the location of project site in other eligible areas.

The last step is establishing that the business will generate a positive net benefit to the state and that the award of tax credits will be a material factor in the decision to create or retain the jobs. If a business can effectively make that showing, it will be eligible to earn 100 percent of base plus bonus credits for each new job and 50 percent for retained jobs, which are those that already exist in New Jersey but are at risk of elimination or relocation out of the state. For projects earning $40 million or more in tax credits (over 10 years), EDA will award the lesser of the "base plus bonus" credits or the credits that it determines are needed to complete the project. To make this determination, EDA will engage in a full economic analysis of the alternative locations under consideration by the business. As of press time, EDA was in the process of developing the model for this analysis. There is no overall program cap on the number of tax credits that the EDA is authorized to award, but there are per-project caps. Applications are due by July 1, 2019, except for Mega Project applications which are due September 18, 2017.

Economic Redevelopment and Growth Grant (ERG). Developers are the primary beneficiaries of the ERG program. EOA 2013 both enhanced the pre-existing business ERGs and created a new category for residential projects. While hailed as a $600 million shot in the arm, a fundamental flaw in the Act has curtailed the launch of the Residential Economic Redevelopment and Growth Grant ("Res-ERG") program. The Act allocated $600 million in tax credits for redevelopment projects that are predominantly residential[6] — at least 51 percent — and built in certain targeted areas, including Camden, southern counties, Garden State Growth Zones, Urban Transit Hubs, and distressed municipalities. While applications for a Res-ERG are due by July 1, 2015, surprisingly, a temporary certificate of occupancy (TCO) must be obtained no later than July 28, 2015. Whether the TCO date was a drafting flaw or a misguided choice, few projects can meet this tight deadline. Therefore, instead of the flood of Res-ERG applications that were anticipated, only a trickle have been filed. Fortunately, help is on the way. State senator Ray Lesniak has introduced a bill that would extend the TCO date to July 28, 2018. Without a legislative fix for the TCO date, this otherwise vital program will have limited impact. Res-ERG tax credits can be sold by the developer (with certain limitations), just as the Urban Transit Hub Tax Credit program permitted.

The business ERG program got a facelift to incentivize redevelopment projects that promote state planning goals, such as encouraging development in the state's urban core and poorest cities, with specific emphasis on the city of Camden. EDA refers to the business ERG as the 20-20-20 program. A project can receive a tax reimbursement for a period of 20 years, for up to 20 percent of total project costs, and requires a 20 percent developer equity contribution. There are other requirements, such as establishing a financing gap and satisfying the net benefits test. EOA 2013 increases the percentage of project costs that can be earned from 20 percent to 30 percent if certain bonus criteria are achieved (up to 40 percent in a Garden State Growth Zone). The grant is in the form of a reimbursement of incremental state tax revenues (up to 75 percent) generated by the construction of the project as well as the ongoing business operations at the project site.[7] A developer may pledge or transfer its rights in an Business ERG award with the consent of EDA, so that a developer can use the grant to obtain attractive financing. Business ERG applications must be filed prior to July 1, 2019.

Camden Incentives. EOA 2013 was enacted through a broad coalition of legislators from north and south Jersey. Elected officials from the southern part of the state saw that the lion's share of the former Urban Transit Hub program benefitted northern and central municipalities almost exclusively. Accordingly, EOA 2013 offers special enhanced incentives to Camden and, to a lesser extent, other southern municipalities. A business in Camden that can meet modest job creation requirements can earn a Grow NJ award up to 100 percent of its capital investment in a qualified business investment.

Special Considerations. Businesses and developers should consider several additional cost drivers. First, all EDA-funded projects must be completed paying prevailing wage to construction workers. Second, Grow NJ applicants in non-priority areas are subject to a cap on tax credits of 90 percent of the employee withholding taxes paid by the business. This incentivizes creation of higher wage positions. Third, for Res-ERG applicants, in addition to the tight TCO deadline, developers must set aside 20 percent of the units for affordable housing. Senator Lesniak's pending legislation would amend the Act to authorize certain eligible municipalities to determine the percentage of affordable housing to be included, similar to the Urban Transit Hub program.

Overall, the business and development community should remain bullish on the potential positive impact of EOA 2013. Now that the programs have been launched and EDA, in conjunction with the business community, can see what will work and what simply will not, there should be ample opportunity to address these issues in the new legislature in order to unleash the full power of the Act.

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[1] With limited exceptions, final point of sale retail businesses are excluded from the program.

[2] Businesses must stay in New Jersey for 1.5 times the tax credit term, i.e. for a 10-year term, the business must remain in New Jersey for 15 years.

[3] In addition to technology and manufacturing, targeted industries include transportation, defense, energy, logistics, life sciences, health and finance business (excluding a business that is primarily a warehouse or distribution center).

[4] The southern counties are Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties.

[5] As the name suggests Mega Projects create a large capital investment and number of jobs in a high-priority region. Mega Projects can be located in a port district (New York Metro or Philadelphia Metro region), Garden State Growth Zone or Urban Transit Hub.

[6] The project must be a "qualified residential project" which requires a total project cost of $17.5 million if in a city with a population greater than 200,000, a total project cost of $10 million for all other cities and towns, except for projects in Garden State Growth Zone municipalities, the total cost must be at least $5 million.

[7] In Garden State Growth Zones, up to 85% may be reimbursed.