Make New Friends … But Keep the Old
Important Perspective on New Jersey's Economic Opportunity Act of 2013

By Robert S. Goldsmith and Robert Beckelman

Much has been written about New Jersey's Economic Opportunity Act of 2013 since it was signed into law by Governor Christie on September 18, 2013. It is important, expansive and likely one of the most attractive state economic development incentive packages in the country. It is critical to keep in mind, however, that most of the elements of the program will relate primarily to projects of substantial scope, complexity and cost. In addition, all financial incentives under the Act trigger prevailing wage requirements. For many projects this may not create an issue, but in certain situations these requirements can be a significant cost factor that offsets or negates the benefits available under the Act.

While writing this article, we were reminded of the jingle we learned as young children, "Make new friends but keep the old, one is silver and the other's gold." While there may be some attractive new incentives available under the Act, the redevelopment community should be careful not to overlook long and short term tax exemptions and abatements, payments in lieu of taxes (PILOT agreements) and Redevelopment Area Bonds (RABs). In most cases, these incentives do not require approvals at the state level and can be granted by municipal governments. Unless mandated by the municipality, they will not require the payment of prevailing wages. The prevailing wage element is particularly critical in "stick built" residential projects, which represent a significant volume of downtown residential redevelopment throughout New Jersey. We therefore suggest that a careful review of incentives should include and consider the potential for local incentives through PILOT agreements and RABs.

The following hypothetical scenario illustrates how requiring payment of prevailing wages can negate the incentives offered. Assume a company wants to redevelop a 100,000 square foot light industrial manufacturing and research facility in a downtown area at a projected cost of $20 million. This facility could be a game changer for the municipality, employing some 300 people with well-paying jobs, supporting the downtown business district, improving home values, and perhaps even stimulating additional development.

Given the nature of the trades, the assumption would be that the site work, electrical work and steel work would be prevailing wage. The bulk of other trades from the construction point of view, however, typically would not be at prevailing wage.

The New Jersey Economic Development Authority (EDA), as one of the most entrepreneurial, friendly and flexible agencies in New Jersey, would do everything in its power to assist and incentivize this project. Under the Economic Opportunity Act, however, any EDA incentive package triggers prevailing wage. The general contractor in this scenario advises the developer that prevailing wage added to the balance of the trades will add a $3 million cost premium, bringing the project from $20 million to $23 million. The incentives will provide, roughly, a $3 million reduction in costs for the project. Thus, the incentives will go purely to the additional project expense in prevailing wage costs, and will not address the redeveloper's financing gap. We intend no cynicism in laying out this scenario – our intention is solely to be realistic.

The municipality wants this project to proceed, so it provides a grant to the redeveloper through RABs, in the amount of $3.5 million, to reduce the capital costs of the project. The bulk of the PILOT payments made to the municipality will be directed to the debt service on the RABs. Thus, in the first scenario there is no economic value to the redeveloper under the Act, while in the second scenario there is an economic benefit of $3.5 million dollars to the redeveloper.

One aspect of the Economic Opportunity Act, the Grow NJ Assistance Program, applies strictly to commercial projects. Under Grow NJ, tax credits are based on the number of jobs created or retained and the level of investment per square foot for different classes of commercial development. The tax credits generally range from $500 to $5,000 per job per year, with bonuses ranging from an additional $250 to $3,000 per job per year in certain areas and for certain industry sectors. The geographic boundaries applicable to the Grow NJ program are extensive and encompass many areas throughout the state. The job creation and retention amounts vary also, from as low as 10 and 25, respectively, for targeted industries, up to 35 and 50 for other businesses. There are bonuses offered for a range of factors such as targeted geographic locations and areas, larger numbers of new jobs created or retained, targeted industries, inclusion of LEED and sustainable energy elements, environmental remediation, and proximity to train stations, for example.

The other aspect of the Economic Opportunity Act is the revised Economic Redevelopment and Growth Grant Program (ERGG). The Act expands the applicability of, and the maximum incentives available under the previously adopted Economic Stimulus Act of 2009 ERGG program. The ERGG continues to provide for incentive grants for up to a maximum of 30% of total project costs (40% for projects located in Garden State Growth Zones of Passaic, Paterson, Trenton and Camden). There are also bonuses of up to an additional10% based upon various criteria that are designed to encourage projects in certain distressed municipalities, near transit facilities, for projects with an element of affordable housing, and in other geographically designated areas, disaster recovery projects, aviation districts or tourism destinations.

The ERGG also has a specific set aside of $600 million for qualified residential projects. The residential ERGG can be applied to projects within the eight south Jersey counties named in the Act, Urban Transit Hubs, Garden State Growth Zones, disaster recovery areas, distressed municipalities, deep poverty pockets, Highlands credit-receiving areas, or redevelopment areas and other qualified growth incentive areas. The total portion of New Jersey covered by these areas is quite extensive.

It should be noted that the law currently requires a 20% low and affordable housing set aside for any residential project to take advantage of benefits under the ERGG. However, Senator Raymond Lesniak has introduced legislation (S928) that would remove that requirement and allow the municipality discretion to determine the percentage of low and moderate housing that should appropriately be required in a residential project for ERGG purposes. Senator Lesniak's bill would also provide for an additional $200 million in tax credits to be made available to 100% affordable projects, with a priority for qualified projects in Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Ocean and Union counties.

With the adoption of the Economic Opportunity Act, and implementation of the new Grow NJ and ERGG programs, New Jersey's legislature has consolidated and subsumed within these two financing tools the Urban Transit Hub Tax Credit Act, the Business Retention and Relocation Assistance Grant and the Business Employee Incentive Program.

Grow NJ incentives are limited to commercial development. While the program's criteria for application are not particularly demanding when taken at face value, there is, again, an economic reality associated with the increased costs of triggering prevailing wage requirements that will, as a practical matter, eliminate many smaller scale projects. For example, a small tech start-up or manufacturing business would only be required to invest $60 per square foot ($20 in Garden State Growth Zones or the eight south Jersey counties) and create ten jobs in order to qualify for Grow NJ incentives. However, as a practical matter, the imposition of prevailing wage on such a small project may not justify the benefits in light of the increased costs that would be incurred to carry out such a project. And so, in reality, the Grow NJ program will only make financial sense for substantial projects of greater size where prevailing wage will not result in a substantial increase to the costs than would otherwise be incurred.

With respect to the ERGG program, the same would be true for smaller projects and the need to weigh whether the increased costs of compliance with the Act and prevailing wage requirements would warrant the benefits available under the Act. Nevertheless, the areas in which the ERGG is applicable are, again, extensive, and so it is worth considering and crunching the numbers to determine whether the benefits available may render a project feasible.

While the new ERGG expands qualifications to include certain residential projects, the bulk of incentives available for residential projects are through the local property tax, and there is little benefit with respect to state tax increment financing in a typical residential project. Further, the EDA advises that since the 2009 inception of ERGG there have been no local ERGG grants for any purpose. The local property tax incentives can be utilized and administered at the local level by PILOT agreements and RABs, without state approval in most instances.

In conclusion, the Economic Opportunity Act offers some substantial incentives for major development in New Jersey that put New Jersey in a more competitive position with respect to our neighboring states of New York and Pennsylvania. These incentives, which should help New Jersey attract and retain jobs, take on added importance in light of New York's highly publicized Start-Up NY program, which creates tax-free zones across the state for new and expanding businesses, with the promise of 100% tax-free operations for the next 10 years.

We encourage developers to give consideration to the tools available under the Act, as there is a reasonable likelihood that many projects may be able to take advantage of some of these incentives depending upon the location, level of investment, number of jobs anticipated to be created or retained, and industry type. And in addition, the redevelopment community is urged to explore other incentives that may be available courtesy of our "old friends," the PILOT agreement and RAB.

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