

Economic Redevelopment and Growth (“ERG”) Grants
NJ Economic Stimulus Act of 2009

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Purpose of Grants

The purpose of these grants is to encourage redevelopment projects in the qualifying area through reimbursement for all or a portion of the “project financing gap” for such projects.

Project financing gap is the part of the total project cost, including return on investment, a) that remains to be financed after all other sources have been accounted for, and b) for which the developer certifies that additional capital cannot be raised from other sources, after making all good faith efforts to raise additional capital. The “other sources of capital” must include “developer contributed capital” which that Act provides cannot be less than 20% of the total project cost.

Qualifying Projects

These grants are available to redevelopment projects located in Metropolitan and Suburban Planning Areas (Planning Areas 1 and 2 designated under the State Development and Redevelopment Plan), “centers” designated by the State Planning Commission, transit villages (denominated as such by a Department of Transportation), and certain federally closed bases.

(Note: State ERG Grants while available in Planning Areas 1 & 2, are not available in qualifying economic redevelopment and growth grant incentive areas if area qualifies solely by virtue of being a transit village.)

Amount of Grants

The State and municipality can agree to pledge and pay up to 75% of certain incremental revenue collected from eligible revenue sources included in the ERG Grant agreement. See attached. The combined amount of the reimbursements under ERG Grant agreements with the State or municipality cannot exceed 20% of the total project costs, exclusive of publicly owned infrastructure, and cannot exceed 20 years.

Financing/Bonding

These grants may be pledged or assigned as security for a loan with the consent of the State Treasurer or municipality, as applicable. Any such assignment shall be an absolute assignment for all purposes, including the federal bankruptcy code.

MUNICIPAL GRANTS

Adoption of Program

- The local ERG Grant program is adopted by ordinance of the municipality and requires the approval of the Local Finance Board before it can take effect.

Application and Approval Process

- The Local Finance Board, in consultation with the EDA, shall develop an application for the local ERG Grant.
- The developer must indicate on the application whether it is also applying for a State incentive grant.
- The CFO of the municipality must find that the incremental revenue to be realized from the project will be in excess of the amount necessary to reimburse the developer for the project financing gap.
- The Local Finance Board must consider a variety of factors, including (1) the likelihood that the redevelopment project shall, upon completion, be capable of generating new revenue in an amount in excess of the amount necessary to reimburse the developer for project costs incurred, (2) the need for the redevelopment incentive grant to the viability of the project, and (3) the degree to which the redevelopment project enhances and promotes jobs and economic development.
- In addition to the certification of the developer with regard to its ability to raise capital for the project financing gap, the developer must also certify other information concerning the project such as the status of control of the site, all permits that have or will be issued upon resolution of the financing issues, the required approvals, estimates of the revenue increment base, projections of eligible revenues for the project and the assumptions upon which those estimates are made.
- The Local Finance Board shall review the project costs, evaluate and validate the financing gap projected by the developer, and conduct a fiscal impact analysis to ensure the public assistance will result in net benefits to the municipality.

Local Incremental Revenues

- Up to the 75% limit, the municipality shall pay to the developer incremental eligible revenues directly realized from activities or business operations on the redevelopment project premises from a variety of sources (See attached)
- The incremental revenue is calculated as the difference between the amount collected in any fiscal year from eligible revenue less the incremental base for that eligible revenue. The increment base is the amount of eligible revenue in the project area in the year preceding the execution of the incentive grant agreement.

STATE GRANTS

Adoption of Program

- The EDA, in consultation with the State Treasurer, is authorized to establish a State ERG Grant program.

Application and Approval Process

- Approval of an application for a State incentive grant requires action by the EDA and the municipality (by ordinance).
- The EDA and State Treasurer must find that the State revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer for the project financing gap. This finding may be made by estimation of the CEO of the EDA and State Treasurer.

- In deciding whether or not to recommend entering into an ERG Grant, the CEO of the EDA must consider a variety of factors including (1) the likelihood that the redevelopment project shall, upon completion, be capable of generating new revenue in an amount in excess of the amount necessary to reimburse the developer for project costs incurred, (2) the need for the redevelopment incentive grant to the viability of the project and (3) the degree to which the redevelopment project enhances and promotes jobs and economic development.
- In addition to the certification of the developer with regard to its ability to raise capital for the project financing gap, the developer must also certify other information concerning the project such as the status of control of the site, all permits that have or will be issued, the required approvals, estimates of the revenue increment base, projections of eligible revenues for the project and the assumptions upon which those estimates are made.
- The State Treasurer shall review the costs, evaluate and validate the project financing gap estimated by the developer and conduct a State fiscal impact analysis.

State Incremental Revenues

- Up to the 75% limit, the State Treasurer is authorized to pay the developer incremental State revenues directly realized from businesses operating on the redevelopment project premises from a variety of revenue sources, including the following incremental taxes: corporate business taxes, taxes imposed on insurers, public utility franchise, gross receipts and excise taxes, taxes derived from the net profits from businesses, distributive shares of partnership income or a pro rata share of S corporation income, sales and use taxes, taxes imposed from the purchase of materials for remediation or certain new construction, hotel and motel occupancy fees, and realty transfer taxes.
- The incremental revenue is calculated as the difference between the amount collected in any fiscal year from eligible revenue less the incremental base for that eligible revenue. The increment base is the amount of eligible revenue in the project area in the year preceding the execution of the incentive grant agreement.

Effective date (3 month waiting period):

“This act shall take effect immediately; however, sections 9 and 11 shall remain inoperative until the first day of the third month next following enactment unless the Local Finance Board determines an earlier operative date.”

If you have questions, please call Anne S. Babineau, Esq.(732 855 6057) or Laurie E. Meyers, Esq.(732 855 6065)

This is a summary of a complex law, the regulations for which have not been fully adopted. You should consult an attorney and tax adviser for the law’s particular application to your circumstances.

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Attachment:

State: Revenues to be Pledged

6. a. Up to the limits established in subsection b. of this section and in accordance with a redevelopment incentive grant agreement, the State Treasurer shall pay to the developer incremental State revenues directly realized from businesses operating on the redevelopment project premises from the following taxes:

- the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq.,
- the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.),
- the public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed on sewerage and water corporations pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), (*Check which utilities are subject to which tax*))
- the tax derived from net profits from business, a distributive share of partnership income, or a pro rata share of S corporation income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., (*Note: Many corporations and partnerships are not subject to such taxes*)
- the tax derived from a business at the site of a redevelopment project that is required to collect the tax pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.),
- the tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) from the purchase of materials used for the remediation, the construction of new structures, or the construction of new residences at the site of a redevelopment project,
- the hotel and motel occupancy fee imposed pursuant to section 1 of P.L.2003, c.114 (C.54:32D-1), or
- the portion of the fee imposed pursuant to section 3 of P.L.1968, c.49 (C.46:15-7) derived from the sale of real property at the site of the redevelopment project and paid to the State Treasurer for use by the State, that is not credited to the "Shore Protection Fund" or the "Neighborhood Preservation Nonlapsing Revolving Fund" ("New Jersey Affordable Housing Trust Fund") pursuant to section 4 of P.L.1968, c.49 (C.46:15-8).

Attachment:

Municipal: Revenues to be Pledged

Note: The statutes referenced below do not necessarily authorize all municipalities to collect each type of tax.

11. d. Within a qualifying economic redevelopment and growth grant incentive area a municipality that has entered into a local redevelopment incentive grant agreement may pledge eligible revenues its is authorized to collect as follows:

(1) incremental payments in lieu of taxes, with respect to property located in the district, made pursuant to the "Five-Year Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et seq.), or the "Long Term Tax Exemption Law," P.L.1991, c.431 (C.40A:20-1 et al.);

(2) incremental revenues collected from payroll taxes, with respect to business activities carried on within the area, pursuant to section 15 of P.L.1970, c.326 (C.40:48C-15); (*Ex: Newark & Jersey City*)

(3) incremental revenue from lease payments made to the municipality, the developer, or the developer's successors with respect to property located in the area;

(4) incremental revenue collected from parking taxes derived from parking facilities located within the area pursuant to section 7 of P.L.1970, c.326 (C.40:48C-7); (*Ex: Newark, Elizabeth, certain densly populated Hudson & Essex County municipalities*)

(5) incremental admissions and sales taxes derived from the operation of a public facility within the area pursuant to section 1 of P.L.2007, c.302 (C.40:48G-1); (*Ex: Trenton*)

(6) (a) incremental sales and excise taxes which are derived from activities within the area and which are rebated to or retained by the municipality pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.) or any other law providing for such rebate or retention; (*Only UEZ municipalities*)

(6) (b) within Planning Area 1 (Metropolitan) under the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), a municipality may impose the entire State sales tax on business activities within a redevelopment project located in an urban enterprise zone that would ordinarily be entitled to collect reduced rate revenues under section 21 of P.L.1983, c.303 (C.52:27H-80), and pledge the excess revenues to a local redevelopment incentive grant agreement; (*Only UEZ municipalities*)

(7) incremental parking revenue collected, pursuant to section 7 of P.L.1970, c.326 (C.40:48C-7), from public parking facilities built as part of a redevelopment project, except for public parking facilities owned by parking authorities pursuant to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et seq.)

(8) incremental revenues collected, pursuant to section 3 of P.L.2003, c.114 (C.40:48F-1), P.L.1981, c.77 (C.40:48E-1 et seq.), or P.L.1947, c.71 (C.40:48-8.15 et seq.), from hotel and motel taxes;

(9) upon approval by the Local Finance Board, other incremental municipal revenues that may become available;

(10) the property tax increment.