*Michael A. Bruno, Esq.*
*Giordano, Halleran & Ciesla, P.C.*

# THE ECONOMIC OPPORTUNITY ACT OF 2013: INCENTIVES AND CHALLENGES FOR RESIDENTIAL DEVELOPERS

As of November 18, 2013, the New Jersey Economic Development Authority (EDA) began accepting applications for the new state-sponsored incentive programs created under the New Jersey Economic Opportunity Act of 2013 (the Act). The Act was signed into law by Governor Chris Christie on September 18, 2013 and serves to replace the previous state-sponsored incentive programs known as the ERG (Economic Redevelopment and Growth Program), the BEIP (the Business Employment Incentive Program), the BRRAG (the Business Retention and Relocation Assistance Grant) and the UTHTC (the Urban Transit Hub Tax Credit). The Act consolidates these programs into two incentive programs called the Economic Redevelopment and Growth Program (New ERG) and the Grow NJ Assistance Program (Grow NJ). Grow NJ and the New ERG will provide major incentives for qualifying businesses to stay or relocate in targeted areas in New Jersey, all in an effort to attract and retain jobs and to spur commercial development. Applications under Grow NJ must be submitted to the EDA prior to June 30, 2019. For qualified residential projects, the New ERG, which is currently available (until the allocated tax credits are awarded) for applications submitted on or before June 30, 2015, will provide gap financing assistance to residential projects in targeted areas in New Jersey.



For residential developers, the New ERG is well intended and fixes a major flaw in the previous ERG by awarding tax credits that can be monetized to help finance the construction of an awarded project. Under the previous ERG, qualified projects were awarded up to twenty percent of the qualified project costs for gap financing shortfalls from up to seventy five percent of the new annual tax revenue created from the project but because residential developments (or even mixed-use projects) do not typically create sufficient tax revenue to support such awards and there was no uniform way to monetize the tax revenue for use on the construction of the project, the previous ERG was not, as a practical matter, a meaningful incentive for residential developers. The New ERG addresses this practical problem by authorizing the issuance of tax credits for the project financing gap subject to a cap of twenty percent of the qualified project costs with certain targeted areas (such as the municipalities

> ***For residential developers, the New ERG fixes a major flaw by awarding tax credits to help finance the construction of an awarded project.***

defined as Garden State Growth Zones) qualifying for up to an additional twenty percent bonus. A significant benefit to the New ERG will be the ability of developers to monetize the awarded tax credits for use as part of the project construction financing.

The most generous incentives under the Act are reserved for four municipalities defined as within the Garden State Growth Zone (currently designated as Camden, Trenton, Paterson and Passaic). The Act provides significant bonus incentives for companies and developers to relocate and develop within those municipalities. In addition to the award of tax credits under the ERG of up to forty percent of the eligible project costs (a twenty percent bonus over other eligible areas), the Act also provides a unique long term tax exemption for qualified developers and projects within a Garden State Growth Zone and permits local municipal approval of a twenty year long term tax exemption on the value of the new improvements for the first ten years after issuance of a certificate of occupancy and thereafter a reduced payment in lieu of taxes on the value of the improvements for years ten through twenty based on a sliding scale percentage of taxes otherwise due on the value of the improvements. The Act also makes available a unique five year tax exemption for qualifying projects within Garden State Growth Zones for those redevelopers that do not otherwise qualify as a Garden State Growth Zone Development Entity (similar to an urban renewal entity as defined under the New Jersey Long Term Tax Exemption Law). The Act attempts to address the constitutional requirements for both the long term tax exemption and five year abatement by the legislature finding that municipalities identified as Garden State Growth Zones are "hereby declared blighted areas and areas in need of rehabilitation."

The New ERG, however, is not without its limitations. For residential developments that typically do not pay prevailing wage or similar labor rates for construction, the New ERG requires the use of prevailing wage. This will likely limit the utility of the New ERG for those projects. In addition, the New ERG currently requires that twenty percent of the project's units qualify for affordable housing. Amendments to the Act are, as of this writing, being discussed in the legislature that would eliminate affordable housing as a mandatory component of the tax credit award and make the affordable component a discretionary election of the municipality.

The New ERG should serve as valuable state-sponsored program for developments that use prevailing wage or pay similar wages for labor. It should also be a benefit for those residential projects located in Garden State Growth Zones and other areas that qualify for bonus awards under the Act. It may, however, fall short of helping other residential projects because of the prevailing wage and affordable housing obligations that come with the award.

**Disclaimer:** This article is for general information only and is not legal advice or counsel.

***About the Author***

*Michael A. Bruno, Esq., Shareholder is the co-chair of Giordano, Halleran & Ciesla's Real Estate, Redevelopment & Planned Real Estate Development practice area. He focuses his practice area on real estate transactions and approvals with an emphasis on redevelopment, planned residential development, affordable housing, and mixed-use development. Mr. Bruno can be contacted at 732-741-3900 or mbruno@ghclaw.com.*

*Giordano, Halleran & Ciesla, P.C. is a multi-specialty law firm dedicated to providing sophisticated, complex legal services and solutions. With a focus on responsiveness and producing results with outstanding value to their clients' bottom line, the firm provides experienced legal representation in a wide variety of practice areas. Visit www.ghclaw.com or follow the firm on Twitter, @GHCLawFirm.*