

NEW JERSEY ECONOMIC DEVELOPMENT LEGISLATIVE UPDATE

In our continued effort to keep clients and friends of the firm apprised of developments that could impact their pursuit or enjoyment of economic development incentives we thought you should know about recent developments with several bills pending before the New Jersey Legislature that impact economic development.

New Tax Credit Program for Businesses Located Near Urban Rail Transit Hubs. In an effort to increase development around urban rail transit hubs, a new bill was introduced December 17th that would establish a tax credit program for 100% of capital investment for businesses investing at least \$75 million in projects (or tenants with an allocation of \$25 million based on proportional share) located within a half-mile radius of targeted rail transit hubs. The Governor is reportedly pushing for passage in the last days of the current “lame duck” session on January 7, although the bill needs many changes before it accomplishes its objectives. Among the most serious issues is that the credit is not transferable and cannot be carried back or forward, making it potentially worthless to many of the companies the State is trying to attract to new transit hub projects. It also appears that only tenants taking large leaseholds (~75,000 sf) would qualify. BLS has been asked to provide input as the Governor and legislators debate refinements. Please contact us to discuss the nuances of this potentially potent new program.

Reporting Requirements for Economic Development Subsidies (C.200, P.L.2007). The recently enacted Development Subsidy Job Goals Accountability Act imposes *annual* reporting requirements and administrative fees for recipients of virtually any form of incentives or other development subsidies along with increased application requirements. The Act, approved on November 2, 2007, became effective immediately. Recipients of development subsidies during the last three years will receive written notification from the granting agency requesting the submission of the progress report within 120 days of receiving notification.

Disclosure of the following data is required annually for all incentives subsidies greater than \$25,000:

- *Jobs:* Summary of jobs created, retained or lost inside New Jersey including annual rate of pay, benefits and job type (full, part-time and temporary) for current and new employees
- *Annual Comparison:* total number of jobs in the State by the parent of the recipient at the time of application compared to the total number of jobs in the State at the time of the report
- *Impact:* statement as to whether the use of the development subsidy during the previous fiscal year resulted in reduced employment at any State site controlled by the recipient or its parent

Corporations *applying* for incentives or subsidies are also subject to the reporting requirements above along with further requirements related to the impact of subsidies on existing employees and sites within the State. While monitoring and accountability for incentives are important, the Act imposes significant additional reporting requirements and fees on businesses obtaining assistance from the State, without regard as to whether the information is required by or relevant to the particular subsidy received, and could further diminish the competitive effectiveness of NJ’s incentives programs as other states continue to attract jobs from NJ. BLS will work with the State to determine the exact requirements for our clients over the next two months.

Prevailing Wage Requirements for BEIP Grants (S-2247, A-3896). With regard to the BEIP program, the Senate passed prevailing wage requirements applicable to all construction contracts undertaken in connection with NJEDA projects and with State assistance, whether the assistance is provided before, during or after the completion of the project and for the duration of 2 years. The requirement does not apply if the facility is owned by a landlord of the recipient *and* less than 55% of the facility is leased by the entity at the time of contract.

BLS filed comments in opposition to this new requirement when it was proposed by NJEDA, and will continue to counsel against it in the Legislature. The imposition of additional financial and administrative burdens on grantees significantly dilutes the net value of the BEIP program, confusing the purpose of the BEIP program and weakening NJ's competitive position.

Expansion of Eligibility under Business Relocation and Retention Assistance Act (BRRAG) (A-1696, S-80). The proposed amendment to BRRAG would extend eligibility for the one-time transferable tax credit to businesses relocating and retaining at least *50 full-time jobs* in the State, scaled down from 250 full-time jobs. BLS strongly supports this amendment given that the current threshold of 250 employees excludes 97% of the employers in the State. By lowering the threshold to 50 employees, NJ is promoting the retention of growth companies that are creating most of the new jobs critical to NJ's economic prosperity.

Restoration of Sales Tax Exemption for Certain Businesses in Urban Enterprise Zones (A-3938, S-2491). The Legislature *partially* remedied the burdensome process it imposed earlier on the UEZ sales tax exemption. Effective January 1, 2008, full sales tax exemption will be restored for UEZ-based businesses, but only for those that have no business locations outside of a UEZ, or for any business with less than \$5 million of annual gross receipts. The use tax exemption will also be restored on out-of-state goods purchased by all UEZ-based businesses; currently, these businesses must self-assess the use tax on their out-of-state purchases, pay the tax and file for a use tax rebate later.

The current sales tax payment/rebate process is cumbersome and imposes administrative and cash flow burdens on businesses. This legislation was a step toward streamlining the process and encouraging investment by urban businesses, many of whom dropped out of the program rather than deal with these substantial administrative burdens. However, the prohibition on use of the exemption by businesses with *any* other location unnecessarily restricts access to the exemption. In dialogue with the State BLS has proposed that the Division of Taxation assure the program is free from abuse through stepped-up audits and that companies found to have abused the exemption program be subject to stiffer penalties.

Business Tax Credit Program for Certain Digital Media Production Expenses (S-2526, A).

The new digital media tax credit passed in June provides 20% of the qualified digital media production costs to taxpayers incurring at least \$2 million of the total digital media content production costs in NJ. The bill also broadens the existing corporate business tax credit for film production by lowering the film production expense threshold from 60% to 50%, and increasing the \$10 million program cap to \$30 million to include the corporate business tax credits for film and digital media production and the gross income credit for film production.

However, citing fiscal constraints, Governor Corzine conditionally vetoed the bill, asking that the amount of allowable credits be scaled back from \$30 million in the original bill to \$15 million, and placing more stringent job creation and production expense standards. Although the legislation *as passed* put NJ on the map for the digital media industry, the Governor's limitations could diminish NJ's ability to compete for jobs and investment in this rapidly expanding industry.

