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Client Alert



New Jersey Governor Signs Redevelopment Reform Bill

New Jersey Governor Jon Corzine has signed into law legislation that imposes new oversight and controls on certain large redevelopment projects that involve public funding.

The measure (A2650/ S1769) applies to projects that receive \$50 million or more in aggregate funding from one or more New Jersey public entities. While this threshold limits the application of the law to the largest projects in the state, the new law likely will have a trickle-down effect as public officials increasingly cast a more careful eye toward projects of all sizes.

The new law comes more than a year after the bankruptcy filing of the \$1 billion EnCap project, which had been represented as a plan to turn a stretch of Meadowlands landfills into a mixed use project of golf courses, hotels, offices and housing.

A2650/ S1769 applies to most projects that meet the \$50 million public funding threshold, including those involving:

- Redevelopment
- Remediation
- Environmental infrastructure

The law excludes from its requirements higher education institutions, and job relocation/retention program facilities.

New Requirements

Under the law, businesses that are awarded a total of \$50 million or more from New Jersey public entities must meet certain matching, disclosure, performance assurance, monitoring and other obligations.

Businesses must:

- Contribute \$1 in funding from non-public sources for every \$5 dollars derived from public sources—in effect raise a minimum of 20 percent in private funding

- Post performance bonds of 110 percent of the cost of publicly funded improvements under the project
- File annually audited financial statements for the project and business itself

Public entities must:

- Hold back funds until a project is completed; the hold-back amount may be as much as 10 percent under the new law (unless the public entity is legally required to hold back more under another law)
- Review the qualifications of project subcontractors

Oversight Authority

In addition to the new requirements imposed on public entities, the law expands the authority of the Office of the State Comptroller (OSC) (currently Matthew Boxer) and the State Treasurer (currently David Rousseau).

The OSC is authorized to audit businesses' use of any public funds to which the law applies, as well as their expenditures of other funds on such projects.

When the \$50 million threshold for public funding is reached, the State Treasurer must designate a "lead public agency" to serve as the sole point of contact between the business that was awarded the project, and every state entity that oversees or is otherwise involved with the project.

The State Treasurer also may appoint a lead public agency for projects that do not meet the \$50 million threshold as he deems necessary.

Penalties

A2650/S1769 includes stiff penalties for companies found to have violated its mandates. They are required to refund the amount of financial assistance received to the granting public entity/entities. In any action for the refund, the public entity(s) also may collect attorney fees and legal costs.

Businesses may be found in violation of the law if they knowingly fail to submit a required financial statement or report, or make a material misrepresentation in any application, report or other disclosure that the recipient business is required to make under the legislation.

Charting Your Path

As written, the new law only applies to large-scale projects; and in fact, some critics claim the law does not go far enough to reform and increase oversight of publicly funded projects.

Legislators vowed, however, that this law is merely the first step to tightening controls on publicly-supported projects.

Businesses already face a highly regulated environment—in which layers of uncoordinated reviews and approvals pervade the development process. With the passage of A2650/S1769, public entities in New Jersey likely will scrutinize even more closely projects to which they contribute funds. Indeed, the State Treasurer’s discretionary authority to designate a “lead public agency” to oversee even those projects that do not meet the \$50 million threshold may represent the most substantial change developers, investors, municipalities will perceive.

At the same time, the new law provides opportunities for sophisticated project sponsors.

Savvy and dedicated sponsors and investors can convert regulatory oversight from a liability to a competitive asset. New Jersey’s regulatory environment has always represented a substantial barrier to entry that limits competitive forces.

In particular, the designation of a single-point lead agency should be viewed as a significant opportunity to coordinate government funding and oversight and streamline funding and other essential approvals. We expect the state’s Economic Development Authority (currently headed by highly-regarded Executive Director Caren Franzini) to assume the lead-agency mantle in many cases. We view this as a positive, because the NJEDA has a long tradition of having in place a highly professional staff with an understanding of the needs of the development community.

Businesses that look to the public sector for project financing should proactively reassess their approach to obtaining public funds, and, where possible, should adopt business practices that are consistent with A2650/ S1769. They should review project structures and compliance efforts in view of the new audit processes.

Hill Wallack Is Here to Help

At Hill Wallack, our attorneys are recognized for their creativity and experience in counseling public and private clients on all aspects of conducting business with each other. We can help secure financing, assure legal compliance, and navigate New Jersey’s regulatory processes.

Whether you are developing, funding or evaluating a new or distressed project, we can create solutions that help convert the regulatory process into a competitive asset.

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