New Jersey Business & Industry Association

10 W Lafayette Street
Trenton, NJ 08608-2002

609-393-7707
www.njbia.org

Michele N. Siekerka, Esq.
President and CEO

Christine Buteas
Chief Government Affairs Officer

Raymond Cantor
Vice President

Christopher Emigholz
Vice President

Nicole Sandelier
Director of Economic Policy Research

Hunter Griffin
Policy Analyst

To: NJEDA CEO Tim Sullivan & NJEDA Staff

From: Christopher Emigholz, Vice President Government Affairs

Date: April 16, 2021

RE: NJBIA Perspective on Emerge Draft Rules

On behalf of our member companies that provide approximately 1 million jobs in our State and make NJBIA the largest statewide business association in the nation, thank you for considering our perspective on the draft Emerge rules.

NJBIA was pleased to support the Economic Recovery of 2020 as it moved through the Legislature and became law, and we are happy to see the New Jersey Economic Development Authority (NJEDA) move forward with these draft rules. The new law and resulting programs have the potential to be a transformative tool for economic growth in New Jersey. That being said, NJBIA would recommend that adjustments be made – both to the law in a potential cleanup bill outside of your control and to these draft rules as described below before they are finalized.

NJBIA would like to preface these recommendations by asking NJEDA to consider all the moving parts affecting the program: potential cleanup legislation, the uncertainty of legacy awardees complying with NJEDA, and the impact of the pandemic on these draft rules. We hope that your process is deliberative and gives ample opportunity for all stakeholders to be heard.

RECOMMENDATIONS

<u>Section 22.2 – Definitions:</u> For the definition of **"new full-time job"** on page 18, NJBIA appreciates the flexibility that includes both the positions at and associated with a qualified business facility given the new remote work realities of the post-pandemic economy. Beyond that definition, NJBIA would request some clarity on the meaning of **material factor** throughout this new law and the draft rules. There is no definition in this section for this repeated term, yet businesses worry that it could mean that they must certify that New Jersey is the singularly most expensive option and the tax credits alone are necessary to make that not the case. With New Jersey in a position to lure jobs from the expensive New York City market, we hope material factor does not mean that the tax credits are the only thing making job relocation, expansion, or retention in New Jersey cheaper than New York City. We hope there is a material factor interpretation or definition with some flexibility to allow for the use of Emerge tax incentives like that.

<u>Section 22.3 – Eligibility:</u> NJBIA again appreciates the continued **remote work flexibility** in (a)2 that 80 percent of work time must be in the state instead of only at the qualified business facility, but we are disappointed to see that flexibility not carry through in (d) for retained jobs in the space accommodation. NJBIA was happy to see the statute have the flexibility allowing qualified businesses to be eligible as long as they were capable of accommodating more than half of the business's new or retained full-time employees, but the draft rules added a limit to that flexibility that went beyond statute. The draft rules say that in addition to accommodating half of the employees, the businesses must occupy space "equal in size" to that at the time of their application. NJBIA believes following the statute more closely without the new conditions is less limiting and more understanding of our new remote work realities.

Section 22.6 – Fees: In this section of the draft rules that was left blank, NJBIA hopes the NJEDA considers a **fee** level similar to neighboring and competitor states, as we have heard previously from members that our fees and application process had been more burdensome than other states.

Section 22.8 – Determination of Amount: Again, we appreciate the flexibility for remote work and understand (a) not awarding the highest-level city specific awards for a project that cannot demonstrate that workers are primarily in those cities, but those projects should not lose all of their entitled **bonuses** – just the geographic ones. Megaprojects, small business projects, projects involving training, those in targeted industries, those with childcare access, projects working on prisoner reentry and others that are not tied to geographical locations should not lose those non-geographic bonuses because they do not have their employees primarily in those preferred locations. Section 22.8 (a) should be clarified that the geographical bonuses would be lost if employees are not primarily at the qualified business facility, but not all bonuses.

Section 22.9 – Approval & Agreement: Both in statute and these draft rules, NJBIA supports the promotion of **community benefit agreements** as a best practice in successful tax incentives, but we worry about mandating them for certain projects. Statute referred to "the county or municipality" having approval over these agreements, but these rules indicate that the municipality has approval authority unless they request that to go to the county. Statute gave the NJEDA flexibility on giving municipalities unilateral control over these developments, and we hope that can be restored in these rules. NJBIA is concerned that some municipalities, often the ones that need development the most, can single-handedly hold a project hostage that would benefit the whole region or state. It is important to not allow a rogue municipality halt a good project, and utilizing the county more as statute allowed could be a way to do that. It also might help to give the NJEDA more authority ensuring that a municipality cannot ask for unreasonable items in the agreement, but the rules currently forbid NJEDA from being involved in the agreement negotiations. Additionally, on these agreements, the rules currently indicate that the municipality's chief executive enters into the agreement, but it may be helpful to clarify that municipal council approval is not necessary. NJBIA would not want to see an antibusiness city council try to overturn their mayor's reasonable agreement.

Section 22.10 – Reporting of Awardee: It is important to clarify that the reporting requirements for the grant awardee can be fulfilled **electronically** so that no unreasonable paper or in-person requirements could be mandated upon them.

Targeted Industries Definitions: NJBIA is concerned there is a little too much **subjectivity in these definitions**, so it would make sense to have a third-party expert determine if someone meets the definition before their bonus is denied. For example, the advanced manufacturing definition could be subjective as to what is a conventional manufacturing firm that could be excluded because they do not sufficiently utilize certain technologies, but who decides what is sufficient and not, especially when most manufacturers in New Jersey are using some sort of technology just to be productive enough to survive in our high-cost state.

NJBIA hopes you consider our recommendations, and please contact me at cemigholz@njbia.org if you have any questions about them. I look forward to seeing you implement this new program soon.